No. S 51

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

INCOME TAX ACT (AMENDMENT) ORDER, 2008

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

INCOME TAX ACT (AMENDMENT) ORDER, 2008

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, 2008 and shall be deemed to have commenced on 1st. January, 2008.

Amendment of section 2 of Chapter 35.

2. Section 2 of the Income Tax Act, in this Order referred to as the Act, is amended by deleting the definition of "resident in Brunei Darussalam," and by substituting the following new definition therefor —

" "resident in Brunei Darussalam" —

(a) in relation to an individual, means a person who, in the year preceding the year of assessment, resides in Brunei Darussalam except for such temporary absences therefrom as to the Collector may consider reasonable and not inconsistent with a claim by such person to be resident in Brunei Darussalam, and includes a person who is physically present or who exercises an employment (other than as a director of a company) in Brunei Darussalam for 183 days or more during the year preceding the year of assessment;

(b) in relation to a company or a body of persons, means a company or a body of persons the control and management of whose business is exercised in Brunei Darussalam;".

Insertion of new section 5A.

3. The Act is amended by inserting the following new section immediately after section 5 —

"Identification of officers.

5A. (1) Any person exercising any functions under this Act shall carry an authority card in a form approved by the Collector which shall identify the holder and his office and which shall be produced by the holder on demand to any person having reasonable grounds to make that demand.

(2) Where any person exercising any functions under this Act produces an authority card in a form approved under subsection (1) or any other written identification or authority, then, until the contrary is proved, that authority card or other identification or authority shall be presumed to be genuine and he shall be presumed to be the person referred to therein.

(3) It shall not be an offence for any person to refuse to comply with any demand or order made by any person exercising any functions under this Act, if such latter person refuses on demand being made by such first-mentioned person to declare his office and to produce his authority card or other written identification or authority.".

Amendment of section 9.

4. Section 9 of the Act is amended by adding the following 2 new subsections —

"(4) There shall be deemed to be derived from Brunei Darussalam —

(a) any interest, commission, fee or other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee or service relating to any loan or indebtedness which is —

(i) borne, directly or indirectly, by a person resident in Brunei Darussalam or having a permanent establishment in Brunei Darussalam (except in respect of any business carried on outside Brunei Darussalam through a permanent establishment outside Brunei Darussalam) or any immovable property situated outside Brunei Darussalam; or

(ii) deductible against any income accruing in or derived from Brunei Darussalam; or

(b) any income derived from loans where the funds provided by such loans are brought into or used in Brunei Darussalam.

(5) There shall be deemed to be derived from Brunei Darussalam —

(a) royalties or other payments in one lump sum or otherwise for the use of or the right to use any movable property;

(b) any payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information or for the rendering of

assistance or services in connection with the application or use of such knowledge or information;

(c) any payment for the management or assistance in the management of any trade, business or profession; or

(d) rent or other payments under any agreement or arrangement for the use of any movable property,

which are borne, directly or indirectly, by a person resident in Brunei Darussalam or having a permanent establishment in Brunei Darussalam (except in respect of any business carried on outside Brunei Darussalam through a permanent establishment outside Brunei Darussalam) or which are deductible against any income accruing in or derived from Brunei Darussalam.".

Amendment of section 11.

5. Section 11 of the Act is amended —

(a) in subsection (1), by inserting the following new paragraph immediately after paragraph *(f)* —

"*(fa)* *zakat, fitrah* or any religious dues, payment of which is made under any written law;".

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

"(1A) Notwithstanding subsection (1), where outgoings and expenses falling within that subsection are incurred, whether directly or in the form of reimbursements, in respect of a motor car (whether or not owned by the person incurring the outgoings and expenses), the sum to be allowed as a deduction shall be limited to the amount which bears to such outgoings and expenses the same proportion as $50,000 bears to the capital expenditure incurred by the owner in respect of that motor car, where such capital expenditure exceeds $50,000.".

Amendment of section 16.

6. Section 16 of the Act is amended by adding the following 2 new subsections —

"(4) Notwithstanding subsections (1) and (2), in respect of a motor car to which this subsection applies —

(a) the initial allowance to be made under subsection (1) shall be calculated on an amount equal to the capital expenditure incurred in respect of that motor car or $50,000, whichever is the less;

(b) the annual allowance to be made under subsection (2) shall be calculated on the basis that the original cost of that motor car is the capital expenditure incurred or $50,000, whichever is the less;

(c) the aggregate of the initial and annual allowances to be made under this subsection for all the relevant years of assessment shall not exceed $50,000.

(5) Subsection (4) shall apply to a motor car which is constructed or adapted for the carriage of not more than 7 passengers (exclusive of the driver) and the weight of which unladen does not exceed 3,000 kilograms.".

Substitution of section 37.

7. Section 37 of the Act is repealed and substituted by the following new section —

"Witholding of tax in respect of interest paid to non-resident persons.

37. (1) Where any person is liable to pay to another person not known to him to be resident in Brunei Darussalam any interest which is chargeable to tax under this Act, the person paying the interest shall deduct therefrom tax at the rate of 20 per cent on every dollar of the interest, and shall immediately give notice of the deduction of tax in writing and pay to the Collector the amount so deducted and every such amount shall be a debt due from him to the Government and shall be recoverable as such.

(2) The Collector may, if he thinks fit, allow any bank or financial institution to give notice of the deduction of tax and make payment of the amount so deducted within such other period and subject to such conditions as he may determine.

(3) Where a person fails to make a deduction of tax which he is required to make under subsection (1), any amount which he fails to deduct shall be a debt due from him to the Government and shall be recoverable as such.

(4) If the amount of tax which is required to be deducted under subsection (1) is not paid to the Collector —

(a) within 14 days after the payment of the interest from which the tax is to be deducted, a sum equal to 5 per cent of such amount of tax shall be payable; and

(b) within 30 days after the payment of the interest from which the tax is to be deducted, an additional penalty of one per cent of such amount of tax shall be payable for each completed month that the tax remains unpaid, but the total additional penalty under this paragraph shall not exceed 15 per cent of the amount of tax outstanding.

(5) Without prejudice to any other provision of this Act, if any person after deducting the tax required to be deducted under subsection (1) fails to give notice of such deduction to the Collector within 14 days after such deduction, he shall be guilty of an offence and shall on conviction be liable to a penalty equal to 3 times the amount of tax so deducted and shall also be liable to a fine not exceeding $10,000, imprisonment for a term not exceeding 3 years or both.

(6) The Collector may —

(a) compound any offence under subsection (5) and may before judgment stay or compound any proceedings thereunder; and

(b) for any good cause remit the whole or any part of the penalty payable under subsection (4)*(b)*.

(7) For the purposes of this section —

(a) the manager or principal officer of a company shall be answerable for doing all such acts, matters and things as are required to be done by the company under this section; and

(b) interest shall be deemed to have been paid by a person to another person although it is not actually paid to that other person but is reinvested, accumulated, capitalised, carried to any reserve or credited to any account however designated, or otherwise dealt with on behalf of that other person.".

Insertion of new sections 37A and 37B.

8. The Act is amended by inserting the following 2 new sections immediately after section 37 —

"Application of section 37 to royalties, management fees etc.

37A. Section 37 shall apply in relation to the payment of any income referred to in sections 9(4) or (5) by any person to another person not known to him to be resident in Brunei Darussalam as those provisions apply to any interest paid by a person to another person not known to him to be resident in Brunei Darussalam, and for the purpose of such application, any reference in those provisions to interest shall be construed as a reference to the income referred to in sections 9(4) or (5).

Application of section 37 to non-resident director's remuneration.

37B. Section 37 shall apply in relation to the payment of any remuneration by a company to any director of the company who is not resident in Brunei Darussalam as those provisions apply to any interest paid by a person to another person not known to him to be resident in Brunei Darussalam and, for the purpose of such application, any reference in those provisions to interest shall be construed as a reference to such remuneration.".

Amendment of section 55.

9. Section 55 of the Act is amended —

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

(b) by deleting "books, documents, accounts and returns" from the penultimate line and by substituting "documents" therefor;

(c) by adding the following new subsection —

"(2) In this section and for the purposes of section 55B —

"document" includes, in addition to a document in writing —

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any label, marking or other writing which identifies or describes anything of which it forms a part, or to which it is attached by any means;

(d) any disc, tape, sound-track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

(e) any film (including microfilm), negative, disc, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(f) any paper or other material on which there are marks, impressions, figures, letters, symbols or perforations having a meaning for persons qualified to interpret them;

"writing" includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.".

Substitution of section 55B.

10. Section 55B of the Act is repealed and the following new section substituted therefor —

"Power of Collector to access and to obtain information.

55B. (1) The Collector and any officer authorised by him in that behalf —

(a) shall at all times have full and free access to all buildings, places, documents, computers, computer programs and computer software (whether installed in a computer or otherwise) for any of the purposes of this Act;

(b) shall have access to any information, code or technology which has the capability of retransforming or unscrambling encrypted data contained or available to such computers into readable and comprehensive format or text for any of the purposes of this Act;

(c) shall be entitled —

(i) without fee or reward, to inspect, copy or make extracts from any such document, computer, computer program, computer software or computer output;

(ii) at any reasonable time to inspect and check the operation of any computer, device, apparatus or material which is or has been in use in connection with anything to which this section applies;

(d) may take possession of any such document, computer, device, apparatus, material, computer program or computer software where in his opinion —

(i) the inspection, checking, copying thereof or extraction therefrom cannot reasonably be performed without taking possession;

(ii) any such items may be interfered with or destroyed unless possession is taken; or

(iii) any such items may be required as evidence in proceedings for an offence under this Act or in proceedings for the recovery of any tax or penalty, or in proceedings by way of an appeal against an assessment;

(e) shall be entitled to require —

(i) the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, device, apparatus or material to provide the Collector or officer with such reasonable assistance as he may require for the purposes of this section;

(ii) any person in possession of decryption information to grant him access to such decryption information necessary to decrypt data required for the purpose of this section.

(2) 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.

(3) The Collector 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, assets or liabilities as may be required of him by the Collector for the purposes of this Act.

(4) In this section, "computer" and "computer output" have the same meanings as in the Computer Misuse Act (Chapter 194).".

Insertion of new section 56A.

11. The Act is amended by inserting the following new section immediately after section 56 —

"Keeping of books of account and giving of receipts.

56A. (1) Subject to subsection (3), every person carrying on or exercising any trade, business, profession or vocation —

(a) shall keep and retain in safe custody sufficient records for a period of 7 years from the year of assessment to which any income relates to enable his income and allowable deductions under this Act to be readily ascertained by the Collector or any officer authorised in that behalf by the Collector; and

(b) shall 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.

(2) Where a machine is used for recording sales, a receipt may be dispensed with if the Collector is satisfied that —

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

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

(3) The Collector may by notice in writing to any person carrying on or exercising any trade, business, profession or vocation, or by a notice published in the *Gazette* in respect of any class or description of any such person, prescribe —

(a) the form of the records to be kept under subsection (1)*(a)*, and the manner in which such records shall be kept and retained; and

(b) the form of the receipts to be issued and the duplicates to be retained under subsection (1)*(b)*, 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.

(4) The Collector may waive all or any of the provisions of subsection (1) in respect of any person or records or any class or description of persons or records.

(5) Any person who, without reasonable excuse, fails to comply with subsection (1) is guilty of an offence.

(6) In this section, "records" includes —

(a) books of account recording receipts, payments, income and expenditure;

(b) invoices, vouchers, receipts and such other documents as in the opinion of the Collector are necessary to verify the entries in any book of account; and

(c) any records relating to any trade, business, profession or vocation.".

Amendment of section 65.

12. Section 65 of the Act is amended, in subsection (2), by deleting "60" from the fourth line and by substituting "30" therefor.

Insertion of new section 77A.

13. The Act is amended by inserting the following new section immediately after section 77 —

"Change of address.

77A. Every person liable to pay income tax under the provisions of this Act shall inform the Collector by notice in writing of any change of address.".

Amendment of section 78.

14. Section 78 of the Act is amended —

(a) in subsection (1)*(a)*, by inserting "section 55B," immediately after ", section 55A," in the fourth line;

(b) by adding the following new subsection —

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

Made this 28th. day of Rabiulawal, 1429 Hijriah corresponding to the 5th. day of April, 2008 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM