

No. S 19

**INCOME TAX ACT
(Chapter 35)**

**INCOME TAX (RELIEF FROM DOUBLE TAXATION)
(KUWAIT) (AMENDMENT) ORDER, 2018**

WHEREAS it is provided by section 41(1) of the Income Tax Act that if the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order declares that arrangements specified in the order have been made with the government of any country or territory outside Brunei Darussalam with a view to affording relief from double taxation in relation to tax under that Act and any tax of a similar character imposed by the laws of that country or territory and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax and other related matters under that Act notwithstanding anything in any written law.

WHEREAS by an agreement dated the 13th day of April 2009 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the State of Kuwait, arrangements were made amongst other things for relief from double taxation.

AND WHEREAS by a Protocol dated 11th October 2016, the arrangements set out in the agreement were amended as prescribed in the Protocol.

NOW THEREFORE it is hereby declared by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, that —

(a) the arrangements as amended by the Protocol specified in the Schedule have been made with the Government of the State of Kuwait; and

(b) it is expedient that those arrangements shall have effect notwithstanding anything in any written law.

SCHEDULE

PROTOCOL AMENDING THE AGREEMENT

BETWEEN

THE GOVERNMENT OF BRUNEI DARUSSALAM

AND

THE GOVERNMENT OF THE STATE OF KUWAIT

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the State of Kuwait.

Desiring to amend the Agreement between the Government of Brunei Darussalam and the Government of the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Kuwait on 13 of April 2009 [hereinafter referred to as “the Agreement”].

Have agreed as follows:

ARTICLE 1

The existing sub-paragraph *(b)* of paragraph 3 in Article 2 of the Agreement is deleted and replaced by the following:

(b) in the case of Kuwait:

- (1) Decree No. 3 of 1955 as amended by Law No. 2 of 2008.
- (2) Law No. 23 of 1961 of the Neutral Zone.
- (3) Law No. 19 of 2000 of the Supporting of National Employees.

(hereinafter referred to as “Kuwaiti tax;”).

ARTICLE 2

The existing sub-paragraph *(c)* (1) of paragraph 1 in Article 3 of the Agreement is amended by adding “and” after the (;).

ARTICLE 3

The existing sub-paragraph *(a)* of paragraph 1 in Article 4 of the Agreement is deleted and replaced by the following:

(a) in the case of Kuwait, an individual who is present in Kuwait for a period or periods totaling in the aggregate at least 183 days within any 12 months period and a company or an entity which is incorporated in Kuwait;

ARTICLE 4

The existing paragraph 4 of Article 5 of the Agreement is amended:

(a) by deleting the word “paragraph 6” and replacing with the word “paragraph 5”; and

(b) in sub-paragraph *(a)*, by deleting the word “paragraph 4” and replacing with the word “paragraph 3”.

ARTICLE 5

The existing paragraph 3 of Article 9 of the Agreement is amended:

(a) by adding “the” after “in”; and

(b) by deleting the word “willful” and replacing with the word “wilful”.

ARTICLE 6

The existing paragraph 3 of Article 10 of the Agreement is amended by deleting “The provisions of paragraphs 1 and 2 shall” and replacing with “The provisions of paragraph 1 shall”.

ARTICLE 7

The existing paragraph 3 of Article 11 of the Agreement is amended by deleting “The provisions of paragraphs 1 and 2 shall” and replacing with “The provisions of paragraph 1 shall”.

ARTICLE 8

The existing paragraph 1 of Article 15 of the Agreement is amended by deleting “there from” and replacing with “therefrom”.

ARTICLE 9

1. The existing paragraph 2 of Article 24 of the Agreement is amended by deleting “constructed” and replacing with “construed”.

2. The existing paragraph 3 of Article 24 is amended by deleting “paragraph 8 of Article 11” and replacing with “paragraph 5 of Article 11” and by deleting “paragraph 6 of Article 12” and replacing with “paragraph 7 of Article 12”.

ARTICLE 10

The text of Article 26 of the Agreement is deleted and replaced by the following:

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public);

(d) to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (1) produced for the purposes of seeking or providing legal advice; or
- (2) produced for the purposes of use in existing or contemplated legal proceedings.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 11

This Protocol shall enter into force on the thirtieth day after the date of the receipt of the later of the two notifications through diplomatic channels by which either Contracting State notifies the other Contracting State that its internal legal requirements for the entry into force of this Protocol have been fulfilled.

ARTICLE 12

This Protocol, which shall form an integral part of the Agreement, shall remain in force and shall apply as long as the Agreement itself is applicable.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Bandar Seri Begawan on this 10th day of Muharram 1438 H. corresponding to the 11th day of October 2016, in two originals, each in the

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Malay, Arabic and English languages, all texts being equally authentic. In the event of divergence, the English text shall prevail.

**THE GOVERNMENT OF
HIS MAJESTY THE SULTAN AND
YANG DI-PERTUAN OF
BRUNEI DARUSSALAM**

**THE GOVERNMENT OF THE
STATE OF KUWAIT**

Made this 12th. day of Rejab, 1439 Hijriah corresponding to the 30th. day of March, 2018.

DAYANG NORLIAH BINTI HAJI KULA
Permanent Secretary,
Ministry of Finance,
Brunei Darussalam.