

No. S 51

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

INCOME TAX ACT (AMENDMENT) ORDER, 2010

ARRANGEMENT OF SECTIONS

Section

1. Citation.
 2. Amendment of section 83 of Chapter 35.
 3. Insertion of new Parts XIVA and XIVB.
 4. Insertion of new Fourth Schedule.
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CONSTITUTION OF BRUNEI DARUSSALAM
{Order made under Article 83(3)}

INCOME TAX ACT (AMENDMENT) ORDER, 2010

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.

1. This Order may be cited as the Income Tax Act (Amendment) Order, 2010.

Amendment of section 83 of Chapter 35.

2. Section 83 of the Income Tax Act, in this Order referred to as the Act, is amended by deleting "or 81" from the first line and by substituting ", 81 or 86M" therefor.

Insertion of new Parts XIVA and XIVB.

3. The Act is amended by inserting the following 2 new Parts immediately after section 86 —

"PART XIVA

EXCHANGE OF INFORMATION UNDER DOUBLE TAXATION ARRANGEMENTS

Interpretation of this Part.

- 86A.** (1) In this Part —

"competent authority", in relation to a prescribed arrangement, means a person or an authority whom the Collector is satisfied is authorised under that arrangement to make a request to the Collector for information under that provision;

"double taxation arrangement" means an arrangement having effect under section 41;

"exchange of information provision", in relation to a double taxation arrangement, means a provision in that arrangement which provides expressly for the exchange of information concerning the tax positions of persons;

"prescribed arrangement" means a double taxation arrangement that —

(a) has an exchange of information provision; and

(b) is declared by His Majesty the Sultan and Yang Di-Pertuan in Council, by an order under section 86C(1), as a prescribed arrangement;

"tax position", in relation to a person, means such person's position as regards any tax —

(a) of the country or territory with whose government the double taxation arrangement in question was made; and

(b) that is covered by the exchange of information provision of that arrangement,

including his position as regards —

(i) past, present and future liability to pay any such tax;

(ii) penalties, interests and other amounts that have been paid, or are or may be payable, by or to the person in connection with any such tax; and

(iii) claims, elections, applications and notices that have been or may be made or given in connection with any such tax.

(2) References in this Part to the tax position of a person include the tax position of —

(a) a person (not being an individual) that has ceased to exist; and

(b) an individual who has died.

(3) References in this Part to the tax position of a person are to his tax position at any time or in relation to any period, unless otherwise stated in the prescribed arrangement in question.

Purpose of this Part.

86B. The purpose of this Part is to facilitate the disclosure of information to a competent authority under a double taxation arrangement prescribed

under section 86C in accordance with the exchange of information provision in that arrangement.

Prescribed arrangement.

86C. His Majesty the Sultan and Yang Di-Pertuan in Council may by order declare a double taxation arrangement as a prescribed arrangement for the purposes of this Part.

Request for information.

86D. (1) The competent authority under a prescribed arrangement may make a request to the Collector for information concerning the tax position of any person in accordance with the exchange of information provision of that arrangement.

(2) Unless the Collector otherwise permits, the request must set out the information mentioned in the Fourth Schedule.

(3) Every request shall be subject to and dealt with in accordance with the terms of the prescribed arrangement.

Collector to serve notice of request on certain persons.

86E. (1) After receipt of a request under section 86D for any information which, in the opinion of the Collector, is information referred to in subsection (2), he shall serve notice of the request by ordinary post on —

(a) the person identified in the request as the person in relation to whom the information is sought; and

(b) the person identified in the request as the person who is believed to have possession or control of such information.

(2) The information referred to in subsection (1) is information that is protected from unauthorised disclosure under —

(a) section 58 of the Banking Order, 2006 (S 56/06);

(b) section 58 of the Islamic Banking Order, 2008 (S 96/08); and

(c) section 18 of the International Banking Order, 2000 (S 53/00).

(3) Notice under subsection (1) shall be treated as served on the day succeeding the day on which it would have been received in the ordinary course of post if it is addressed —

(a) in the case of an individual or a body of persons, to the last known business or private address of such individual or body of persons;

(b) in the case of a company incorporated in Brunei Darussalam, to its registered office; or

(c) in the case of a company incorporated outside Brunei Darussalam, either to the individual authorised to accept service of process at the address filed with the Registrar of Companies, or to the registered office or any place of business of the company wherever it may be situated.

(4) Notice under subsection (1) may not be served on any person —

(a) if the Collector —

- (i) does not have any information of the person referred to in subsection (3);
- (ii) is of the opinion that this is likely to prevent or unduly delay the effective exchange of information under the prescribed arrangement; or
- (iii) is of the opinion that this is likely to prejudice any investigation into any alleged breach of any law relating to tax of the country or territory with whose government the prescribed arrangement in question was made (whether the breach would result in the imposition of a criminal or civil penalty); or

(b) on such other ground as may be prescribed under section 86H.

(5) Rules made under section 86H may provide for the particulars to be given in a notice under subsection (1).

Power of Collector to obtain information.

86F. (1) Sections 55 to 55C shall have effect for the purpose of enabling the Collector to obtain any information for the purpose of complying with a request under section 86D.

(2) For the purpose of subsection (1) —

(a) the reference in section 55 to the purpose of obtaining full information in respect of the income of any person shall be read as a reference to the purpose referred to in subsection (1);

(b) a reference in section 55B to the purposes of this Act shall be read as the purpose referred to in subsection (1); and

(c) references in section 55C to proceedings for an offence under this Act, proceedings for the recovery of tax or penalty and proceedings by way of an appeal against an assessment shall be read as proceedings for an offence under the law relating to tax of the country or territory of the competent authority making the request, proceedings for the recovery of tax or penalty under such law, and proceedings by way of an appeal against an assessment or equivalent procedure under such law, respectively.

Power of Collector to obtain information from other authorities.

86G. (1) For the purpose of complying with a request under section 86D, the Collector may request the Collector appointed for the purposes of the Stamp Act (Chapter 34) to transmit information in his possession to him.

(2) Notwithstanding any obligation as to confidentiality imposed under any written law, the Collector appointed for the purposes of the Stamp Act (Chapter 34) may transmit to the Collector information requested by him under subsection (1).

Rules for purposes of this Part.

86H. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules —

(a) to prescribe anything which may be prescribed under this Part; and

(b) for the purposes of carrying out the provisions of this Part.

PART XIVB

COURT ORDERS RELATING TO RESTRICTED INFORMATION

Interpretation of this Part.

86I. In this Part —

"authorised officer" means an officer who is authorised by the Collector for the purposes of this Part;

"information subject to legal privilege" means —

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client; and

(b) communications between —

(i) a professional legal adviser and his client or any person representing his client; or

(ii) a professional legal adviser or his client or any such representative and any other person,

made in connection with, or in contemplation of, judicial proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them, but excluding, in any case, any communication or item held with the intention of furthering a criminal purpose.

Orders relating to certain information.

86J. (1) Where —

(a) the Collector requires any information —

(i) for the administration of this Act, other than for an investigation or a prosecution of an offence alleged or suspected to have been committed under this Act; or

(ii) in order to comply with a request made under section 86D; and

(b) the Collector is of the opinion that the information is protected from unauthorised disclosure under —

- (i) section 58 of the Banking Order, 2006 (S 56/06);
- (ii) section 58 of the Islamic Banking Order, 2008 (S 96/08);
or
- (iii) section 18 of the International Banking Order, 2000 (S 53/00),

then the Collector or an authorised officer may apply to the High Court for an order under subsection (2).

(2) If, on such an application, the High Court is satisfied that the conditions referred to in subsection (3) have been fulfilled, it may make an order that the person who appears to it to have possession or control of the information to which the application relates shall —

(a) make a copy of any document containing the information and provide the copy to an authorised officer for him to take away; or

(b) give an authorised officer access to the information, within 21 days from the date of the order or such other period as the Court considers appropriate.

(3) The conditions referred to in subsection (2) are —

(a) the making of the order is justified in the circumstances of the case; and

(b) it is not contrary to the public interest for a copy of the document to be produced or that access to the information be given.

(4) Both or either of the following persons may, within 7 days from the date the order is served on the person against whom it is made, apply to the High Court to have the order discharged or varied —

(a) the person against whom such order is made;

(b) the person in relation to whom the information is sought, and the Court, on hearing such an application, may discharge the order or make such variation as it thinks fit.

(5) The person referred to in subsection (4)(b) shall be entitled to make such an application even if an order under subsection (7) has been made to the effect that an order under subsection (2) shall not be disclosed to

him, if (despite the first-mentioned order) he becomes aware of the second-mentioned order.

(6) Proceedings under this section other than subsection (4) may, at the discretion of the High Court, be conducted in the presence or absence of —

(a) the person alleged to have possession or control of that information or against whom the order under subsection (2) is made, as the case may be; or

(b) the person in relation to whom the information is sought.

(7) The High Court may, in any proceedings under this section, on the application of the Collector, make such further order as it may consider necessary to ensure the confidentiality of anything relating to any order made in those proceedings.

(8) All proceedings under this section shall be heard in camera.

(9) No person may inspect or take a copy of any document relating to any proceedings under this section without the leave of the High Court.

(10) No information relating to any proceedings under this section may be published without the leave of the High Court; and leave shall not be given unless the Court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter that the Collector or any person referred to in subsection (6) reasonably wishes to remain confidential.

(11) The Chief Justice may make Rules of Court to provide for the procedure relating to —

(a) any proceedings under this section; and

(b) any appeals from any such proceedings.

Supplementary provisions regarding section 86J orders.

86K. (1) Where the High Court orders a person under section 86J(2) to give an authorised officer access to any information found on any premises, it may, on the same or a subsequent application of the Collector or an authorised officer, order any person who appears to him to be entitled to grant entry to the premises to allow an authorised officer to enter the premises to obtain access to the information.

(2) Where any information to which an order under section 86J relates is contained in or accessible by means of any data equipment —

(a) an order under section 86J(2)(a) shall have effect as an order to make a copy of a document containing the information in a form which can be taken away and which is visible and legible; and

(b) an order under section 86J(2)(b) shall have effect as an order to give access to the information in a form which is visible and legible.

(3) A person is not excused from producing any document or giving access to any information by an order under section 86J(2) on the ground that doing so —

(a) might incriminate him or make him liable to a penalty; or

(b) would be in breach of an obligation (imposed by law or otherwise) not to disclose the information.

(4) An order under section 86J(2) —

(a) shall not confer any right to the production of, or of access to, information subject to legal privilege; and

(b) shall have effect notwithstanding any obligations as to confidentiality or other restrictions upon the disclosure of information imposed by law or otherwise.

(5) An authorised officer may photograph or make copies of any thing produced or to which access is granted pursuant to an order made under section 86J(2).

(6) In this section, "data equipment" means any equipment which —

(a) automatically processes information;

(b) automatically records or stores information;

(c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated); or

(d) can be used to retrieve information whether such information is recorded or stored in the equipment itself or in other equipment (wherever situated).

Immunity.

86L. (1) No civil or criminal action, other than a criminal action for an offence under section 86M, shall lie against any person for —

(a) making a copy of a document or giving access to any information if he had done so in good faith in compliance with an order made against him under section 86J(2); or

(b) doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with an order made under sections 86J(2) or (7).

(2) Any person who complies with an order made under sections 86J(2) or (7) shall not be treated as being in breach of any restriction upon the disclosure of information imposed by any other written law, contract or rules of professional conduct.

Failure to comply with section 86J orders.

86M. Any person who —

(a) without reasonable excuse contravenes an order under sections 86J(2) or (7); or

(b) in purported compliance with an order under section 86J(2), produces to an authorised officer any document which contains any information, or makes available to an authorised officer any information, known to the person to be false or misleading in a material particular without —

(i) indicating to the authorised officer that the information is false or misleading and the part that is false or misleading; or

(ii) providing correct information to the authorised officer if the person is in possession of, or can reasonably acquire, the correct information,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both."

Insertion of new Fourth Schedule.

4. The Act is amended by inserting the following new Schedule immediately after the Third Schedule —

INFORMATION TO BE INCLUDED IN A REQUEST

FOR INFORMATION UNDER PART XIVA

1. The purpose of the request.
2. The identity of the competent authority.
3. The identity of the person in relation to whom the information is requested.
4. A statement of the information requested for including its nature, the relevance of the information to the purpose of the request, and the form in which the competent authority wishes to receive the information from the Collector.
5. The grounds for believing that the information requested for is held by the Collector or by the Collector appointed for the purposes of the Stamp Act (Chapter 34); or is in the possession or control of a person in Brunei Darussalam.
6. The name and address of any person believed to have possession or control of the information requested for.
7. A statement that the request is in conformity with the law and administrative practices of the country or territory of the competent authority, and that the competent authority is authorised to obtain the information under the laws of that country or territory in the normal course of administrative practice.
8. A statement that the country or territory has pursued all means available in its own country or territory to obtain the information including getting the information directly from the person in relation to whom the information is requested.
9. The details of the period within which that country or territory wishes the request to be met.
10. Any other information required to be included with the request under the prescribed arrangement.
11. Any other information that may assist in giving effect to the request."

Made this 2nd. day of Jamadilawal, 1431 Hijriah corresponding to the 17th. day of April, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM