

No. S 60

INCOME TAX ACT
(CHAPTER 35)

INCOME TAX (EXCHANGE OF INFORMATION)
(CANADA) ORDER, 2014

WHEREAS it is provided by section 41(1) of the Income Tax Act that if His Majesty the Sultan and Yang Di-Pertuan in Council 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 exchange of information 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.

AND WHEREAS by an agreement dated 9th day of May 2013 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of Canada, arrangements were made amongst other things for exchange of information relating to tax matters.

NOW THEREFORE it is hereby declared by His Majesty the Sultan and Yang Di-Pertuan in Council that —

(a) the arrangements specified in the Schedule have been made with the Government of Canada; and

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

SCHEDULE

ARRANGEMENTS MADE WITH THE GOVERNMENT OF CANADA

Article 1

Object and Scope of this Agreement

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

2. The requested Party shall ensure that any right or safeguard granted to persons by the laws or administrative practices of the requested Party is not applied in a manner which unduly prevents or delays the effective exchange of information.

Article 2

Jurisdiction

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

1. The taxes which are the subject of this Agreement are —

(a) in Canada, all taxes imposed or administered by the Government of Canada;

(b) in Brunei Darussalam, all taxes imposed or administered by the Government of Brunei Darussalam.

2. This Agreement shall also apply to any identical taxes imposed after the date of entry into force of this Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of entry into force of this Agreement in addition to or in place of the

existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined —

(a) the term “Brunei Darussalam” means the territory of Brunei Darussalam including its territorial sea, extending to the airspace above such territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including sea-bed and subsoil, which has been or may hereafter be designated under the laws of Brunei Darussalam as an area over which it exercises sovereign rights and jurisdiction in accordance with international law;

(b) the term “Canada”, used in a geographical sense, means —

- (i) the land territory, air space, internal waters and territorial sea of Canada;
- (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea of 10 December 1982; and
- (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of the United Nations Convention on the Law of the Sea of 10 December 1982;

(c) the term “Contracting Party” means Canada or Brunei Darussalam as the context requires;

(d) the term “competent authority” means —

- (i) in the case of Canada, the Minister of National Revenue or the Minister’s authorised representative;
- (ii) in the case of Brunei Darussalam, the Minister of Finance or the Minister’s authorised representative;

(e) the term “person” includes an individual, a company, a trust, a partnership and any other body of persons;

(f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

(g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided that its listed shares can be readily purchased and sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

(h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

(i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

(j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased and sold, or readily purchased and redeemed, by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

(k) the term “tax” means any tax to which this Agreement applies;

(l) the term “applicant Party” means the Contracting Party requesting information;

(m) the term “requested Party” means the Contracting Party requested to provide information;

(n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information; and

(o) the term “information” means any fact, statement or record in any form whatever.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the territory of the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under the domestic laws of the requested Party, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request —

(a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

(b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request —

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the territory of the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the request is in conformity with the laws and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement; and

(g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the applicant Party and shall use its best endeavours to forward the requested information to the applicant Party within a reasonable time.

Article 6

Tax Examinations Abroad

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the territory of the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4, shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation 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 produced for the purposes of —

(a) seeking or providing legal advice, or

(b) use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax laws of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

Article 8

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes in that jurisdiction. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not otherwise be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Contracting Parties.

Article 10

Other International Agreements or Arrangements

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

Article 11

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 12

Entry into Force

This Agreement shall enter into force on the thirtieth day after the date of the later of the two notifications by which either Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled. Upon entry into force, it shall have effect —

(a) for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party (irrespective of whether contained in the tax laws, the criminal code or other statutes), on that date, and

(b) for all other matters covered in Article 1, on that date, but only in respect of taxable periods beginning on or after that date, or where there is no taxable period, all charges to tax arising on or after that date.

Article 13

Termination

1. A Contracting Party may terminate this Agreement by serving a notice of termination through diplomatic channels to the other Contracting Party.
2. This Agreement shall terminate on the first day of the month following the expiration of a period of six months after the date of the notice of termination.
3. Where a Contracting Party terminates this Agreement, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto have signed this agreement.

DONE in duplicate at Bandar Seri Begawan this 9th day of May 2013 in the English, French and Malay languages, each version being equally authentic.

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

FOR GOVERNMENT OF
CANADA

11th. NOVEMBER, 2014

Made this 19th. day of Zulhijjah, 1435 Hijriah corresponding to the 14th. day of October, 2014.

PEHIN ORANG KAYA PEKERMA JAYA
DATO PADUKA HAJI AWANG JUDIN BIN HAJI ASAR
Secretary to the Council of Ministers.