

No. S 71

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

INCOME TAX (PETROLEUM) (AMENDMENT) ORDER, 2001

ARRANGEMENT OF SECTIONS

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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) (Amendment) Order, 2001 and shall commence on the 1st. day of October, 2001.

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) by deleting the definition of "company" and by substituting "company" means a company incorporated or registered in Brunei Darussalam under the Companies Act (Chapter 39) or under any law in force elsewhere;" therefor; and

(b) by inserting the new definition "'Minister" means the Minister of Finance;" immediately after the definition of "disposal" and "disposed of".

Amendment of section 3.

3. Section 3 of the Act is amended, in subsection (1), by deleting "in Council" from the second line.

Substitution of section 5.

4. Section 5 of the Act is repealed and substituted by the following —

"Rules.

5. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules generally for the carrying out of the provisions of this Act, including the specifications of forms of returns, claims, statements and notices under this Act."

Substitution of section 6.

5. Section 6 of the Act is repealed and substituted by the following —

"Service and signature of notices.

6. (1) Except where it is provided by this Act that service shall be effected either personally or by registered post, a notice may be served on a person either personally or by being sent through the post.

(2) Where a notice is served by ordinary or registered post, it shall be deemed to have been served on the day succeeding the day on which the notice would have been received in the ordinary course of post if the notice is addressed —

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

(b) in the case of a company incorporated outside Brunei Darussalam, either to the individual authorised to accept service of process under the Companies Act (Chapter 39), the manager or some other person resident in Brunei Darussalam employed in the management of petroleum operations carried on by such company or the registered office of the company wherever it may be situated.

(3) Where the person to whom there has been addressed a letter containing a notice given under this Act is informed that there is a registered letter waiting for him at a post office and such person refuses or neglects to take delivery of such registered letter, such notice shall be deemed to have been served upon him on the date on which he was informed that there was a registered letter waiting for him at that post office.

(4) Every notice to be given by the Collector under this Act shall be signed by the Collector or by a person authorised by him in that behalf under section 3, and every such notice shall be valid if the signature of the Collector or of such person is duly printed or written thereon.

(5) Any notice under this Act requiring the attendance of any person or witness before the Collector shall be signed by the Collector or by a person duly authorised by him as aforesaid."

Amendment of section 11.

6. Section 11 of the Act is amended by repealing subsections (1) and (2) and by substituting the following therefor —

"(1) Where the Collector is satisfied that the purpose or effect of any arrangement is directly or indirectly —

(a) to alter the incidence of any tax which is payable by, or which would otherwise have been payable by, any person;

(b) to relieve any person from any liability to pay tax or to make a return under this Act; or

(c) to reduce or avoid any liability imposed or which would otherwise have been imposed on any person by this Act,

he may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the arrangement and make such adjustment as he considers appropriate, including the computation or re-computation of gains or profits, and the imposition of liability to tax, so as to nullify any tax advantage obtained or obtainable from or under that arrangement.

(2) In subsection (1), "arrangement" includes any scheme, trust, grant, covenant, agreement, disposition and transaction, and all steps by which it is carried into effect."

Amendment of section 19.

7. Section 19 of the Act is amended by inserting "in such form and manner as the Collector may determine" immediately after "Collector" in the sixth line.

Insertion of new sections 21A and 21B.

8. The Act is amended by inserting the following two new sections immediately after section 21 —

"Power to call for statements of bank etc.

21A. The Collector may give notice in writing to any person requiring him to furnish within the time limited by such notice, not being less than 30 days from the date of service of such notice, a statement containing particulars of —

(a) all banking accounts, whether current or deposit, business or private, in that person's own name or in the name or names of his wife or wives, or in any other name, in which he is or has been interested, or on which he has or has had the power to operate, jointly or solely, and which are in existence or which have existed at any time during the period stated in the notice;

(b) all savings and loan accounts, deposits, building society and co-operative society accounts, in regard to which he has, or has had, any interest or power to operate jointly or solely during the period stated in the notice;

(c) all assets, other than those referred to in paragraph (a) or (b), which he and his wife or wives possess, jointly or solely, or has possessed during the period stated in the notice;

(d) all sources of income not referred to in paragraph (a), (b) or (c) and the income derived therefrom during the period stated in the notice;

(e) all facts bearing upon his liability to income tax to which he is, or has been, liable.

Power of access to buildings and documents etc.

21B. (1) The Collector and any officer authorised in writing by him in that behalf shall at all times have full and free access to all land, buildings, places, books, documents and other papers for any of the purposes of this Act and may, without fee or reward, inspect, copy or make extracts from any such books, documents or papers.

(2) The Collector may take possession of any books, documents or papers to which he has access under subsection (1) where in his opinion —

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

(b) the books, documents or papers may be interfered with or destroyed unless possession is taken; or

(c) the books, documents or papers may be required as evidence in proceedings for an offence under this Act or in proceedings for the recovery of tax or liabilities as may be demanded by the Collector for the purposes of this Act.

(3) Where in the opinion of the Collector it is necessary for the purpose of ascertaining income in respect of the gains or profits from any business for any period to examine any books, accounts or records kept otherwise than in the Malay or English languages, he may by notice require any person carrying on that business during any period to furnish within the time stated in the notice (not being less than 30 days from the date of service of the notice) a translation into the Malay or English languages of those books, accounts or records."

Amendment of section 29.

9. Section 29 of the Act is amended, in subsection (11), by deleting "His Majesty in Council" from the first line and by substituting "The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan," therefor.

Amendment of section 32.

10. Section 32 of the Act is amended by deleting "2 months" from the fourth line and by substituting "30 days" therefor.

Amendment of section 33.

11. Section 33 of the Act is amended, in subsection (1), —

(a) in paragraph (b), by deleting "2 months" from the third line and by substituting "30 days" therefor;

(b) by inserting, immediately after paragraph (b), the following new paragraph —

"(ba) notwithstanding the provisions of paragraphs (a) and (b), if the amount of tax outstanding is not paid within 60 days of the imposition of the penalty provided for in paragraph (a), an additional penalty of 1% of the tax outstanding shall be payable for each completed month that the tax remains unpaid, but the total additional penalty shall not exceed 12% of the amount of tax outstanding, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of tax of such additional penalty;"

Amendment of section 37.

12. Section 37 of the Act is amended —

(a) in paragraph (a) of subsection (1), by inserting "Section 21A," immediately after "Section 21," in the fourth line;

(b) in paragraph (b) of subsection (1), by adding "or" immediately after the semicolon;

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

"(c) obstructs or hinders any officer acting in the discharge of his duty under this Act or any rules made thereunder;"

(d) in subsection (2), by deleting "he shall have been personally served with such notice" from the last two lines and by substituting "such notice has been served on him either personally or by registered post" therefor.

Amendment of section 38.

13. Section 38 of the Act is amended by repealing subsection (2).

Amendment of section 47.

14. Section 47 of the Act is amended, in subsection (1), by deleting "His Highness in Council" from the first line and by substituting "the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan," therefor.

Made this 13th. day of Rejab, 1422 Hijriah corresponding to the 1st. day of October, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM