No. S 30

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

# INCOME TAX ACT (AMENDMENT) ORDER, 2012

## ARRANGEMENT OF SECTIONS

Section

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

**INCOME TAX ACT (AMENDMENT) ORDER, 2012**

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 and commencement.**

**1.** This Order may be cited as the Income Tax Act (Amendment) Order, 2012 and shall be deemed to have commenced on 1st. January, 2011.

**Insertion of new section 8A into Chapter 35.**

**2.** The Income Tax Act, in this Order referred to as the Act, is amended by inserting the following new section immediately after section 8 —

**"Tax on exports.**

**8A.** (1) Subject to this Act, a tax shall be imposed, at the rate of one %, on every person deriving income from approved exports.

(2) The tax imposed under subsection (1) shall be computed by applying the prescribed rate of tax to the gross proceeds of export, liable to be assessed to tax under this Act.

(3) The total turnover of the exporter shall be treated as exports for the purposes of this section if the local sales do not exceed 20% of the total turnover.

(4) In case the local sales are —

*(a)* more than 20% of the total turnover; and

*(b)* the person cannot separately prove the extent of the expenses relating to the local sales,

then allocation of expenses may be made on a *pro-rata* basis in the same ratio as the turnover not covered by this section bears to the export sales.

(5) The tax imposed under this section shall be a final tax on the amount in respect of which the tax is imposed and such amount shall not be further chargeable to tax under any other provision of the Act in computing

the chargeable income of the person who derives it for any year of assessment.

(6) *(a)* No deduction shall be allowable under this Act for any expenditure incurred in deriving the amount in respect of which the tax is imposed.

*(b)* Such amount shall not be reduced by —

(i) any deductible allowance; or

(ii) the set-off of any loss.

(7) The tax payable by a person under this section shall not be reduced by any tax credit allowed under this Act.

(8) Capital allowances shall be deemed to have been availed at the rates prescribed under the Act for the relevant period.

(9) In this section, "approved" means approved by the Minister of Finance.".

**Insertion of new section 11G.**

**3.** The Act is amended by inserting the following new section immediately after section 11F —

**"Further deduction for payment of salary on account of maternity leave.**

11G. Where an employer makes payment of salary on account of any written law relating to maternity leave to any of its female employees who is a member of the Tabung Amanah Pekerja (Employee Trust Fund), there shall be allowed a further deduction of the amount of that salary in addition to the deduction allowed under section 11 —

Provided that the allowance under this section shall be restricted to an amount not exceeding the amount of salary of an employee for more than 15 weeks.".

**Insertion of new sections 42A, 42B and 42C.**

**4.** The Act is amended by inserting the following 3 new sections immediately after section 42 —

**"Tax credit for contribution to Tabung Amanah Pekerja (TAP).**

**42A.** Where an employer makes a contribution to the Tabung Amanah Pekerja (Employee Trust Fund) established under section 6 the Tabung Amanah Pekerja Act (Chapter 167), credit at the rate of 10% of the additional contribution so made (in excess of contribution made for the last year), shall be allowed against the tax payable by it in addition to the deductions allowed under sections 11 and 11E.

**Tax credit for balancing, modernisation and replacement of machinery or plant.**

**42B.** (1) Where a person invests any amount in the purchase of new plant and machinery for installation at any time between the first day of January, 2012 and the 31st. day of December, 2017 in an industrial undertaking set up in Brunei Darussalam and owned by it, for the purposes of balancing, modernisation or replacement of the machinery and plant already installed therein, credit at the rate of 15% of the amount so invested shall be allowed against the tax payable by the person in the manner hereinafter provided.

(2) The amount of credit admissible under this section shall be deducted from the tax payable by the person in respect of the basis period in which the machinery or plant in the purchase of which the amount referred to in subsection (1) is invested, is installed.

(3) Where no tax is payable by the person in respect of the year of assessment relevant to the basis period in which such machinery or plant is installed, or where the tax payable is less than the amount of the credit, the amount of the credit or so much of it as is in excess thereof, as the case may be, shall be carried forward and deducted from the tax payable by the person in respect of the following year of assessment, and so on, but no such amount shall be carried forward for more than 2 years of assessment so, however, that the deductions made under subsection (2) and this subsection shall not exceed in the aggregate the limit specified in subsection (1).

(4) Where any credit is allowed under this section and subsequently it is discovered by the Collector that any one or more of the conditions specified in this section was or were not fulfilled, as the case may be, the credit originally allowed shall be deemed to have been wrongly allowed and the Collector may, notwithstanding anything contained in this Act, recompute the tax payable by the person for the relevant year and the provisions of section 62 shall, so far as may be, apply accordingly, the period of 6 years specified in that section being reckoned from the end of the year of assessment relevant to the basis period in which the infringement was discovered.

**Maximum limit on admissibility of tax credit.**

**42C.** The total amount of tax credits under this Act (excluding tax credit under section 42) shall not exceed 50% of the total tax payable by a person in one year of assessment.".

**Amendment of section 52.**

**5.** Section 52 of the Act is amended —

*(a)* by deleting "Notice of chargeability and returns." from the section heading and by substituting "Return of income." therefor;

*(b)* by repealing subsection (1) and by substituting the following new subsection therefor —

"(1) Every company is required to furnish a return of income for a year of assessment by 30 June of the relevant Year of Assessment to which the return relates.";

*(c)* by inserting the following 2 new subsections immediately after subsection (1) —

"(1A) A return of income —

*(a)* shall be in the prescribed form and accompanied by such annexures, statements or documents as may be prescribed; and

*(b)* shall fully state all the relevant particulars or information as specified in the form of return, including a declaration of the records kept by the company.

(1B) The Collector may, if he considers it necessary, extend the time to file the return of income.";

*(d)* in subsection (2), by deleting ", in any notice made under subsection (1)," from the first line.

**Repeal of section 53.**

**6.** Section 53 of the Act is repealed.

**Amendment of section 56.**

**7.** Section 56 of the Act is amended by inserting "or filing" immediately after "signing" in the fourth line.

**Insertion of new section 60A.**

**8.** The Act is amended in Part XI by inserting the following new section immediately ater section 60 —

**"Self-assessment.**

**60A.** (1) Where a person has furnished a complete return of income for a year of assessment ending on or after the 1st. day of January, 2012 —

*(a)* the Collector shall be taken to have made an assessment of chargeable income for that year of assessment, and the tax due thereon, equal to those respective amounts specified in the return; and;

*(b)* the return shall be taken for all purposes of this Act to be an assessment order issued to the person by the Collector on the day the return was furnished.

(2) Notwithstanding subsection (1), the Collector may select a person for an audit of his income tax affairs under section 61A and that section shall apply accordingly.

(3) A return of income shall be taken to be complete if it is in accordance with the provisions of section 52.

(4) Where the return of income furnished is not complete, the Collector shall issue a notice to the person informing him of the deficiencies (other than incorrect amount of tax payable on chargeable income, as specified in the return, or short payment of tax payable) and directing him to provide such information, particulars, statement or documents by such date specified in the notice.

(5) Where a person fails to comply with the requirements of the notice under subsection (4) on the due date specified therein, the return furnished shall be treated as an invalid return as if it had not been furnished.

(6) Where, in response to a notice under subsection (4), the person has, by the due date, fully complied with the requirements of the notice, the return furnished shall be treated as complete on the day it was furnished and subsection (1) shall apply accordingly.".

**Amendment of section 61.**

**9.** Section 61 of the Act is amended —

*(a)* in subsection (1), by deleting "The Collector" from the first line and by substituting "Subject to section 60A, the Collector" therefor;

*(b)* in subsection (2), by inserting "(other than a return fully qualifying for acceptance under section 60A)" immediately after "return" in the first line.

**Insertion of new section 61A.**

**10.** The Act is amended by inserting the following new section immediately after section 61 —

**"Audit.**

**61A.** (1) The Collector may lay down criteria for selection of any person for an audit of a person's income tax affairs.

(2) The Collector shall select a person for audit in accordance with such criteria laid down under subsection (1).

(3) The Collector shall keep the criteria laid down under subsection (1) confidential.

(4) In addition to the selection criteria referred to in subsection (2), the Collector may also select a person for an audit of that person's income tax affairs having regard to —

*(a)* the person's history of compliance or non-compliance with the provisions of this Act;

*(b)* the amount of tax payable by the person;

*(c)* the class of business conducted by the person; and

*(d)* any other matter which in the opinion of the Collector is material for the determination of correct income.

(5) After the selection of a person for audit, the Collector shall conduct an audit of the income tax affairs (including examination of accounts and records, enquiry into expenditure, assets and liabilities) of that person.

(6) After completion of the audit, the Collector may if he considers it necessary, after seeking the person's explanation on all the issues raised in the audit, make additional assessment under section 62.

(7) The fact that a person has been audited in a year shall not preclude that person from being audited again in the next and following years where there are reasonable grounds for such audits.".

**Amendment of section 63.**

11. Section 63 of the Act is amended, in subsection (3) by inserting ", the relevant particulars of assesments under section 60A" immediately after "copies of all notices of assessment" in the first line.

**Amendment of section 65.**

12. Section 65 of the Act is amended —

*(a)* in subsection (1), by inserting "(except for those assessed under section 60A)" immediately after "the assessment lists" in the second line;

*(b)* by inserting the following new subsection immediately after subsection (1) —

"(1A) Notice of assessment shall not be required to be issued in case a return has been accepted for assessment under section 60A.";

*(c)* by repealing subsection (4) and by substituting the following new subsection therefor —

"(4) In the event of any person assessed, who has objected to an assessment made upon him —

*(a)* agreeing with the Collector as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person; or

*(b)* failing to agree with the Collector as to the amount at which he is liable to be assessed, the Collector shall, if any tax is payable, give him notice of refusal to amend the assessment as desired by that person and may revise the assessment to such amount as the Collector may determine, according to the best of his judgment and the Collector shall give him notice of the revised assessment and of the tax payable —

Provided that in the event of any person, who under subsection (2) has applied to the Collector for revision of the assessment made upon him, failing to agree with the Collector as to the amount at which he is liable to be assessed, his right of appeal under this Act against the assessment made upon him shall remain unimpaired.".

**Insertion of new section 69A.**

13. The Act is amended by inserting the following new section immediately before section 70 —

> **"Payment of tax with estimate of chargeable income and return of income.**
>
> **69A.** Every company which is required, under this Act to furnish an estimate of chargeable income or return of chargeable income, shall pay the tax payable, on the basis of such estimate of chargeable income or return, as the case may be, on or before the date on which it is so required to furnish such estimate of chargeable income or return.".

**Amendment of section 70.**

14. Section 70 is amended, in subsection (1) —

*(a)* by deleting "34 or 35" from the second line and by substituting "8A, 34, 35 or 35A";

*(b)* by deleting the fullstop and by substituting "; and" therefor;

*(c)* by adding the following new proviso —

> "Provided further that this subsection shall not apply to payment of tax on the basis of estimate of chargeable income or return as required under section 69A.".

**Amendment of section 72.**

15. Section 72 is amended, in subsection (1) —

*(a)* by deleting "section 70" from the second line and by substituting "sections 69A and 70" therefor;

*(b)* in sub-subparagraph *(bb)*, by inserting "as provided by paragraph *(a)*, an additional penalty" immediately after "penalty" in the third line.

**Amendment of section 78.**

16. Section 78 is amended, in subsection (1) —

*(a)* in paragraph *(a)*, by deleting "section 53" from the fourth line;

*(b)* in paragraph *(b)*, by deleting "53" from the first line and by substituting "52 or 52A" therefor.

Made this 1st. day of Jamadilawal, 1433 Hijriah corresponding to the 24th. day of March, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

Dicetak oleh AWANG HAJI ZAKARIA BIN HAJI AHMAD, Pemangku Pengarah Percetakan, di Jabatan Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.

Harga B$5.00