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**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX (PRESCRIBED ISLAMIC FINANCING
ARRANGEMENTS) REGULATIONS 2009**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
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In exercise of the powers conferred by section 34B(5) of the Income Tax Act, the Minister for Finance hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Prescribed Islamic Financing Arrangements) Regulations 2009 and shall be deemed to have come into operation on 17th February 2006.

Definitions

2. In these Regulations —

“bank” means —

- (a) any approved bank as defined in section 13(16) of the Act (referred to in these Regulations as a Singapore bank); or
- (b) any institution outside Singapore that —
 - (i) carries on only such activities as are carried on by a bank referred to in paragraph (a); and

(ii) is licensed or approved under any written law administered by its financial supervisory authority for the carrying on of its activities,

(referred to in these Regulations as a non-Singapore bank);

“deposit” means a deposit under section 4B of the Banking Act (Cap. 19);

“financial institution” means —

(a) any institution in Singapore that is licensed or approved by the Monetary Authority of Singapore, or exempted from such licensing or approval, under any written law administered by the Monetary Authority of Singapore (referred to in these Regulations as a Singapore financial institution); or

(b) any institution outside Singapore that is licensed or approved, or exempted from such licensing or approval, under any written law administered by its financial supervisory authority for the carrying on of financial activities (referred to in these Regulations as a non-Singapore financial institution);

“Islamic deposit based on the Murabaha concept” means an Islamic deposit entered into between a person (the customer) and a bank where —

(a) for the purpose of making funds of the customer available to the bank, the customer appoints the bank (or any other person) as an agent to purchase on his behalf an asset for an amount of money (the original price), in circumstances where the asset exists at the time of the purchase;

(b) the bank purchases the asset from the customer at a price (the marked-up price) that is greater than the original price, and sells the asset, or appoints the customer (or any other person) as an agent of the bank to sell the asset on its behalf;

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- (c) the bank and the customer do not derive any gain or suffer any loss from any movement in the market value of the asset, other than the difference between the marked-up price and the original price (which represents the profit or return to the customer for making funds available to the bank); and
 - (d) the marked-up price or any part thereof is not required to be paid by the bank to the customer until after the date of sale of the asset by the bank;

[S 318/2011]

“Islamic financing based on the Diminishing Musharakah concept” means an Islamic financing arrangement between a person (the customer) and a financial institution where —

- (a) the financial institution, or the financial institution’s agent, jointly purchases an asset with the customer at the request of the customer, and contributes an amount of money towards the purchase price (the contribution) for the purposes of financing the use or purchase, or both, of the asset by the customer;
- (b) the financial institution, or the financial institution’s agent —
 - (i) sells a portion of its share of the asset on a periodic basis to the customer for an amount of money determined at the start of the arrangement (the redemption amount); and
 - (ii) leases the unsold portion of its share of the asset to the customer for an amount of money determined at the start of the arrangement (the rental);
- (c) if the asset is not in existence at the time of the joint purchase, and the financial institution, or the financial institution’s agent, leases the unsold portion of its share of the asset to the customer, an amount of money (the advance payment) may be paid by the customer to the

financial institution, or the financial institution's agent, for the subsequent use of that portion of the asset;

- (d) the financial institution, or the financial institution's agent, appoints the customer (or a third party) to take on the obligations in connection with the use of the asset, including its maintenance and insurance;
- (e) in the event of an early termination of the arrangement, the customer shall purchase from the financial institution, or the financial institution's agent, the remainder of the unsold portion of the financial institution's, or the financial institution's agent's, share of the asset at a price determined at the start of the arrangement (the early termination price);
- (f) upon the expiry of the arrangement, the customer shall have purchased from the financial institution, or the financial institution's agent, the whole of the financial institution's, or the financial institution's agent's, share of the asset and obtained full ownership of the asset;
- (g) the total amount payable by the customer for the asset, comprising —
 - (i) the advance payment;
 - (ii) the redemption amount;
 - (iii) the rental; and
 - (iv) the early termination price,is greater than the contribution, and the difference between the total amount payable and the contribution is the profit or return to the financial institution for providing such financing to the customer;
- (h) the financial institution, or the financial institution's agent, does not derive any gain or suffer any loss from any movement in the market value of the asset, including the total loss of the asset, other than as part of the profit or return referred to in paragraph (g), except in the circumstances provided in paragraph (i); and

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- (i) if the customer is unable to pay the financial institution, or the financial institution's agent, the early termination price, the financial institution, or the financial institution's agent, may sell the asset to a third party at a price lower than the outstanding amount payable by the customer;

[S 318/2011]

“Islamic financing based on the Istisna concept” means an Islamic financing arrangement between a person (the customer) and a financial institution where —

- (a) the financial institution, or the financial institution's agent, at the request of the customer and for the purposes of financing the procurement and the use or purchase, or both, of an asset by the customer, commissions the customer to construct the asset in accordance with the customer's specifications for an amount of money (the purchase price);
- (b) contemporaneously with the commissioning referred to in paragraph (a) —
- (i) the financial institution, or the financial institution's agent, and the customer enter into an Islamic mortgage based on the Ijara Wa Igtina concept where the asset is not in existence at the time the asset is leased to the customer (the lease arrangement); or
- (ii) the customer gives an undertaking to the financial institution, or the financial institution's agent, to purchase the asset from the financial institution, or the financial institution's agent, immediately after the transfer of the ownership of the asset to the financial institution, or the financial institution's agent, by the customer under paragraph (e)(i) (the purchase undertaking);
- (c) the customer procures the construction of the asset by a third party;

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- (d) the financial institution, or the financial institution's agent, makes payment of the purchase price to the customer on a periodic basis (the progress payment);
 - (e) one of the following takes place:
 - (i) the customer transfers the ownership of the asset to the financial institution, or the financial institution's agent, on a mutually agreed date on or after the completion of the construction of the asset by the third party;
 - (ii) the customer refunds all progress payments to the financial institution, or the financial institution's agent, and the lease arrangement or the purchase undertaking, as the case may be, is cancelled; or
 - (iii) the financial institution, or the financial institution's agent, agrees to the substitution of the asset that is the subject of the lease arrangement or the purchase undertaking with a comparable asset, and the customer transfers the ownership of the comparable asset to the financial institution, or the financial institution's agent, on a mutually agreed date;
 - (f) the financial institution, or the financial institution's agent, does not take physical delivery of the asset or the comparable asset;
 - (g) at the end of the arrangement, the financial institution, or the financial institution's agent, transfers ownership of the asset, or of the comparable asset, to the customer pursuant to the lease arrangement or the purchase undertaking, except in the circumstances referred to in paragraph (e)(ii);
 - (h) the amount payable by the customer for the asset, or the comparable asset, is greater than the purchase price, and the difference between the total amount payable and the purchase price is the profit or return to the financial

institution for providing such financing to the customer;
and

- (i) the financial institution, or the financial institution's agent, does not derive any gain or suffer any loss from any movement in the market value of the asset, including from the total loss of the asset, other than the profit or return referred to in paragraph (h);

[S 318/2011]

“Islamic financing based on the Murabaha concept” means an Islamic financing arrangement between a person (the customer) and a financial institution where —

- (a) the financial institution, at the request of and for the purpose of financing the purchase of an asset by the customer, purchases the asset from the seller in circumstances where the asset is existing at the time of the purchase;
- (b) the financial institution sells the asset to the customer;
- (c) the customer is under a legal obligation to the financial institution to take delivery of the asset;
- (d) the amount payable by the customer for the asset (the marked-up price) is greater than the amount paid by the financial institution for the asset (the original price);
- (e) the financial institution does not derive any gain or suffer any loss from any movement in the market value of the asset other than as part of the difference between the marked-up price and the original price; and
- (f) the marked-up price or any part thereof is not required to be paid until after the date of the sale;

“Islamic inter-bank placement based on the Murabaha concept” means an Islamic inter-bank placement between banks where —

- (a) for the purpose of making funds of a bank (the first bank) available to another bank (the second bank), the first bank purchases, or appoints the second bank (or

any other person) as an agent of the first bank to purchase on its behalf an asset for an amount of money (the original price), in circumstances where the asset exists at the time of the purchase;

- (b) the second bank purchases the asset from the first bank at a price (the marked-up price) that is greater than the original price, and sells the asset, or appoints the first bank (or any other person) as an agent of the second bank to sell the asset on its behalf;
- (c) the first bank and the second bank do not derive any gain or suffer any loss from any movement in the market value of the asset, other than the difference between the marked-up price and the original price (which represents the profit or return to the first bank for making funds available to the second bank); and
- (d) the marked-up price or any part thereof is not required to be paid by the second bank to the first bank until after the date of sale of the asset by the second bank;

[S 318/2011]

“Islamic mortgage based on the Ijara Wa Igtina concept” means an Islamic financing arrangement between a person (the customer) and a financial institution where —

- (a) the financial institution or its agent purchases an asset at the request of the customer for an amount of money (the original price) for the purposes of financing the use or purchase, or both, of the asset by the customer;
- (b) the financial institution or its agent leases the asset to the customer;
- (c) in a case where the asset is not in existence at the time the financial institution or its agent leases the asset to the customer, an amount of money (the advance payment) may be paid by the customer to the financial institution or its agent for the subsequent use of the asset;

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- (d) an amount of money (the rental) is paid by the customer to the financial institution or its agent for the lease of the asset;
 - (e) the financial institution or its agent appoints the customer or a third party to take on the obligations in connection with the use of the asset, including its maintenance and insurance;
 - (f) in the event of an early termination of the lease, the customer or a third party is required to purchase the asset from the financial institution or its agent at a price determined at the start of the lease (the early termination price);
 - (g) upon expiry of the lease —
 - (i) where the aggregate of all rental and advance payments made under the lease is greater than the original price, the financial institution or its agent is required, whether with or without consideration, to transfer the ownership of the asset to the customer or a third party; and
 - (ii) where the aggregate of all rental and advance payments made under the lease is equal to or less than the original price, the customer or a third party is required to purchase the asset from the financial institution or its agent at a sale price determined at the start of the lease (the sale price), which amount is the consideration for the transfer of the asset;
 - (h) the total amount payable by the customer or the third party referred to in either paragraph (f) or (g), if any, for the asset comprising —
 - (i) the advance payment;
 - (ii) the rental; and
 - (iii) the sale price or early termination price,is greater than the original price; and

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- (i) the financial institution or its agent does not derive any gain or suffer any loss from any movement in the market value of the asset, including total loss of the asset, other than as part of the difference between the total amount payable and original price referred to in paragraph (h);
[S 330/2012]

“Islamic transaction based on the Spot Murabaha concept” means an Islamic transaction between a person (the customer) and a financial institution where —

- (a) for the purposes of effecting profit rate swap payment resulting from the carrying on by the financial institution of any business referred to in section 30(1)(a), (b) or (c) of the Banking Act (Cap. 19) —

- (i) the financial institution gives an undertaking to the customer to purchase an asset from the customer (the financial institution purchase undertaking);
- (ii) the customer gives an undertaking to the financial institution to purchase an asset from the financial institution (the customer purchase undertaking);
- (iii) the financial institution gives an undertaking to the customer to sell an asset to the customer (the financial institution sale undertaking); or
- (iv) the customer gives an undertaking to the financial institution to sell an asset to the financial institution (the customer sale undertaking),

for an amount of money determined at the time the undertaking is given by the financial institution or the customer, as the case may be (the agreed price);

- (b) if the financial institution purchase undertaking is exercised by the customer, or the customer sale undertaking is exercised by the financial institution,

the financial institution will purchase the asset from the customer at the agreed price, in circumstances where the asset exists at the time of the purchase, and immediately sell the asset to a third party at spot price;

- (c) if the customer purchase undertaking is exercised by the financial institution, or the financial institution sale undertaking is exercised by the customer, the financial institution will purchase the asset from a third party at spot price, in circumstances where the asset exists at the time of the purchase, and immediately sell the asset to the customer at the agreed price;
- (d) the financial institution does not take physical delivery of the asset; and
- (e) the financial institution does not derive any gain or suffer any loss from any movement in the market value of the asset, other than the difference between the spot price and the agreed price.

[S 330/2012]

Prescribed arrangements

3. The following Islamic financing arrangements are prescribed for the purpose of section 34B of the Act:

- (a) any Islamic deposit based on the Murabaha concept that —
 - (i) is an arrangement between a Singapore bank and any customer that is not a bank, where the purchase of the asset referred to in paragraph (a)(i) of the definition of that deposit in regulation 2 took place on or after 11th June 2007; or
 - (ii) is an arrangement between a non-Singapore bank and a customer (other than a Singapore bank) that is resident in Singapore, is a permanent establishment in Singapore or is carrying on business in Singapore, where the purchase of the asset referred to in

[S 318/2011]

paragraph (a)(i) of the definition of that deposit in regulation 2 took place on or after 17th February 2006;
[S 318/2011]

(iii) [*Deleted by S 318/2011*]

(aa) any Islamic financing based on the Diminishing Musharakah concept that is an arrangement between —

- (i) a Singapore financial institution and any customer; or
- (ii) a non-Singapore financial institution and a customer that is resident in Singapore, is a permanent establishment in Singapore or is carrying on a business in Singapore,

[S 330/2012]

where the use or purchase of the asset referred to in paragraph (a) of the definition of that financing in regulation 2 took place on or after 7th May 2009;

[S 318/2011]

(ab) any Islamic financing based on the Istisna concept that is an arrangement between —

- (i) a Singapore financial institution and any customer; or
- (ii) a non-Singapore financial institution and a customer that is resident in Singapore, is a permanent establishment in Singapore or is carrying out a business in Singapore,

where the commissioning of the customer to construct the asset referred to in paragraph (a) of the definition of that financing in regulation 2 took place on or after 13th April 2010;

[S 318/2011]

(b) any Islamic financing based on the Murabaha concept that is an arrangement between —

- (i) a Singapore financial institution and any customer; or
- (ii) a non-Singapore financial institution and a customer that is resident in Singapore, is a permanent establishment in Singapore or is carrying on business in Singapore,

where the purchase of the asset referred to in paragraph (a) of the definition of that financing in regulation 2 took place on or after 17th February 2006;

- (ba) any Islamic inter-bank placement based on the Murabaha concept that is an arrangement between banks, where the purchase of the asset referred to in paragraph (a) of the definition of that inter-bank placement in regulation 2 took place on or after 19th January 2009;

[S 318/2011]

- (c) any Islamic mortgage based on the Ijara Wa Igtina concept that is an arrangement between —

- (i) a Singapore financial institution and any customer; or
- (ii) a non-Singapore financial institution and a customer that is resident in Singapore, is a permanent establishment in Singapore or is carrying on business in Singapore,

where the purchase of the asset by the financial institution or its agent referred to in paragraph (a) of the definition of that mortgage in regulation 2 took place —

- (A) in the case of a financial institution that is a Singapore bank, on or after 19th January 2009; and
- (B) in the case of a financial institution that is not a Singapore bank, on or after 17th February 2006;

[S 330/2012]

- (d) any Islamic transaction based on the Spot Murabaha concept that is an arrangement between —

- (i) a Singapore financial institution and any customer; or
- (ii) a non-Singapore financial institution and a customer that is resident in Singapore, is a permanent establishment in Singapore or is carrying on a business in Singapore,

where the purchase or sale of the asset, as the case may be, referred to in paragraph (a) of the definition of that transaction in regulation 2 took place on or after 7th May 2009.

[S 330/2012]

Prescribed returns

4. The following returns are prescribed for the purpose of section 34B of the Act:

- (a) in the case of any Islamic deposit based on the Murabaha concept, the difference between the marked-up price and the original price referred to in paragraph (c) of the definition of that deposit in regulation 2;
- (aa) in the case of any Islamic financing based on the Diminishing Musharakah concept, the difference (between the total amount payable by the customer and the contribution) referred to in paragraph (g) of the definition of that financing in regulation 2;
[S 318/2011]
- (ab) in the case of any Islamic financing based on the Istisna concept, the difference (between the total amount payable by the customer and the purchase price) referred to in paragraph (h) of the definition of that financing in regulation 2;
[S 318/2011]
- (b) in the case of any Islamic financing based on the Murabaha concept, the difference between the marked-up price and the original price referred to in paragraph (d) of the definition of that financing in regulation 2;
- (ba) in the case of any Islamic inter-bank placement based on the Murabaha concept, the difference (between the marked-up price and the original price) referred to in paragraph (c) of the definition of that inter-bank placement in regulation 2;
[S 318/2011]
- (c) in the case of any Islamic mortgage based on the Ijara Wa Igtina concept, the difference between the total amount payable and the original price referred to in paragraph (h) of the definition of that mortgage in regulation 2;
[S 330/2012]
- (d) in the case of any Islamic transaction based on the Spot Murabaha concept, the difference between the spot price and the agreed price referred to in paragraph (b), or in

paragraph (c), as the case may be, of the definition of that transaction in regulation 2.

[S 330/2012]

Made this 29th day of September 2009.

TEO MING KIAN
*Permanent Secretary,
Ministry of Finance,
Singapore.*

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