LAWS OF BRUNEI

CHAPTER 119

INCOME TAX (PETROLEUM)

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REVISED EDITION 2022

CHAPTER 119

INCOME TAX (PETROLEUM)

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INCOME TAX (PETROLEUM) ACT

An Act to impose a tax upon profits arising from petroleum operations and to provide for the collection thereof

Commencement: 18th November 1963

PART 1

PRELIMINARY

Citation and application

1. (1) This Act may be cited as the Income Tax (Petroleum) Act.

(2) This Act applies in respect of tax chargeable for the year of assessment 1963 and each subsequent year of assessment.

Interpretation

2. (1) In this Act, unless the context otherwise requires —

"accounting period" means —

(a) a period of 12 months commencing on the date of the first sale or disposal of petroleum by or on behalf of a company engaged in petroleum operations, whichever event shall be the earlier, or commencing on such date within the calendar month in which such event occurs as may be selected by the company with the approval of the Collector;

(b) such shorter period commencing as aforesaid and ending either on a date selected by the company with the approval of the Collector or on the date when the company ceases to be engaged in petroleum operations;

(c) each subsequent period of 12 months during which the company is engaged in petroleum operations; or

(d) any period of less than 12 months, being a period commencing on the day following the end of any such period of 12 months and ending on the date when the company ceases to be engaged in petroleum operations;

"Auditor" means the Auditor General;

"authentication code", in relation to any person, means an identification or identifying code, a password or any other authentication method or procedure which is assigned to that person for the purposes of identifying and authenticating the access to and use of the electronic service by that person;

"basis period" for any year of assessment means an accounting period ending on any date within the year preceding the year of assessment;

"Brunei Darussalam" includes the submarine areas beneath the territorial waters of Brunei Darussalam and the submarine areas beneath any other waters over which the Government exercises or may hereafter exercise sovereign rights in respect of minerals;

"chargeable profits" means profits ascertained in accordance with the provisions of section 8 or 10A;

"Collector" means the Collector of Income Tax appointed under section 3 and includes for all purposes of this Act, except the powers conferred on the Collector by sections 38, 39 and 42, a Deputy Collector so appointed;

"company" means a company incorporated or registered in Brunei Darussalam under the Companies Act (Chapter 39) or under any law in force elsewhere, 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);

"control" means —

(a) in relation to a body corporate, the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person; and

(b) in relation to a partnership, the right to a share of more than one-half of the assets or of more than one-half of the income of the partnership;

"crude oil" means oil in its natural state before the oil has been refined or otherwise treated but excluding water and foreign substances;

"disposal" and "disposed of", in relation to petroleum owned by a company engaged in petroleum operations, mean respectively —

(a) delivery, without sale, of petroleum to a refinery for refining by or on behalf of the company; and

(b) delivered, without sale, to a refinery for refining by or on behalf of the company;

"electronic service" means the electronic service provided by the Collector under section 6A(1);

"Minister" means the Minister of Finance and Economy;

"person" means any individual or group of individuals and any company, corporation or other body;

"petroleum" means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casing-head petroleum spirit but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

"petroleum operations" means searching for and winning or obtaining of petroleum in Brunei Darussalam by or on behalf of a company for its own account by any method or means in the course of a business carried on by a company engaged in such operations, and all operations incidental thereto, and the sale or disposal by such company or any other company carrying on business through a permanent establishment in Brunei Darussalam of petroleum so won or obtained, and includes the transportation within Brunei Darussalam by such companies of petroleum so won or obtained to any point of sale or delivery or export and any field process necessary to reduce petroleum so won or obtained to a marketable condition, but does not include —

(a) any transportation of petroleum outside Brunei Darussalam;

(b) any process of refining at a refinery; or

(c) any dealings with products so refined;

"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);

"resident in Brunei Darussalam", when applied to a company, means a company the control and management of the business of which are exercised in Brunei Darussalam;

"royalties" means and includes —

(a) the amount of any yearly payments as to which there is provision for their deduction from the amount of any royalties under any petroleum mining agreement; and

(b) the amount of any royalties payable under any such petroleum mining agreement less any such yearly payments deducted from those royalties;

"under common control" means in relation to any two persons, a situation where one person has control of the other, or some other person has control of both of them;

"year of assessment" means the period of 12 months commencing on the 1st day of January 1963, and each subsequent period of 12 months.

(2) Any word or expression used in this Act which is defined in the Petroleum Mining Act (Chapter 44) or in any petroleum mining agreement made thereunder shall, unless the context otherwise requires, have the same meaning in this Act.

PART 2

ADMINISTRATION

Administrative authority

3. (1) For the due administration of this Act, His Majesty the Sultan and Yang Di-Pertuan may, by notification published in the *Gazette*, appoint a Collector of Income Tax and such deputy Collectors and other officers and persons as may be necessary.

(2) The Collector may —

(a) by notification published in the *Gazette*, authorise any person within or outside Brunei Darussalam, to perform or to assist in the performance of any specific duty imposed upon the Collector by this Act; and

(b) subject to such conditions as the Collector may specify, direct in writing that any information, return or document required to be supplied, forwarded or given to the Collector may be supplied to any person so authorised.

(3) The Collector shall be responsible for the assessment and collection of tax and shall pay all amounts collected in respect thereof into the Treasury to the credit of the general revenue.

(4) The Collector may specify the form of any return, claim, statement or notice to be made or given under this Act.

[S 7/2017]

Official secrecy

4. (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income, chargeable profits or items thereof of any company as secret and confidential, and shall make and subscribe a declaration in such form as may be prescribed before the Collector.

(2) Every such person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to petroleum operations or the amount and value of petroleum won by any company at any time otherwise than for the purpose of this Act or with the express authority of the Minister —

(a) communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any unauthorised person; or

(b) suffers or permits any unauthorised person to have access to any such information or to anything contained in such documents, returns, lists or copies,

is guilty of an offence.

(3) No proceedings for an offence against this section shall be taken save by the Collector with the sanction of the Attorney General or by the Attorney General.

(4) No person appointed under, or employed in carrying out, the provisions of this Act shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act, or in order to institute a prosecution, or in the course of a prosecution, for any offence under or in relation to tax imposed by this Act.

(5) Where under any law in force in any territory outside Brunei Darussalam provision is made for the allowances of relief from income tax and similar taxes in respect of the payment of income tax and similar taxes in Brunei Darussalam or for the exemption of income from income tax and similar taxes in respect of income subject to income tax and similar taxes in Brunei Darussalam, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that territory of such facts as may be necessary to enable the proper relief or exemption to be given in cases where relief or exemption is claimed from income tax and similar taxes in Brunei Darussalam or from income tax and similar taxes in that territory.

(6) Notwithstanding anything contained in this section, the Collector shall permit the Auditor or any officer duly authorised in that behalf by the Auditor to have such access to any records or documents as may be necessary for the performance of his official duties.

(7) For the purposes of this section, the Auditor or any such officer is deemed to be a person employed in carrying out the provisions of this Act.

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.

[S 7/2017]

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 is 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 is 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 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.

Electronic service

6A. (1) The Collector may provide an electronic service for —

(a) the filing or submission of any return, estimate, statement or document; or

(b) the service of any notice by the Collector.

(2) For the purposes of the electronic service, the Collector may assign to any person —

(a) an authentication code; and

(b) an account with the electronic service.

(3) Any person who is required to file or submit any return, estimate, statement or document may do so through the electronic service.

(4) Any agent who is authorised by his principal in the prescribed manner may file or submit any return, estimate, statement or document on behalf of his principal through the electronic service.

(5) Where any return, estimate, statement or document is filed or submitted on behalf of any person under subsection (4) —

(a) it is deemed to have been filed or submitted with the authority of that person; and

(b) that person is deemed to be cognisant of all matters therein.

(6) Where any return, estimate, statement or document is filed or submitted through the electronic service using the authentication code assigned to any person before that person has requested, in the prescribed manner, for the cancellation of the authentication code —

(a) the return, estimate or document shall, for the purposes of this Act, be presumed to have been filed or submitted by that person unless he adduces evidence to the contrary; and

(b) where that person alleges that he did not file or submit the return, estimate, statement or document, the burden shall be on him to adduce evidence of that fact.

(7) Where any person has given his consent for any notice to be served on him through the electronic service, the Collector may serve the notice on that person by transmitting an electronic record of the notice to that person's account with the electronic service.

(8) Notwithstanding any other written law, in any proceedings under this Act —

(a) an electronic record of any return, estimate, statement or document that was filed or submitted, or any notice that was served, through the electronic service; or

(b) any copy or printout of that electronic record,

shall be admissible as evidence of the facts stated or contained therein if that electronic record, copy or printout —

(i) is certified by the Collector to contain all or any information filed, submitted or served through the electronic service in accordance with this section; and

(ii) is duly authenticated in the manner specified in subsection (10) or is otherwise authenticated in the manner provided in the Evidence Act (Chapter 108) for the authentication of computer output.

(9) For the avoidance of doubt —

(a) an electronic record of any return, estimate, statement or document that was filed or submitted, or any notice that was served, through the electronic service; or

(b) any copy or printout of that electronic record,

shall not be inadmissible in evidence merely because the return, estimate, statement or document was filed or submitted, or the notice was served, without the delivery of any equivalent document or counterpart in paper form.

(10) For the purposes of this section, a certificate —

(a) giving the particulars of —

(i) any person whose authentication code was used to file, submit or serve the return, estimate, statement, document or notice; and

(ii) any person or device involved in the production or transmission of the electronic record of the return, estimate, statement, document or notice, or the copy or printout thereof;

(b) identifying the nature of the electronic record or copy thereof; and

(c) purporting to be signed by the Collector or by a person occupying a responsible position in relation to the operation of the electronic service at the relevant time,

shall be sufficient evidence that the electronic record, copy or printout has been duly authenticated, unless the court calls for further evidence on this issue.

(11) Where the electronic record of any return, estimate, statement, document or notice, or a copy or printout of that electronic record, is admissible under subsection (8), it shall be presumed, until the contrary is proved, that the electronic record, copy or printout accurately reproduces the contents of that document.

(12) The Collector may, for the purposes of the electronic service, approve the use of any symbol, code, abbreviation or notation to represent any particulars or information required under this Act.

(13) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for carrying out the purposes of this section, including regulations prescribing —

(a) the procedure for the use of the electronic service, including the procedure in circumstances where there is a breakdown or interruption of the electronic service;

(b) the procedure for the correction of errors in, or the amendment of, any return, estimate, statement or document that is filed or submitted through the electronic service;

(c) the manner in which a person who has given his consent for a notice to be served on him through the electronic service shall be notified of the transmission of an electronic record of the notice to his account with the electronic service;

(d) the manner in which authentication codes are to be assigned; and

(e) anything which may be prescribed under this section.

PART 3

IMPOSITION OF TAX AND ASCERTAINMENT OF CHARGEABLE PROFITS

Charge of tax

7. For each year of assessment, there shall be levied upon and paid by every company engaged in petroleum operations, a tax on the chargeable profits, assessed as hereinafter provided, arising from such operations during the basis period for that year of assessment.

Ascertainment of chargeable profits

8. (1) The gross proceeds for any basis period of any company engaged in petroleum operations shall be the aggregate of —

(a) the actual proceeds of sale of all petroleum sold by the company in that period, or the price referred to in subsection (2), whichever is the higher; and

(b) in the case of petroleum disposed of by the company or petroleum taken by the Government by way of royalty in kind in that period, the price referred to in subsection (2); and

(c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations.

(2) For the purposes of subsection (1), the price of any petroleum sold, disposed of or taken by the Government by way of royalty in kind shall be the price it would have been expected to realise if sold for export at the time of sale or disposal and if the buyer and the seller had been persons not under common control dealing at arm's length:

Provided that where an agreement as to the price of any petroleum sold for consumption within Brunei Darussalam has been made between the company and the Government, the price so agreed shall be taken to be the price thereof for the purposes of this section.

(3) The chargeable profits for any basis period of any company engaged in petroleum operations shall be the remainder of the gross proceeds of that company during that period, after the deductions allowed by this Part shall have been made:

Provided that where a company engaged in petroleum operations is also engaged in the transportation of petroleum outside Brunei Darussalam by pipeline and/or tankers operated by or on behalf of the company, then such adjustments shall be made in computing the chargeable profits of that company as shall have the effect of excluding therefrom any profit or loss attributable to such transportation.

Allowance against chargeable profits

8A. (1) In computing the tax assessable upon the chargeable profits for any basis period, there shall be allowed as deductions against the chargeable profits any royalties paid during or payable in respect of the basis period by the company in respect of petroleum won and saved by the company from the Scheduled Lands.

(2) If during the basis period the Government should take crude oil in kind *in lieu* of royalty, the crude oil shall be valued at the price it would have been expected to realise if —

(a) sold for export at the time of sale or disposal; and

(b) the buyer and the seller had been persons not under common control but dealing at arm's length in accordance with section 8(2).

Deductions allowed in ascertainment of chargeable profits

9. (1) Subject to the express provisions of this Act, there shall be deducted in computing the chargeable profits of any company from its petroleum operations for any basis period all outgoings and expenses wholly and exclusively incurred, whether within or outside Brunei Darussalam, during that period by such company for the purpose of those operations including but without in any way limiting the generality of the foregoing —

(a) any rents (other than yearly payments deductible in ascertaining the chargeable tax under section 14) incurred by the company in respect of land and buildings occupied for its petroleum operations;

(b) any compensation incurred for disturbance of surface rights or for any other disturbance or for all damage or injury to the property and rights of other parties;

(c) any expense incurred for repair of premises, plant, machinery or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensil or article so employed;

(d) debts due to the company and proved to the satisfaction of the Collector to have become bad or doubtful during the period for which the chargeable profits are being ascertained, notwithstanding that the bad or doubtful debts were due and payable prior to the commencement of that period:

Provided that —

(i) all sums recovered during that period on account of amounts previously deducted in respect of bad or doubtful debts, either under this Act or under the Income Tax Act (Chapter 35), shall for the purposes of this Act be treated as chargeable profits for that period;

(ii) the debts in respect of which a deduction is claimed were either —

(A) included as a receipt from the carrying on of petroleum operations in the chargeable profits of the year within which they were incurred; or

(B) advances made in the normal course of carrying on petroleum operations;

(e) any expense incurred in connection with the drilling of appraisal wells and development wells but excluding any expenditure which is qualifying expenditure for the purpose of the Schedule to this Act;

(f) any contribution to a pension, provident or other society or fund which has already been approved under the Income Tax Act (Chapter 35) or which may be approved from time to time by the Collector subject to such conditions as he may impose;

(g) sums allowable as deductions in respect of capital expenditure in accordance with the provisions of the Schedule to this Act;

(h) any sum contractually due by the company by way of annuity, royalty or other such recurring payment by reason of any agreement referred to in section 12(1);

(i) such other deductions as may be prescribed.

(2) There shall be deducted in computing the chargeable profits of any company from its petroleum operations for any basis period —

(a) a fair proportionate share of any overhead costs incurred by the company partly for the purposes of petroleum operations carried on by the company and partly for other purposes;

(b) the amount of any loss incurred by that company during any previous basis period which if it had been a profit would have been a chargeable profit for the purposes of section 8:

Provided that —

(i) in no circumstances shall the aggregate deduction from chargeable profits in respect of any such loss exceed the amount of such loss; and

(ii) a deduction under this paragraph shall be made as far as possible in computing the amount, if any, of the chargeable profits for the first basis period after that in which the loss was incurred, and, so far as it cannot be so made, then in computing the chargeable profits for the next basis period, and so on;

(c) the amount or value, not exceeding one-sixth of the chargeable profits remaining after the deductions authorised by paragraphs *(a)* and *(b)* have been made, of gifts made by the company in that basis period to any institution of a public character in Brunei Darussalam approved for this purpose by the Minister:

Provided that the Minister may at any time in his discretion withdraw such approval.

In this paragraph, "institution of a public character" means —

(i) any hospital which is not operated or conducted for profit;

(ii) a public or other benevolent institution or organisation not operated or conducted for profit;

(iii) an educational institution which is not operated or conducted for profit;

(iv) a public fund established and maintained for the relief of distress among members of the public.

Deductions not allowed

10. Subject to the express provisions of this Act, for the purpose of ascertaining the chargeable profits arising from petroleum operations of any company, no deduction shall be allowed in respect of —

(a) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of those operations;

(b) any capital withdrawn or any sum employed or intended to be employed as capital;

(c) any capital employed in improvements as distinct from repairs;

(d) any loss or expense recoverable under a policy of insurance or contract of indemnity;

(e) rent of or cost of repairs to any premises or any part thereof not used for the purpose of those operations;

(f) any amount paid or payable in respect of income tax, profits tax or other similar tax charged within Brunei Darussalam;

(g) any amount paid or payable in respect of income tax, profits tax or other similar tax charged outside Brunei Darussalam to the extent that the amount is allowed by way of relief from or credit against tax charged under this Act;

(h) any payment to any pension, provident or other society or fund except such payments as are allowed under section 9(1)*(f)*;

(i) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;

(j) any sum payable to the Government under any oil mining agreement in consequence of the company having failed to comply with its expenditure obligations under such agreement;

(k) any sum payable by way of interest upon any money borrowed by such company.

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 called "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 the 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 section 2(1) means —

(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 section 26(1) in any such currencies as may be specified for this purpose in the relevant production sharing agreement.

(8) Sections 8, 8A, 9, 10, 12, 26(5) and 27 do 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.

Collector may disregard, vary or adjust arrangements

11. (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.

(3) Nothing contained in this section shall prevent the decision of the Collector in the exercise of any discretion given to him by this section from being questioned in an objection or an appeal against an assessment in accordance with Parts 7 and 8.

Further charge to tax; deduction of tax at source; indemnification of company deducting tax

12. (1) For each year of assessment there shall be levied and paid a tax at the rate of 55 *per cent* on any payments due by way of annuity, royalty or other such recurring payment relating to a former interest in and/or rights to petroleum in Brunei Darussalam which is received under any agreement entered into after the coming into force of this Act between a company engaged in petroleum operations and a person who has sold his interest in and/or rights to petroleum in Brunei Darussalam providing for such payments to be made to the latter.

(2) The paying company shall deduct the tax from any such payment due under the agreement and shall pay the tax so deducted to the Collector forthwith.

(3) Every company deducting tax in accordance with the preceding subsection shall be and is hereby indemnified against any person whatsoever for all tax deducted and paid in pursuance of this section.

PART 4

ASCERTAINMENT OF ASSESSABLE TAX AND CHARGEABLE TAX

Assessable tax and chargeable tax

13. (1) The assessable tax for each year of assessment shall be an amount equal to 55 *per cent* of the chargeable profits (subject to any allowance due under section 8A) of a company for the basis period for such year of assessment.

(2) The chargeable tax for each year of assessment to be charged, assessed and paid by a company under the provisions of this Act, shall be the amount of its assessable tax for that year of assessment.

14. *(No section).*

PART 5

CHARGING OF NON-RESIDENTS ETC.

Companies not resident in Brunei Darussalam

15. (1) A company not resident in Brunei Darussalam which is or has been engaged in petroleum operations (in this section called "non-resident company") shall be assessable and chargeable to tax, either directly or in the name of its manager, or in the name of any other person who is resident in Brunei Darussalam and employed in the management of the petroleum operations carried on by such non-resident company, in like manner and to the like amount as such non-resident company would be assessed and charged if it were resident in Brunei Darussalam.

(2) The person in whose name a non-resident company is assessable and chargeable to tax shall be answerable —

(a) for all matters required to be done by virtue of this Act for the assessment of the tax as might be required to be done by such non-resident company if it were resident in Brunei Darussalam; and

(b) for paying any tax assessed and charged in the name of such person by virtue of subsection (1).

Manager of company to be answerable

16. The manager or any principal officer in Brunei Darussalam of every company which is or has been engaged in petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.

Indemnification of representative

17. Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money coming into his hands on behalf of such company so much thereof as shall be sufficient to pay such tax and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Act.

Company wound up

18. Where a company is being wound up, the liquidator of the company shall not distribute any of the assets of the company to the shareholders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company.

PART 6

RETURNS

Returns

19. Every company which is or has been engaged in petroleum operations shall, when required to do so by any notice in writing given in pursuance of this Act, within the time limited by such notice, which in no case shall be less than 6 months after the commencement of a year of assessment, prepare and deliver to the Collector in such form and manner as the Collector may determine a true and correct return, signed by a duly authorised officer of the company, containing the following particulars in respect of such basis period as may be specified in such notice in the amount of its chargeable profits arising from such operations.

Collector may call for further returns

20. The Collector may give notice in writing to any company which is or has been engaged in petroleum operations when and as often as he thinks necessary requiring it to furnish within a reasonable time limited by such

notice fuller or further returns respecting any matter as to which a return is required by or under this Act.

Power to call for returns, books etc.

21. For the purposes of obtaining full information in respect of any company's petroleum operations, the Collector may give notice in writing to such company requiring it within the time limited by such notice, which time shall not be less than 30 days from the date of service of such notice, to complete and deliver to the Collector any return specified in such notice and in addition or alternatively requiring an authorised representative to attend personally before him and to produce for examination any books, documents, accounts and returns which the Collector may deem necessary.

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.

Official information and official secrecy

22. The Collector may, by notice in writing, require any officer in the employment of the Government or of any public body to supply such particulars as may be required for the purposes of this Act and which may be in the possession of such officer:

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

PART 7

ASSESSMENTS

Collector to make assessment

23. (1) The Collector shall proceed to assess every company chargeable with tax as soon as may be after the expiration of the time allowed to such company for the delivery of the return provided for in section 19 or such further particulars thereof as may be required by section 20.

(2) Where a company has delivered a return, the Collector may —

(a) accept the return or call for further returns in the manner set out in section 20, and make an assessment accordingly; or

(b) refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly.

(3) Where a company has not delivered a return and the Collector is of the opinion that such company is liable to pay tax, he may, according to the best of his judgment, determine the amount of the chargeable income of such company and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver a return.

Additional assessments

24. Where it appears to the Collector that any company liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Collector may, within the year of assessment or within 12 years after the expiration thereof, assess such company at such amount or additional amount as according to his judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act apply to such assessment or additional assessment and to tax charged thereunder.

List of companies assessed and notices of assessment

25. (1) The Collector shall as soon as possible prepare lists of companies assessed to tax.

(2) Such lists (in this Part called "assessment lists") shall contain the names and addresses of the companies assessed to tax, the amount of the chargeable profits of each company, the amount of the assessable tax, the amount of the chargeable tax payable by it, and such other particulars as may be prescribed.

(3) Where complete copies of all notices of assessment and of all notices amending assessments are filed in the office of the Collector, they shall constitute the assessment lists for the purpose of this Act.

Service of notices of assessment; revision of assessment in case of objection

26. (1) The Collector shall cause to be served upon each company whose name appears on the assessment lists a notice stating the amount of its chargeable profits, the assessable tax, the tax payable by such company, the place within Brunei Darussalam at which such payment should be made, and informing it of its rights under subsection (2). 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.

(2) If any company disputes the assessment, it may apply to the Collector, by notice of objection in writing, to review and to revise the assessment made upon it. Such application shall state precisely the grounds of objection to the assessment and shall be made within 60 days from the date of the service of the notice of assessment:

Provided that the Collector, upon being satisfied that, owing to the absence from Brunei Darussalam or sickness of any person or due to other reasonable cause, the company disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances.

(3) On receipt of the notice of objection referred to in subsection (2), the Collector may, by notice in writing, require the company giving notice of objection to furnish such particulars as the Collector may deem necessary, and may, by notice in writing, summon any person who, in his opinion, is able to give evidence with respect to the assessment to attend before him and may examine such person on oath or otherwise. Any person so attending may be allowed by the Collector any reasonable expenses necessarily incurred by such person in so attending.

(4) In the event of any company assessed, which has objected to an assessment made upon it, agreeing with the Collector as to the amount of the chargeable tax, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such company:

Provided that in the event of any company, which under subsection (2) has applied to the Collector for revision of the assessment made upon it, failing to agree with the Collector as to the amount of the assessable tax and the chargeable tax, its right of appeal under the provisions of this Act against the assessment made upon it shall remain unimpaired.

(5) If the notice of objection raises a dispute as to the price (as defined in section 8(2)) of any petroleum then, in default of agreement between the company and the Collector within 60 days of the notice of objection (or such other period as may be agreed), the dispute shall be automatically referred to the Price Review Committee for determination in accordance with the provisions of section 27. The determination of the Price Review Committee thereon shall be final and conclusive for the purposes of assessment under this Act and notwithstanding any other provisions of this Act no appeal shall lie against the determination.

Price Review Committee

27. (1) The Price Review Committee for the purpose of any reference under section 26(5) shall consist of such person or persons as the company and the Collector may agree at the time of the reference.

(2) Failing such agreement the company and the Collector shall each have the right to appoint one member of the Committee. If either the company or the Collector fails to exercise this right within 30 days of the date of the reference, an appointment on its or his behalf, as the case may be, shall be made at the request of either party by the President of the Institute of Petroleum, London.

(3) The two members thus appointed shall within 30 days after their appointment jointly appoint a third member who shall be Chairman of the Committee. If the first two members are unable to agree upon the appointment of the Chairman within the period of 30 days, the Chairman shall be appointed at the request of either party by the President of the Institute of Petroleum, London.

(4) The Committee shall make such rules governing the conduct of any reference to it as it shall think fit.

(5) Any discretion vested in the Committee by this section may be exercised by a majority of the Committee or failing a majority by the Chairman.

(6) If the Committee is not satisfied that the price of any petroleum sold or disposed of as stated in the return made by the company in respect of the basis period in question under section 19 is as high as the price referred to in section 8(1) and (2), then it shall determine the price in such higher amount as it considers appropriate. If it is so satisfied, then it shall confirm the price in the amount so stated by the company.

(7) If the company has made no return in respect of the basis period in question, the Committee shall determine the price in such amount as it considers appropriate.

(8) The Committee shall make such order as it thinks fit as to the whole or any part of the costs of any reference to it.

Errors and defects in assessment and notice

28. (1) No assessment, warrant or other proceedings purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if —

(a) the assessment, warrant or other proceedings is in substance and effect in conformity with or according to the intent and meaning of this Act or any Act amending the same; and

(b) the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected —

(a) by reason of a mistake therein as to —

(i) the name of a company liable;

(ii) the description of any profits; or

(iii) the amount of the assessable tax or the amount of the chargeable tax;

(b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment, the notice thereof shall be duly served on the company intended to be charged and such notice shall contain in substance and effect the particulars on which the assessment is made.

PART 8

APPEALS

Appeals against assessments; appeal to Court of Appeals; provisions applying to all appeals

29. (1) Any person (being a company or a person in whose name a company is assessed) who, being aggrieved by an assessment made upon him, has failed to agree with the Collector in the manner provided in section 26(4), may appeal against the assessment to the High Court within 30 days after the date of service upon him of notice of the refusal of the Collector to amend the assessment as desired:

Provided that, notwithstanding the lapse of such period of 30 days, any person may appeal against the assessment if he shows to the satisfaction of the Court that, owing to absence from Brunei Darussalam, sickness or other reasonable cause, he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(2) Reasonable notice shall be given to the Collector of the date fixed for the hearing of the appeal.

(3) Notwithstanding anything contained in section 30 or 31, if in any particular case the Court, from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, the Court may on application being made by or on behalf of the Collector require the appellant to furnish within such time as may be specified security for the payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.

(4) In any case in which the amount of the tax payable as determined by the High Court (excluding the amount of costs awarded) exceeds $200, the appellant or the Collector may appeal to the Court of Appeal from the decision of the High Court upon any question of law or of

mixed fact and law. The procedure governing such appeals shall, except as otherwise in this section provided, be the same as for appeals to the Court of Appeal from decisions of the High Court in civil suits.

(5) Every company appealing shall appoint an authorised representative who shall attend before the Court in person on the day and at the time fixed for the hearing of its appeal:

Provided that if it be proved to the satisfaction of the Court that, owing to absence from Brunei Darussalam, sickness or other reasonable cause, any duly appointed representative is prevented from attending in person at the hearing of the appeal on the day and at the time fixed for that purpose, the Court may postpone the hearing of the appeal for such reasonable time as the Court thinks necessary for his attendance, or the Court may permit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.

(6) The onus of proving that the assessment complained of is excessive shall be on the company concerned as a party to the appeal.

(7) The Court may confirm, reduce, increase or annul the assessment or make such order thereon as to the Court may seem fit.

(8) Notice of the amount of tax payable under the assessment as determined on appeal shall be served by the Collector upon the company concerned as a party to the appeal.

(9) All appeals shall be heard in camera, unless the Court shall, on the application of the company concerned as a party to the appeal, otherwise direct.

(10) The costs of an appeal shall be in the discretion of the Court and shall be a sum fixed by the Court.

(11) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules providing for the method of tendering evidence before a Court on appeal, the conduct of such appeals, and generally for giving effect to the provisions of this section, or if such rules have not been made, the rules applicable in such Court with respect to Civil Appeals apply to all such matters.

Assessment to be final and conclusive

30. Except as expressly provided in this Act, where no valid objection or appeal has been lodged within the time limited by this Part against an assessment as regards the amount of the chargeable tax assessed thereby or where the amount of the chargeable tax has been agreed to under section 26(4), or where the amount of such chargeable tax has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such chargeable tax:

Provided that nothing in this Part shall prevent the Collector from making any refund under the provisions of section 36 or any assessment which does not involve re-opening any matter which has been determined on appeal for the year of assessment.

PART 9

COLLECTION, RECOVERY AND REPAYMENT OF TAX

Procedure in cases where objection or appeal is pending

31. Collection of tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance until such objection or appeal is determined:

Provided that the Collector may in any such case enforce payment of that portion of the tax, if any, which is not in dispute.

Time within which payment is to be made

32. Subject to the provisions of section 31, tax for any year of assessment shall be payable at the place within Brunei Darussalam stated in the notice of assessment under section 26 within 30 days after the service of such notice.

Penalty for non-payment of tax and enforcement of payment

33. (1) Subject to the provisions of subsection (2), if any tax is not paid within the periods prescribed in section 32 —

(a) a sum equal to 5 *per cent per annum* of the amount of the tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax apply to the collection and recovery of such sum;

(b) the Collector shall serve a demand note upon the company assessed; and if payment is not made within 30 days from the date of the service of such demand note, the Collector may proceed to enforce payment as hereinafter provided;

(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 one *per cent* 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 *per cent* of the amount of tax outstanding, and the provisions of this Act relating to the collection and recovery of tax apply to the collection and recovery of tax of such additional penalty;

(c) a penalty imposed under this subsection is not deemed to be part of the tax paid for the purposes of claiming relief under any of the provisions of this Act.

(2) The Collector may, for any good cause shown, remit the whole or any part of the penalty due under subsection (1).

Collection of tax after determination of objection or appeal

34. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of an appeal, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within one month from the date of service on the company assessed of the notification of the tax payable, and if such tax is not paid within such period the provisions of section 33 apply.

Suit for tax by Collector

35. (1) Subject to the provisions of section 31, tax may be sued for and recovered in the High Court by the Collector in his official name with interest at such rate as the Court may order and with full cost of suit from the company charged therewith as a debt to the Government.

(2) The Collector may appear personally or by advocate in any suit instituted under this section.

(3) In any suit under subsection (1), the production of a certificate signed by the Collector giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence of the amount so due and sufficient authority for the Court to give judgment for the amount.

Repayment of tax

36. If it be proved to the satisfaction of the Collector that any person for any year of assessment has paid tax in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within 6 years from the end of the year of assessment to which the claim relates. The Collector shall certify the amount to be repaid and shall cause repayment to be made forthwith:

Provided that nothing in this section shall operate to extend or reduce any time limit for appeal or repayment specified in any other section or to validate any objection or appeal which is otherwise invalid, or to authorise the revision of any assessment or other matter which has become final and conclusive.

PART 10

OFFENCES AND PENALTIES

Penalties

37. (1) Every person who wilfully —

(a) fails to comply with the requirements of a notice given to him under any of the following sections —

sections 19, 20, 21, 21A, 22 or 23(3);

(b) fails to attend in answer to a summons issued under section 26(3) or having attended fails without sufficient cause to answer any question lawfully put to him; or

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

is guilty of an offence.

(2) Any person guilty of an offence against this Act for which no other penalty is provided is liable on conviction to a fine of $6,000 and in default of payment to imprisonment for a term not exceeding 6 months:

Provided that no person is liable to prosecution for an offence against this Act in respect of failure to comply with the terms of any notice issued under the provisions of this Act or of any rules made thereunder unless such notice has been served on him either personally or by registered post.

Penalty for making incorrect return

38. (1) Every person who wilfully —

(a) makes an incorrect return by omitting or understating any profits of which he is required by this Act to make a return; or

(b) gives any incorrect information in relation to any matter or thing affecting his liability to tax,

is guilty of an offence and liable on conviction to a fine of $6,000 and double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct, and in default of payment to imprisonment for 6 months.

(2) *(Repealed).*

(3) The Collector may compound any offence under this section, and may before judgment, stay or compound any proceedings thereunder:

Provided that any proceedings commenced with the sanction of the Attorney General shall not be stayed or compounded without the consent of the Attorney General.

Penal provisions relating to fraud etc.

39. (1) Any person who wilfully with intent to evade or to assist any other person to evade tax —

(a) omits from a return made under this Act any income or profits which should be included;

(b) makes any false statement or entry in any return made under this Act;

(c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act;

(d) prepares, maintains or authorises the preparation or maintenance of, any false books of account or other records, or falsifies or authorises the falsification of any books of account or records; or

(e) makes use of any fraud, art or contrivance whatsoever or authorises the use of any such fraud, art or contrivance,

is guilty of an offence and liable on conviction to a fine of $60,000 and treble the amount of tax which has been undercharged in consequence of each such offence, or would have been undercharged if any such return, statement, accounts or information had been accepted as correct, or would have been undercharged if such fraud, art or contrivance had not been detected, and to imprisonment for 3 years.

(2) The Collector may compound any offence under this section and may before judgment stay or compound any proceedings thereunder:

Provided that any proceedings commenced with the sanction of the Attorney General shall not be stayed or compounded without the consent of the Attorney General.

Penalties for offences by authorised and unauthorised persons

40. Any person who —

(a) being a person appointed for the due administration of this Act or any assistant employed in connection with the assessment and collection of tax —

(i) demands from any person an amount in excess of the authorised assessment of the tax payable;

(ii) withholds for his own use or otherwise any portion of the amount of tax collected;

(iii) renders a false return, whether verbally or in writing, of the amounts of tax collected or received by him;

(iv) defrauds any person or otherwise uses his position so as to deal wrongfully either with the Collector or any other individual; or

(b) not being authorised under this Act to do so, collects or attempts to collect tax under this Act,

is guilty of an offence and liable on conviction to a fine of $60,000 and imprisonment for 3 years.

Tax to be payable notwithstanding any proceedings for penalties

41. The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any tax for which he is or may be liable.

Sanction for prosecution

42. No prosecution in respect of an offence under section 37, 38, 39 or 40 shall be commenced except at the instance of the Collector and with the sanction of the Attorney General.

Jurisdiction of Courts

43. A conviction for any offence under or against this Act or any rules made thereunder may be had before the High Court.

Saving for criminal proceedings

44. The provisions of this Act shall not affect any criminal proceedings under any other written law.

PART 11

GENERAL

Restrictions on effect of Income Tax and other Acts

45. No tax shall be charged by the Government under the provisions of the Income Tax Act (Chapter 35) or any other Act in respect of any profits or income which are brought into charge, under the provisions of this Act, in the calculation of the amount of any chargeable profits upon which tax is

levied and paid under the provisions of this Act, or in respect of any dividends paid out of such profits or income.

46. *(No section).*

Double taxation arrangements with other territories

47. (1) 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 imposed under the provisions of this 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 notwithstanding anything in any Act to the contrary.

(2) *(Repealed).*

(3) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.

(4) An order made under the provisions of subsection (1) may include provisions for relief from tax for years of assessment commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.

(5) Where, before the publication of this Act in the *Gazette* upon enactment, any order has been made under the provisions of section 41 of the Income Tax Act (Chapter 35) and the arrangements specified in that order, with any modifications, are expressed to apply to a tax in any country or territory outside Brunei Darussalam and to income tax in Brunei Darussalam and to any other taxes of a substantially similar character either imposed in that country or territory or Brunei Darussalam or imposed by either Contracting Party to any such arrangements after those arrangements came into force and —

(a) such order was made before 1st January 1963, then for the purposes of this Act that order is deemed to have been made under this section on that day and those arrangements shall have effect, in Brunei Darussalam, as respects tax for any year of assessment; or

(b) such order was made after 31st December 1962, then, for the purposes of this Act, that order is deemed to have been made under this section on that day and those arrangements specified therein shall have effect, in Brunei Darussalam, as respects tax for any year of assessment beginning on or after the date when those arrangements come into force and for the unexpired portion of any year of assessment current at that date.

Method of calculating relief to be allowed for double taxation

48. (1) The provisions of this section shall have effect where, under arrangements having effect under section 47, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Brunei Darussalam.

In this section, "foreign tax" means any tax payable in that territory which, under the arrangements, is to be so allowed; "income" means that part of the profits for any year of assessment which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefor or relief granted under subsection (6).

(2) The amount of the credit admissible to any company under the terms of any such arrangements shall be set off against the tax chargeable upon that company in respect of the income, and where that tax has been paid, the amount of the credit may be repaid to that company or carried forward against the tax chargeable upon that company for any subsequent year of assessment.

(3) The credit for a year of assessment shall not exceed whichever is the lesser of the following amounts —

(a) the amount of the foreign tax payable on the income; or

(b) 55 *per cent* of the income.

(4) Without prejudice to the provisions of subsection (3), the total credit to be allowed to a company for any year of assessment for foreign tax under all arrangements having effect under section 47 shall not exceed the total tax which would be ultimately borne by that company for that year of assessment, if no such credit had been allowed.

(5) Where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.

(6) Where the amount of the foreign tax attributable to the income exceeds the credit therefor computed under subsection (3), then the amount of that income, to be included in computing profits for any purpose of this Act other than that of subsection (3) shall be taken to be the amount of that income increased by the amount of the credit therefor after deduction of the foreign tax.

(7) Any claim for an allowance by way of credit shall be made not later than 2 years after the end of the year of assessment, and in the event of any dispute as to the amount allowable the Collector shall give to the claimant notice of refusal to admit the claim, which shall be subject to appeal in like manner as an assessment.

(8) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Brunei Darussalam or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than 2 years from the time when all such assessments, adjustments and other determinations have been made, whether in Brunei Darussalam or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

SCHEDULE

(section 9(1)*(g)*)

CAPITAL ALLOWANCES

Interpretation

1. For the purposes of this Schedule, unless the context otherwise requires —

"chargeable purpose" means the purpose of putting property to a use such that profits or income accrue or are intended to accrue therefrom and will be chargeable to tax under this Act within Brunei Darussalam;

"concession" includes an oil prospecting licence, an oil mining lease, a petroleum mining agreement, any right, title or interest in or to petroleum in the ground and any option to acquire such licence, lease, agreement, right, title or interest or any renewal or renewals thereof;

"intangible drilling costs" means costs of labour, fuel, repairs and maintenance, hauling, supplies and materials which are used in —

(i) the drilling, shooting, deepening, cleaning, logging and completing of wells;

(ii) preparing the site for wells (including such geological work, surveying and access work as is necessary); and

(iii) constructing such derricks, tanks, pipelines and other physical structures as are necessary for the drilling of wells and the preparation of wells for the production of petroleum,

but excludes tangible drilling costs;

"lease" includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including "leasehold interest" shall be construed accordingly, and —

(a) where, with the consent of the lessor, a lessee of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease is deemed for the purposes of this Schedule to continue so long as the lessee remains in possession as aforesaid; and

(b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease;

SCHEDULE — *(continued)*

"qualifying expenditure" means, subject to the express provisions of this Schedule, expenditure incurred in a basis period which is —

(a) capital expenditure (in this Schedule called "qualifying plant expenditure") incurred on plant, machinery, fixtures or the construction of any buildings, structures or works which are likely to be of little or no value when the source of petroleum deposits is no longer worked or which, when the source is worked, under a concession, are likely to become valueless to the company working the source when the concession comes to an end (but not being qualifying productive or unproductive drilling expenditure);

(b) capital expenditure (in this Schedule called "qualifying building expenditure") incurred on the construction of buildings, structures or works of a permanent nature including offices (but not being qualifying productive or unproductive drilling expenditure);

(c) capital expenditure (in this Schedule called "qualifying exploration expenditure"), other than secondary recovery costs, incurred in connection with —

(i) the acquisition of, or of rights in or over, petroleum deposits, or the purchase of information relating to the existence and extent of such deposits; or

(ii) searching for or discovering and testing petroleum deposits, or winning access thereto,

but excluding expenditure on the acquisition or installation of physical assets which could be claimed as qualifying plant or building expenditure or as tangible drilling costs;

(d) capital expenditure (in this Schedule called "qualifying productive drilling expenditure") incurred in connection with the drilling of wells productive of petroleum in commercial quantities and consisting of intangible drilling costs and tangible drilling costs; or

(e) capital expenditure (in this Schedule called "qualifying unproductive drilling expenditure") incurred in connection with the drilling of wells which are not productive of petroleum in commercial quantities and including both intangible and tangible drilling costs save in so far as such costs have been incurred upon physical assets which can economically be removed and put to use elsewhere;

"relevant interest" means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure;

SCHEDULE — *(continued)*

"secondary recovery" means a project which has as its object the production of quantities of hydrocarbons by the application of external energy to the underground reservoir for the purpose of additional and/or accelerated recovery of those hydrocarbons;

"secondary recovery costs" include the costs of procuring the source of energy, of the application of the energy, of the surface plant involved and the drainage points or modification to drainage points (drilling of additional wells) required for the application of the project including the costs of personnel, studies and facilities ancillary to the project and the costs of producing and treating the hydrocarbons for removal of impurities or otherwise as may be necessary to render it fit for shipment;

"tangible drilling costs" means the cost of materials and equipment such as casing, tubing, sucker rods, bottom hole pumps, casinghead and wellhead used in a well but excluding any equipment which is removed and put to use elsewhere;

"winning access" includes all exploration drilling but excludes all appraisal and development drilling.

Capital expenditure incurred before first basis period

2. (1) For the purposes of this Schedule, where capital expenditure is incurred or is deemed under paragraph 3 to be incurred by a company before its first basis period and such expenditure would have fallen to be treated as qualifying expenditure if it had been incurred by the company on the first day of its first basis period, then —

(a) if that expenditure is incurred in respect of an asset owned by the company, such expenditure (ascertained without the qualification contained in the proviso in the definition of "qualifying expenditure") or the residue of such expenditure (ascertained in accordance with the provisions of sub-paragraph (2)) is deemed to be qualifying expenditure incurred by it on that day; or

(b) if that expenditure is incurred in respect of an asset which has been disposed of (otherwise than as envisaged in paragraph 3(1)) by the company before the beginning of its first basis period but after 1st January 1962, any excess of such expenditure over the value of that asset (ascertained in accordance with the provisions of sub-paragraph (3)) is deemed to be qualifying expenditure incurred by the company on that day and to have brought into existence an asset owned by the company in use for the purposes of petroleum operations carried on by the company, and any excess of the value of the asset (ascertained as aforesaid) over such expenditure shall be treated as income incidental to the petroleum operations of the company for its first basis period for the purposes of section 8.

SCHEDULE — *(continued)*

(2) For the purposes of this paragraph, the residue of capital expenditure shall be taken to be the total capital expenditure incurred by a company before its first basis period in respect of any asset (ascertained without the qualification contained in the proviso in the definition of qualifying expenditure) less the initial allowance, if any, and any annual allowances made in respect thereof of such company under the Income Tax Act (Chapter 35) or the Income Tax (Development of Mineral Resources) (Encouragement) Order (O 2 of Chapter 35), and as reduced by the provisions of paragraph 3(4) of Schedule 3 to the Income Tax Act (Chapter 35):

Provided that the residue of capital expenditure on the construction of offices shall be computed as if the expenditure had qualified for any annual allowance granted in respect of capital expenditure on the construction of industrial buildings or structures under that Act or Order.

(3) For the purposes of this paragraph, the value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or, if it is disposed of without being sold, the value shall be nil, except that if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

(4) Where, under the Income Tax Act (Chapter 35) or the Income Tax (Development of Mineral Resources) (Encouragement) Order (O 2 of Chapter 35), a company has received an investment allowance or an initial allowance in respect of capital expenditure incurred by the company before its first basis period, no initial allowance shall be made under this Schedule in respect of the residue of such expenditure, nor shall any initial allowance be made under this Schedule in respect of such expenditure incurred before 1st January 1962 in so far as it was incurred on the construction of offices.

Capital expenditure in hands of second owner

3. (1) For the purposes of this Schedule, where an asset in respect of which the first owner has incurred qualifying expenditure is disposed of to a second owner without being sold or where the terms of its disposal are subject to control (as defined in paragraph 14(3)), and where such asset in the hands of the second owner is or will be in use for the purposes of petroleum operations carried on by the second owner, the residue of such expenditure (ascertained in accordance with the provisions of sub-paragraph (2)) is deemed to be qualifying expenditure incurred by the second owner on the day on which the second owner took possession of the asset, or on the day when such asset is in such use, whichever is later.

SCHEDULE — *(continued)*

(2) For the purposes of this paragraph, the residue of qualifying expenditure shall be taken to be the total qualifying expenditure incurred by the first owner in respect of an asset less the initial allowance if any, and any annual allowances made to the first owner in respect thereof under this Schedule or the Income Tax Act (Chapter 35), or the Income Tax (Development of Mineral Resources) (Encouragement) Order (O 2 of Chapter 35), and as reduced by the provisions of paragraph 3(4) of Schedule 3 to the Income Tax Act (Chapter 35).

Provisions relating to qualifying exploration expenditure

4. (1) For the purposes of this Schedule where —

(a) (i) qualifying exploration expenditure has been incurred on the purchase of information relating to the existence and extent of petroleum deposits or on searching for or on discovering and testing such deposits or winning access thereto and such expenditure has been incurred for the purposes of petroleum operations carried on by the company incurring the expenditure during a basis period of the company; or

(ii) expenditure has been incurred before its first basis period and such expenditure would have been treated as such qualifying exploration expenditure (ascertained without the qualification contained in the proviso in the definition of qualifying expenditure) if it had been incurred in that first basis period; and

(b) such expenditure has not brought into existence an asset, then such expenditure (ascertained in the case of sub-paragraph (1)*(a)*(ii) without such qualification) is deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purposes of such petroleum operations.

(2) For the purposes of this Schedule, an asset in respect of which qualifying exploration expenditure has been incurred by any company for the purposes of petroleum operations carried on by it and which has not been disposed of, is deemed not to cease to be used for the purposes of such operations so long as such company continues to carry on such operations.

(3) Notwithstanding anything contained in the definition of qualifying expenditure in paragraph 1, so much of any qualifying exploration expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information shall be left out of account for the purposes of this Schedule.

SCHEDULE — *(continued)*

Owner of buildings etc.

5. For the purposes of this Schedule, where an asset consists of a building, structure or works, the holder of the relevant interest therein shall be regarded as the owner.

Sale of buildings etc.

6. Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the company which buys that interest is deemed to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction, whichever is the less.

Initial allowances

7. (1) Subject to the provisions of this Schedule, where, in its basis period for any year of assessment, a company owning any asset has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, there shall be made to that company for that year of assessment an allowance (in this Schedule called "initial allowance") at the appropriate rate *per cent* hereinafter mentioned.

(2) The rate shall be in the case of —

(a) qualifying plant expenditure on —

(i) secondary recovery 40%

(ii) marine platforms and production facilities and floating craft 40%

(b) other qualifying plant expenditure 20%

(c) qualifying building expenditure 20%

(d) qualifying productive drilling expenditure insofar as it consists of tangible drilling costs incurred in connection with wells —

(i) at sea 40%

(ii) on land 20%

SCHEDULE — *(continued)*

Provided that the rates of initial allowances other than those prescribed by sub-subparagraphs *(a)* and *(d)* shall be increased by 25 *per cent* thereof in the case of assets used in, on or under the sea.

Annual allowances

8. (1) Subject to the provisions of this Schedule, where in its basis period for any year of assessment, a company owning any asset has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, whether or not an initial allowance may be made to it in respect of that qualifying expenditure, there shall be made to that company for each year of assessment in its basis period for which that asset was used for the purposes of such operations, an allowance (in this Schedule called "annual allowance") at the appropriate rate *per cent* hereinafter mentioned, of the qualifying expenditure.

(2) The rate shall be, in the case of —

(i)	qualifying plant expenditure incurred after 1st January 1962 in respect of secondary recovery	20%
(ii)	qualifying plant expenditure on marine platforms and production facilities and floating craft	20%
(iii)	other qualifying plant expenditure	20%
(iv)	qualifying building expenditure	5%
(v)	qualifying productive drilling expenditure consisting of tangible drilling costs	20%

Provided that the rates of annual allowances other than those prescribed by clauses (i), (ii) and (v) shall be increased by 25 *per cent* thereof in the case of assets used in, on or under the sea.

(3) *(a)* Subject to the provisions of sub-subparagraph *(c)*, where in its basis period for any year of assessment a company has incurred qualifying exploration expenditure, qualifying productive drilling expenditure consisting of intangible drilling costs or qualifying unproductive drilling expenditure, there shall be made to that company for that year an allowance of an amount equal to —

(i) 100 *per cent* of the aggregate of such expenditure; or

(ii) the chargeable profits of the company for that year computed before any allowances are made under this Schedule,

whichever shall be the less.

SCHEDULE — *(continued)*

(b) In respect of any residue of the expenditure for which an allowance shall not have been made under the preceding sub-paragraph, there shall be made to the company for subsequent years of assessment an allowance at the rate specified in sub-subparagraph *(d)*.

(c) In respect of any qualifying exploration expenditure deemed under paragraph 2 to have been incurred on 1st January 1962, the provisions of sub-subparagraph *(a)* do not apply but an annual allowance shall be made to the company in respect of the expenditure for the year of assessment 1963 and subsequent years of assessment at the rate specified in the next following sub-subparagraph.

(d) (i) The rate shall be the amount which results from applying to the residue of the expenditure the fraction of which the numerator represents the output resulting from the petroleum operations of the company in the basis period for the year of assessment in question and the denominator represents the sum of that output and the total potential future output resulting from the operations, estimated as at the end of that basis period, or the fraction one-eighth, whichever is the greater.

(ii) When a company ceases to carry on petroleum operations, it may elect that the annual allowances, if any, for the year of assessment in which that event occurs and each of the 5 previous years of assessment shall be computed as if the reference in the last preceding subsection to the potential future output estimated as at the end of the basis period were a reference to the actual output between the end of the basis period and the happening of the event, and the allowances shall be computed accordingly, and, notwithstanding anything in this Act limiting the time for the making of assessments or the allowance of claims for repayment, all such repayments and additional assessment shall be made as necessary to enable effect to be given to this sub-paragraph:

Provided that no election may be made under this sub-paragraph by the first owner in respect of any asset which is the subject of an election under the provision of paragraph 14(3).

Restrictions on allowances

9. An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any year of assessment if at the end of its basis period for that year of assessment it was the owner of that asset and the asset was in use for the purposes of the petroleum operations carried on by it; and the aggregate amount of the allowances to be made under this Schedule shall in no case exceed the amount of the qualifying expenditure incurred by the company.

SCHEDULE — *(continued)*

Balancing allowances

10. Subject to the provisions of this Schedule, where in its basis period for any year of assessment a company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it disposes of that asset an allowance (in this Schedule called "balancing allowance") shall be made to that company for that year of assessment of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date.

Balancing charges

11. (1) Subject to the provisions of this Schedule, where in its basis period for any year of assessment, a company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset, a charge (in this Schedule called "balancing charge") shall be made on that company for that year of assessment of the excess of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date and the amount of such balancing charge shall be treated for the purpose of section 8 as income incidental to petroleum operations.

(2) Notwithstanding anything in sub-paragraph (1), in no case shall the amount of a balancing charge exceed the amount of the annual and initial allowances, if any, made under this Schedule or the Income Tax Act (Chapter 35) or the Income Tax (Development of Mineral Resources) (Encouragement) Order (O 2 of Chapter 35) to the owner in respect of the asset in question.

Residue

12. For the purposes of this Schedule, except paragraphs 2 and 3, the residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, in respect of that asset, less the total of any annual or initial allowances made in respect of that asset, before that date, either under this Schedule or the Income Tax Act (Chapter 35) or the Income Tax (Development of Mineral Resources) (Encouragement) Order (O 2 of Chapter 35) and as reduced by the provisions of paragraph 3(4) of Schedule 3 to the Income Tax Act (Chapter 35).

Meaning of "disposed of"

13. Subject to any express provision to the contrary, for the purposes of this Schedule —

(a) a building, structure or works of a permanent nature is disposed of if any of the following events occur —

SCHEDULE — *(continued)*

(i) the relevant interest therein is sold or otherwise transferred;

(ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession;

(iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon; or

(iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

(b) plant, machinery or fixtures are disposed of if they are sold or the ownership thereof is otherwise transferred, or if they are discarded or cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

(c) assets in respect of which qualifying exploration expenditure is incurred are disposed of if they are sold or if the ownership is otherwise transferred or if they cease to be used for the purposes of the petroleum operations of the company incurring the expenditure either on such company ceasing to carry on such operations in the area in respect of which the qualifying exploration expenditure was incurred or on such company receiving insurance or compensation monies therefor; and qualifying exploration expenditure incurred in respect of such area together with another area or areas shall for this purpose be apportioned between such area and such other area or areas in such manner as may be just and reasonable.

Value of asset

14. (1) For the purposes of this Schedule, except paragraph 2, where an asset is disposed of by way of sale, its value at the date of its disposal shall, subject to the remaining provisions of this paragraph, be the net proceeds of the sale thereof or of the relevant interest therein.

(2) Where an asset is disposed of in such circumstances that insurance or compensation monies are received by the owners thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

SCHEDULE — *(continued)*

(3) Where an asset is disposed of without being sold or where the terms of its disposal are subject to control as hereinafter defined, its value shall be the amount which such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold. For the purposes of this Schedule, the terms of a disposal shall be regarded as subject to control where the owner of the asset prior to disposal and the person taking possession of the asset after such disposal are under common control:

Provided that where the terms of a disposal are subject to control and where the subsequent ownership and use of the asset are such that its value will be regarded as qualifying expenditure, the first owner and the second owner may by notice in writing to the Collector elect that the foregoing provisions of this sub-paragraph shall not have effect and in such a case the following apply —

(a) the value of the asset at the date of its disposal shall be the residue (ascertained in accordance with the provisions of paragraph 12) of qualifying expenditure in respect of that asset at that date; and

(b) notwithstanding the provisions of paragraph 11, such balancing charge, if any, shall be made on the second owner on any event occurring after the date of the sale as would have been made on the first owner if the first owner had continued to own the asset and had been given all such allowances as were given to the second owner.

Apportionment

15. (1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for, that asset, as the case may be. For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain are deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchase or disposals of those assets.

(2) The provisions of sub-paragraph (1) apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

SCHEDULE — *(continued)*

Part of asset

16. Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of an asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Collector, be just and reasonable.

Asset used or expenditure incurred partly for purpose of petroleum operations

17. (1) The following provisions of this paragraph apply where either or both of the following conditions apply with respect to any asset —

(a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of petroleum operations carried on by him and partly for other purposes;

(b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of petroleum operations carried on by such owner and partly for other purposes.

(2) Any allowances and any balancing charges which would be made if both such expenditure were incurred wholly and exclusively for the purposes of such petroleum operations and such asset were used wholly and exclusively for the purposes of such operations shall be completed in accordance with the provisions of this Schedule.

(3) So much of the allowances and charges computed in accordance with the provisions of sub-paragraph (2) shall be made as in the opinion of the Collector is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.