No. S 13

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

INCOME TAX ACT (AMENDMENT) ORDER, 2009

ARRANGEMENT OF SECTIONS

Section

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

INCOME TAX ACT (AMENDMENT) ORDER, 2009

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation.

1. This Order may be cited as the Income Tax Act (Amendment) Order, 2009.

Amendment of section 3 of Chapter 35.

2. Section 3 of the Income Tax Act, in this Order referred to as the Act, is amended by adding the following new subsection —

"(5) No action shall be brought against the Collector, any authorised officer or any other person acting under the direction of the Collector in respect of any act or thing done or omitted to be done by him in good faith in the exercise, performance or purported exercise or performance, of any powers or duties under this Act.".

Insertion of new section 6A.

3. The Act is amended by inserting the following new section immediately after section 6 —

"Electronic service.

6A. (1) The Collector may provide an electronic service for —

(a) the filing or submission of any return, estimate, statement or document; or

(b) the service of any notice by the Collector.

(2) For the purposes of the electronic service, the Collector may assign to any person —

(a) an authentication code; and

(b) an account with the electronic service.

(3) Any person who is required to file or submit any return, estimate, statement or document may do so through the electronic service.

(4) Any agent who is authorised by his principal in the prescribed manner may file or submit any return, estimate, statement or document on behalf of his principal through the electronic service.

(5) Where any return, estimate, statement or document is filed or submitted on behalf of any person under subsection (4) —

(a) it shall be deemed to have been filed or submitted with the authority of that person; and

(b) that person shall be deemed to be cognisant of all matters therein.

(6) Where any return, estimate, statement or document is filed or submitted through the electronic service using the authentication code assigned to any person before that person has requested, in the prescribed manner, for the cancellation of the authentication code —

(a) the return, estimate, statement or document shall, for the purposes of this Act, be presumed to have been filed or submitted by that person unless he adduces evidence to the contrary; and

(b) where that person alleges that he did not file or submit the return, estimate, statement or document, the burden shall be on him to adduce evidence of that fact.

(7) Where any person has given his consent for any notice to be served on him through the electronic service, the Collector may serve the notice on that person by transmitting an electronic record of the notice to that person's account with the electronic service.

(8) Notwithstanding any other written law, in any proceedings under this Act —

(a) an electronic record of any return, estimate, statement or document that was filed or submitted, or any notice that was served, through the electronic service; or

(b) any copy or print-out of that electronic record,

shall be admissible as evidence of the facts stated or contained therein if that electronic record, copy or print-out —

(i) is certified by the Collector to contain all or any information filed, submitted or served through the electronic service in accordance with this section; and

(ii) is duly authenticated in the manner specified in subsection (10) or is otherwise authenticated in the manner provided in the Evidence Act (Chapter 108) for the authentication of computer output.

(9) For the avoidance of doubt —

(a) an electronic record of any return, estimate, statement or document that was filed or submitted, or any notice that was served, through the electronic service; or

(b) any copy or print-out of that electronic record,

shall not be inadmissible in evidence merely because the return, estimate, statement or document was filed or submitted, or the notice was served, without the delivery of any equivalent document or counterpart in paper form.

(10) For the purposes of this section, a certificate —

(a) giving the particulars of —

(i) any person whose authentication code was used to file, submit or serve the return, estimate, statement, document or notice; and

(ii) any person or device involved in the production or transmission of the electronic record of the return, estimate, statement, document or notice, or the copy or print-out thereof;

(b) identifying the nature of the electronic record or copy thereof; and

(c) purporting to be signed by the Collector or by a person occupying a responsible position in relation to the operation of the electronic service at the relevant time,

shall be sufficient evidence that the electronic record, copy or print-out has been duly authenticated, unless the court calls for further evidence on this issue.

(11) Where the electronic record of any return, estimate, statement, document or notice, or a copy or print-out of that electronic record, is admissible under subsection (8), it shall be presumed, until the contrary is proved, that the electronic record, copy or print-out accurately reproduces the contents of that document.

(12) The Collector may, for the purposes of the electronic service, approve the use of any symbol, code, abbreviation or notation to represent any particulars or information required under this Act.

(13) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for carrying out the purposes of this section, including regulations prescribing —

(a) the procedure for the use of the electronic service, including the procedure in circumstances where there is a breakdown or interruption of the electronic service;

(b) the procedure for the correction of errors in, or the amendment of, any return, estimate, statement or document that is filed or submitted through the electronic service;

(c) the manner in which a person who has given his consent for a notice to be served on him through the electronic service shall be notified of the transmission of an electronic record of the notice to his account with the electronic service;

(d) the manner in which authentication codes are to be assigned; and

(e) anything which may be prescribed under this section.".

Insertion of new section 11E.

4. The Act is amended by inserting the following new section immediately after section 11D —

"Further deduction for contribution to Tabung Amanah Pekerja.

11E. Where the Collector is satisfied that an employer has made a contribution to the Tabung Amanah Pekerja (Employee Trust Fund) established under section 6 of the Tabung Amanah Pekerja Act (Chapter 167) in respect of any of his employees, there shall be allowed to the employer a further deduction of the amount of that contribution in addition to the deduction allowed under section 11.".

Amendment of section 16.

5. Section 16(1) of the Act is amended —

(a) by deleting "one-fifth" from the sixth line and by substituting "40%" therefor;

(b) by deleting "1946" from the ninth line and by substituting "2009" therefor.

Insertion of new section 16B.

6. The Act is amended by inserting the following new section immediately after section 16A —

"Allowances of 3 years write-off for machinery and plant, and 100% write-off for computer, prescribed office automation equipment etc.

16B. (1) Notwithstanding section 16, where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of that trade, profession or business, he shall, in lieu of the allowances provided by section 16, be entitled for a period of 3 years to an annual allowance of 33⅓% in respect of the capital expenditure incurred.

(2) Notwithstanding section 16, where a person proves to the satisfaction of the Collector that he has installed a computer or other prescribed automation equipment for the purposes of a trade, business or profession carried on by him, he shall, in lieu of the allowances provided by subsection (1) or section 16, be entitled, if he so elects, to an allowance of 100% in respect of the capital expenditure incurred on the provision of that computer or automation equipment.

(3) Notwithstanding section 16 and subject to subsection (4), where a person proves to the satisfaction of the Collector that he has incurred capital expenditure not exceeding $2,000 on the provision of any item of machinery or plant for the purposes of a trade, profession or business carried on by him, he shall, in lieu of the allowances provided by subsection (1) or section 16, be entitled, if he so elects, to an allowance of —

(a) 100% in respect of that capital expenditure; or

(b) where allowances have been made under subsection (1) or section 16 for any previous year of assessment under subsection (4), the amount of that capital expenditure still unallowed.

(4) The aggregate amount of allowances claimed by any person under subsection (3) for any year of assessment shall not exceed $30,000; and allowances may be made under subsection (1) or section 16 in respect of any capital expenditure still unallowed.

(5) No allowance shall be made under subsection (3) in respect of any item of machinery or plant which is acquired under a hire-purchase agreement and the original cost of that item of machinery or plant exceeds $2,000.

(6) Any claim by a person for allowances in respect of any machinery or plant under this section for any year of assessment shall not be disallowed by reason only that the person has not in use the machinery or plant at the end of the basis period for that year of assessment.

(7) Any claim for allowances under this section shall be made at the time of lodgment of the return of income for the relevant years of assessment or within such further time as the Collector may allow.

(8) Where any allowance has been claimed and allowed under this section for any year of assessment, no allowances shall be made in any subsequent year of assessment under section 16 in respect of such expenditure.

(9) Subject to subsection (3), where any allowance has been claimed and allowed under section 16 in respect of any expenditure, no allowances shall, except with the approval of the Minister and subject to such conditions as he may impose, be made in any subsequent year of assessment under this section in respect of the amount of that expenditure remaining unallowed under section 16.

(10) This section shall apply to any machinery or plant acquired on or after 1st January 2009.".

Amendment of section 30.

7. Section 30 of the Act is amended by inserting the following new subsection immediately after subsection (1) —

"(1A) For the purposes of this section, unless otherwise provided in this Act or the Investment Incentives Order, 2001 (S 48/01), where a company whose income, if any, is subject to tax at different rates of tax for any year of assessment, the Collector shall apportion any sum allowable among those different rates of tax on such basis as he considers reasonable.".

Amendment of section 35.

8. Section 35 of the Act is amended —

(a) in subsection (1) —

(i) in paragraph *(b)* —

(A) by deleting "and subsequent years of assessment" from the first and second lines;

(B) by deleting the comma and by substituting a semicolon therefor;

(ii) by adding the following new paragraph —

"*(c)* the year of assessment 2010 and subsequent years of assessment upon the chargeable income of every company, tax at the rate of 23.5%,";

(b) in subsection (2)*(b)*, by deleting ", *(b)* and *(d)*" from the first line and by substituting "and *(b)*" therefor;

(c) by inserting the following new subsection immediately after subsection (2) —

"(2A) Notwithstanding anything in this Act, tax at the rate of 10% shall be levied and paid on the gross amount of any income referred to in section 9(5)*(d)* accruing in or derived from Brunei Darussalam on or after 1st January 2009 by any person from any trade, business, profession or vocation carried on or exercised by him in Brunei Darussalam and which is not effectively connected with any permanent establishment in Brunei Darussalam of that person.";

(d) by inserting the following 2 new subsections immediately after subsection (6) —

"(6A) The rate of tax under subsection (1)*(c)* shall not apply to any part of the chargeable income of any company which is attributable to the income derived by the company on or before 1st January

2009 and the rate of tax under subsections (1)*(a)* or *(b)*, as the case may be, shall apply to such part of the chargeable income of the company.

(6B) For the purposes of subsection (6A), without prejudice to section 28, the Collector may make such adjustments as he considers appropriate, including the computation or re-computation of gains or profits of any company, so as to give effect to that subsection.".

Amendment of section 37A.

9. Section 37A of the Act is amended by adding ", and the reference to 20 per cent in the fourth line of section 37(1) shall be construed as a reference to the rate specified in sections 35(2), (2A) or (3), as the case may be".

Amendment of section 52.

10. Section 52 of the Act is amended —

(a) by inserting "(1)" immediately before "The" in the first line;

(b) by inserting "or such extended time as the Collector may allow" immediately after "time" in the third line;

(c) by adding the following 2 new subsections —

"(2) The Collector may, in any notice made under subsection (1), exempt from liability to furnish returns such class of persons not liable to pay tax as he thinks fit, and any person so exempted need not furnish a return under that subsection unless he is required by the Collector to do so under subsection (3).

(3) Notwithstanding subsection (1), the Collector may, by notice in writing, require any person to furnish to him in such form and manner and within such reasonable time as he may determine, with a return of income and such particulars as may be required for the purpose of ascertaining the income, if any, for which such person is chargeable under this Act.".

Insertion of new section 52A.

11. The Act is amended by inserting the following new section immediately after section 52 —

"Furnishing of estimate of chargeable income if no return is made under section 52.

52A. (1) Every person carrying on or exercising any trade, business, profession or vocation who has not made a return under section 52 for any year of assessment shall, within 3 months after the end of the accounting period relating to that year of assessment, furnish to the Collector an estimate of his chargeable income.

(2) Any person who fails or neglects without reasonable excuse to furnish the estimate of his chargeable income as required under subsection (1) shall be guilty of an offence.".

Insertion of new section 55C.

12. The Act is amended by inserting the following new section immediately after section 55B —

"Failure to comply with notices issued by Collector.

55C. Notwithstanding section 78, any person who fails or neglects without reasonable excuse to comply with any notice issued by the Collector under sections 54, 55, 55A or 55B shall be guilty of an offence.".

Amendment of section 60.

13. Section 60 of the Act is amended by adding the following new subsection —

"(3) If a return in relation to the partnership for any year of assessment has not been made, the person required to make the return under subsections (1) or (2), as the case may be, shall, within 3 months after the end of the accounting period relating to that year of assessment, furnish to the Collector an estimate of the income from all sources of the partnership, and the names and identification numbers of all the partners together with the amount of the share of the income to which each partner was entitled for that year.".

Amendment of section 62.

14. Section 62 of the Act is amended —

(a) by inserting "(1)" immediately before "Where" in the first line;

(b) by adding the following 2 new subsections —

"(2) Notwithstanding subsection (1), where, in the opinion of the Collector, any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to tax, he may, for the purpose of making good any loss of tax attributable to fraud or wilful default, assess that person at any time.

(3) This section shall also apply, with the necessary modifications, to any assessment made under subsections (1) or (2) which results in any unabsorbed allowances or losses.".

Amendment of section 70.

15. Section 70 of the Act is amended —

(a) by inserting "(1)" immediately before "Subject" in the first line;

(b) by deleting the colon from the fifth line and by substituting a fullstop therefor;

(c) by deleting the proviso;

(d) by adding the following new subsection —

"(2) The Collector may, in his discretion and subject to such terms and conditions, including the imposition of interest, as he may impose, extend the time limit within which payment is to be made.".

Amendment of section 76.

16. Section 76 of the Act is amended, in subsection (2), by deleting "His Majesty the Sultan and Yang Di-Pertuan in Council" from the first line and by substituting "The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan," therefor.

Amendment of section 77A.

17. Section 77A of the Act is amended —

(a) by inserting "(1)" immediately before "Every" in the first line;

(b) by adding the following new subsection —

"(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 section 6(3), be deemed to have been duly given or served and shall be conclusive evidence of the fact of service.".

Amendment of section 78.

18. Section 78 of the Act is amended by adding the following 2 new subsections —

"(4) Where any person has been convicted of an offence under section 55C and such conviction is a second or subsequent conviction in respect of the same information required for the same period, he shall be liable to a further penalty of $50 for every day during which the offence continues after such conviction.

(5) Where any person has been convicted of an offence for failing to comply with any provision of sections 52 or 60 and such conviction is a second or subsequent conviction in respect of the same year of assessment, he shall be liable to a further penalty of $50 for every day during which the offence continues after such conviction.".

Amendment of section 79.

19. Section 79 of the Act is amended by inserting the following new subsection immediately after subsection (1) —

"(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 Act 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 $5,000, imprisonment for a term not exceeding 12 months or both.".

Amendment of section 80.

20. Section 80 of the Act is amended by inserting the following new subsection immediately after subsection (2) —

"(2A) Where an individual has been convicted of —

(a) 3 or more offences under this section; or

(b) one offence under this section and one offence under section 80A,

the imprisonment he shall be liable to shall not be less than 6 months.".

Insertion of new section 80A.

21. The Act is amended by inserting the following new section immediately after section 80 —

"Serious fraudulent tax evasion.

80A. (1) Any person who wilfully with intent to evade or to assist any other person to evade tax —

(a) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or

(b) makes use of any fraud, art or contrivance or authorises the use of any such fraud, art or contrivance,

shall be guilty of an offence for which, on conviction, he shall pay a penalty of 4 times 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, and shall also be liable to a fine not exceeding $50,000, imprisonment for a term not exceeding 5 years or both.

(2) Where an individual has been convicted of —

(a) 2 or more offences under this section; or

(b) one offence under this section and one offence under section 80,

the imprisonment he shall be liable to shall not be less than 6 months.

(3) Where in any proceedings under this section it is proved that any false statement or entry is made 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 evade tax.

(4) The Collector may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.".

Substitution of section 84.

22. The Act is amended by repealing section 84 and by substituting the following new section therefor —

"Jurisdiction of courts.

84. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Chapter 7) or in any other written law, a Court of a Magistrate shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of that offence.".

Made this 26th. day of Rabiulawal, 1430 Hijriah corresponding to the 23rd. day of March, 2009 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM