No. S 7

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

INCOME TAX (PETROLEUM) ACT (AMENDMENT) ORDER, 2003

ARRANGEMENT OF SECTIONS

Section

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

INCOME TAX (PETROLEUM) ACT (AMENDMENT) ORDER, 2003

In exercise of the power conferred by subsection (3) of section 83 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 (Petroleum) Act (Amendment) Order, 2003 and shall be deemed to have commenced on the 1st. March, 2003.

Amendment of section 2 of Chapter 119.

2. Section 2 of the Income Tax (Petroleum) Act, in this Order referred to as the Act, is amended, in subsection (1) —

(a) in the definition of "Accounting period", by deleting "Company" from the eighth line and by substituting "company" therefor;

(b) in the definition of "chargeable profits", by inserting "or section 10A as appropriate" immediately after "8";

(c) in the definition of "company", by adding ", but does not include the Company acting as a State Party in a petroleum mining Agreement in accordance with the Petroleum Mining Act (Chapter 44)";

(d) by inserting the following new definition immediately after the definition of "petroleum operations" —

> " "production sharing agreement" means any petroleum mining Agreement described as such and entered into by a State Party in accordance with the Petroleum Mining Act (Chapter 44),".

Amendment of section 8A.

3. Section 8A of the Act is amended by deleting "Company" from the fifth and from the sixth lines and by substituting "company" therefor.

Amendment of section 10.

4. Section 10 of the Act is amended, in paragraph *(h)*, by deleting "paragraph *(g)* from the penultimate line and by substituting "paragraph *(f)*" therefor.

Insertion of new section 10A.

5. The Act is amended by inserting the following new section immediately after section 10.

"Taxation of production sharing operations.

10A. (1) Notwithstanding any other provision of this Act, a company shall be subject to tax in accordance with this Act in respect of any petroleum operations carried out pursuant to a particular production sharing agreement (in this Act referred to as the relevant production sharing operations) in accordance with the provisions of this section. Where there is any inconsistency between the provisions of this section and any other provision of this Act, the provisions of this section shall prevail in relation to any relevant production sharing operations.

(2) A company shall be subject to tax in accordance with this Act in respect of the relevant production sharing operations on a ring-fenced basis, as if (to the extent they are not in fact the only operations of the company concerned) the relevant production sharing operations were the only petroleum operations carried on by that company, so that (without limitation to the generality of the foregoing) no account shall be taken in the computation of the gross proceeds, chargeable profits or losses from the relevant production sharing operations of any proceeds, income or gains or any losses, expenses or other outgoings relating to any other operations or activities and no account shall be taken in the computation of the gross proceeds, chargeable profits or losses from such other activities of any proceeds, income or gains or any losses, expenses or other outgoings relating to the relevant production sharing operations.

(3) The gross proceeds for any basis period of a company from the relevant production sharing operations shall be the aggregate value of the entire entitlement in respect of petroleum allocated to the company for that period in accordance with the terms of the relevant production sharing agreement. For this purpose, the amount and value of the company's entire entitlement in respect of petroleum for that period will be determined in accordance with the terms of the relevant production sharing agreement:

Provided that the company's entire entitlement in respect of petroleum for that period shall not include any petroleum allocated to the State Party (whether as royalty petroleum, profit petroleum or otherwise) for that period in accordance with the terms of the relevant production sharing agreement.

(4) The chargeable profits for any basis period of a company from the relevant production sharing operations shall be the remainder of the gross

proceeds for that period from the relevant production sharing operations, determined in accordance with subsection (3), after only the following deductions shall have been made —

(a) the value of the share of the company's entire entitlement in respect of petroleum allocated for cost recovery for that period in accordance with the terms of the relevant production sharing agreement. For this purpose, the amount and value of such share of the company's entire entitlement in respect of petroleum for that period will be determined in accordance with the terms of the relevant production sharing agreement; and

(b) such other outgoings and expenses wholly and exclusively incurred by the company for the purpose of the relevant production sharing operations, as may be allowable as deductions for that period in accordance with the terms of the relevant production sharing agreement, but which are not taken into account in the calculation of the value referred to in paragraph *(a)*.

(5) In computing the tax assessable upon the chargeable profits for any basis period of any company from the relevant production sharing operations, no further deductions shall be made from the chargeable profits as determined for that period in accordance with subsection (4).

(6) For the purposes of applying this Act to the relevant production sharing operations, the definition of "Accounting period" in subsection (1) of section 2 shall be deemed to be amended —

(a) by deleting paragraph *(a)* and by substituting the following new paragraph therefor —

"*(a)* a period commencing on the first day of the calendar quarter of a particular calendar year, in which the first sale or disposal of petroleum by or on behalf of a company engaged in the relevant production sharing operations, whichever event shall be the earlier, occurs and ending on the last day of the same calendar year; or";

(b) by deleting paragraph *(b)* and by substituting the following new paragraph therefor —

"*(b)* such shorter period commencing as aforesaid and ending on the date when the company ceases to be engaged in petroleum operations;".

(7) For the purposes of assessing a company liable to tax in relation to the relevant production sharing operations, the Collector shall serve a notice

of assessment stating the amount of chargeable profits, the assessable tax, the tax payable by such company and any such further information as is required in subsection (1) of section 26 in any such currencies as may be specified for this purpose in the relevant production sharing agreement.

(8) Sections 8, 8A, 9, 10, 12, subsection (5) of section 26, and section 27 shall not apply in relation to any relevant production sharing operations.

(9) As long as there are dispute resolution proceedings in progress in accordance with the terms of the relevant production sharing agreement in respect of any issue which either of subsection (3) or (4) requires to be determined in accordance with the terms of such production sharing agreement, then, for the purposes of section 30, no assessment shall be regarded as final and conclusive for all purposes of this Act as regards the amount of the chargeable tax to the calculation of which the issue relates, until such dispute resolution proceedings have been completed and, in accordance with the results of such proceedings, an assessment is made.

Amendment of section 12.

6. Section 12 of the Act is amended, in subsection (2), by deleting "Company" from the first line and by substituting "company" therefor.

Amendment of section 26.

7. Section 26 of the Act is amended by adding the following to subsection (1) —

"Any such amount of chargeable profits, assessable tax and tax payable may be stated in a notice of assessment in such currencies as the Collector may deem fit.".

Amendment of Schedule.

8. The Schedule to the Act is amended —

(a) in paragraph 1, by deleting "Company" from the tenth line of the definition of "qualifying expenditure" and by substituting "company" therefor;

(b) in sub-paragraph (3)(ii) of paragraph 8, by deleting "Company" from the first line and by substituting "company" therefor.

Made this 15th. day of Muharam, 1424 Hijriah corresponding to the 18th. day of March, 2003 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

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

Harga B$5.00