



PARLIMEN MALAYSIA



BILL

Income Tax (Amendment) 1960

D.R.2/1960



Federation of Malaya

HIS MAJESTY'S GOVERNMENT

Gazette

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The following Bill introduced into the House of Representatives is published for general information:

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(Presented and read a first time and ordered to be printed, 22nd February, 1960.)

A BILL

intituled

An Act to amend the Income Tax Ordinance, 1947.

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

1. This Act may be cited as the Income Tax (Amendment) Act, 1960, and, subject to the provisions of Clause (1) of Article 7 of the Constitution, shall be deemed to have come into force on the first day of January, 1960.

Short title and commencement.
M.U. Ord. No. 48 of 1947.

2. The Income Tax Ordinance, 1947 (in this Act referred to as "the principal Ordinance") is hereby amended by inserting immediately after section 3 thereof the following new section:

New section 3A.

"Power of Minister to issue directions.

3A. The Minister of Finance may from time to time give the Comptroller-General and Comptroller directions of a general character, and not inconsistent with the provisions of this Ordinance, as to the exercise of the powers and discretions conferred on the Comptroller-General and the Comptroller by, and the duties required to be discharged by the Comptroller-General and the Comptroller under this Ordinance or any rules or regulations made thereunder, and the Comptroller-General and the Comptroller shall give effect to all such directions."

3. Section 6 of the principal Ordinance is hereby amended by inserting immediately after sub-section (7) thereof the following two new sub-sections—

Amendment of section 6.

"(8) Notwithstanding anything contained in this section, the Comptroller in his discretion may transmit to the Comptroller of Income Tax, Singapore, any document, information or return which is required in the performance of his official duties by the Comptroller of Income Tax, Singapore, in the administration of the law for the time being in force in Singapore relating to income tax.

(9) Notwithstanding anything contained in any written law for the time being in force in the Federation relating to the proof of documents, the Comptroller may produce or cause to be produced in any Court, in

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any proceedings relating to income tax, a copy of any particulars contained in any document or return transmitted to him by the Comptroller of Income Tax, Singapore, under the provisions of any law in force in the State of Singapore corresponding to the provisions of sub-section (8) of this section, certified by the Comptroller or on his behalf to be a correct copy of such particulars:

Provided that—

(i) the Comptroller may produce or cause to be produced the original of any such document or return in any case when it is necessary to prove the hand-writing or the signature of the person who wrote, made, signed or furnished such return or document, but only for the purpose of such proof;

(ii) the Comptroller shall not in any case be compelled to produce in any court either the original of such document or return or a copy of any particulars contained in such document or return.”.

New section
29A.

4. The principal Ordinance is hereby amended by inserting immediately after section 29 thereof the following new section:

“Income
arising
from settle-
ments.

29A. (1) Where under the terms of any settlement and during the life of the settlor any income, or assets representing it, will or may become payable or applicable to or for the benefit of any relative of the settlor and at the commencement of the year of assessment such relative is unmarried or has not attained the age of twenty-one years, such income or assets shall be deemed to be income of the settlor and not income of any other person.

(2) If and so long as the terms of any settlement are such that—

(a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and

(b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then

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comprised in the settlement, or of the income arising from the whole or any part of the property so comprised,

all income arising under the settlement from the property comprised in the settlement shall be deemed to be income of the settlor and, subject to the provisions of section 47 of this Ordinance, not income of any other person:

Provided that this sub-section shall not apply by reason only that the settlor or the wife or husband of the settlor will or may become beneficially entitled to any income or property relating to the interest of any beneficiary under the settlement in the event that such beneficiary should pre-decease him.

(3) Where in any year of assessment the settlor or any relative of the settlor or any person under the direct or indirect control of the settlor or of any of his relatives, whether by borrowing or otherwise, makes use of any income arising or of any accumulated income which has arisen under a settlement to which he is not entitled thereunder, then the amount of such income or accumulated income so made use of shall be deemed to be income of such settlor for such year of assessment and not income of any other person.

(4) Where under the terms of any settlement to which this section applies any tax is charged on and paid by the person by whom the settlement is made, that person shall be entitled to recover from any trustee or other person to whom income is paid under the settlement the amount of the tax so paid, and for that purpose to require the Comptroller to furnish a certificate specifying the amount of tax so paid; and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

(5) If any question arises as to the amount of any payment of income or as to any apportionment of income under this section that question shall be decided by the Comptroller, whose decision thereon shall be final.

(6) This section applies to every settlement wheresoever it was made or entered into and whether it was made or entered into before or after the date on which this section came into force and shall (where there is more than one settlor or more than one person who made the settlement) have effect in relation to each settlor as if he were the only settlor.

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(7) In this section—

'settlement' includes any disposition, trust, covenant, agreement, whether reciprocal or collateral, arrangement or transfer of assets or income, but does not include—

- (i) a settlement which in the opinion of the Comptroller is made for valuable and adequate consideration;
- (ii) a settlement resulting from an order of a court;
- (iii) any agreement made by an employer to pay to an employee or to the widow or any relative or dependant of such employee after his death such remuneration or pension or lump sum as in the opinion of the Comptroller is fair and reasonable;

'settlor', in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and any person who has provided or undertaken to provide funds or credit directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

'relative' means any person who is a wife, grand-child, child, brother, sister, uncle, aunt, nephew, niece or cousin of the settlor, and for the purpose of this section 'child' shall include a step-child, a child who has been *de facto* adopted by the settlor or by the husband or wife of the settlor, whether or not such adoption has been registered in accordance with any statutory provision, and a child of whom the settlor has the custody or whom he maintains wholly or partly at his own expense."

New section
61B.

5. The principal Ordinance is hereby amended by inserting immediately after section 61A thereof the following new section:

"Power of
Comptroller
to obtain
information.

61B. (1) The Comptroller shall at all times have full and free access to all lands, buildings and places, and all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whatsoever, for the purpose of ascertaining any facts or inspecting any books and documents which the Comptroller considers necessary

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or relevant for the purposes of this Ordinance, or considers likely to provide any information otherwise required for the purposes of this Ordinance, and may, without fee or reward, make extracts from or copies of any such books or documents.

(2) The Comptroller may require any person to give orally or in writing, as may be required, all such information concerning his or any other person's income or assets or liabilities as may be demanded of him by the Comptroller for the purposes of this Ordinance:

Provided that no person shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy."

6. Section 63 of the principal Ordinance is hereby repealed and the following new section substituted therefor:

New section
63.

"Keeping
of books of
account and
giving of
receipts.

63. (1) Subject to the provisions of sub-section (2) of this section, every person carrying on or exercising any trade, business, profession or vocation—

(a) shall keep and retain in safe custody sufficient records to enable his income and allowable deductions under this Ordinance to be readily ascertained by the Comptroller or any officer authorised in that behalf by the Comptroller;

(b) shall, if the gross receipts from such trade, business, profession or vocation in the preceding calendar year exceeded eighteen thousand dollars from the sale of goods, or twelve thousand dollars from the performance of services, issue a printed receipt serially numbered for every sum received in respect of goods sold or services performed in the course of or in connection with such trade, business, profession or vocation, and shall retain a duplicate of every such receipt:

Provided that where a machine is used for recording sales a receipt may be dispensed with if the Comptroller is satisfied that—

(i) such machine automatically records all sales made; and

(ii) the total of all sales made in each day is transferred at the end of such day to a record of sales.

(2) The Comptroller may by notice in writing to any person carrying on or exercising any trade, business, profession or vocation, or by notice in the *Gazette* in

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respect of any class or description of any such person, prescribe—

- (a) the form of the records to be kept under the provisions of paragraph (a) of sub-section (1) of this section, and the manner in which such records shall be kept and retained;
 - (b) the form of the receipts to be issued and the duplicates to be retained under the provisions of paragraph (b) of sub-section (1) of this section, and the manner in which such receipts shall be issued and such duplicates shall be retained,
- and every such person shall be bound to comply with such notice.

(3) The Comptroller may waive all or any of the provisions of sub-section (1) of this section in respect of any person or records or any class or description of persons or records.

(4) For the purposes of this section "records" includes—

- (a) books of account recording receipts or payments or income or expenditure;
- (b) invoices, vouchers, receipts, and such other documents as in the opinion of the Comptroller are necessary to verify the entries in any books of account;
- (c) any records relating to any trade, business, profession or vocation carried on or exercised on or after the first day of January, 1947.

(5) The provisions of paragraph (b) of sub-section (1) of this section shall come into force on the first day of July, 1960."

Amendment
of section
64.

7. Section 64 of the principal Ordinance is hereby amended by substituting for sub-section (7) thereof the following new sub-section:

"(7) Where an employer has in his possession any monies whatsoever which are or may be payable to or for the benefit of an employee who has ceased or is about to cease to be employed by him in the Federation he shall not, without the permission of the Comptroller, pay any part of such monies to or for the benefit of such employee until the expiry of thirty days after the receipt by the Comptroller of such notice as is required to be given under sub-section (5) of this section."

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8. Section 69 of the principal Ordinance is hereby amended— Amendment of section 69.

(a) by deleting the words and commas “, within the year of assessment or within six years after the expiration thereof,” appearing in sub-section (1) thereof;

(b) by substituting a full-stop for the colon appearing immediately before the proviso to sub-section (1) thereof, and deleting the whole of such proviso.

9. Section 81 of the principal Ordinance is hereby repealed. Repeal of section 81.

10. Section 82 of the principal Ordinance is hereby repealed and the following new section substituted therefor: New section 82.

“Time within which payment is to be made.

82. Subject to the provisions of section 87 of this Ordinance, tax for any year of assessment levied in accordance with the provisions of section 38 or 39 of this Ordinance shall, notwithstanding any objection or appeal against the assessment on which such tax is levied, be payable at the place stated in the notice given under section 72 of this Ordinance within one month after the service of such notice:

Provided that—

(a) where collection of tax has remained in abeyance pending the determination of any objection or appeal against an assessment made prior to the first day of January, 1960, such tax shall be payable not later than the first day of July, 1960;

(b) the Comptroller in his discretion may extend the time limit within which payment is to be made.”.

11. Section 83 of the principal Ordinance is hereby amended— Amendment of section 83.

(a) by substituting for sub-section (1) thereof the following new sub-section:

“(1) Where the Comptroller is of the opinion that any person is about or likely to leave Malaya without paying all tax assessed upon him, he may issue a certificate containing particulars of such tax and a direction to the Commissioner of Police, Federation of Malaya, or the Controller of Immigration, Federation of

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Malaya, or both, or a request to the Comptroller of Income Tax, Singapore, to prevent such person from leaving Malaya without paying the tax or furnishing security to the satisfaction of the Comptroller for payment thereof.”;

- (b) by substituting for the words “the Federation” wherever they occur in sub-section (2) thereof the word “Malaya”;
- (c) by substituting for the words “the Federation” appearing in sub-section (4) thereof the word “Malaya”;
- (d) by substituting for the words “the Federation” wherever they occur in sub-section (5) thereof the word “Malaya”;
- (e) by re-numbering the existing sub-section (6) as sub-section (7) and inserting the following new sub-section (6):

“(6) Where the Comptroller receives a request under the provisions of any law in force in the State of Singapore corresponding to the provisions of sub-section (1) of this section to prevent any person from leaving Malaya without paying the tax assessed upon him or furnishing security to the satisfaction of the Comptroller for payment thereof he may issue a direction under the provisions of this section in respect of such person.”;

- (f) by substituting for the words “the Federation” appearing in the marginal note the word “Malaya”.

New section
85.

12. Section 85 of the principal Ordinance is hereby repealed and the following new section substituted therefor:

“Change of
address.

85. (1) Every person liable to pay income tax under the provisions of this Ordinance shall inform the Comptroller in writing of any change in his address.

(2) Any notice or process given or served upon any person by posting the same or a copy thereof by registered post to him at his last known address shall, notwithstanding the provisions of sub-section (3) of section 8 of this Ordinance, be deemed to have been duly given or served and shall be conclusive evidence of the fact of service.”.

Amendment
of section
86.

13. Sub-section (1) of section 86 of the principal Ordinance is hereby amended by substituting for the words “Subject to the provisions of section 81 of this Ordinance, tax” appearing therein the words “Tax and any penalty”.

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14. The principal Ordinance is hereby amended by inserting immediately after section 86 thereof the following new section :

New section 86A.

"Statement of Comptroller sufficient.

86A. (1) In any civil or criminal proceedings under this Ordinance, every statement purporting to be under the hand of the Comptroller contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter stated therein.

(2) This section shall apply to any matter so stated although—

(a) evidence in support or rebuttal of the matter stated or of any other matter is given; or

(b) the matter stated is a mixed question of law and fact: but in such case the statement shall be *prima facie* evidence of the fact only.

(3) This section shall not apply to—

(a) a statement of the intent of the defendant; or

(b) proceedings for an offence punishable by imprisonment."

15. Section 87 of the principal Ordinance is hereby amended—

Amendment of section 87.

(a) by deleting the number and comma "81," appearing in sub-section (3) thereof;

(b) by inserting immediately after sub-section (3) thereof the following new sub-section :

"(4) An employer who fails to comply with the provisions of sub-section (7) of section 64 of this Ordinance shall be liable to pay the full amount of the tax which by reason of such failure cannot be recovered from such employee:

Provided that—

(i) the Comptroller shall apply any amount so recovered by or paid to him in or towards payment of the tax payable by the employee; and

(ii) the employer may recover from the employee any amount which he has paid to the Comptroller or which has been recovered from him by the Comptroller in pursuance of the provisions of this sub-section."

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Amendment
of section
90.

16. Section 90 of the principal Ordinance is hereby amended by inserting immediately after sub-section (2) thereof the following new sub-section:

“(3) The Comptroller may compound any offence punishable under sub-section (1) or (2) of this section, and may before judgment stay or compound any proceedings thereunder.”.

Amendment
of section
91.

17. Section 91 of the principal Ordinance is hereby repealed and the following new section substituted therefor:

“Penalty
for in-
correct
return.

91. (1) Subject to the provisions of Part XII of this Ordinance, every person who—

(a) makes an incorrect return by omitting therefrom or understating therein any income of which he is required by this Ordinance to make a return; or

(b) gives any incorrect information in relation to any matter affecting his own liability to tax or the liability of any other person or of a partnership,

shall pay a penalty equal to the amount of tax which has been undercharged in consequence of such incorrect return or information, or which would have been so undercharged if the return or information had been accepted as correct.

(2) Every person who without reasonable excuse or through negligence—

(a) makes an incorrect return by omitting or understating any income of which he is required by this Ordinance to make a return; or

(b) gives any incorrect information in relation to any matter affecting his own liability to tax or the liability of any other person or of a partnership,

shall be guilty of an offence for which, on conviction, he shall pay a penalty equal to double the amount of tax which has been undercharged in consequence of such incorrect return or information, or which would have been so undercharged if the return or information had been accepted as correct, and shall also be liable to a fine not exceeding five thousand dollars, or to imprisonment for a term of not less than six months and not exceeding three years, or to both such fine and imprisonment.

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(3) The Comptroller may compound any offence punishable under sub-section (1) or (2) of this section and may before judgment stay or compound any proceedings thereunder."

18. Section 92 of the principal Ordinance is hereby amended by substituting for the words "and shall for each such offence be liable on conviction to a fine not exceeding ten thousand dollars and treble the amount of tax for which he is liable under this Ordinance for the year of assessment in respect of or during which the offence was committed, or to imprisonment for a term" appearing in sub-section (1) thereof the words "and on conviction shall pay a penalty of treble the amount of tax for which he is liable under this Ordinance for each year of assessment in respect of which an offence was committed, and shall also be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not less than six months and".

Amendment
of section
92.

19. The principal Ordinance is hereby amended by inserting immediately after section 93 thereof the following new section:

New section
93A.

"Penalty for obstructing officers. 93A. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Ordinance or of any rules or regulations made thereunder shall be guilty of an offence."

20. The principal Ordinance is hereby amended by inserting immediately after section 94 thereof the following new section:

New section
94A.

"Penalty not to be part of tax for purpose of claiming relief. 94A. Any penalty imposed under this Ordinance shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Ordinance."

21. The principal Ordinance is hereby amended by inserting immediately after section 96 thereof the following new section:

New section
96A.

"Proceedings as to evidence in legal proceedings. 96A. (1) Statements made or documents produced by or on behalf of any person shall not be inadmissible in evidence against him in any of the proceedings specified in sub-section (2) by reason only that such person was or may have been induced to make such statements or produce such documents by any lawful inducement or promise proceeding from a person having any official duty or being employed in the administration of this Ordinance.

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(2) The proceedings mentioned in sub-section (1) of this section are—

- (a) any proceedings against the person in question under the provisions of section 91 or 92 of this Ordinance;
- (b) any proceedings against the person in question for the recovery of any sum due from him, whether by way of tax or penalty.”.

EXPLANATORY STATEMENT

This Bill proposes certain changes in the law relating to Income Tax, principally with a view to assisting the Income Tax Department in the combat of tax evasion.

2. *Clause 2* of the Bill is designed to give the Minister of Finance power to give the Comptroller-General and Comptroller general directions, not inconsistent with the provisions of the Ordinance, concerning the exercise of their powers, duties and directions under the Ordinance, and *clause 3* of the Bill (which corresponds to a similar provision in parallel legislation proposed in Singapore) seeks to facilitate the exchange of official information between the Comptroller, Federation of Malaya and the Comptroller, Singapore. *Clause 4* is designed to prevent the loss of tax which occurs when an individual transfers income or assets, normally to his children, for the purpose of reducing his tax liability, and *clause 5* is designed to empower the Comptroller to obtain information orally or in writing or by inspection of premises, books or documents, for the purposes of the Income Tax Ordinance, 1947.

3. Under *clause 6* every person carrying on any trade, business, profession or vocation will be required to keep and retain proper records, in order that his liability to tax may be readily ascertained. The clause also proposes that, except in the case of small businesses, a printed, serially numbered receipt shall be given for every sum received from the sale of goods or the performance of services. It is provided that no receipt need be given where sales are recorded by an automatic machine and where the Comptroller is satisfied that sales so recorded are properly accounted for; and it is not proposed to bring this provision into force until July 1.

4. The object of *clauses 7 and 15*, which are complementary, is to ensure that employers give the Comptroller adequate notice of the departure of employees from Malaya, in order that steps may be taken before such departure to compute and to collect any tax payable. These clauses are supplemented by *clause 11*, in which it is proposed that the Comptroller should be able to request the assistance of the Commissioner of Police, Singapore, and the Controller of Immigration, Singapore, to prevent any person from leaving Malaya without paying the tax owing by him.

5. *Clause 8* is designed to abolish the six-year limitation upon additional assessments contained in section 69 of the Ordinance; *clause 10* proposes that the collection of tax on any assessment shall not be held up by reason of any objection or appeal against the assessment, and also gives the Comptroller discretion to extend the time for payment in any particular case; *clause 12* proposes that every person

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shall be required to advise the Comptroller of any change of address, and also provides that posting of a registered letter to the last known address of the taxpayer should be deemed to constitute service in any proceedings under the Ordinance; and *clause 13* is intended to ensure that any monetary penalty imposed under the Ordinance may, like tax, be sued for in a court of competent jurisdiction.

6. *Clause 14* is designed to expedite proceedings under the Ordinance by ensuring that statements of fact made by the Comptroller and contained in any information, complaint, declaration or claim before the Court are admitted as *prima facie* evidence thereof: but it is not intended that the provisions of the clause should apply in any proceedings punishable by imprisonment. By *clause 16* the power of the Comptroller to compound major offences under the Ordinance is extended to minor offences.

7. *Clause 17* proposes a penalty equivalent to the tax under-charged, where the under-charge arises from the omission of income or from incorrect information given by a taxpayer. Where the omission arises from or the incorrect information is given through the negligence of the taxpayer or without reasonable excuse the clause proposes that, on conviction, the taxpayer should pay a penalty equal to double the tax under-charged, and in addition should be liable to a fine of not less than \$5,000 or to imprisonment for not less than six months nor more than three years, or to both such fine or imprisonment. It is intended, however, that the Comptroller should have the discretionary power to compound any offence before judgment is given in any legal proceedings under the proposed new section 91.

8. *Clause 18* seeks to clarify the quantum of the fine which may be imposed under section 92 of the Ordinance and provides for a minimum sentence of six months in the case of a sentence of imprisonment, and *clause 19* is intended to make it an offence for any person to obstruct an officer of the Income Tax Department in the discharge of his duties under the Ordinance. *Clause 20* makes it clear that no penalty can be taken into account in claiming relief in respect of tax under the Ordinance.

9. As the law now stands, statements made by a taxpayer to the Comptroller may be inadmissible as evidence in any Court if such statements were made by the taxpayer under a lawful inducement or promise on the part of the Comptroller to accept a monetary settlement in lieu of instituting proceedings. Cases may arise in which a taxpayer refuses to abide by an undertaking to pay the compounded penalty for an offence under the Ordinance, or in which a disclosure by the taxpayer of omissions of income is subsequently discovered to be incomplete. *Clause 21* is in consequence designed to enable statements made by the taxpayer in such circumstances to be admitted as evidence in any proceedings instituted against him.

[A.G. 2214.]