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Petroleum (Income Tax) Act 1967 (Revised 1995)

1Petroleum (Income Tax)

LAWS OF MALAYSIA

REPRINT

Act 543

PETROLEUM (INCOME TAX)

ACT 1967

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LAWS OF MALAYSIA

Act 543

PETROLEUM (INCOME TAX) ACT 1967

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LAWS OF MALAYSIA

Act 543

PETROLEUM (INCOME TAX) ACT 1967

An Act to impose a tax upon income from the winning of petroleum in Malaysia, to provide for the assessment and collection thereof and for purposes connected therewith.

[28 September 1967]

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

PART I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be cited as the Petroleum (Income Tax) Act

1967. (2) This Act shall extend throughout Malaysia.

(3) This Act shall have effect for the year of assessment 1968 and subsequent years of assessment.

Interpretation

2. (1) In this Act, unless the context otherwise requires-- "adjusted income" means adjusted income ascertained in accordance with this Act;

"adjusted loss" means adjusted loss ascertained in accordance with this Act;

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"approved scheme" means the Employees Provident Fund or any pension or provident fund, scheme or society approved by the Director General under any written law relating to income tax; "assessable income" means assessable income ascertained in accordance with this Act;

"assessment" means any assessment or additional assessment made under this Act;

"authorized officer" means, within the scope of his authority-- (a) an officer authorized by subsection 69(1) or (2) to exercise any function of the Director General; or

(b) an officer authorized under subsection 69(5) to exercise or assist in exercising any such function;

"barrel" means 42 U.S. gallons or 9702 cubic inches, being equivalent to 34.9726 Imperial gallons;

"basis period", in relation to a chargeable person and a year of assessment, means such basis period, if any, as is ascertained in accordance with section 5;

"building" includes any structure erected on land (not being plant or machinery);

"cash payment" means such payment as may be made by Petroleum Nasional Berhad under section 4 of the Petroleum Development Act 1974 [Act 144];

"casinghead petroleum spirit" means any liquid hydrocarbons obtained in Malaysia from natural gas by separation or by any chemical or physical process but before the same has been refined or otherwise treated;

"chargeable income" means chargeable income ascertained in accordance with this Act;

"chargeable person" means--

(i) Petroleum Nasional Berhad,

(ii) Malaysia-Thailand Joint Authority,

(iii) in relation to each petroleum agreement, any other person carrying on petroleum operations thereunder,

severally;

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"chargeable petroleum", in relation to a chargeable person, means petroleum won or obtained by that chargeable person from his petroleum operations;

"chargeable tax" means chargeable tax ascertained in accordance with and imposed by this Act;

"Clerk" means the Clerk to the Special Commissioners; "company" means a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a place outside Malaysia;

"crude oil" means any oil won in Malaysia including oil extracted by destructive distillation from bituminous shales or other stratified deposits either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil has been refined or otherwise treated;

"Director General" means the Director General of Inland Revenue referred to in section 67;

"disposal" and "disposed of", in relation to petroleum owned by a chargeable person, mean respectively--

(a) delivery, without sale, of that petroleum to a refinery for refining by or on behalf of that chargeable person, and (b) delivered, without sale, to a refinery for refining by or on behalf of that chargeable person;

"entertainment" includes--

(a) the provision of food, drink, recreation or hospitality of any kind; or

(b) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (a),

by a chargeable person or an employee of his in connection with petroleum operations carried on by that chargeable person; "Inland Revenue Board of Malaysia" means the Inland Revenue Board of Malaysia established under the Inland Revenue Board of Malaysia Act 1995 [Act 533];

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"Joint Development Area" has the meaning assigned thereto by the Malaysia-Thailand Joint Authority Act 1990 [Act 440]; "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living; "market value", in relation to any thing, means the price which that thing would fetch if sold in a transaction between independent persons dealing at arm's length;

"Minister" means the Minister of Finance;

"natural gas" means gas obtained in Malaysia from bore holes and wells and consisting primarily of hydrocarbons; "partnership" means an association or arrangement of any kind (including, but not limited to, joint ventures, syndicates and cases where a party to the association or arrangement is itself a partnership) between parties who have agreed to combine any of their rights, powers, property, labour or skill for the purposes of carrying on petroleum operations and sharing any petroleum production or any profit derived therefrom;

"person" includes a company, a partnership or other body of persons and a corporation sole;

"petroleum" means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit including bituminous shales and other stratified deposits from which oil can be extracted;

"petroleum agreement" means an agreement for exploring, prospecting or mining for petroleum entered into between Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority and any other person whereby the parties thereto share any petroleum production or any profit derived therefrom;

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"petroleum operations" means--

(a) searching for and winning or obtaining of petroleum in Malaysia by or on behalf of any person for his own account or on a joint account with any other person by any drilling, mining, extracting or other like operations or process, in the course of a business carried on by that person engaged in such operations, and all operations incidental thereto, and any sale or disposal by or on behalf of that person of petroleum so won or obtained, and includes the transportation within Malaysia by or on behalf of that person of petroleum so won or obtained to any point of sale or delivery or export, but does not include--

(i) any transportation of petroleum outside Malaysia; (ii) any process of refining or liquefying of petroleum; (iii) any dealings with products so refined or liquefied; or

(iv) service involving the supply and use of rigs, derricks, ocean tankers and barges; and

(b) any sale or disposal by Petroleum Nasional Berhad within Malaysia of petroleum obtained from outside of Malaysia and includes the transportation within Malaysia by, or on behalf of, Petroleum Malaysia Berhad of such petroleum to any point of sale or delivery within Malaysia; "prescribed" means prescribed by rules made under section 83 or, in relation to a form other than the form mentioned in subsection 71(1), prescribed under section 82;

"rent" includes any sum paid for the use or occupation of any premises or part thereof or for the hire of any thing; "secondary recovery" means a project which has as its object the production of quantities of hydrocarbons by the application of external energy to the underground reservoir for the purpose of additional and/or accelerated recovery of those hydrocarbons; "Special Commissioners" means the Special Commissioners of Petroleum Income Tax referred to in section 42;

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"statutory income" means statutory income ascertained in accordance with this Act;

"statutory order" means an order having legislative effect; "stock in trade" of a chargeable person means his chargeable petroleum which he holds in his stock and which he has not-- (i) delivered to a plant for refining or liquefying; (ii) exported; or

(iii) sold.

"tax" means the tax imposed by this Act;

"year of assessment" means calendar year.

(2) For the purposes of this Act, where a person, other than Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority, carries on petroleum operations under more than one petroleum agreement, he shall be regarded as a separate chargeable person in respect of each of those agreements.

(3) Where a partnership is succeeded by another at any time during the period of its petroleum agreement, and at least one of the original parties to that agreement who was a member of the succeeded partnership is a member of the succeeding partnership, both partnerships shall be treated for the purposes of this Act as one continuing partnership.

(4) For the purposes of this Act--

(a) (i) where a partnership carries on petroleum operations under two or more petroleum agreements and the

areas under those agreements are contiguous, the

petroleum operations in those areas shall be treated as being carried on under one petroleum agreement; and

(ii) agreement areas which would otherwise be

contiguous with each other shall be treated as being contiguous with each other notwithstanding that

any part of those agreement areas has been

surrendered to Petroleum Nasional Berhad or the

Malaysia-Thailand Joint Authority; or

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(b) where prior to 21 October 1988 a partnership has more than one petroleum agreement and there is no change in the members of the partnership after that date in respect of those petroleum agreements, that partnership shall be regarded as carrying on petroleum operations under one petroleum agreement.

(5) For the purposes of this Act, the date of production in relation to a petroleum agreement with the Malaysia-Thailand Joint Authority means the date of first commercial production of petroleum under that agreement.

PART II

IMPOSITION OF THE TAX

Charge of petroleum income tax

3. Subject to and in accordance with this Act, a tax to be known as petroleum income tax shall be charged for each year of assessment on the income of every chargeable person, being income derived by such chargeable person from petroleum operations. Manner in which chargeable income is to be ascertained

4. (1) Subject to this Act, the chargeable income of a chargeable person upon which tax is chargeable for a year of assessment shall be ascertained in the following manner:

(a) first, the basis period for his petroleum operations for that year shall be ascertained in accordance with Chapter 1 of Part III;

(b) next, his gross income for the basis period for that year shall be ascertained in accordance with Chapter 2 of that Part;

(c) next, his adjusted income or adjusted loss for the basis period for that year shall be ascertained in accordance with Chapter 3 of that Part;

(d) next, his statutory income for that year and his assessable income for that year shall be ascertained in accordance with Chapter 4 of that Part; and

(e) next, his chargeable income for that year shall be ascertained in accordance with Chapter 5 of that Part.

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(2) For the purposes of this Act, any income and any adjusted loss of a chargeable person from petroleum operations may be ascertained for any period notwithstanding that-- (a) the chargeable person in question may have ceased to be engaged in petroleum operations prior to that period; or (b) in that period those petroleum operations may have ceased to produce gross income or may not have produced any gross income.

(3) For the avoidance of doubt, it is hereby declared that for the purposes of this Act, the chargeable income from petroleum operations of any person other than Petroleum Nasional Berhad or the Malaysia- Thailand Joint Authority shall be ascertained by reference to each petroleum agreement separately.

PART III

ASCERTAINMENT OF CHARGEABLE INCOME

Chapter 1 -- Basis periods

Basis periods

5. (1) For the purposes of this Act, the accounting period ending on any date within the year preceding a year of assessment shall constitute the basis period for that year of assessment.

(2) In this section "accounting period", in relation to a chargeable person, means--

(a) a period of twelve months commencing on the date of the first sale or disposal of chargeable petroleum by or on behalf of that chargeable person, whichever event shall be the earlier, or commencing on such date within the calendar month in which such event occurs as may be selected by that chargeable person with the approval of the Director General;

(b) such shorter period commencing as aforesaid and ending either on a date selected by that chargeable person with the approval of the Director General or on the date when that chargeable person ceases to be engaged in petroleum operations;

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(c) each subsequent period of twelve months during which that chargeable person is engaged in petroleum operations; or

(d) any period of less than twelve months, being a period commencing on the day following the end of any such period of twelve months and ending on the date when that chargeable person ceases to be engaged in petroleum operations or on the date when that chargeable person ceases to derive income from its petroleum operations, whichever is the later.

(3) Notwithstanding subsection (1) where--

(a) by virtue of subsections (1) and (2) there has been taken as the basis period for a year of assessment of a chargeable person an accounting period ending on any day in the year preceding that year of assessment; and

(b) there is a failure to make up the accounts of that chargeable person for an accounting period ending on the corresponding day in that year of assessment,

the Director General may direct that the basis period for the following year of assessment or the basis periods for the two following years of assessment shall consist of a period or periods (which may be of any length) specified in the direction; and any period so specified for that following year of assessment and any period so specified for the later of those two following years of assessment shall constitute the basis period for that following year of assessment and for that later year respectively.

Chapter 2 -- Gross income

Ascertainment of gross income

6. Subject to this Act, the gross income of a chargeable person for the basis period for a year of assessment from his petroleum operations shall be the gross income for that period ascertained in accordance with the following provisions of this Chapter (that chargeable person and that period being referred to in those provisions as the relevant chargeable person and the relevant period respectively). 18 Laws of Malaysia ACT 543

Natural gas and casinghead petroleum spirit sold, and crude oil sold and refined in Malaysia

7. Where in the relevant period the relevant chargeable person sells his chargeable petroleum, the proceeds of that sale shall be treated as gross income of that chargeable person for that period-- (a) if that chargeable petroleum consists of natural gas or casinghead petroleum spirit; or

(b) if that chargeable petroleum consists of crude oil which is delivered by that chargeable person in Malaysia, and it is shown to the satisfaction of the Director General that such crude oil is refined in Malaysia.

Crude oil sold and exported

8. Where in the relevant period the relevant chargeable person sells his chargeable petroleum consisting of crude oil, the proceeds of that sale shall be treated as gross income of that chargeable person for that period--

(a) if that chargeable person delivers such crude oil in Malaysia and it is not shown to the satisfaction of the Director General that such crude oil is refined in Malaysia; or (b) if that chargeable person exports such crude oil. Crude oil exported otherwise than on sale

9. Where in the relevant period the relevant chargeable person exports his chargeable petroleum consisting of crude oil otherwise than on sale, the market value of that crude oil shall be treated as gross income of that chargeable person for that period. Chargeable petroleum delivered to refinery or gas processing plant

10. Where in the relevant period any chargeable petroleum of the relevant chargeable person is delivered to a refinery in Malaysia for refining or to a gas processing plant in Malaysia for processing by or on behalf of that chargeable person, an amount equal to the market value of the chargeable petroleum shall be treated as gross income of that chargeable person for that period.

11. (Deleted by Act A353). 19Petroleum (Income Tax)

Casinghead petroleum spirit injected into crude oil

12. References in sections 7, 8, 9 and 10 to crude oil include references to casinghead petroleum spirit which has been injected into crude oil.

Miscellaneous receipts

13. (1) Where in the relevant period the relevant chargeable person derives receipts of a revenue nature incidental to and arising from any one or more of his petroleum operations (other than activities mentioned in sections 7, 8, 9 and 10) the receipts shall be treated as gross income of that chargeable person for that period. (2) Subject to this Act, where in the relevant period the relevant chargeable person receives in relation to the petroleum operations sums by way of--

(a) insurance, indemnity, recoupment, recovery, reimbursement or otherwise--

(i) where such sums are in respect of the kind of outgoings and expenses deductible in ascertaining the adjusted income of that relevant chargeable

person from the petroleum operations; or

(ii) under a contract of indemnity; and

(b) compensation for loss of income from the petroleum operations,

the receipts shall be treated as gross income of that relevant chargeable person for that relevant period.

Receipts from disposal of assets vesting in Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority

13A. (1) Where under an agreement between Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority and another chargeable person, who has incurred qualifying expenditure in respect of any asset within the meaning of the Second Schedule, 20 Laws of Malaysia ACT 543

the asset has vested in Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority, on the disposal of such asset within the meaning of paragraph 29 or 40 of that Schedule, as the case may be, in the relevant period the disposal value of that asset shall be treated as gross income of Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority for that period. (1A) Subsection (1) shall not apply where a chargeable person (in this subsection referred to as the "disposer") disposes of an asset in relation to which an initial or annual allowance has been made or would have been made, if claimed, to him (in this subsection referred to as the "asset") and that asset continues to be used for petroleum operations by another chargeable person (in this subsection referred to as the "acquirer") in another petroleum agreement under which the acquirer has not incurred qualifying expenditure in respect of that asset and at the time of the disposal--

(a) the disposer of the asset is a company and the acquirer of the asset is a partnership in which the disposer is also a partner;

(b) the disposer of the asset and the acquirer of the asset are the same partnership but operating under separate petroleum agreements;

(c) the disposer of the asset and the acquirer of the asset are partnerships and all the partners in the partnership that is disposing of the asset are also partners in the partnership that is acquiring the asset; or

(d) the disposer of the asset and the acquirer of the asset are the same company but operating under separate petroleum agreements.

(2) For the purpose of this section disposal value shall be taken to be an amount equal to the market value of the asset at the date of its disposal or, in the case of its disposal by way of sale, transfer or assignment--

(a) an amount equal to its market value at the date of the sale, transfer or assignment, as the case may be; or (b) the net proceeds of the sale, transfer or assignment as the case may be,

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whichever is the greater:

Provided that, where the asset is disposed of in such circumstances that insurance or compensation moneys are received in respect of the asset, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or those moneys, whichever is the greater.

Sums recovered on account of debts, and debts released

14. (1) Where a deduction has been made under subsection 16(2) in ascertaining the adjusted income of the relevant chargeable person for the basis period for a year of assessment, that basis period being prior to the relevant period, then--

(a) if the deduction has been made in respect of a debt estimated to have become wholly irrecoverable, any sum recovered on account of the debt by that chargeable person in the relevant period shall be treated as gross income of that chargeable person for the relevant period; and (b) if the deduction has been made in respect of a debt estimated to have become partly irrecoverable and there has been received by that chargeable person in respect of the debt a sum (or an aggregate of sums) in excess of the amount of that part of the debt not estimated to have become irrecoverable, so much of that excess as is recovered by that chargeable person in the relevant period shall be treated as gross income of that chargeable person for the relevant period.

(2) Where--

(a) a deduction has been made under subsection 15(1) or subsection 16(4) in computing the adjusted income of the relevant chargeable person for the basis period for a year of assessment (that basis period being prior to the relevant period) in respect of any outgoing or expense (including any sum payable, rent payable, expense incurred or rates payable of the kind described in paragraph 15(1)(a), (b), (c) or (d) or subsection 16(4), as the case may be); and 22 Laws of Malaysia ACT 543

(b) the whole or any part of a debt in respect of any such outgoing, expense, sum, rent, expense or rates is released in the relevant period,

the amount released shall be treated as gross income of the relevant chargeable person for the relevant period.

(3) Where during the relevant period--

(a) recovered expenditure (within the meaning of the First Schedule) is recovered by or on behalf of the relevant chargeable person; and

(b) the total recovered expenditure so recovered exceeds the aggregate of--

(i) the residual expenditure (within the meaning of that Schedule) at the date on which that period

begins; and

(ii) the qualifying exploration expenditure (within the meaning of that Schedule) incurred by the relevant chargeable person during that period,

the amount of the excess shall be treated as gross income of the relevant chargeable person for the relevant period. (4) Where--

(a) a deduction has been made under subsection 16(4) in computing the adjusted income of the relevant chargeable person for the basis period for a year of assessment (that basis period being prior to the relevant period) in respect of any expenses of the kind described in subsection 16(4); and

(b) the whole or any part of any such expenses is recovered in the relevant period,

the amount recovered shall be treated as gross income of the relevant chargeable person for the relevant period. Chapter 3 --Adjusted income and adjusted loss

Deduction in respect of outgoings and expenses

15. (1) Subject to this Act, the adjusted income of a chargeable person for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that 23Petroleum (Income Tax)

chargeable person for that period all outgoings and expenses wholly and exclusively incurred during that period by that chargeable person in the production of the gross income, including-- (a) subject to subsection (2), any sum payable for that period (or for any part of that period) by way of interest upon any money borrowed by that chargeable person and-- (i) employed in that period in the production of the gross income; or

(ii) laid out on assets used or held in that period for the production of the gross income:

Provided that any sum deductible under this paragraph shall not exceed the amount which in the opinion of the Director General would have been the fair amount of interest in a similar borrowing transaction made by independent parties dealing with one another at arm's length;

(b) rent payable for that period (or for any part of that period) by that chargeable person in respect of any land or building or part thereof occupied by that chargeable person in that period for the purpose of producing the gross income; (c) expenses incurred during that period for the repair of premises, plant, machinery or fixtures employed in the production of the gross income or for the renewal, repair or alteration of any implement, utensil or article so employed (being one of a class of implements, utensils or articles which as a class have a working life under normal conditions of use of less than two years or are subject to substantial wastage or loss annually or more frequently), excluding the cost of reconstructing or rebuilding--

(i) any premises, buildings, structures or works of a permanent nature;

(ii) any plant or machinery (other than an implement, utensil or article of such a class); or

(iii) any fixtures;

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(d) assessment rates payable for that period (or for any part of that period) by that chargeable person under any law relating to local authorities, in respect of any property used for his petroleum operations;

(e) such other deductions as may be prescribed.

(2) Where a chargeable person, being a chargeable person to which paragraph (1)(a) applies in relation to gross income for the basis period for a year of assessment and in relation to borrowed money, has made (otherwise than for the purpose of producing that gross income) any loan of money or any investment in movable or immovable property, and the loan or any part thereof is outstanding at any time in that period or the investment or any part thereof is held by that chargeable person at any time in that period-- (a) the total sum payable for that period or any part thereof by way of interest on that borrowed money, which qualifies for deduction under paragraph 15(1)(a), or any part of the total sum which so qualifies, shall be

deemed to accrue evenly over that period or part thereof, and so much of that sum as is thus found to accrue during each calendar month shall be taken to be the monthly figure for the purposes of this subsection;

(b) if at the end of any calendar month the aggregate of-- (i) the amount of the loan then outstanding if any; and

(ii) the cost of so much of the investment as is held at that time if any,

is less than the amount of that borrowed money, the monthly figure for that month shall be reduced by an amount which bears to that monthly figure the same proportion as that aggregate bears to the amount of that borrowed money;

(c) if at the end of any calendar month the aggregate mentioned in the preceding paragraph is more than the amount of that borrowed money, the monthly figure for that month shall be reduced to nil; and

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(d) the amount of the deduction to be made for that period in respect of that borrowed money shall be an amount consisting of the aggregate of--

(i) the monthly figures for all calendar months to which paragraph (b) or (c) applies, as reduced by either of those paragraphs; and

(ii) the monthly figures for the other calendar months. (3) In subsection (2) "calendar month", in relation to a basis period or part thereof, means a period which is included in that basis period or part thereof and is either--

(a) one of the twelve named months of the Gregorian calendar; or

(b) where the basis period or part thereof includes a part, but not the whole, of such a month, that part of that month. Deduction in respect of irrecoverable debt, contribution to approved scheme, intangible drilling expenses, certain capital expenditure and royalty

16. (1) In ascertaining the adjusted income of a chargeable person for the basis period for a year of assessment, deductions shall be made from the gross income of that chargeable person for that period in accordance with the following subsections (the chargeable person, period and gross income in question being referred to in those subsections as the relevant chargeable person, the relevant period and the relevant gross income respectively). (2) There shall be deducted in the case of any debt owing to the relevant chargeable person the amount of which has been included in the relevant gross income or in the gross income of the relevant chargeable person for the basis period for a year of assessment prior to the year of assessment to which the relevant period relates--

(a) if at the end of the relevant period the debt is reasonably estimated in all the circumstances of the case to be wholly irrecoverable, an amount equal to the amount of the debt; (b) if at the end of the relevant period the debt is reasonably estimated in all the circumstances of the case to be partly irrecoverable, an amount equal to so much of the debt as is estimated to be irrecoverable,

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the deduction being in either case reduced by the amount of any deduction made under this subsection in respect of the debt for the basis period for a year of assessment prior to the year of assessment to which the relevant period relates.

(3) Where in the relevant period the relevant chargeable person has made a contribution to an approved scheme in respect of an employee of the relevant chargeable person, then-- (a) if

the employee's remuneration as determined under the rules, regulations, by-laws or constitution of that scheme for the period for which the contribution is made (that period being a period which coincides with or overlaps the relevant period) is deductible as a whole (or in parts aggregating the whole), in computing the adjusted income for any basis period or periods for a year or years of assessment, there may be deducted from the relevant gross income an amount equal to the contribution or nineteen per cent of the employee's remuneration as so determined for the period for which the contribution is made, whichever is the less;

(b) if only a part or parts of that remuneration is or are so deductible, there may be deducted from the relevant gross income an amount equal to so much of the contribution or of that percentage of the remuneration (whichever of those amounts is the less) as bears to the whole of the contribution or to that percentage of the remuneration, as the case may be, the same proportion as that part or the aggregate of those parts, as the case may be, bears to the whole of that remuneration:

Provided that, where on the first establishment of a scheme of the kind referred to above a special contribution is made thereto in the relevant period by the relevant chargeable person whereby any of its employees engaged in activities relating to the production of the relevant gross income or gross income of the relevant chargeable person for any basis period for a year of assessment (that basis period being prior to the relevant period) may qualify for the benefits under that scheme, the Director General may when approving that scheme authorize deductions in respect of that special contribution of such amounts (being amounts which in total are equal to or less than the special contribution) from the gross income of the relevant chargeable person for the basis periods for such years of assessment as he thinks fit.

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(4) There shall be deducted from the relevant gross income all intangible expenses for drilling exploration, appraisal and development wells, whether productive or unproductive, incurred by the relevant chargeable person during the relevant period in exploration, development or production areas.

(5) There may be deducted from the relevant gross income such amounts in respect of capital expenditure as may be allowed for the relevant period pursuant to the First Schedule. (6) There shall be deducted from the relevant gross income an amount equal to the cash payment made by the relevant chargeable person on petroleum which is won in the relevant period. (7) (Deleted by Act A353).

(7A) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period on the provision of any equipment necessary to assist any disabled person employed by him in the production of his gross income.

(7B) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period on the provision of services, public amenities and contributions to a charity or community project pertaining to education, health, housing, infrastructure and information and communication technology, approved by the Minister:

Provided that where a deduction has been made under this paragraph, no further deduction of the same amount shall be allowed under subsection 22(1).

(7C) There shall be deducted from the relevant gross income an amount equal to the expenditure incurred not being capital expenditure on land, premises, buildings, structures or works of a permanent nature or on alterations, additions or extensions thereof or in the acquisition of any rights in or over any property, by the relevant chargeable person in the relevant period on the provision and maintenance of a child care centre for the benefit of persons employed by him in his business.

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(7D) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period in establishing and managing a musical or cultural group approved by the Minister. (7E) There shall be deducted from the relevant gross income an amount equal to the amount of expenditure incurred by the relevant chargeable person in the relevant period for sponsoring any arts or cultural activity approved by the Ministry of Culture, Arts and Tourism:

Provided that the amount deducted shall not exceed two hundred thousand ringgit.

(7F) There shall be deducted from the relevant gross income an amount equal to the amount of the expenditure incurred by the relevant chargeable person in the relevant period on the provision of a scholarship to a student for any course of study leading to an award of a diploma, or degree (including a degree at a Masters or Doctorate level) or the equivalent of a diploma or degree undertaken at a higher educational institution established or registered under the laws regulating such establishment or registration in Malaysia or authorized by any order made under section 5A of the Universities and University Colleges Act 1971 [Act 30]:

Provided that the scholarship--

(a) shall only be given to a student--

(i) who is receiving full-time instruction at such higher educational institution;

(ii) who has no means of his own; and

(iii) the total monthly income of whose parents or guardian, as the case may be, does not exceed five thousand ringgit; and

(b) shall not include payments other than payments required by such higher educational institution relating to the course of study, and educational aids and reasonable cost of living expenses during the student's period of study at such higher educational institution.

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(7G) There shall be deducted from the relevant gross income an amount equal to the amount of the expenditure, not being capital expenditure, incurred by the relevant chargeable person in the relevant period for the purposes of obtaining certification for recognized quality systems and standards and evidenced by a certificate issued by a certification body as determined by the Minister:

Provided that the expenditure incurred in the relevant period shall be deemed to be incurred by the relevant chargeable person in the basis period for the year of assessment in which the certificate is issued.

(7H) There shall be deducted from the relevant gross income an amount equal to the expenditure incurred by the relevant chargeable person in the relevant period on the provision of practical training in Malaysia, in relation to his business, to an individual who is-- (a) resident in the basis year for a year of assessment; and (b) not an employee of that person.

(8) Where any deduction in respect of any matter is capable of being made under this section, no deduction in respect of that matter shall be made under section 15.

Stock in trade

17. (1) Notwithstanding any other provision of this Part, in ascertaining the adjusted income of a chargeable person for the basis period for a year of assessment, the value of the stock in trade of his petroleum operations at the beginning and the value of the stock in trade of his

petroleum operations at the end of that period shall be taken into account in accordance with the following subsections (that chargeable person, that period and that stock in trade being referred to in those subsections as the relevant chargeable person, the relevant period and the stock respectively). (2) Where the value of the stock at the end of the relevant period exceeds the value of the stock at the beginning of the relevant period, the total of all amounts otherwise deductible under sections 15 and 16 in ascertaining the adjusted income of the relevant chargeable person for the relevant period shall be reduced 30 Laws of Malaysia ACT 543

by the amount of the excess; and, where the value of the stock at the beginning of the relevant period exceeds the value of the stock at the end of the relevant period, the total of all amounts otherwise so deductible shall be increased by the amount of the excess. (3) The value of the stock at the end of the relevant period shall be taken to be--

(i) an amount equal to its market value at that time; or (ii) if the relevant chargeable person so elects, an amount equal to the total cost to him of acquiring the stock. (4) The value of the stock at the beginning of the relevant period (other than the basis period for the first year of assessment for which the relevant chargeable person is chargeable to tax) shall be taken to be an amount equal to its value as ascertained under subsection (3) at the end of the basis period for the year of assessment immediately preceding the year of assessment to which the relevant period relates.

Deductions not allowed

18. (1) Subject to any express provision of this Act, in ascertaining the adjusted income of any chargeable person for the basis period for a year of assessment no deduction from the gross income for that period shall be allowed in respect of--

(a) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income;

(b) any capital withdrawn or any sum employed or intended to be employed as capital;

(c) any amount in respect of any payment to any pension, provident, savings, widows and orphans or other similar fund or society which is not an approved scheme;

(d) (Deleted by Act A353);

(e) rent of, or cost of repairs to, any premises or any part thereof not used for the purpose of his petroleum operations; (f) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures; 31Petroleum (Income Tax)

(g) any expenditure incurred in relation to petroleum operations, being expenditure which is qualifying expenditure for the purposes of the First Schedule or the Second Schedule and which but for this paragraph would be deductible in ascertaining the adjusted income;

(h) interest, royalty, services, technical advice, assistance, rent or other payments made under any agreement or arrangement for the use of moveable property derived from Malaysia or contract payment to a non-resident contractor from which tax is deductible under the provisions of the law for the time being in force in Malaysia relating to income tax, if tax has not been deducted therefrom and paid to the Director General in accordance therewith: Provided that 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;

(i) (Deleted by Act A381);

(j) any amount of chargeable tax payable under this Act; (k) any amount of income tax or of any identical or substantially similar tax;

(l) (Deleted by Act 619);

(m) any sum paid by way of rentals in respect of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, in excess of fifty thousand ringgit: Provided that if the motor vehicle has not been used by any person for any purpose prior to the rental and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit, any sum paid by way of rental in excess of one hundred thousand ringgit:

Provided further that the maximum amount of deduction in respect of the rentals of such motor vehicle in the year of assessment and subsequent years of assessment shall not in the aggregate exceed fifty thousand ringgit or one hundred thousand ringgit, as the case may be, in respect of that motor vehicle;

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(n) a sum equal to fifty percent of any expenses incurred in the provision of entertainment including any sums paid to an employee of that chargeable person for the purpose of defraying expenses incurred by that employee in the provision of entertainment:

Provided that this paragraph shall not apply to the expenses incurred in the provision of entertainment to his employees except where such provision is incidental to the provision of entertainment for others; or

(o) notwithstanding the proviso to paragraph (n), any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia.

(2) It is hereby declared that section 15 except in so far as it relates to expenses of the kind specified in paragraphs (1)(a) to (e) thereof, is not an express provision of this Act within the meaning of this section.

Adjusted loss

19. Subject to this Act, where but for an insufficiency of gross income of a chargeable person for the basis period for a year of assessment from his petroleum operations there would have been an amount of adjusted income of that chargeable person for that period, the amount by which the total of all such deductions as would then have been allowed under the foregoing provisions of this Chapter in ascertaining that adjusted income exceeds his gross income for that period from his petroleum operations shall be taken to be the amount of his adjusted loss for that period. Chapter 4 -- Statutory income and assessable income Statutory income

20. Subject to this Act, the statutory income (if any) of a chargeable person for a year of assessment shall consist of-- (a) the amount of his adjusted income (if any) for the basis period for that year, and

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(b) the amount of any balancing charge or the aggregate amount of the balancing charges falling to be made for that year under the Second Schedule,

reduced by the amount of any allowance or the aggregate amount of the allowances falling to be made for that year under that Schedule.

Assessable income

21. (1) The assessable income of a chargeable person (in this section referred to as the relevant chargeable person) for a year of assessment (in this section referred to as the relevant year) shall consist of the amount of his statutory income for the relevant year reduced by any deduction falling to be made for the relevant year pursuant to subsection (2).

(2) Subject to subsection (3), there shall be deducted pursuant to this subsection from the statutory income of the relevant chargeable person for the relevant year the amount of any adjusted loss for the basis periods for the years of assessment preceding the relevant year, which has not been deducted from his statutory income for a year of assessment prior to the relevant year.

(3) A deduction of any adjusted loss under subsection (2) shall be made as far as possible from the statutory income for the first year of assessment after that for the basis period for which that loss is the adjusted loss, and, so far as it cannot be so made, then from the statutory income for the next year of assessment, and so on.

(4) (Deleted by Act 79 of 1967).

(5) (Deleted by Act 79 of 1967).

Chapter 5 -- Chargeable income

Chargeable income

22. (1) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money 34 Laws of Malaysia ACT 543

made by that chargeable person in the basis period for that year of assessment to the Government, a State Government, a local authority or an approved institution or organization: Provided that the amount to be deducted from the assessable income of a chargeable person for that year of assessment in respect of any gift of money made by that chargeable person to an approved institution or organization shall not exceed five per cent of the statutory income from his petroleum operations. (1A) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to the value, as determined by the Department of Museums and Antiquities or the National Archives, of any gift of artefact, manuscript or painting made by him in the basis period for that year of assessment to the Government or State Government.

(1B) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or contribution in kind (the value to be determined by the relevant local authority) made by him in the basis period for that year of assessment to the Government or State Government for the provision of facilities in public places for the benefit of disabled persons. (1C) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to any gift of money or the cost or value (as certified by the Ministry of Health) of any gift of medical equipment made by him in the basis period for that year of assessment to any health care facility approved by that Ministry, and that amount shall not exceed twenty thousand ringgit.

(1D) The chargeable income of a chargeable person for a year of assessment shall consist of the amount of his assessable income for that year reduced by an amount equal to the value of any gift of painting (to be determined by the National Art Gallery or any state art gallery) made by him in the basis period for that year of assessment to the National Art Gallery or any state art gallery. (2) In this section "approved institution" and "approved organization" means respectively an institution and an organization approved by the Director General for the purposes of the laws for the time being in force relating to income tax.

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PART IV

ASCERTAINMENT OF CHARGEABLE TAX

Chargeable tax

23. (1) The chargeable tax for each year of assessment of a chargeable person shall be an amount equal to thirty-eight per cent of his chargeable income for that year of assessment: Provided that for the year of assessment 1976--

(a) such chargeable tax shall be computed on the chargeable income ascertained for the period commencing on or after 1 April 1975, which overlaps the basis period for that year of assessment; and

(b) the provisions of this section shall not apply to the chargeable income ascertained for the period ending on 31 March 1975, which overlaps the basis period for that year of assessment.

(2) Notwithstanding subsection (1), the chargeable tax for any year of assessment of a chargeable person on income derived from petroleum operations in the Joint Development Area shall be an amount equal to--

(a) zero per cent of the chargeable income ascertained from income for any of the first eight years of production; (b) ten per cent of the chargeable income ascertained from income for any of the next seven years of production; or (c) twenty per cent of the chargeable income ascertained from income for any subsequent year of production: Provided that where the chargeable income ascertained relates to income from two production periods, that chargeable income shall be apportioned to each of those periods (the apportionment being made in the proportion that the number of months of the relevant production period bears to the number of months of that basis period) and the chargeable tax shall be arrived at by applying the rate applicable to each of the relevant production periods to the chargeable income so apportioned.

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(3) For the purposes of subsection (2), the "production period" means the number of years of production referred to in paragraph (2)(a), (b) or (c), as the case may be.

24. (Deleted by Act A353).

25. (Deleted by Act A353).

26. (Deleted by Act A353). PART V

PERSONS CHARGEABLE

Chargeability of tax on chargeable person and persons responsible on his behalf

27. (1) Where under this Act the income of a chargeable person is assessable and chargeable to tax, that chargeable person shall, subject to this Part, be assessable and chargeable to tax in respect of that income.

(2) Responsibility for doing all acts and things required to be done by or on behalf of a company or body of persons for the purposes of this Act shall lie jointly and severally-- (a) in the case of a company, with--

(i) the manager or other principal officer in Malaysia; (ii) the directors;

(iii) the secretary; and

(iv) any person (however styled) exercising the functions of any of the persons mentioned in the foregoing

subparagraphs; and

(b) in the case of a body of persons, with--

- (i) the manager;
- (ii) the treasurer;
- (iii) the secretary; and
- (iv) the members of its controlling authority.

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(3) The liquidator of a company which is being wound up shall not distribute any of the assets of the company to its shareholders unless he has made provision (in so far as he is able to do so out of the assets of the company) for the payment in full of any tax which he knows or might reasonably expect to be payable by the company under this Act.

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

(5) Subsection 64(2) shall apply to a penalty imposed by subsection (4) of this section as it applies to a penalty imposed by subsection 51(3) or 52(2).

Power to appoint agent

28. (1) The Director General may, if he thinks fit, by notice in writing duly served appoint any person to be the agent of any chargeable person for all or any of the purposes of this Act; and, where any person is so appointed for all those purposes, he shall be assessable and chargeable to tax on behalf of that chargeable person.

(2) An appointment made under subsection (1) may be revoked by the Director General at any time.

(3) Where a person appointed under subsection (1) to be the agent of a chargeable person is aggrieved by the appointment, he may appeal under section 43 as if the notice of appointment served upon him were a notice of assessment.

Vicarious responsibility and chargeability

29. (1) Subject to this Part, the following subsections shall apply where by or under the provisions of this Part a person (in this section referred to as the representative)--

(a) is appointed to be the agent of a chargeable person; (b) is assessable and chargeable to tax on behalf or in the name of a chargeable person; or

(c) is a person in whose name a chargeable person is assessable and chargeable to tax,

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such a chargeable person being in this section referred to as the principal.

(2) The representative may require any person (including the principal, in so far as he is capable of complying with the requisition) who is in receipt or control of any income of the principal, and any person by whom any income is paid or payable to the principal, to supply to the representative full particulars of the income and any expenses connected therewith.

(3) Where the representative is assessable and chargeable to tax on behalf of the principal, the representative shall be assessable and chargeable to tax in like manner and to the like amount as the principal would be assessed and charged to tax; and, where the principal is assessable and chargeable in the name of the representative, the principal shall be so assessable and chargeable in like manner and to the like amount as he would be assessed and charged to tax if he were assessable and chargeable in his own name.

(4) The representatives shall be responsible for doing all such acts and things as are required by or by virtue of this Act to be done by him as representative or by the principal for the purposes of this Act and in particular for the payment of any tax due from him as representative or from the principal; and, in default of payment, any such tax (together with any penalty to which he as representative or the principal is or would be liable in respect of the default) shall be recoverable from the representative either as such or as if he were the principal, as the case may be: Provided that the representative shall not be required to pay any such tax or penalty (or any other penalty incurred by the principal) otherwise than from the accessible moneys.

(5) Where by or by virtue of this Act anything is to be made or served on or given or done to the principal for the purposes of this Act, in lieu thereof the same may be made or served on or given or done to the representative:

Provided that nothing shall be done to the representative by way of any conviction or imposing upon him any fine in relation to an offence committed by the principal and in which the representative had no part.

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(6) The representative--

(a) may retain out of the accessible moneys so much as is necessary to pay any tax or penalty due from him as representative or from the principal; and

(b) shall be and is hereby indemnified against all persons whatsoever for any payments made by him as representative in pursuance of this Act.

(7) In this section "the accessible moneys", in relation to the representative and the principal, mean any moneys-- (a) which from time to time are due from the representative to the principal or are held by the representative in his custody and control on behalf of the principal; or (b) being then moneys of or due to the principal, are obtainable on demand by the representative.

PART VI

RETURNS

Preparation and delivery of accounts

30. (1) Every chargeable person shall for the basis period for each year of assessment, make up accounts of his profits or losses, arising from his petroleum operations, of that period. (2) Every chargeable person shall, with respect to the basis period for each year of assessment, within three months after the expiration of that period deliver to the Director General a copy of his accounts (bearing an auditor's certificate) for that period, made up in accordance with the provisions of subsection (1), which shall contain a declaration, that the same is true and complete. Power to call for specific returns and production of books

31. For the purpose of obtaining full information for ascertaining whether or not a chargeable person is chargeable to tax, the Director General may by notice under his hand require any person-- (a) to complete and deliver to the Director General within a time specified in the notice (not being less than thirty days from the date of service of the notice) any return specified in the notice;

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

(c) to make a return in accordance with paragraph (a) and also to attend in accordance with paragraph (b).

Power to call for the statement of bank accounts, etc.

32. The Director General may by notice under his hand require any chargeable person to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a statement containing particulars of-- (a) all banking accounts--

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

(ii) on which he has or has had power to operate, being accounts which are in existence or have

been in existence at any time during a period to

be specified in the notice;

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

Power of access to buildings and documents, etc.

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

(1A) Where the Director General exercises his powers under subsection (1), the occupiers of such lands, buildings and other places shall provide the Director General or an authorized officer with all reasonable facilities and assistance for the exercise of his powers under this section.

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

(a) the inspection of them, the copying of them or the making of extracts from them cannot reasonably be undertaken without taking possession of them;

(b) they may be interfered with or destroyed unless he takes possession of them; or

(c) they may be needed as evidence in any legal proceedings instituted under or in connection with this Act.

(3) Where in the opinion of the Director General it is necessary for the purpose of ascertaining income from petroleum operations for any period to examine any books, accounts or records kept otherwise than in the National Language, he may by notice under his hand require any chargeable person carrying on the petroleum operations during that period to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a translation in the National Language of the books, accounts or records in question:

Provided that in East Malaysia this subsection shall have effect as if the words "or English" were inserted after the words "National Language" wherever they occur.

Power to call for information

34. The Director General may by notice under his hand require any person to give orally or in writing, as may be required, within a time specified in the notice (not being less than thirty days from the date of service of the notice), all such information concerning the income,

assets or liabilities of a chargeable person as may be demanded of him by the Director General for the purpose of this Act:

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

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Power to call for further returns

35. The Director General may give notice in writing to any person whenever he thinks fit requiring that person to furnish within a reasonable time (to be specified in the notice) fuller or further returns respecting any matter as to which a return is required by or under this Act.

Returns deemed to be made with due authority

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

Change of address

37. Every chargeable person who changes his address in Malaysia (being an address furnished by him to the Director General) for another address in Malaysia shall within three months inform the Director General of the change by notice in writing. PART VII

ASSESSMENTS AND APPEALS

Chapter 1 -- Assessments

Assessments generally

38. (1) The Director General shall proceed to assess every chargeable person chargeable with tax as soon as may be after the expiration of the time allowed to such chargeable person for the delivery of the accounts provided for in section 30.

(2) Where a chargeable person has delivered accounts to the Director General for the basis period for a year of assessment, the Director General may--

(a) accept the accounts and make an assessment accordingly; or

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(b) refuse to accept the accounts and, according to the best of his judgment, determine the amount of the chargeable income of that chargeable person for that year and make an assessment accordingly.

(3) The Director General, where he is of the opinion that a chargeable person who has not delivered accounts under section 30 for the basis period for a year of assessment is chargeable to tax for that year, may according to the best of his judgment determine the amount of the chargeable income of that chargeable person for that year and make an assessment accordingly:

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

Assessments and additional assessments in certain cases

39. (1) The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a chargeable person chargeable to tax, may in that year or within six years after its expiration make an assessment or additional assessment, as the case may be, in respect of that chargeable person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that chargeable person ought to have been made for that year.

(2) Where the Director General discovers that the whole or part of any tax repaid to a chargeable person (otherwise than in consequence of an agreement come to with respect to an assessment pursuant to subsection 45(2) or in consequence of an assessment having been determined on appeal) has been repaid by mistake whether of fact or law, the Director General may make an assessment in respect of that chargeable person in the amount of that tax or that part of that tax, as the case may be:

Provided that no such assessment shall be made--

(a) if the repayment was in fact made on the basis of, or in accordance with, the practice of the Director General generally prevailing at the time when the repayment was made; or

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(b) in respect of any tax, more than six years after the tax has been repaid.

(3) The Director General, where it appears to him that any form of fraud or wilful default has been committed by or on behalf of a chargeable person, or that any chargeable person has been negligent, in connection with or in relation to tax, may at any time make an assessment in respect of that chargeable person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question. (4) Where in a year of assessment--

(a) any assessment made in respect of any chargeable person for any year of assessment has been determined by the court on appeal or review; or

(b) any exemption granted to any chargeable person under this Act has been withdrawn for failing to comply with any condition imposed in granting such exemption, the Director General may in the first mentioned year of assessment or within six years after its expiration make an assessment in respect of that chargeable person for any year of assessment for the purpose of giving effect to the determination or withdrawal, as the case may be.

Form and making of assessments, and notice of assessment

40. (1) An assessment shall-- (a) be made in the appropriate prescribed form;

(b) indicate, in addition to any other material included therein, the appropriate year of assessment and the amount or additional amount of chargeable income, and chargeable tax or the amount of tax or additional tax, as the case may be; and

(c) specify in the appropriate space in that form the date on which that form was duly completed,

and, where that form appears to have been duly completed, the assessment shall, until the contrary is proved, be presumed to have been made on the date so specified.

(2) As soon as may be after an assessment has been made, the Director General shall cause a notice of assessment to be served on the chargeable person in respect of whom the assessment was made.

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(3) Where the tax charged under an assessment is increased on appeal to the Special Commissioners or a court, then, as soon as may be after the appeal has been decided there shall be served on the chargeable person in respect of whom the assessment was made a notice of increased assessment.

(4) Where subsection 43(2) applies as regards an agent and a chargeable person, any notice to be served under subsection (2) or (3) shall be served both on the agent and the chargeable person. (5) A notice served under subsection (2) or (3) shall be in the prescribed form and shall indicate, in addition to any other material included therein--

(a) in the case of a notice served under subsection (2), the year of assessment and the amount or additional amount of the chargeable income, and the chargeable tax; (b) in the case of a notice served under subsection (3), the year of assessment and the amount of the increase in the tax charged; and

(c) in either case--

(i) the place at which payment is to be made;

(ii) the penalty for late payment imposed by subsection 48(4); and

(iii) any right of appeal which may exist under this Act.

Finality of assessment

41. (1) Where-- (a) no valid notice of appeal against an assessment has been given under section 43 within the time specified by that section (or any extension thereof);

(b) an agreement has been come to with respect to an assessment pursuant to subsection 45(2); or

(c) an assessment has been determined on appeal and there is no right of further appeal, the assessment as made, agreed to or determined shall be final and conclusive for the purposes of this Act.

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(2) Nothing in subsection (1) shall prejudice the exercise of any power conferred on the Director General by section 39 or subsection 74(3).

Chapter 2 -- Appeals

The Special Commissioners and the Clerk

42. (1) For the purposes of this Act there shall be three or more Special Commissioners of Petroleum Income Tax and a Clerk to the Special Commissioners.

(2) The Special Commissioners appointed under the law relating to income tax shall be the Special Commissioners of Petroleum Income Tax.

(3) The Clerk to the Special Commissioners, appointed under the law relating to income tax shall be the Clerk to the Special Commissioners of Petroleum Income Tax.

Right of appeal

43. (1) A chargeable person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Director General within thirty days after the service of the notice of assessment (or within such extended period as may be allowed under section 44) a written notice of appeal in the prescribed form stating the

grounds of appeal and containing such other particulars as may be required by that form. (2) Where an assessment has been made in respect of a person appointed under section 28 to be the agent of a chargeable person, the agent and that chargeable person shall for the purposes of this section and the other provisions of this Act relating to appeals each be treated as the person in respect of whom the assessment was made and, if they both appeal against the assessment, their appeals shall if possible be dealt with together. (3) Where in a case to which section 29 applies the principal has appealed against an assessment, the representative, whether or not he himself has appealed or is entitled to appeal against the assessment and without prejudice to any other power conferred on him by subparagraph 12(c) of the Third Schedule, may represent and act generally on behalf of the principal for the purposes of the provisions of this Act relating to appeals ('the principal' and 'the representative' here having the same meaning as in section 29). 47Petroleum (Income Tax)

Extension of time for appeal

44. (1) A chargeable person seeking to appeal against an assessment may at any time make to the Director General a written application in the prescribed form for an extension of the period within which notice of appeal against the assessment may be given under section 43.

(2) On receipt of an application under subsection (1), the Director General--

(a) if he is satisfied that for any reasonable cause the applicant was prevented from giving notice of appeal within the period provided by section 43, shall extend the period as he thinks proper in the circumstances and give written notice of the extension to the applicant; and

(b) if he is not so satisfied, shall forward the application to the Clerk, together with a statement of the reasons for his dissatisfaction and his address for the purposes of the application.

(3) Where the Director General forwards an application and statement pursuant to paragraph (2)(b), he shall inform the applicant in writing that he has done so and shall furnish the applicant with a copy of the statement; and the applicant may, within twenty-one days of receiving the information and the copy, forward to the Clerk written representations as to the application and the statement. (4) Any application and statement forwarded pursuant to paragraph (2)(b) and any representations forwarded pursuant to subsection (3) shall be brought by the Clerk to the attention of a Special Commissioner, who shall decide whether or not to extend as he thinks proper in the circumstances the period within which the notice of appeal may be given.

(5) The decision of one of the Special Commissioners refusing an application or granting an extension under subsection (4) shall be notified in writing by the Clerk to the applicant and the Director General, and shall be final.

Review by Director General

45. (1) On receipt of a notice of appeal under section 43, the Director General shall, within twelve months from the date of 48 Laws of Malaysia ACT 543

receipt of the notice of appeal, review the assessment against which the appeal is made and for that purpose may-- (a) require the appellant to furnish such particulars as the Director General may think necessary with respect to the income to which the assessment relates and any other matter relevant to the assessment in the Director General's opinion;

(b) require the appellant to produce all books or other documents in the appellant's custody or under the appellant's control relating to the petroleum operations to which the assessment relates or any other matter relevant to the assessment in the Director General's opinion; (c) summon any person who in the Director General's opinion is able to give evidence respecting the assessment to attend before the Director General; and

(d) examine any person so attending on oath or otherwise. (1A) Where the Director General requires a period longer than twelve months to carry out the review under subsection (1), the Director General may apply to the Minister for an extension of that period not later than thirty days before the expiry of the twelve month period.

(1B) On receipt of an application under subsection (1A), the Minister may grant such extension as he thinks proper and reasonable in the circumstances provided that such extension shall not exceed a period of six months from the date of expiry of the twelve month period.

(1C) The decision of the Minister under subsection (1B) shall be notified in writing to the Director General and shall be final. (2) Where as the result of a review under subsection (1) the Director General and the appellant come to an agreement in writing either--

(a) as the amount of the chargeable income and the tax or the amount of tax or additional tax; or

(b) that there is no chargeable income or tax,

the assessment against which the appeal is made shall be treated as having been confirmed, reduced, increased or discharged in accordance with the agreement.

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(3) Subject to subsection (5), where as the result of a review under subsection (1) the Director General and the appellant come to an oral agreement as to the matters mentioned in paragraph (2) (a) or (b) and the Director General serves a written confirmation of the agreement on the appellant, then, unless the appellant within a period of twenty-one days of being so served gives notice in writing to the Director General repudiating the agreement, the oral agreement as confirmed by the Director General shall be deemed to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period between the Director General and the appellant.

(4) Subject to subsection (5), where as the result of a review under subsection (1) the Director General makes to the appellant proposals in writing that the assessment should be confirmed, reduced, increased or discharged and the appellant neither accepts nor rejects the proposals, unless the appellant within a period of twenty-one days of being served with such proposals (or such further period as the Director General on the appellant's application may allow) gives notice in writing to the Director General rejecting the proposals, the proposals shall be deemed to have been accepted and to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period or further period, as the case may be, between the Director General and the appellant. (5) Where by the operation of subsection (3) or (4) there is deemed to be an agreement within the meaning of subsection (2) between the Director General and the appellant, one of the Special Commissioners on the application of the appellant made to the Special Commissioners within a period of thirty days after the agreement is deemed to come to may, after giving the Director General an opportunity to make oral or written representations, set the agreement aside if he thinks it just and equitable to do so in the circumstances.

(6) The decision of one of the Special Commissioners on an application under subsection (5) shall be notified by the Clerk in writing to the applicant and the Director General, and shall be final.

(7) References in this section to agreements come to between the Director General and the applicant and to confirmations and requests being served on the appellant included references to agreements come to between the Director General and a duly authorized person conducting correspondence or otherwise acting on behalf of the appellant in relation to the appeal and to confirmations and requests served on such a person.

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(8) Where on an appeal against an assessment the tax charged under the assessment is increased by an agreement come to under subsection (2) or by an agreement deemed to become to under subsection (3) or (4) and not set aside under subsection (5), the Director General shall serve on the appellant a notice in the prescribed form which shall--

(a) indicate, in addition to any other material included therein, the amount of the increase in the tax charged and the place of payment; and

(b) have the same effect for the purposes of Part VIII as a notice of increased assessment.

(9) The notice mentioned in subsection (8) shall be served-- (a) where an agreement is come to under subsection (2), as soon as may be;

(b) where an agreement is come to under subsection (3) or (4) and is not set aside under subsection (5), as soon as may be after the expiry of the period mentioned in subsection (5) or, if there is an unsuccessful application to the Special Commissioners under subsection (5), as soon as may be after the application has been refused. Disposal of appeals

46. (1) Subject to subsection (3), the Director General may send an appeal forward to the Special Commissioners at any time within the twelve month period from the date of receipt of the notice of appeal or, if an extension under subsection 45(1B) has been granted, within the extended period if he is of the opinion that there is no reasonable prospect of coming to an agreement with the appellant in accordance with subsection 45(2) in respect of the appeal and if subsections 45(3) and (4) are not applicable; and, where he sends an appeal forward under this subsection, he shall give the appellant written notice that he has done so.

(2) (Deleted by Act 608).

(3) No appeal shall be sent forward to the Special Commissioners if the Director General and the appellant have or are deemed to have come to an agreement in respect of it in accordance with subsection 45(2), (3) or (4).

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(4) Where an appeal is sent forward to the Special Commissioners pursuant to this section, the appeal shall be sent forward in the manner provided by the Third Schedule and that Schedule shall have effect for regulating the hearing and determination of the appeal and otherwise as provided therein.

(5) Where an appeal has been sent forward to the Special Commissioners pursuant to this section--

(a) the Director General and the appellant at any time before the hearing of the appeal by the Special Commissioners is completed may come to an agreement of the kind mentioned in subsection 45(2) with regard to the assessment to which the appeal relates; or

(b) the appellant may at any time withdraw the appeal. (6) Where the Director General and the appellant come to an agreement under paragraph 5(a), the Director General shall and the appellant may, send a true copy of the agreement to the Special Commissioners.

(7) Where the Special Commissioners are satisfied that the Director General and the appellant have come to an agreement under paragraph (5)(a) with regard to the assessment to which an appeal relates-- (a) the proceedings before the Special Commissioners relating to the appeal shall abate;

(b) the agreement shall have effect as if it had been come to under subsection 45(2); and

(c) subsections 45(8) and (9) shall apply accordingly. (8) Where the Special Commissioners are satisfied that the appellant has withdrawn his appeal under paragraph (5)(b)-- (a) the

proceedings before the Special Commissioners relating to the appeal shall abate; and

(b) the assessment to which the appeal relates shall be final and conclusive for the purposes of this Act.

(9) In this section 'appeal' means an appeal against an assessment.

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Reference to the Price Review Committee

47. (1) Subject to section 2 and without prejudice to the powers of the Director General to determine the amount of the chargeable income of a chargeable person for a year of assessment to the best of his judgment and to make an assessment accordingly, where the Director General is not satisfied with the determination of the market value of chargeable petroleum and he so notifies the chargeable person in writing, either the Director General or that chargeable person may refer the matter to the Price Review Committee (in this section referred to as the committee) established in accordance with the following subsections for determination of what ought to be the market value:

Provided that nothing in this subsection shall be so construed as to relieve any chargeable person from any obligation imposed upon him under Chapter 2 of Part VII.

(2) Subject to this section the committee shall consist of such person or persons as the chargeable person and the Director General may agree within twenty-one days from the date of service of the notification mentioned in subsection (1) on the chargeable person. (3) Where the chargeable person and the Director General fail to come to an agreement in the manner provided in subsection (2), each of them shall have the right to appoint one member of the committee.

(4) Where the chargeable person within thirty days from the date of his acquiring the right to appoint one member of the committee under subsection (3) fails to exercise that right, the Director General shall have the right to appoint one member of the committee to act in the place of the member whom the chargeable person has failed to appoint.

(5) Where the Director General within thirty days from the date of his acquiring the right to appoint one member of the committee under subsection (3) fails to exercise that right, the chargeable person shall have the right to appoint one member of the committee to act in the place of the member whom the Director General has failed to appoint.

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(6) The two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, shall within twenty-one days after their appointment jointly appoint a third member who together with the two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, shall form the committee, and who shall be the chairman of it.

(7) Where the two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, fail within twenty-one days after their appointment jointly to appoint a third member-- (a) the chargeable person and the Director General shall have the right to request the Chief Justice of the Federal Court to appoint a third member; and

(b) the third member appointed by the Chief Justice of the Federal Court shall together with the two members appointed under subsections (3) and (4) or (3) and (5), as the case may be, form the committee and shall be the chairman of it.

(8) The committee shall make such rules governing the conduct of any reference to it as it shall think fit.

(9) The committee shall determine the matter referred to it under subsection (1) and its decision on the matter shall be final. (10) Notwithstanding anything in this Act the Special Commissioners shall have no jurisdiction to hear or determine any matter which the committee has jurisdiction to hear and determine. PART VIII

COLLECTION AND RECOVERY OF TAX

Payment of tax

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

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(2) Subject to this section, where tax payable under an assessment is increased on appeal, the additional tax payable by virtue of the increased assessment shall on the service of the notice of increased assessment on the chargeable person assessed be due and payable at the place specified in that notice, whether or not that chargeable person makes any appeal against the increased assessment. (3) Where any tax is payable in accordance with subsection (1) or (2) the Director General may allow the tax to be paid by instalments in such amounts and on such dates as he may determine. (4) Subject to subsection (3), where any tax due and payable on the service of a notice in accordance with subsection (1) or (2) has not been paid within thirty days after the service of that notice (or within such longer period as may be allowed by the Director General), so much of the tax as is unpaid upon the expiration of those days or that period, as the case may be, shall without any further notice being served be increased by a sum equal to ten per cent of the tax so unpaid, and that sum shall be recoverable as if it were tax payable under this Act.

(5) In any case to which subsection (3) applies, in the event of default in payment of any one instalment on its due date for payment the balance of the tax then outstanding shall be due and payable on that date and shall without any further notice being served be increased by a sum equal to ten per cent of that balance, and that sum shall be recoverable as if it were tax due and payable under this Act:

Provided that, where the instalment to which the default relates is subsequently paid, the Director General may treat it as having been paid on its due date.

(6) Notwithstanding the foregoing subsections, where tax due and payable is increased by a sum under subsection (4) or (5), 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. Recovery by suit

49. (1) Tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government. 55Petroleum (Income Tax)

(2) The Director General and all authorized officers shall be deemed to be public officers authorized by the Minister under subsection 25(1) of the Government Proceedings Act 1956 [Act 359], in respect of all proceedings under this section. (3) In any proceedings under this section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under subsection 48(4) or (5).

Refund of overpayments

50. (1) Subject to this section, where it is proved to the satisfaction of the Director General that any chargeable person has paid tax for any year of assessment in excess of the amount

payable under this Act, the chargeable person shall be entitled to have the excess refunded by the Government.

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

(3) Nothing in this section shall operate--

(a) to extend any time limit for appeal, validate any appeal which is otherwise invalid or authorize the revision of any assessment or other matter which has become final and conclusive; or

(b) to compel the Government to refund the excess amount of tax paid (by deduction or otherwise) in respect of an assessment unless the assessment has been finally determined.

Fund for Tax Refund

50A. (1) There shall be paid from time to time into the Fund established under section 111B of the Income Tax Act 1967 such amount of tax collected under this Act as may be authorized by the Minister.

(2) The money of the Fund referred to in subsection (1), shall be applied for the making of a refund of an amount of tax paid in excess of the amount payable as ascertained in section 50.

(3) Section 14A of the Financial Procedure Act 1957 shall not apply to any refund in excess of the amount payable as ascertained in section 50.

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PART IX

OFFENCES AND PENALTIES

Failure to make or deliver accounts

51. (1) Any person who without reasonable excuse-- (a) makes default in making up accounts in accordance with subsection 30(1); or

(b) makes default in delivering a copy of accounts in accordance with subsection 30(2),

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

(2) In any prosecution under subsection (1) the burden of proving that accounts have been made or a copy of accounts has been delivered shall be upon the accused person.

(3) Where in relation to a year of assessment a person makes default in the manner described in paragraph (1)(a) or (b) and no prosecution under subsection (1) has been instituted in relation to that default--

(a) the Director General may require that person to pay a penalty equal to treble the amount of the tax which, before any set-off or repayment under this Act, is payable for that year; and

(b) if that person pays that penalty (or, where the penalty is abated or remitted under section 63, so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

Incorrect returns

52. (1) Any person who-- (a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of a chargeable person; or

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(b) gives any incorrect information in relation to any matter affecting the chargeability to tax of a chargeable person, shall, unless he satisfies the court that the incorrect return or incorrect information was made or given in good faith, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding *fifty thousand ringgit and shall pay a special penalty of double the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct.

(2) Where a person--

(a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of a chargeable person; or

(b) gives any incorrect information in relation to any matter affecting the chargeability to tax of a chargeable person, then, if no prosecution under subsection (1) has been instituted in respect of the incorrect return or incorrect information,

the Director General may require that person to pay a penalty equal to the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct; and, if that person pays that penalty (or, where the penalty is abated or remitted under section 63, so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

Wilful evasion

53. (1) Any person who wilfully and with intent to assist a chargeable person to evade tax--

(a) omits from a return made under this Act any income which should be included;

(b) makes a false statement or entry in a return made under this Act;

*NOTE--Previously "five thousand ringgit" see Petroleum (Income Tax) (Amendment) Act 1976 [Act A353].

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(c) gives a false answer (orally or in writing) to a question asked or request for information made in pursuance of this Act;

(d) prepares or maintains or authorizes the preparation or maintenance of false books of account or other false records;

(e) falsifies or authorizes the falsification of books of account or other records; or

(f) makes use or authorizes the use of any fraud, art or contrivance,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall pay a special penalty of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence had not been detected. (2) Where in any proceedings under this section it is proved that a false statement or false entry (whether by omission or otherwise) has been made in a return furnished under this Act by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed until the contrary is proved to have made that false statement or entry with intent to assist a chargeable person to evade tax. Obstruction of officers

54. Any person who-- (a) obstructs or refuses to permit the entry of the Director General or an authorized officer into any land, building or place in pursuance of section 33;

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

(c) refuses to produce any book or other document in his custody or under his control on being required to do so by the Director General or an authorized officer for the purposes of this Act;

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(d) fails to provide reasonable facilities or assistance or both to the Director General or an authorized officer in the exercise of his powers under this Act; or

(e) refuses to answer any question relating to any of those purposes lawfully asked of him by the Director General or an authorized officer,

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

Breach of confidence

55. (1) Any classified person who in contravention of section 71--

(a) communicates classified material to another person; or (b) allows another person to have access to classified material, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) In this section "classified material" and "classified person" have the same meaning as in section 71.

Offences by officials

56. Any person having an official function under this Act who-- (a) otherwise than on good faith, demands from any person an amount in excess of the tax or penalties due under this Act;

(b) withholds for his own use or otherwise any portion of any such tax or penalty collected or received by him; (c) otherwise than on good faith, makes a false report or return (orally or in writing) of the amount of any such tax or penalty collected or received by him; or

(d) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Director General or any other person,

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

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Unauthorized collection

57. Any person who, not being authorized under this Act to do so, collects or attempts to collect tax or a penalty under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Other offences

58. Any person who without reasonable excuse-- (a) fails to comply with a notice given under section 31, 32, subsection 33(3), section 34 or 35; or

(b) fails to comply with section 37,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Additional provisions as to certain offences

59. (1) No proceedings for an offence under section 52, 54 or 58 shall be instituted more than twelve years after the offence was committed.

(2) Any person who aids, abets or incites another person to commit an offence under section 52, 54 or 56 shall be deemed to have committed the same offence and shall be liable to the same penalty.

Tax payable notwithstanding institution of proceedings

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

61. (Deleted by Act A1028). 61Petroleum (Income Tax)

Power to compound offences

62. (1) Where any person has committed any offence under this Act, the Director General may at any time before conviction compound the offence and order that person to pay such sum of money, not exceeding the amount of the maximum fine and any special penalty to which that person would have been liable if he had been convicted of the offence, as he thinks fit: Provided that the Director General shall not exercise his powers under this section unless that person in writing admits that he has committed the offence and requests the Director General to deal with the offence under this section.

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

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

subsection (1);

(b) the order shall specify--

(i) the offence committed;

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

(iii) the date on which payment is to be made or the dates on which instalments of that sum are to be

paid, as the case may be,

and, where the order provides for payment by instalments and there is default in payment of any instalment, the whole of the balance then outstanding shall become due and payable forthwith;

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

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

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

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(f) the order may be enforced in the same way as the judgment of a court for the payment of the amount stated in the order or the amount outstanding, as the case may be; and

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

Power to abate or remit penalties

63. The Director General may abate or remit any penalty imposed under this Act except a penalty imposed on conviction. Recovery of penalties imposed under Part IX

64. (1) Special penalties imposed under subsection 52(1) or 53(1) shall be recoverable in the same way as fines imposed on conviction.

(2) Any penalty imposed on any person under subsection 51(3) or 52(2) shall be collected as if it were part of the tax payable by that person, but shall not be treated as tax so payable for the purposes of any provision of this Act other than section 49. Jurisdiction of subordinate court

64A. Notwithstanding any other written law, a subordinate court (as defined in the Third Schedule) shall have power to try any offence under this Act and on conviction to impose the full penalty therefor.

PART X

REMISSION AND OTHER RELIEF

Remission of tax

65. (1) The tax paid or payable by any chargeable person may be remitted wholly or in part by the Minister on grounds of justice and equity, and any tax so remitted shall not be regarded as tax payable for the purposes of any other provision of this Act. (2) Where a chargeable person granted remission under subsection (1) has paid any of the tax to which the remission relates, he shall be entitled to have the amount which he has paid refunded to him as if it were an overpayment to which section 50 applies. 63Petroleum (Income Tax)

Double taxation arrangements

65A. (1) If the Minister by statutory order declares that-- (a) arrangements specified in the order have been made by the Government with the government of any territory outside Malaysia with a view to affording relief from double taxation in relation to tax under this Act and any foreign tax of that territory; and

(b) it is expedient that those arrangements shall have effect,

then, so long as the order remains in force, those arrangements shall have effect in relation to tax under this Act notwithstanding anything in any written law.

(2) Where any arrangements have effect by virtue of this section, section 71 shall not prevent the disclosure to a duly authorized servant or agent of the government with which the arrangements have been made of such information as is required to be disclosed under the arrangements.

(3) Any arrangements to which effect is given under this section may include--

- (a) provision for relief from tax with respect to any person of any particular class;
- (b) provision as to income which is not itself subject to double taxation; and
- (c) provision for exempting from tax any person or any person of any particular class or of exempting from tax (wholly or in part) the income of any person or any person of any particular class.

(4) For the purposes of this section 'foreign tax' means any tax on income derived from petroleum operations chargeable or imposed by or under the laws of a territory outside Malaysia. (5) Any order made under this section shall be laid before the House of Representatives.

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Exemption to give effect to agreements in overlapping areas 65B. (1) The Minister may, by statutory order, exempt from tax any chargeable person or exempt from tax the income (wholly or in part) of any chargeable person to give effect to any agreement or arrangement made by the Government with the government of any territory outside Malaysia for the joint exploration and exploitation of petroleum in overlapping areas.

(2) Any order made under subsection (1) shall be laid before the House of Representatives.

(3) Nothing in subsection (1) shall absolve or be deemed to have absolved the said chargeable person from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provisions of this Act in respect of the income exempted under this section. Relief in respect of error or mistake

66. (1) If any chargeable person who has paid tax for any year of assessment alleges that an assessment relating to that year is excessive by reason of some error or mistake in a return or statement made by him for the purposes of this Act and furnished by him to the Director General prior to the assessment becoming final and conclusive, he may within six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Director General for relief. (2) On receiving an application under subsection (1) the Director General shall inquire into the matter and, subject to this section, shall give by way of repayment of tax such relief in respect of the alleged error or mistake as appears to him to be just and reasonable. (3) In determining any application under this section the Director General shall have regard to all the relevant circumstances of the case and in particular--

- (a) shall consider whether the granting of relief would result in the exclusion from charge to tax of income of the applicant; and
- (b) for that purpose may take into consideration the chargeability of the applicant for years of assessment other than the year to which the application relates and assessments made upon him for those years.

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(4) No relief shall be given under this section in respect of an error or mistake as to the basis on which the chargeability of the applicant ought to have been computed if the return or statement containing the error or mistake was in fact made on the basis of, or in accordance

with, the practice of the Director General generally prevailing at the time when the return or statement was made. (5) An application under subsection (1) shall be as nearly as may be in the same form as a notice of appeal under section 43; and, where the applicant is aggrieved by the Director General's decision on the application--

(a) the applicant may within six months after being informed of the decision request the Director General in writing to send the application forward to the Special

Commissioners;

(b) the Director General shall within three months after receiving the request send the application forward as if he were sending an appeal forward pursuant to section 46; and

(c) the application shall thereupon be deemed to be an appeal and shall be disposed of accordingly.

PART XI

SUPPLEMENTAL

Chapter 1 -- Administration

The Director General

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

Power of Minister to give directions to Director General

68. The Minister may give to the Director General directions of a general character (not inconsistent with this Act) as to the exercise of the functions of the Director General under this Act; and the Director General shall give effect to any directions so given. 66 Laws of Malaysia ACT 543

Delegation of Director General's functions

69. (1) Any function of the Director General under this Act (not being a function exercisable by statutory order or a function exercisable under section 82) may be exercised by a Deputy Director General appointed under the law relating to income tax. (2) Any officer appointed under the law relating to income tax may exercise any function of the Director General under this Act (not being a function exercisable by a statutory order or a function exercisable under subsection 70(1) and section 82. (3) (Deleted by Act 644).

(4) (Deleted by Act 644).

(5) The Director General may by writing under his hand authorize any public officer or any employee of the Inland Revenue Board of Malaysia (subject to any exceptions or limitations contained in the authorization) to exercise or assist in exercising any function of the Director General under this Act which is exercisable under subsection (2) by the appointed officers.

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

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

(8) References in this Act to the Director General shall be construed, in relation to any case where a public officer or an employee of the Inland Revenue Board of Malaysia is authorized

by any provision of subsections (1) to (5) to exercise the functions of the Director General, as including references to that officer or employee.

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Identification of officials

70. (1) Any person exercising the right of access or the right to take possession conferred by section 33 shall carry a warrant in the prescribed form issued by the Director General (or, in the case of a warrant issued to the Director General, by a Deputy Director General) which shall identify the holder and his office and shall be produced by the holder on demand to any person having reasonable grounds to make the demand.

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

Certain material to be treated as confidential

71. (1) Subject to this section, every classified person shall regard and deal with classified material as confidential; and, if he is an official, he shall make and subscribe before the prescribed authority a declaration in the prescribed form that he will do so. (2) No classified material shall be produced or used in court or otherwise except--

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

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(3) No official shall be required by any court--

(a) to produce or disclose classified material which has been supplied to him or another official otherwise than by or on behalf of the chargeable person to whose income or adjusted loss it relates; or

(b) to identify the person who supplied that material. (4) Nothing in this section shall prevent--

(a) the production or disclosure of classified material to the Auditor General (or to public officers under his direction and control) or the use of classified material by the Auditor General, to such an extent as is necessary or expedient for the proper exercise of the functions of his office; (b) the Director General from publicising, from time to time in any manner as he may deem fit, the following particulars in respect of a person who has been found guilty or convicted of any offence under this Act or dealt with under subsection 52(2), section 62 or 63--

(i) the name, address and occupation or other

description of the person;

(ii) such particulars of the offence or evasion as the Director General may think fit;

(iii) the year or years of assessment to which the offence or evasion relates;

(iv) the amount of the income not disclosed;

(v) the aggregate of the amount of the tax evaded and penalty (if any) charged or imposed;

(vi) the sentence imposed or other order made:

Provided that the Director General may refrain from publicising any particulars of any person to whom this paragraph applies if the Director General is satisfied that before any investigation or inquiry has been commenced in respect of any offence or evasion falling under section 52 or 53 that person has voluntarily disclosed to the Director General or to any authorized officer complete information and full particulars relating to such offence or evasion. 69Petroleum (Income Tax)

(5) In this section--

"another tax law" means any written law relating to income tax, estate duty, film hire duty, payroll tax or turnover tax and any other written law declared by the Minister by statutory order to be another tax law for the purposes of this section; "classified material" means any return or other document made for the purposes of this Act and relating to the income or adjusted loss of any chargeable person and any information or other matter or thing which comes to the notice of a classified person in his capacity as such;

"classified person" means--

(a) an official;

(b) the Auditor General and public officers under his direction and control;

(c) any person advising or acting for a person who is or may be chargeable to tax, and any employee of a person so acting or advising if he is an employee who in his capacity as such has access to classified material; or

(d) any employee of the Inland Revenue Board of Malaysia; "official" means a person having an official duty under or employed in carrying out the provisions of this Act.

Chapter 2 -- Powers to protect the revenue in case of certain transactions

Power to disregard certain transactions

72. (1) The Director General, where he has reason to believe that any transaction has the direct or indirect effect of-- (a) altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any chargeable person;

(b) relieving any chargeable person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return;

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(c) evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by this Act; or

(d) hindering or preventing the operation of this Act in any respect,

may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such adjustments as he thinks fit with a view to counter-acting the whole or any part of any such direct or indirect effect of the transaction.

(2) In exercising his powers under this section, the Director General may--

(a) treat any income of any person as the income of any other person;

(b) make such computation or recomputation of any gross income, adjusted income or adjusted loss, statutory income, assessable income or chargeable income of any chargeable

person as may be necessary to revise any chargeable person's liability to tax or impose any liability to tax on any chargeable person in accordance with his exercise of those powers; and

(c) make such assessment or additional assessment in respect of any chargeable person as may be necessary in

consequence of his exercise of those powers, nullify a right to repayment of tax or require the return of a repayment of tax already made.

(3) Without prejudice to the generality of the foregoing subsections, the powers of the Director General conferred by this section shall extend--

(a) to the charging with tax of any chargeable person who but for any adjustment made by virtue of this section would not be chargeable with tax or would not be chargeable with tax to the same extent; and

(b) to the charging of a greater amount of tax than would be chargeable but for any such adjustment.

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(4) Where in accordance with this section the Director General requires from a chargeable person the return of the amount of a repayment of tax already made--

(a) the Director General shall give to that chargeable person a notice of that requirement and the notice shall be treated as a notice of assessment for the purposes of any appeal therefrom, the provisions of Chapter 2 of Part VII applying with any necessary modifications; and

(b) that amount shall be deemed to be tax payable under an assessment and section 48 and the other provisions of Part VIII shall apply accordingly.

(5) Where in consequence of any adjustment made under this section an assessment is made, a right to repayment is refused or a return of a repayment of tax is required, particulars of the adjustment shall be given with the notice of assessment, with the notice refusing the repayment or with the notice requiring the return of a repayment, as the case may be.

(6) Transactions--

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

(b) between companies both of which are controlled by some other company,

shall be deemed to be transactions of the kind to which subsection (1) applies if in the opinion of the Director General those transactions have not been made on terms which might fairly be expected to have been made by independent companies engaged in the same or similar activities dealing with one another at arm's length. (7) In this section "transaction" means any trust, grant, covenant, agreement, arrangement or other disposition or transaction made or entered into orally or in writing (whether before or after the commencement of this Act), and includes a transaction entered into by two or more companies with another company or companies. (8) For the purposes of this Act, a person shall be taken to have control of a company--

(a) if he exercises or is able to exercise or is entitled to acquire control (whether direct or indirect) over the company's affairs and in particular, without prejudice to 72 Laws of Malaysia ACT 543

the generality of the preceding words, if he possesses or is entitled to acquire the greater part of the share capital or voting power in the company;

(b) if he possesses or is entitled to acquire either-- (i) the greater part of the issued share capital of the company;

(ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed; or

(iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members; or

(c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.

(9) Where two or more persons together satisfy in respect of a company any of the conditions in subsection (8), they shall be taken to have control of the company.

(10) For the purposes of subsections (8) and (9) there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(11) Where the trustees of a trust are members of a controlled company, only one of those trustees shall be deemed to be a member thereof; and, where each of those trustees as such is a person of the kind mentioned in subsection (8) or (9), only one of those trustees shall be taken to be a person of that kind. (12) For the purposes of subparagraph (8)(b)(iii) and paragraph (8)(c), any person who is a loan creditor of the company (otherwise than in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of a business of banking carried on by him) may be treated as a member, and the references to share capital may be treated as including loan capital.

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(13) In this section "member" includes in relation to a company, any person having a share or interest in the capital or income of the company, and for the purposes of subsection (8) a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire.

Chapter 3 -- Miscellaneous

Evidential provisions

73. (1) In a suit under section 49 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from the defendant shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

(2) In criminal or civil proceedings under this Act any statement purporting to be signed by the Director General or an authorized officer which forms part of or is annexed to the information, complaint or statement of claim shall, until the contrary is proved, be evidence of any fact stated therein:

Provided that this subsection shall not apply to-- (a) a statement of the intent of the accused person or other defendant; or

(b) proceedings for an offence punishable by imprisonment. (3) A transcript of any particulars contained in a return or other document relating to tax, if it is certified by the Director General or an authorized officer to be a true copy of the particulars, shall be admissible in evidence as proof of those particulars. (4) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against that person in any proceedings against

him for an offence under section 51, 52 or 53, or for the recovery of any sum due by way of tax or penalty, by reason only of the fact that he was or may have been induced to make the statement or produce the document by any lawful inducement or promise proceeding from the Director General or an authorized officer.

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(5) (a) Save as provided in paragraph (b) nothing in this Act shall--

(i) affect the operation of Chapter IX of Part III of the Evidence Act 1950 [Act 56]; or

(ii) be construed as requiring or permitting any person to produce or give to a court, the Special Commissioners, the Director General or any other person any document, thing or information which by that Chapter or those provisions he would not be required or permitted to produce or give to a court.

(b) Notwithstanding any other written law, where any document, thing, matter, information, communication or advice consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure, or financial transactions or dealings of any person (whether an advocate and solicitor, his client, or any other person), it shall not be privileged from disclosure to a court, the Special Commissioners, the Director General or any authorized officer if it is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared or kept by any practitioner or firm of practitioners in connection with any client or clients of the practitioner or firm of practitioners or any other person.

(c) Paragraph (b) shall also apply with respect to any document, thing, matter, information, communication or advice made or brought into existence before the commencement of that paragraph. Errors and defects in assessments, notices and other documents

74. (1) No assessment, notice or other document purporting to be made or issued for the purposes of this Act shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if it is in substance and effect in conformity with this Act or in accordance with the intent and meaning of this Act and--

(a) in the case of an assessment, the person assessed or intended to be assessed or affected thereby is designated according to common intent and understanding; and (b) in any other case, the person to whom it is addressed and any other person referred to therein are so designated. 75Petroleum (Income Tax)

(2) An assessment purporting to be made or issued for the purposes of this Act shall not be impeached or affected by reason of a mistake therein as to--

(a) the name of a chargeable person charged to tax; (b) the description of any income; or

(c) the amount of chargeable income assessed or tax charged, and a notice of assessment purporting to be so made or issued shall not be impeached or affected by any such mistake if it is served on the chargeable person in respect of whom the assessment was made or intended to be made [or served in accordance with subsection 29(5)] and contains in substance and effect the particulars contained in the assessment.

(3) Notwithstanding subsection (2), if the amount of tax charged by an assessment has been incorrectly calculated, the amount of tax charged as shown in the assessment and the notice of assessment may, if the Director General so directs, be taken to be the amount of tax which ought to have been charged if it had been correctly calculated.

(4) A notice of tax payable purporting to be issued for the purposes of this Act shall not be impeached by reason of a mistake therein as to the name of the person liable to pay the tax if the notice is served on that person.

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

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

Service of notices

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

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

(a) in the case of a company, a partnership or other body of persons having a registered office in Malaysia, to that registered office;

(b) in the case of a company, a partnership or other body of persons not having a registered office in Malaysia-- (i) to any registered office of the company, or

partnership or other body (wherever that office

may be situated);

(ii) to the principal place of business or other activity of the company, or partnership or other body

(wherever that place may be situated); or

(iii) to any individual authorized by or under the law of any place where the company, or partnership

or other body is incorporated, registered or

established to accept service of process;

(c) in the case of an individual, to his last known address. (3) Where a person to whom there has been addressed a registered letter containing a notice under this Act--

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

(b) refuses or neglects to take delivery of the letter, the notice shall be deemed to have been served upon him on the date on which he was informed that the letter was awaiting him. (4) For the purposes of subsection (3), an affidavit by the officer in charge of a post office stating that to the best of his knowledge and belief there has been delivered to the address appearing on a registered letter a post office notification informing the addressee that there is a registered letter awaiting him shall, until the contrary is proved, be evidence that the addressee has been so informed. 77Petroleum (Income Tax)

Authentication of notices and other documents

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

(2) Where this Act provides for a notice or other document to be under the hand of the officer issuing, serving or giving it, the notice or document shall be signed in manuscript by that officer. (3) A notice or other document issued, served or given for the purposes of this Act and purporting to be signed in manuscript by the Director General or an authorized officer shall be presumed, until the contrary is proved, to have been so signed. Free postage

78. All returns made under this Act and all remittances of tax (and any correspondence resulting from or connected with any such return or remittance) may, if posted in Malaysia in envelopes marked "Income Tax", be sent free of postage to the Director General or to an officer or address specified in an order made under section 75:

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

Provisions as to approvals and directions given by Minister or Director General

79. Where by or under this Act there is conferred on the Minister or the Director General power to give an approval or direction of any kind (not being a power exercisable by statutory order)-- (a) an approval or direction given in the exercise of that power shall not be regarded as subsidiary legislation; (b) that power shall be deemed to include--

(i) power to give any such approval or direction with retrospective effect; and

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(ii) power to vary or revoke any such approval or direction retrospectively or otherwise; and

(c) any such approval or direction shall take effect when it is given or, where the Minister or Director General as the case may be, specifies a date on which it is to take effect, on that date.

Annulment of rules and orders laid before House of Representatives

80. Where this Act provides for any rule or order to be laid before the House of Representatives, the rule or order shall be laid before that House as soon as may be after it has been made and, if that House at or before the second meeting begun after the rule or order is laid before it resolves that the rule or order or any provision of it be annulled, the rule or order or that provision of it shall cease to have effect, without prejudice to anything previously done thereunder or the making of a new rule or order. Procedure for making refunds and repayments

81. Where the Director General is authorized or required by this Act to make any refund or repayment he shall certify the amount of the sum to be refunded or repaid and cause the refund or repayment to be made forthwith.

Forms

82. (1) The Director General may either by statutory order or in such other way as seems to him to be appropriate, prescribe such forms as are required by this Act to be prescribed and such other forms as he considers ought to be prescribed in connection with the operation of this Act, and may authorize the use of a suitable substitute for any form so prescribed:

Provided that this subsection shall not apply to the form of declaration to be prescribed for the purposes of subsection 71(1). 79Petroleum (Income Tax)

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

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

Power to make rules

83. (1) The Minister may make rules-- (a) prescribing, except where subsection 82(1) applies, any other thing required by this Act to be prescribed; (b) providing for transitional and saving regulations to have effect notwithstanding any provisions of this Act; (c) for facilitating generally the operation of this Act. (2) Any rules made under subsection (1) shall be laid before the House of Representatives.

Any other law not applicable

84. Notwithstanding anything contained in any written law, other than this Act, for the time being in force relating to income tax, for the year of assessment 1968 and subsequent years of assessment-- (a) income derived from petroleum operations; and (b) dividends paid by any company out of its income derived from its petroleum operations,

shall not be chargeable to tax under such other laws. 80 Laws of Malaysia ACT 543

FIRST SCHEDULE

DEDUCTIONS FOR CAPITAL EXPENDITURE

ON EXPLORATION

Qualifying exploration expenditure

1. Subject to paragraph 2, qualifying exploration expenditure for the purposes of this Schedule is expenditure which is incurred by a chargeable person in connection with his petroleum operations or in preparation for petroleum operations--

- (a) on the acquisition of petroleum deposits or of rights in or over petroleum deposits;
- (b) on searching for, on discovering and testing or on winning access to petroleum deposits;
- (c) on the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on; or
- (d) on development, general administration or management before the date of the first sale or disposal of chargeable petroleum by or on behalf of that chargeable person or during any period when chargeable petroleum is not being produced.

2. Qualifying exploration expenditure does not include any expenditure which is qualifying expenditure under the Second Schedule or any expenditure deductible under Chapter 3 of Part III excluding subsection 16(5), from gross income in computing the adjusted income or adjusted loss.

3. Where prior to the basis period for the first year of assessment for which a chargeable person is chargeable to tax, that chargeable person incurs qualifying exploration expenditure, an amount equal to that expenditure reduced by the amount of all recovered expenditure, if any, received by that chargeable person prior to that basis period, shall be deemed for the purposes of this Schedule to be qualifying exploration expenditure incurred in that basis period.

4. (1) Where in the basis period for a year of assessment a chargeable person incurs any qualifying exploration expenditure, there shall be made to that chargeable person, for that

year, an allowance to be known as "initial allowance". (2) The amount of initial allowance to be made under subparagraph (1) shall be an amount equal to--

(a) where the qualifying exploration expenditure is incurred in secondary recovery, twenty per cent thereof;

(b) in any other case, ten per cent of the qualifying exploration expenditure.

5. (1) Where a chargeable person incurs any qualifying exploration expenditure, there shall be made to that chargeable person for each of the consecutive years of assessment beginning with the year of assessment in the basis period for which that expenditure is incurred, an allowance to be known as "annual allowance". 81Petroleum (Income Tax)

(2) The amount of annual allowance for a year of assessment shall be the amount which results from applying to the residual expenditure the fraction of which--

(a) the numerator represents the output from the petroleum operations for the basis period for that year; and

(b) the denominator represents the sum of that output and the total potential future output of the petroleum operations, estimated as at the end of that period, notwithstanding that such output is shared with another person under an agreement with such other person to carry out the petroleum operations or the fraction three-twentieths, whichever is the greater.

6. Where under this Schedule an initial allowance or an annual allowance falls to be made to a chargeable person for any year of assessment, in the ascertainment of the adjusted income of that chargeable person for that year of assessment under subsection 16(5), an amount equal to that initial allowance or that annual allowance, as the case may be, shall be deducted from the gross income of that chargeable person for the basis period for that year of assessment. Transfer of asset, etc.

7. In paragraphs 8 to 13-- "consideration" means consideration (not being in the nature of or representing income) which is monetary or non-monetary or both; "exploration asset" means an asset on or for which the chargeable person has incurred qualifying expenditure in connection with or in preparation for the petroleum operations;

"other property" means property which is not an exploration asset; "value" means--

(a) in relation to monetary consideration, the amount of the consideration; (b) in relation to non-monetary consideration, the market value of the consideration, at the time of the transaction to which the consideration relates.

8. Subject to paragraph 9-- (a) where the chargeable person transfers an exploration asset for a consideration, the value of the consideration shall be deemed to be recovered expenditure and to be received by the chargeable person at the date of the transfer;

(b) where the chargeable person receives any consideration for the granting of any right in or over petroleum deposits, the value of the consideration shall be deemed to be recovered expenditure in relation to the petroleum operations and the chargeable person; and

(c) where the chargeable person receives any amount or property by way of compensation, recoupment or otherwise for any qualifying exploration expenditure (being expenditure of a kind which does not produce an exploration asset) incurred by him in connection with or in preparation 82 Laws of Malaysia ACT 543

for petroleum operations, that amount or the market value of that property at the time of its receipt shall be deemed to be recovered expenditure in relation to the chargeable person.

9. Where the chargeable person transfers an exploration asset together with any other property, then--

(a) if the transfer is made for an undivided consideration and the chargeable person and the transferee are able to agree how much of the value of the consideration should be treated as given for the exploration asset and for the other property respectively, they shall within three months of the transfer jointly furnish the Director General with a written statement showing the apportionment of the consideration as so agreed and, subject to subparagraph (c), the part of that value apportioned to the exploration asset shall be deemed to be recovered expenditure to be received by the chargeable person at the date of the transfer; (b) if the transfer is made for separate considerations, the chargeable person shall within three months of the transfer furnish the Director General with a written statement showing the value of each consideration and, subject to subparagraph (c), the value of the consideration shown in that statement for the exploration asset shall be deemed to be recovered expenditure to be received by the chargeable person at the date of the transfer; and

(c) if the Director General is not satisfied with the apportionment mentioned in subparagraph (a) or with any value shown in the statement mentioned in subparagraph (b), or if there is a failure to furnish a statement in accordance with either of those subparagraphs, the Director General shall determine to the best of his judgment the value of the consideration for the exploration asset, and the value so determined shall be deemed to be recovered expenditure to be received by the chargeable person at the date of the transfer.

10. Where there is a transfer by the chargeable person of an exploration asset (with or without any other property) together with a grant by the chargeable person of a right of the kind mentioned in subparagraph 8(b), then, for the purposes of paragraph 9--

(a) the grant shall be treated as forming part of the transfer of that asset; and

(b) the right shall be treated as forming part of that asset, and that paragraph shall apply accordingly with any necessary modifications.

11. Where the chargeable person transfers an exploration asset (with or without other property) either--

(a) for an undivided consideration (as regards that asset and that other property, if any) together with an amount or property of the kind mentioned in subparagraph 8(c); or

(b) for separate considerations (as regards that asset and that other property, if any) together with an amount or property of that kind, paragraph 9 shall apply with any necessary modifications. 83Petroleum (Income Tax)

12. For the purposes of paragraphs 8 to 11, if any consideration consists partly of money and partly of non-monetary property, the value of the monetary part of the consideration and the value of the non-monetary part thereof shall, whenever necessary, be aggregated or aggregated and apportioned, as the case may require.

13. Where there takes place a transaction as a result of which an amount would (but for this paragraph) fall to be treated under any provision of paragraphs 7 to 12 as recovered expenditure of the chargeable person in relation to the petroleum operations and--

(a) the chargeable person is a company over which the other party to the transaction has control;

(b) that other party is a company over which the chargeable person has control;

(c) some other company has control over both that chargeable person and that other party;

(d) the transaction takes place pursuant to a scheme of reconstruction or amalgamation of companies; or

(e) the Director General is of the opinion that the transaction is or forms part of a transaction to which section 72 applies, the residual expenditure referable to the exploration asset immediately before the date of that first-mentioned transaction shall be deemed in the hands of that chargeable person to be recovered expenditure received at that date and in the hands of that other party to be qualifying exploration expenditure incurred at that date; and paragraphs 5 to 10 shall not apply in relation to that first-mentioned transaction.

Supplemental provisions

14. In this Schedule, unless the context otherwise requires-- "recovered expenditure" means any amount ascertained in accordance with paragraphs 7 to 13 to be recovered expenditure in relation to the petroleum operations of a chargeable person;

"residual expenditure", in relation to the petroleum operations of a chargeable person and to any particular date, means the total qualifying exploration expenditure incurred before that date by the chargeable person in respect of those petroleum operations, reduced by the amount of--

(a) any deductions made under section 16 pursuant to this Schedule in respect of that expenditure from the gross income of that chargeable person for all basis periods ending before that date; and (b) any recovered expenditure in relation to those petroleum operations received by that chargeable person on or before that date. 84 Laws of Malaysia ACT 543

SECOND SCHEDULE

CAPITAL ALLOWANCES AND CHARGES

Qualifying Expenditure

1. Subject to this Schedule, qualifying expenditure for the purposes of this Schedule is qualifying plant expenditure or qualifying building expenditure within the meaning of paragraphs 2 to 6.

2. (1) Subject to subparagraph (2) and paragraph 45, qualifying plant expenditure is capital expenditure incurred by a chargeable person on the provision of machinery or plant used for the purposes of petroleum operations, including-- (a) expenditure incurred by him on the alteration of an existing building for the purpose of installing that machinery or plant and other expenditure incurred incidentally to the installation thereof; (b) expenditure incurred by him on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of that machinery or plant, being expenditure which does not exceed ten per cent of the aggregate of itself and any other expenditure (being qualifying plant expenditure) incurred for the purposes of the petroleum operations; and

(c) expenditure incurred by him on the provision or construction of fixed off-shore platforms for drilling, production or other petroleum operations (but excluding, for the purposes of this subparagraph only, machinery or plant installed on such platforms).

(2) In the case of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, the qualifying plant expenditure incurred on or after the first day of the basis period for the year of assessment 1991 shall be limited to a maximum of fifty thousand ringgit:

Provided that where the qualifying plant expenditure is incurred on a motor vehicle purchased on or after 28 October 2000, the maximum amount shall be increased to not more than one hundred thousand ringgit if the motor vehicle has not been used prior to purchase and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit. *3. (1)

Subject to paragraph 6, qualifying building expenditure is capital expenditure incurred by a chargeable person on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.

(2) For the purpose of this Schedule, the qualifying building expenditure in the case of purchase of a building shall be the purchase price of that building.

*NOTE--For the special provision relating to paragraph 3--see section 38 of the Finance Act 2004 [Act 639].

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3A. (Deleted by Act 639)

4. (Deleted by Act 639)

5. (Deleted by Act 639)

6. Qualifying building expenditure does not include-- (a) subject to paragraph 45, expenditure which is qualifying plant expenditure for the purposes of this Schedule; or

(b) expenditure which is qualifying exploration expenditure for the purposes of the First Schedule.

Initial allowances

7. An allowance made under paragraphs 8 to 10 shall be known as an initial allowance.

8. Subject to this Schedule, where in the basis period for a year of assessment a chargeable person has incurred qualifying plant expenditure other than qualifying plant expenditure of the kind referred to in subparagraph 2(1)(c), for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to--

(a) forty per cent or such other rate as may be prescribed of that first- mentioned expenditure if it has been incurred in secondary recovery; or

(b) twenty per cent or such other rate as may be prescribed of that first- mentioned expenditure in any other case.

9. Subject to this Schedule, where in the basis period for a year of assessment a chargeable person has for the purposes of his petroleum operations incurred qualifying building expenditure on the construction or purchase of a building, there shall be made to him for that year of assessment an allowance equal to-- (a) twenty per cent of the expenditure if it has been incurred in secondary recovery; or

(b) ten per cent of the expenditure in any other case.

10. (1) Notwithstanding paragraphs 8 and 9 and subject to this paragraph-- (a) no allowance shall be made to a chargeable person under paragraph 8 for a year of assessment in relation to an asset if at the end of the basis period for that year of assessment he was not the owner of the asset or the asset was not in use for the purposes of his petroleum operations or, where the asset was disposed of by him in that period, he was not the owner of the asset or the asset was not in use, prior to the disposal, for the purposes of his petroleum operations at some time in that period;

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(b) no allowance shall be made to a chargeable person under paragraph 9 for a year of assessment in relation to an asset if at the end of the basis period for that year of assessment he was not the owner of the asset or the asset was not in use as an industrial building or,

where the asset was disposed of by him in that period, the asset was not in use, prior to the disposal, for the purposes of his petroleum operations as an industrial building at some time in that period. (2) For the purposes of paragraph 8, where--

(a) during the exploration or the development period of the petroleum operations of a chargeable person but prior to the basis period for the first year of assessment for which that chargeable person is chargeable to tax, that chargeable person incurs qualifying plant expenditure of a certain amount; and

(b) that chargeable person has not disposed of the asset prior to the basis period for that year of assessment,

it shall be deemed that that expenditure of that amount is incurred in the basis period for that year of assessment.

(3) For the purposes of paragraph 9, where--

(a) during the exploration or the development period of the petroleum operations of a chargeable person but prior to the basis period for the first year of assessment for which that chargeable person is chargeable to tax, that chargeable person incurs qualifying building expenditure of a certain amount on the construction of a building; and (b) that chargeable person has not disposed of the asset prior to the basis period for that year of assessment,

it shall be deemed that that expenditure of that amount is incurred in the basis period for that year of assessment.

Annual allowances

11. An allowance made under paragraphs 12 and 13 shall be known as an annual allowance.

12. (1) Subject to this Schedule, where a chargeable person has for the purposes of his petroleum operations incurred qualifying plant expenditure in relation to an asset other than qualifying plant expenditure of the kind referred to in subparagraph 2(1)(c), and at the end of the basis period for a year of assessment he was the owner of the asset and the asset was in use for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to--

(a) ten per cent or such other rate as may be prescribed of that first- mentioned expenditure if it has been incurred in secondary recovery; or

(b) eight per cent or such other rate as may be prescribed of that first- mentioned expenditure in any other case.

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(2) Subject to this Schedule, where a chargeable person has for the purposes of his petroleum operations incurred qualifying plant expenditure of the kind referred to in subparagraph 2(1)(c) in relation to an asset and at the end of the basis period for a year of assessment he was the owner of the asset and the asset was in use for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to ten per cent or such other rate as may be prescribed of that expenditure. *13. Subject to this Schedule, where a chargeable person has for the purposes of his petroleum operations incurred qualifying building expenditure on the construction or purchase of a building and at the end of the basis period for a year of assessment he was the owner of the building and the building was in use as an industrial building for the purposes of his petroleum operations, there shall be made to him for that year of assessment an allowance equal to three per cent or such other rate as may be prescribed of that expenditure.

14. (Deleted by Act 619)

15. An allowance made to a chargeable person under paragraph 13 for a year of assessment in respect of any expenditure in relation to an asset shall not exceed the amount of the residual expenditure at the end of the basis period for that year of assessment.

Balancing allowances and balancing charges

16. Allowances made under paragraph 17 and charges made under paragraph 18 shall be known as balancing allowances and balancing charges respectively.

17. (1) Subject to this Schedule, where in the basis period for a year of assessment a chargeable person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of his petroleum operations and the residual expenditure at the date of the disposal of that asset exceeds the disposal value of that asset, there shall be made to him for that year of assessment an allowance equal to the amount of the excess.

(2) Notwithstanding paragraph 19 but otherwise subject to this Schedule, where--

(a) during the exploration or the development period of the petroleum operations of a chargeable person but prior to the basis period for the first year of assessment for which that chargeable person is chargeable to tax, that chargeable person incurs qualifying expenditure of a certain amount;

*NOTE--For the special provision relating to paragraph 13--see section 15 of the Finance Act 2002 [Act 619].

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(b) after incurring that expenditure but before the commencement of the basis period for that year of assessment that chargeable person disposes of the asset; and

(c) that amount exceeds the disposal value of that asset, there shall be made to that chargeable person for that year of assessment an allowance equal to the amount of that excess.

*18. Subject to this Schedule, where in the basis period for a year of assessment a chargeable person disposes of an asset in relation to which he has incurred qualifying expenditure for the purposes of his petroleum operations and the disposal value of the asset exceeds the residual expenditure at the date of its disposal, there shall be made on him for that year a charge equal to the amount of the excess.

19. No allowance shall be made for a year of assessment under paragraph 17 to a chargeable person in relation to an asset which has been disposed of unless an initial or annual allowance in relation to that asset has been made or would have been made, if claimed, to him.

20. A charge made on a chargeable person under paragraph 18 in relation to an asset shall not exceed the total of all allowances made to him under this Schedule in relation to that asset.

Disposals subject to control, etc.

21. (1) Paragraphs 22 and 23 shall apply where a chargeable person disposes of an asset in relation to which an initial or annual allowance has been made or would have been made, if claimed, to him and at the time of the disposal-- (a) the disposer of the asset is a person over whom the acquirer of the asset has control;

(b) the acquirer of the asset is a person over whom the disposer of the asset has control;

(c) some other person has control over the disposer and the acquirer of the asset; or

(d) the disposal is effected pursuant to a scheme of reconstruction or amalgamation of companies,

the disposer of the asset, the asset in question and the acquirer of the asset being in those paragraphs referred to as the disposer, the asset and the acquirer respectively.

(2) In this paragraph "control", in relation to a company, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person. *NOTE--For the special provision relating to paragraph 18--see section 39 of the Finance Act 2004 [Act 639].

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21A. Paragraphs 22 and 23A shall apply where a chargeable person (in this paragraph referred to as the "disposer") disposes of an asset in relation to which an initial or annual allowance has been made or would have been made, if claimed, to him (in this paragraph referred to as the "asset") and that asset continues to be used for petroleum operations by another chargeable person (in this paragraph referred to as the "acquirer") in another petroleum agreement under which the acquirer has not incurred qualifying expenditure in respect of that asset and at the time of the disposal--

(a) the disposer of the asset is a company and the acquirer of the asset is a partnership in which the disposer is also a partner; (b) the disposer of the asset and the acquirer of the asset are the same partnership but operating under separate petroleum agreements; (c) the disposer of the asset and the acquirer of the asset are partnerships and all the partners in the partnership that is disposing of the asset are also partners in the partnership that is acquiring the asset; or (d) the disposer of the asset and the acquirer of the asset are the same company but operating under separate petroleum agreements, the disposer of the asset, the asset in question and the acquirer of the asset being in those paragraphs referred to as the disposer, the asset and the acquirer respectively.

22. (1) Subject to any rules made under paragraph 23 or 23A, the disposal of the asset shall be deemed to have taken place on the first day of the disposer's final period for a sum equal to the disposer's residual expenditure on that day. (2) In this paragraph "the disposer's final period" means, in relation to the disposal and acquisition of the asset, the basis period (appropriate to the disposer's petroleum operations for the purposes of which qualifying expenditure has been incurred in relation to the asset) for the year of assessment which coincides with the first year of assessment for which an initial or annual allowance may be made to the acquirer in relation to the asset if it is used for the purposes of the petroleum operations carried on by the acquirer or as an industrial building.

23. Any qualifying expenditure incurred by the acquirer in relation to the asset to which regard would be had but for this paragraph shall be disregarded for the purposes of this Schedule and the acquirer shall be deemed to have incurred qualifying expenditure in relation to the asset of an amount equal to the sum ascertained under paragraph 22 in relation to the asset; and in relation to the asset--

(a) the date on which the acquirer shall be treated as having incurred the expenditure so deemed to have been incurred by him; (b) the withdrawal of any allowance which would but for paragraph 22 and this paragraph fall to be made to the disposer; (c) the amount of any allowance or charge to be made to or on the acquirer; and

(d) such other matters as may be considered necessary by the Minister, 90 Laws of Malaysia ACT 543

shall be determined in such manner as may be prescribed by rules to be made for the purposes of paragraphs 21, 22 and this paragraph. 23A. The acquirer shall be deemed to

have incurred qualifying expenditure in relation to the asset of an amount equal to the sum ascertained under paragraph 22 and in relation to the asset--

- (a) the date on which the acquirer shall be deemed to have incurred the expenditure;
- (b) the withdrawal of any allowance which would but for paragraph 22 and this paragraph fall to be made to the disposer; (c) the amount of any allowance or charge to be made to or on the acquirer; and
- (d) such other matters as may be considered necessary by the Minister, shall be determined in such manner as may be prescribed by rules to be made for the purposes of paragraphs 21A and 22 and this paragraph. Interpretation

24. In this Schedule "asset", except where the context otherwise requires, means an asset in relation to which qualifying expenditure has been incurred.

25. Any reference in this Schedule to any asset or to any relevant interest therein shall be construed whenever necessary as including a reference to a part of any asset or to any relevant interest therein (or, in the case of an asset or any relevant interest therein held in undivided shares, the undivided share in the asset or in the relevant interest therein); and, when it is so construed, the Director General shall make such necessary apportionments as may be just and reasonable to give proper effect to this Schedule.

26. For the purposes of this Schedule, capital expenditure incurred on-- (a) the provision of machinery or plant, includes capital expenditure incurred on the reconstruction of that machinery or plant; (b) the construction of a building, includes capital expenditure incurred on the reconstruction or rebuilding of that building.

27. Where a chargeable person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of his petroleum operations, he shall for the purposes of this Schedule be taken to be the owner of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be taken to be the capital portion of any instalment payment (or, where there is more than one such payment, of the aggregate of those payments) made by him under that agreement in that period.

28. For the purposes of this Schedule, where an asset consists of a building the owner thereof shall be taken to be the owner of the relevant interest in the building.

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29. Subject to paragraph 48A, a building in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule on the occurrence of any of the following events:

- (a) the sale, transfer or assignment of the relevant interest in the building; (b) where that interest depends on the duration of a petroleum agreement, the termination of such petroleum agreement;
- (c) where that interest is a leasehold interest, the determination of that relevant interest otherwise than on the person entitled thereto acquiring the reversion;
- (d) the demolition or destruction of the building, or on the building ceasing to be used as an industrial building.

30. In this Schedule "relevant interest", in relation to a building on which qualifying building expenditure has been incurred, means (subject to paragraphs 31 and 32) the interest in the building to which the chargeable person who incurred that expenditure was entitled when he incurred it.

31. Where-- (a) a chargeable person is entitled to two or more interests in a building when he incurs qualifying expenditure on it; and

(b) one of those interests is an interest which is reversionary on all the others,

that reversionary interest shall be the relevant interest for the purposes of this Schedule.

32. An interest shall not cease to be the relevant interest for the purposes of this Schedule by reason of the creation of any lease or other interest to which that first-mentioned interest is subject; and, where the relevant interest is a leasehold interest and is extinguished by the surrender thereof or on the person entitled thereto acquiring the interest which is reversionary thereon, the interest into which that leasehold merges shall thereupon become the relevant interest.

33. (1) Any reference in this Schedule to the disposal, purchase or transfer of any asset includes a reference to the disposal, purchase or transfer, as the case may be, of that asset together with any other asset, whether or not qualifying expenditure has been incurred on that last-mentioned asset, and in any such case so much of the disposal value or the purchase price, as the case may be, of those assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the disposal value or the purchase price, as the case may be, of that first-mentioned asset. (2) For the purposes of this paragraph, all the assets which are disposed of, purchased or transferred in pursuance of one bargain shall be deemed to be disposed of, purchased or transferred, as the case may be, together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate disposals, purchases or transfers, as the case may be, of those assets.

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(3) Subparagraphs (1) and (2) shall apply, with any necessary modifications, to the disposal, purchase or transfer of any asset or the relevant interest in any asset together with any other asset or relevant interest in any other asset.

34. Where any chargeable person has incurred expenditure in relation to an asset which is allowed to be deducted under Chapter 3 of Part III in computing the adjusted income or adjusted loss of that chargeable person for the basis period for a year of assessment from his petroleum operations, that expenditure shall not be treated as qualifying expenditure in relation to that asset.

35. For the purposes of this Schedule-- (a) in the case of any expenditure incurred on the construction of a building, the day on which that expenditure is incurred is the day on which the construction of the building is completed, and in the case of any expenditure incurred on the provision of machinery or plant for the purposes of petroleum operations the day on which that expenditure is incurred is the day on which the machinery or plant is capable of being used for the purposes of the petroleum operations; (b) in any other case, the day on which the amount of any expenditure becomes payable is the day on which that amount of expenditure is incurred.

36. For the purposes of this Schedule, an asset which is temporarily disused in relation to the petroleum operations of a chargeable person shall be deemed to be in use for the purposes of the petroleum operations if it was in use for the purposes of the petroleum operations immediately before becoming disused and if during the period of disuse it is constantly maintained in readiness to be brought back into use for those purposes.

37. If an asset which is temporarily disused in relation to the petroleum operations of a chargeable person ceases to be ready for use for the purposes of the petroleum operations or if its disuse can no longer reasonably be regarded as temporary, it shall be deemed to have ceased at the beginning of the period of disuse to be used for the purposes of the petroleum operations, and all such assessments shall be made as may be necessary to counteract the

benefit of any allowance made to the chargeable person for any year of assessment by reason of the application of paragraph 36 in relation to the asset.

38. For the purposes of this Schedule, subject to paragraph 48A a building is purchased by a person on the sale, transfer or assignment to him of a relevant interest in the building.

39. Any reference in this Schedule to the date of any sale, purchase or transfer shall be construed as a reference to the date of completion of the sale, purchase or transfer, as the case may be, or the date when possession of the asset the subject matter of the sale, purchase or transfer, as the case may be (or of the asset in which there is a relevant interest which is the subject matter of the sale, purchase or transfer, as the case may be) is given, whichever is the earlier. 93Petroleum (Income Tax)

40. Subject to paragraph 48A, any plant or machinery which is used for the purposes of petroleum operations and in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule if it is sold, discarded or destroyed or if it ceases to be used for the purposes of those petroleum operations.

41. For the purposes of this Schedule,-- (a) subject to subparagraphs (b) and (c), where an asset is disposed of by a person, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or, in the case of its disposal by way of sale, transfer or assignment-- (i) an amount equal to its market value at the date of the sale, transfer or assignment, as the case may be; or

(ii) the net proceeds of the sale, transfer or assignment, as the case may be, whichever is the greater:

Provided that, where the asset is disposed of in such circumstances that insurance or compensation moneys are received by that person in respect of the asset, its disposal value shall be taken to be an amount equal to its market value at the date of its disposal or those moneys, whichever is the greater; (b) subject to subparagraph 22(1), where an asset has vested in Petroleum Nasional Berhad under an agreement between Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority and the person who incurred qualifying expenditure in respect of such assets, its disposal value shall be taken to be zero;

(c) subject to subparagraph (b), where an asset of the kind to which subparagraph 2(2) applies is disposed of, the disposal value shall be deemed to be an amount which bears the same proportion to the disposal value ascertained under subparagraph (a) as the qualifying plant expenditure ascertained under subparagraph 2(2) bears to the qualifying plant expenditure ascertained under subparagraph 2(1).

42. Subject to paragraphs 43 and 44, a building is an industrial building within the meaning of this Schedule if it is used for the purposes of petroleum operations.

43. (1) Where a building is an industrial building, any building provided as a canteen, rest-room, recreation room, lavatory, bath-house, bathroom or wash- room for persons employed in the petroleum operations for the purposes of which that industrial building is used shall be treated as an industrial building. (2) A building used as a dwelling house or a retail shop, show-room, hotel or office is not and shall not be treated as an industrial building. (3) Any work or building of the kind described in subparagraph 1(c) of the First Schedule is not and shall not be treated as an industrial building. 94 Laws of Malaysia ACT 543

44. Where part of a building or of an extension of a building is used as an industrial building and the other part of the building or extension, as the case may be, is not so used, then, if the capital expenditure incurred on the construction of the part which is not so used is not more than one-tenth of the capital expenditure incurred on the construction of the whole building or extension, as the case may be, the building or extension, as the case may be, shall be treated as an industrial building for the purposes of this Schedule; and, where the whole or some of the capital expenditure incurred on the construction of the part not so used is not identifiable

as the capital expenditure incurred on the whole building or extension, as the case may be, that last-mentioned expenditure or the part thereof not identifiable as incurred on the respective parts of the building or extension, as the case may be, shall be apportioned by reference to the respective floor areas of those respective parts or in such other manner as the Director General may direct.

45. Where capital expenditure is incurred on preparing, cutting, tunnelling or levelling land in order to prepare a site for the installation of machinery or plant to be used for the purposes of petroleum operations, then, if that expenditure amounts to more than seventy-five per cent of the aggregate of that expenditure and the capital expenditure incurred on that machinery or plant, the machinery or plant shall as regards that aggregate expenditure be treated for the purposes of this Schedule as a building so long as that machinery or plant is used for the purposes of those petroleum operations; and that aggregate expenditure shall be treated as the amount of the qualifying expenditure incurred on that building which shall be treated as disposed of if that plant or machinery is disposed of.

46. A reference in this Schedule to residual expenditure at any date in relation to an asset in respect of which qualifying expenditure has been incurred by a chargeable person is to be construed as a reference to the total qualifying expenditure incurred by him on the provision, construction or purchase of the asset before that date, reduced by--

(a) the amount of any initial allowance made to that chargeable person in relation to that asset for any year of assessment; (b) any annual allowance made to that chargeable person in relation to that asset for any year of assessment before that date; and (c) any annual allowance which, if it had been claimed (or could have been claimed, if the asset had been in use for the purposes of his petroleum operations) by that chargeable person in relation to that asset, would have been made to him for a year of assessment before that date.

47. Any reference in this Schedule to an allowance made to a person for a year of assessment or to an allowance to which a chargeable person is entitled under this Schedule for a year of assessment is a reference to-- (a) an allowance which is claimed for a year of assessment and is made or is due to be made for that year of assessment (any such allowance being treated as having been made at the end of the basis period for that year of assessment); and

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(b) an allowance which would have been made or to which that chargeable person would have been entitled in relation to his petroleum operations for a year of assessment but for an insufficiency or absence of adjusted income or the existence of an adjusted loss for the basis period for that year of assessment.

48. In this Schedule "purchase price", in relation to the purchase of an industrial building, includes any legal fee, stamp duty or other incidental expenditure incurred by the purchaser in connection with the purchase, but does not include so much of the purchase price of the building and of any land or an interest therein purchased with the building as is attributable to the land or that interest; and, for the purposes of paragraph 33, the building and that land or the interest therein, as the case may be, shall be treated as being separate assets. 48A. For the purposes of this Schedule, where under an agreement between Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority and another chargeable person who has incurred qualifying expenditure in respect of an asset the asset vests in Petroleum Nasional Berhad or the Malaysia-Thailand Joint Authority, such vesting alone shall not be treated as cessation of ownership or as disposal of such asset by that other chargeable person.
Supplemental provisions

49. Where a chargeable person has incurred qualifying expenditure in relation to an asset which is owned by that chargeable person for a period of less than two years, the Director General may direct that any allowance which but for this paragraph would fall to be made to him in relation to that asset shall not be made; and, where any such allowance has been

made, a balancing charge in an amount equal to any such allowance shall be made on him for the year of assessment in the basis period for which the asset was disposed of by him.

50. In the application of the provisions of this Schedule to a chargeable person regard shall only be had to qualifying expenditure incurred by him in relation to an asset which is in use in Malaysia for the purposes of his petroleum operations.

51. Where qualifying expenditure has been incurred by a chargeable person in relation to an asset used for the purposes of his petroleum operations, then, if--

(a) the asset is used only partly for the purposes of the petroleum operations; (b) the asset is not used wholly in Malaysia for the purposes of the petroleum operations;

(c) the petroleum operations are carried on partly in Malaysia and partly elsewhere, and the asset is not used wholly for the purposes of the petroleum operations carried on in Malaysia; or

(d) the asset is used for the purposes of petroleum operations under more than one petroleum agreement,

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any allowance to be made to that chargeable person under this Schedule for a year of assessment in relation to the asset shall consist of so much of what would have been the amount of the allowance claimed and due for that year if the asset had been used in the basis period for that year of assessment wholly for the purposes of the petroleum operations, or wholly in Malaysia for the purposes of the petroleum operations, or wholly for the purposes of the petroleum operations carried on in Malaysia or wholly for the purposes of petroleum operations under one petroleum agreement, as the case may be, as shall be determined by the Director General having regard to all the circumstances of the case:

Provided that in ascertaining the residual expenditure at any date in relation to the asset regard shall be had, with respect to any allowance claimed in relation to that asset for any year of assessment, to the full amount of that allowance which but for this paragraph would then have been made to him for that year in relation to that asset.

52. Where, by reason of an insufficiency or absence of adjusted income of a chargeable person from his petroleum operations, for the basis period for a year of assessment, or by reason of the existence of an adjusted loss of that chargeable person for that period from his petroleum operations, effect cannot be given or cannot be given in full to any allowance or to the aggregate amount of any allowances falling to be made to him for that year of assessment, the allowance or that aggregate amount, as the case may be, which has not been so made (or so much thereof as has not been so made to it for that year of assessment) shall be deemed to be an allowance to be made to him for the first subsequent year of assessment for the basis period for which there is adjusted income from its petroleum operations, and so on for subsequent years of assessment until the whole amount of the allowance or that aggregate amount to be made to him has been made to him.

53. A chargeable person shall not be entitled to an allowance under this Schedule for a year of assessment unless he makes a claim for the allowance for that year in accordance with paragraph 54.

54. (1) Any claim by a chargeable person for an allowance under this Schedule for a year of assessment shall be made in a written statement containing such particulars as may be requisite to show that the claimant is entitled to the allowance and a certificate duly signed on behalf of the claimant verifying those particulars.

(2) Any claim to be made by a chargeable person for a year of assessment in accordance with this paragraph shall be delivered with the copy of the accounts made and delivered under

section 30 for that year of assessment.

55. Where in the case of the petroleum operations of a chargeable person the basis periods for two years of assessment overlap, the period common to those periods shall be deemed for the purposes of this Schedule to fall into the earlier of those periods and not into the later of those periods. 97Petroleum (Income Tax)

56. Where as regards the petroleum operations of a chargeable person the Director General has exercised the power conferred upon him by subsection 5(3) to direct that the basis period for a year of assessment shall consist of a specified period, any allowance or charge to be made on or to that chargeable person under this Schedule for that year of assessment shall be ascertained by reference to such a period as shall be determined by the Director General, and that last-mentioned period shall be taken to be the basis period for that year of assessment in the application of this paragraph with this Schedule. THIRD SCHEDULE

APPEALS

Appeals to be heard by three Special Commissioners

1. (1) Every appeal shall be heard by three Special Commissioners, at least one of whom shall be a person with experience as an advocate, as a member of the judicial and legal service of the Federation or as the holder of an office to which the Judges Remuneration Act 1963 [Act 45] applies. (2) If a Chairman of the Special Commissioners has been appointed and is present at the hearing of an appeal, he shall preside at the hearing. (3) If, when an appeal is heard, no Chairman of the Special Commissioners has been appointed or the Chairman is absent, the Special Commissioners present shall choose one of their number [who shall be a person with experience of the kind mentioned in subparagraph (1)] to preside at the hearing. Place of sitting

2. The Special Commissioners shall sit for the hearing of appeals in such places as they think appropriate.

Sending forward of appeals, etc.

3. Where the Director General sends an appeal forward in pursuance of section 46, he shall do so by forwarding to the Clerk a copy of the notice of appeal given under section 43, together with an address for service and a request for the appeal to be set down for hearing.

4. The notice forwarded under paragraph 3 shall constitute the petition of appeal and the appellant's address contained therein shall constitute the appellant's address for service.

5. Either party to an appeal may change his address for service by giving written notice of the change to the Clerk and the other party. 98 Laws of Malaysia ACT 543

Place and date of hearing

6. On receipt of a request under paragraph 3 for an appeal to be set down for hearing, the Clerk shall fix a place and date of hearing which he considers suitable and shall give the appellant and the Director General at least twenty- eight days notice of the date and place so fixed: Provided that, before sending an appeal forward the Director General may make an agreement in writing with the appellant fixing any place which the Special Commissioners think appropriate as the place of hearing of the appeal and, where he does so--

(a) he shall forward a copy of the agreement to the Clerk when he sends the appeal forward; and

(b) the Clerk shall fix as the place of hearing the place so agreed.

7. One of the Special Commissioners on the application of a party to an appeal may, after giving the other party an opportunity to be heard, vary any date or place fixed under paragraph 6 and may do so, in the case of a place so fixed, notwithstanding that the appeal has been partly heard in that place. Appeals may be heard together

8. One of the Special Commissioners may order-- (a) two or more appeals by the same appellant; or (b) two or more appeals by different appellants, if they agree, to be heard together.

9. One of the Special Commissioners may make an order under subparagraph 8(a) either of his own motion or on the application of a party to one of the appeals in question, but no such order shall be made until the parties to those appeals have been given an opportunity to be heard. Scope of argument

10. At the hearing of an appeal the appellant may rely on grounds of appeal other than those stated in the petition of appeal and may vary any ground of appeal so stated:

Provided that, where he does so without giving reasonable notice to the Director General, the Special Commissioners shall adjourn the hearing for a reasonable period if requested to do so by the Director General. Onus of proof

11. The onus of proving that an assessment against which an appeal is made is excessive or erroneous shall be on the appellant. 99Petroleum (Income Tax)

Representation and attendance

12. For the purposes of an appeal-- (a) the Director General may be represented by an authorized officer, a legal officer, an advocate either alone or by one of them together with the other or others of them;

(b) the appellant may be represented by an advocate or an accountant or by both an advocate and an accountant; and

(c) if the appellant is the principal within the meaning of section 29, the appellant may be represented by the representative within the meaning of that section.

13. In paragraph 12-- "accountant" means--

(a) a professional accountant authorized by or under any written law to be an auditor of companies;

(b) any other professional accountant approved for the purposes of this Act by the Minister; or

(c) any other person approved for the purposes of this Act by the Minister on the recommendation of the Director General;

"legal officer" means a legally qualified public officer entitled under the law in force in any part of Malaysia to represent the Government in civil proceedings by or against the Government.

14. The Director General and the appellant may-- (a) attend at the time and place fixed for the hearing of the appeal; and (b) do any other thing or take any other action in connection with the appeal,

either personally or by a representative of the kind referred to in paragraph 12 or together with such representative or representatives. 14A. Where both parties to an appeal attend pursuant to paragraph 14 at the time and place fixed for the hearing of the appeal the Special Commissioners may on the application of either or both of the parties grant a postponement of the hearing on such terms as they consider reasonable, including terms as to the costs of the

postponement to the Special Commissioners and to the party not applying for postponement, against the party or parties (as the case may be) applying for the postponement.

15. Where a party to an appeal fails to attend, either personally or by a representative of the kind referred to in paragraph 12, at the time and place fixed for the hearing of the appeal, the Special Commissioners-- (a) if they are then and there satisfied that the defaulting party is prevented from attending by sickness or other reasonable cause, shall postpone the hearing for what appears to them to be an appropriate time; 100 Laws of Malaysia ACT 543

(b) if they are not so satisfied, shall hear and decide the appeal in the absence of the defaulting party.

16. Where, after a deciding order has been made under paragraph 15 as the result of a party's failure to attend at the time and place fixed for the hearing of an appeal, the Special Commissioners are satisfied on an application made within a period of thirty days after the making of the order that the defaulting party was prevented from attending by sickness or other reasonable cause, they may set aside the order and fix a time and place for a fresh hearing of the appeal. Powers of Special Commissioners

17. The Special Commissioners shall have-- (a) power to summon to attend at the hearing of an appeal any person who in their opinion is or might be able to give evidence respecting the appeal;

(b) power, where a person is so summoned, to examine him as a witness on oath or otherwise;

(c) power, where a person is so summoned, to require him to produce any books, papers or documents which are in his custody or under his control and which the Special Commissioners may consider necessary for the purposes of the appeal;

(d) power, where a person is so summoned, to allow him any reasonable expenses incurred by him in connection with his attendance; (e) all the powers of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;

(f) subject to subsection 73(5), power to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence; (g) power to postpone or adjourn the hearing of an appeal from time to time (including power to adjourn to consider their decision). Witnesses bound to tell truth

18. Every person examined as a witness by or before the Special Commissioners, whether on oath or otherwise, shall be legally bound to state the truth. Witnesses' expenses

19. (1) Expenses allowed under subparagraph 17(d) shall be assessed by the Clerk on the scale used in civil proceedings in a subordinate court and shall be paid by the appellant or the Government as the Special Commissioners may direct.

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(2) In a case where section 29 applies, the Special Commissioners may direct that expenses assessed under subparagraph (1) shall be paid by the representative (within the meaning of that section); and, where they so direct, subsections (4) to (7) of that section shall apply as if those expenses were tax due from the representative.

Procedure at hearing

20. Subject to this Schedule, the procedure at the hearing of an appeal shall be regulated by the Special Commissioners in whatever manner they consider appropriate.

Deciding orders

21. As soon as may be after completing the hearing of an appeal the Special Commissioners shall give their decision on the appeal in the form of an order which shall be known as a deciding order and which, subject to this Schedule, shall be final.

22. A deciding order may, if the Special Commissioners think fit, be read or summarized in the presence of the parties by one of the Special Commissioners or by the Clerk; but the fact that any deciding order is not so read or summarized shall not affect its validity and the fact that any deciding order is so read or summarized shall not relieve the Clerk of his obligation under paragraph 39 to cause a copy of the order to be served on the parties.

23. If the Special Commissioners differ among themselves as to the decision to be given on an appeal--

(a) the opinion of the majority shall prevail; and (b) the Special Commissioner who dissents from the majority view shall sign the deciding order as required by paragraph 39 (unless he is incapacitated from doing so as mentioned in that paragraph), but in doing so shall indicate the fact of his dissent and may, if he thinks fit, add a statement of his reasons therefor.

24. Subject to paragraph 23, a deciding order shall either confirm or discharge the assessment to which the appeal relates or shall direct the Director General to amend the assessment; and, where it directs amendment, the order shall-- (a) specify the appropriate amendments;

(b) require appropriate amendments to be determined by agreement between the parties or, failing agreement, by the Special Commissioners; or (c) specify some of the appropriate amendments and require the others to be so determined.

25. Where a deciding order is made pursuant to subparagraph 24(b) or (c) in respect of an appeal, section 45 shall apply as if references to the order were substituted for references to the notice of appeal under subsection 43(1) (any 102 Laws of Malaysia ACT 543

agreement come to pursuant to the order being deemed to be and to have the same effect as an agreement come to under subsection 45(2) and section 46 shall apply as it applies on a failure to agree under subsection 45(2): Provided that--

(a) if the Special Commissioners are required under paragraph 29 to state a case in respect of the order, section 46 shall not come into operation until all proceedings respecting the case have been completed; and (b) if the Director General has cause to send the appeal forward to the Special Commissioners pursuant to section 46, he shall do so by sending to the Clerk and the appellant a written statement that a further hearing has become necessary by reason of the parties' failure to agree.

26. Where an appeal is set down for further hearing pursuant to paragraph 25, it shall not be necessary for the further hearing to take place before the same Special Commissioners as those who heard the earlier proceedings. Costs and fees

27. Except as expressly provided in this Schedule, the Special Commissioners shall not make any order as to the payment of the costs of an appeal. 27A. (1) Any sum ordered to be paid by the Special Commissioners as costs shall become due and payable on the order for payment being made and shall be recoverable--

(a) in the case of costs ordered to be paid to the appellant, as a debt due to him; and

(b) in the case of costs ordered to be paid to the Special Commissioners or the Director General, as a debt due to the Government. (2) In any proceedings for the recovery of costs ordered by the Special Commissioners the production of a certificate signed by one of the Special Commissioners giving the names and addresses of the persons to whom and by

whom such costs are to be paid and the amount of the costs due shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgement for the amount.

28. (Deleted by Act A353).

29. Either party to proceedings before the Special Commissioners may appeal on a question of law against a deciding order made in those proceedings [including a deciding order made pursuant to subparagraph 24(b) or (c)] by requiring the Special Commissioners to state a case for the opinion of the High Court and by paying to the Clerk at the time of making the requisition such fee as may be prescribed from time to time by the Minister in respect of each deciding order against which he seeks to appeal.

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30. A requisition under paragraph 29 shall be in writing and shall be sent or delivered to the Clerk within twenty-one days after the service on the intending appellant of the order against which he seeks to appeal.

31. The High Court on the application of an intending appellant made by summons in chambers may extend the period of twenty-one days mentioned in paragraph 30.

32. A case stated under paragraph 29-- (a) shall set forth the facts as found by the Special Commissioners, the deciding order and the grounds of their decision; and (b) shall be signed by the Special Commissioners who heard the appeal (or, if any of them are incapacitated from signing by illness, absence or other cause, by such of them as are able to do so). 32A. (1) The appellant shall pay to the Clerk the costs of preparing the case stated at such rate as may be prescribed from time to time by the Minister. (2) The Special Commissioners may at any time before a case stated is transmitted to the High Court require the appellant to deposit with the Clerk a sum which in their opinion will cover the cost of preparing copies of the case stated for the High Court and the parties, and where they do so they may refrain from stating the case or prevent the case stated from being transmitted to the High Court unless the required deposit is made.

(3) Any party to an appeal may obtain from the Clerk extra copies of the case stated on payment of such fee as may be prescribed from time to time by the Minister.

33. When a case has been stated and signed in accordance with paragraph 32, the Clerk shall transmit it to the High Court and serve a copy of it on the parties to the proceedings in respect of which it is stated.

34. The High Court shall hear and determine any question of law arising on a case stated under paragraph 29 and may in accordance with its determination thereof--

- (a) order the assessment to which the case relates to be confirmed, discharged or amended;
- (b) remit the case to the Special Commissioners with the opinion of the court thereon; or
- (c) make such other order as it thinks just and appropriate.

35. At any time before it determines the questions of law arising on a case stated under paragraph 29, the High Court may--

- (a) cause the case to be sent back to the Special Commissioners for amendment; or

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- (b) require the Special Commissioners to find further facts and state a supplementary case, and may postpone or adjourn the proceedings before it until the amendment has been made or the requisition complied with.

36. There shall be such rights of appeal from decisions of the High Court on cases stated under paragraph 29 as exist in respect of decisions of the High Court on questions of law in its appellate civil jurisdiction.

37. Unless it is otherwise provided by rules of court, the rules of court for the time being in force in relation to appeals in civil matters from a subordinate court to the High Court and from the High Court in its appellate jurisdiction to the Court of Appeal shall, subject to this Schedule, apply with the necessary modifications to appeals under this Schedule to the High Court and the Court of Appeal respectively.

Supplemental provisions

37A. Where any matter of procedure or practice is not provided for in this Schedule, the procedure and practice for the time being in force or in use in the subordinate court or in the High Court, as the case may be, shall be adopted and followed with the necessary modifications.

38. (1) Proceedings under this Schedule before the Special Commissioners or the court shall take place in camera:

Provided that where the Director General applies to the Special Commissioners or the court, as the case may be, that the proceedings, or such part thereof as he may deem necessary, be heard by way of a hearing open to the public, the Special Commissioners or the court, as the case may be, shall direct that the proceedings or the part thereof, as the case may be, shall be so heard notwithstanding any objection from any other party to the proceedings: Provided further that where in the opinion of the Special Commissioners or the court any proceedings or part thereof heard in camera ought to be reported, the Special Commissioners or the court, as the case may be, may publish or authorize publication of the facts of the case, the arguments and the decision relating to the proceedings or the part thereof heard in camera, but without identifying the parties (other than the Director General) where the whole proceedings were heard in camera.

(2) Any publication authorized under subparagraph (1) may be obtained from the Special Commissioners or the court on payment of such fee as may be prescribed from time to time by the Minister.

39. Where a deciding order or any other order is made by the Special Commissioners or one of the Special Commissioners in or in connection with proceedings under this Schedule--

(a) the order shall be dated and signed by the Special Commissioners or Special Commissioner making it; and

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(b) a copy of the order shall be served by the Clerk on the parties to the proceedings:

Provided that, if any of the Special Commissioners who have made a deciding order are incapacitated from signing by death, illness, absence or any other cause, the order shall be signed by such of them as are able to do so.

40. Directions for the settlement or disposal of any matter of a procedural nature arising in connection with proceedings before the Special Commissioners, the High Court, the Court of Appeal or the Federal Court under this Schedule may, if no other provision is made by or under this Act or rules of Court for the settlement or disposal of the matter, be given-- (a) in relation to proceedings before the Special Commissioners, by one of the Special Commissioners on an application made in whatever manner he considers appropriate; and

(b) in relation to proceedings before the High Court, the Court of Appeal or the Federal Court, by the High Court on an application made by summons in chambers.

41. The Special Commissioners in the exercise of their functions shall enjoy the same judicial immunity as is enjoyed by the person presiding in a subordinate court.

42. In sections 193 and 228 of the Penal Code the words "judicial proceeding" shall be deemed to include an appeal.

43. In this Schedule-- "appeal", except in paragraphs 29 to 37, means an appeal to the Special Commissioners under section 43;

"deciding order" means a deciding order made under paragraph 21; "subordinate court" means a sessions court;

"High Court", in relation to an appeal heard by the Special Commissioners, means (unless the parties to the appeal agree otherwise in writing) the High Court having jurisdiction in the place where the appeal begins to be heard by the Special Commissioners.

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PETROLEUM (INCOME TAX) ACT 1967

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Act A38 Petroleum (Income Tax) 30-04-1971

(Amendment) Act 1971

Act 160 Malaysian Currency 29-08-1975

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Act A353 Petroleum (Income Tax) 01-04-1975

(Amendment) Act 1976

Act A381 Petroleum (Income Tax) 01-04-1975;

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Act 324 Criminal Procedure Code 10-01-1976

(Amendment and Extension)

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P.U. (A) 357/1980 Subordinate Courts Act 01-06-1981 (Extension) Order 1980

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Act 631 Finance Act 2003 Section 23:

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Act 644 Finance Act 2005 01-01-2006

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PETROLEUM (INCOME TAX) ACT 1967

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4 Act A353 01-04-1975

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5 Act A353 01-04-1975

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6 Act A353 01-04-1975

7 Act A353 01-04-1975

8 Act A353 01-04-1975

9 Act A353 01-04-1975

10 Act 79/1967 14-12-1967

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DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA

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