

No. S 55

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

INCOME TAX ACT (AMENDMENT) (NO. 3) ORDER, 2017

ARRANGEMENT OF SECTIONS

Section

1. Citation
 2. Amendment of section 6A of Chapter 35
 3. Amendment of section 41
 4. Amendment of section 55B
 5. Insertion of new sections 55D and 55E
 6. Amendment of section 86E
 7. Substitution of Part XIVB
 8. Further amendment of Act
 9. Savings provision
-

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

INCOME TAX ACT (AMENDMENT) (NO. 3) ORDER, 2017

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

Citation

1. This Order may be cited as the Income Tax Act (Amendment) (No. 3) Order, 2017.

Amendment of section 6A of Chapter 35

2. Section 6A of the Income Tax Act, in this Order referred to as the Act, is amended –

(a) in subsection (1), in paragraph *(a)*, by inserting “, and the provision of any information to the Collector under section 55B(3) or 86L(1)” immediately after “document”;

(b) in subsection (3), by inserting “, or to provide any information under section 86L(1),” immediately after “document”;

(c) in subsection (4), by inserting “, or provide any information to the Collector,” immediately after “document”;

(d) in subsection (5) –

- (i) by inserting “, or any information is provided,” immediately after “submitted” in the second line;
- (ii) in paragraph *(a)*, by deleting “or submitted” and by substituting “, submitted or provided” therefor;

(e) in subsection (6) –

- (i) by inserting “, or any information is provided,” immediately after “submitted” in the second line;
- (ii) by deleting paragraph *(a)* and by substituting the following new paragraph therefor –

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

(iii) in paragraph (b), by inserting “or provide the information,” immediately before “the” in the second line;

(f) in subsection (8) —

(i) in paragraph (a), by deleting “or document that was filed or submitted” and by substituting “, document or information that was filed, submitted or provided” therefor;

(ii) in sub-paragraph (i), by inserting “, provided” immediately after “submitted” in the second line;

(g) in subsection (9) —

(i) in paragraph (a), by deleting “or document that was filed or submitted” and by substituting “, document or information that was filed, submitted or provided” therefor;

(ii) by deleting “or document was filed or submitted” from the third last line and by substituting “, document or information was filed, submitted or provided” therefor;

(h) in subsection (10), in paragraph (a) —

(i) by deleting sub-paragraph (i) and by substituting the following new sub-paragraph therefor —

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

(ii) in sub-paragraph (ii), by inserting “, information” immediately after “document” in the third line;

(i) in subsection (11), by inserting “, information” immediately after “document” in the second line;

(j) in subsection (13), in paragraph (b), by deleting “or document that is filed or submitted” and by substituting “, document or information that is filed, submitted or provided” therefor.

Amendment of section 41

3. Section 41 of the Act is amended —

(a) by deleting the section heading and by substituting “Arrangements in relation to tax and other matters” therefor;

(b) in subsection (1), by deleting paragraph *(a)* and by substituting the following new paragraph therefor —

“*(a)* arrangements specified in the order have been made with —

(i) the government of any country or territory;

(ii) the governments of two or more countries or territories,

outside Brunei Darussalam in relation to tax under this Act and any tax of a similar character imposed by the laws of that country or territory; and”;

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

“(1A) Any arrangement under subsection (1)*(a)* includes a multilateral treaty to which Brunei Darussalam is a Party, the purposes of which include relief from double taxation and the exchange of information (whether on request by an authority of a country or territory to the arrangement, or an authority of a Party to the treaty, or otherwise).”.

Amendment of section 55B

4. Section 55B of the Act is amended, in subsection (3) —

(a) by inserting “by notice” immediately before “require” in the first line;

(b) by deleting “or in writing” from the first two lines and by substituting “, in writing or through the electronic service” therefor.

Insertion of new sections 55D and 55E

5. The Act is amended by inserting the following two new sections immediately after section 55C —

“Section 55B notice applies notwithstanding duty of secrecy under relevant laws

55D. (1) This section applies where —

(a) the Collector requires any information for the administration of this Act, other than for an investigation or a prosecution for an offence alleged or suspected to have been committed against this Act;

(b) the information is protected from unauthorised disclosure under any of the following laws (in this section referred to as the relevant laws) —

- (i) section 58 of the Banking Order, 2006 (S 45/2006), including any regulations made for the purposes of subsection (10) of that section;
- (ii) section 58 of the Islamic Banking Order, 2008 (S 96/2008), including any regulations made for the purposes of subsection (10) of that section;
- (iii) section 18 of the International Banking Order, 2000 (S 53/2000);
- (iv) section 35 of the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000); and

(c) the Collector issues a notice under section 55B(3) to a person to provide that information.

(2) Notwithstanding anything in section 55B(2), a person issued with a notice referred to in subsection (1)(c) is not excused from providing the information by reason only that the person is under a statutory obligation to observe secrecy under a relevant law, and that notice shall have effect notwithstanding the relevant law.

(3) A person who in good faith complies with a notice referred to in subsection (1)(c) shall not be treated as being in breach of the relevant law.

(4) No action for a breach of the relevant law shall lie against the person referred to in subsection (3) —

(a) for producing any document or providing any information if he had done so in good faith in compliance with a notice referred to in subsection (1)(c); or

(b) for doing or omitting to do any act if he had done or omitted to do the act in good faith and as a result of complying with such a notice.

Section 55B notice may be subject to confidentiality duty

55E. (1) Where the Collector issues a notice to any person under section 55B(3) and states that the notice must be kept confidential, the person (including an officer, employee or agent of the person) shall not disclose any information relating to the notice to any other person.

(2) Subsection (1) does not apply to the disclosure of any information relating to the notice to an advocate and solicitor for the purpose of seeking legal advice on the notice, if (and only if) the person who discloses the information informs the advocate and solicitor of the Collector's requirement that the notice be kept confidential.

(3) The advocate and solicitor to whom information is disclosed in accordance with subsection (2) shall be subject to subsection (1) as if he is the person to whom the notice under subsection (1) was issued.

(4) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in default of payment, to imprisonment for a term not exceeding 6 months.

(5) The Collector may compound the offence under subsection (4).

(6) A person who in good faith complies with subsection (1) shall not be treated as being in breach of any duty to disclose the information to any person, whether imposed by written law, rule of law, any contract or any rule of professional conduct; and no criminal or civil action for a breach of such duty shall lie against the first-mentioned person.”.

Amendment of section 86E

6. Section 86E of the Act is amended by repealing subsection (2) and by substituting the following new subsection therefor —

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

(a) section 58 of the Banking Order, 2006 (S 45/2006), including any regulations made for the purposes of subsection (10) of that section;

(b) section 58 of the Islamic Banking Order, 2008 (S 96/2008), including any regulations made for the purposes of subsection (10) of that section;

(c) section 18 of the International Banking Order, 2000 (S 53/2000); or

(d) section 35 of the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000).”.

Substitution of Part XIVB

7. Part XIVB of the Act is repealed and the following new Part is substituted therefor —

“PART XIVB

INTERNATIONAL AGREEMENTS TO IMPROVE TAX COMPLIANCE

Interpretation of this Part

86I. In this Part —

“competent authority agreement” means a bilateral or multilateral agreement to improve international tax compliance based on the standard for automatic exchange of financial account information in tax matters developed by the Organisation for Economic Co-operation and Development;

“international tax compliance agreement” means an agreement or arrangement that is declared by the Minister, by an order under section 86K, as an international tax compliance agreement.

Purpose of this Part

86J. The purpose of this Part is to implement Brunei Darussalam’s obligations under an international tax compliance agreement.

International tax compliance agreements

86K. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order declare any of the following as an international tax compliance agreement for the purposes of this Part —

(a) the agreement reached between the Government and the government of any other country or territory to facilitate compliance by financial institutions and other persons in Brunei Darussalam with the Standard for Automatic Exchange of Financial Account Information in Tax Matters issued by the Organisation for Economic Co-operation and Development and as amended from time to time;

(b) a competent authority agreement between the Government and —

(i) the government of another country or territory; or

- (ii) the governments of two or more countries or territories;
- (c) any agreement modifying or supplementing an agreement referred to in paragraph (a) or (b);
- (d) any other agreement or arrangement between the Government and —
 - (i) the government of another country or territory; or
 - (ii) the governments of two or more countries or territories,

which makes provision corresponding, or substantially similar, to that made by an agreement referred to in paragraph (a), (b) or (c).

(2) An order under subsection (1) may only take effect on or after the date on which the agreement or arrangement enters into force for Brunei Darussalam.

Provision of information to Collector

86L. (1) Subject to subsection (6), a person falling within any description of persons prescribed by regulations (in this section referred to as a prescribed person) shall provide the Collector, or such other person as may be authorised by the Collector, with information of a description prescribed by those regulations.

(2) The information under subsection (1) shall be provided —

(a) at such times and frequency as may be prescribed by the regulations or as the Collector may in any particular case allow;

(b) in such form and manner as may be prescribed by the regulations or as the Collector may in any particular case allow; and

(c) using the electronic service, except that the Collector may in any particular case or class of cases permit the information to be given in any other manner.

(3) A prescribed person is not excused from providing the information by reason only that the person is under a duty not to collect, use or disclose that information, whether imposed by written law, rule of law, any contract or any rule of professional conduct, in respect of that information.

(4) A prescribed person who in good faith and with reasonable care does any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any duty mentioned in subsection (2).

(5) No civil or criminal action for a breach of any such duty, other than a criminal action for an offence under section 86M(3), shall lie against the prescribed person —

(a) for producing any document or providing any information if he had done so in good faith and with reasonable care in compliance with subsection (1); or

(b) for doing or omitting to do any act if he had done or omitted to do the act in good faith and with reasonable care and for the purpose of, or as a result of, complying with subsection (1).

(6) Notwithstanding subsection (3), subsection (1) does not apply to any information subject to legal privilege.

Offences

86M. (1) Any person who, without reasonable excuse, fails or neglects to comply with section 86L(1), or any regulation made under section 86Q the contravention of which is an offence, is guilty of an offence and liable on conviction —

(a) to a fine not exceeding \$1,000 and, in default of payment, to imprisonment for a term not exceeding 6 months; and

(b) in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(2) The Collector may compound any offence under subsection (1).

(3) Any person who, in purported compliance with section 86L(1), produces to the Collector any document which contains any information, or provides to the Collector any information, known to the person to be false or misleading in a material particular —

(a) without indicating to the Collector that the information is false or misleading and the part that is false or misleading; and

(b) without providing correct information to the Collector if the person is in possession of, or can reasonably acquire, the correct information,

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

(4) Where —

(a) a person (*X*), in order to comply with a regulation mentioned in section 86Q(2)(c), requests another person (*Y*) to provide any information contemplated by an agreement mentioned in section 86Q(1) to establish *Y*'s residence for a tax purpose contemplated by that agreement; and

(b) *Y*, in purported compliance with that request, provides any such information to *X* which *Y* knows is false or misleading in any material particular,

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

(5) Where —

(a) *X*, in order to comply with a regulation mentioned in section 86Q(2)(c), requests *Y* to provide any information contemplated by an agreement mentioned in section 86Q(1) to establish another person's (*Z*) residence for a tax purpose contemplated by that agreement; and

(b) *Z* provides any such information, whether directly or indirectly, to *X* or *Y* which *Z* knows is false or misleading in any material particular,

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

(6) In subsection (3), references to the Collector include any other person authorised by the Collector.

Anti-avoidance

86N. (1) If —

(a) a person enters into any arrangement or takes any action; and

(b) in the Collector's view, the main purpose, or one of the main purposes of the person in entering into the arrangements or in taking the action is to avoid any obligation under, or to circumvent the application of section 86L or any regulation made under section 86Q,

then the Collector may in writing direct a relevant person that section 86L or the regulation has effect in relation to the relevant person as if the arrangements had not been entered into or the action had not been taken, and section 86L or the regulation shall then apply accordingly.

(2) In subsection (1), "relevant person" means a person who is subject to section 86L or the regulation, and whom the Collector considers should receive the direction.

Power of Collector to obtain information

86O. (1) Sections 55 to 55D shall have effect for the purpose of enabling the Collector to obtain any information for the purpose of —

(a) complying with any provision of an international tax compliance agreement;

(b) enabling Brunei Darussalam to carry out its obligations under any provision of such agreement; or

(c) determining whether a person has complied with any regulation made under section 86Q.

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

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

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

(c) references in section 55B to proceedings for an offence against this Act, proceedings for the recovery of tax or penalty and proceedings by way of an appeal against an assessment shall be read as a reference to proceedings for an offence against this Part;

(d) the Collector may authorise any person appointed or authorised under section 3 (including an officer of the Autoriti Monetari Brunei Darussalam) to perform or assist in the performance of any duty of the Collector under section 55, 55A or 55B; and

(e) section 55E has effect in relation to a notice issued under section 55B for a purpose mentioned in subsection (1).

Information may be used for administration of Act

86P. For the avoidance of doubt, any information provided or obtained under section 86L or 86O may be used for any purpose connected with the administration of this Act, including the investigation or a prosecution for an offence alleged or suspected to have been committed under this Act.

Regulations to implement international tax compliance agreements etc.

86Q. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for, or in connection with, giving effect to or enabling effect to be given to —

(a) an international tax compliance agreement; or

(b) any competent authority agreement which may be declared as an international tax compliance agreement under section 86K(1).

(2) Without prejudice to the generality of subsection (1), regulations under subsection (1) may —

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

(b) for the purposes of section 86L, prescribe different descriptions of information, forms and manners of provision of the information, and times and frequencies for the provision of the information, in relation to different international tax compliance agreements, different persons or under different circumstances;

(c) impose on a person —

(i) audit requirements for the purpose of determining the extent of compliance by the person with the regulations made under this section, including requiring the person's internal auditor or appointing another person to carry out an audit, and report the results of the audit to the Collector;

(ii) due diligence requirements;

(iii) registration and other requirements; and

(iv) a requirement that the person inform the Collector if the person wishes to authorise another person to perform any requirement under section 86L(1) or sub-paragraphs (i), (ii) and (iii) on behalf of the person,

being requirements that —

(A) are required or permitted to be imposed under an international tax compliance agreement on any person to whom the agreement applies; or

(B) may facilitate the implementation of any future competent authority agreement which may be declared as an international tax compliance agreement under section 86K(1);

(d) provide that a contravention of any specified provision is an offence;

(e) enable the Collector to appoint another person to carry out an audit for the purpose of determining the extent of compliance by a person with the regulations made under this section; and

(f) contain incidental, transitional or savings provisions.

(3) Regulations under subsection (1) may give force of law to any provision of an international tax compliance agreement, whether with or without any modification.

Duty to provide information under regulations prevails over duty of secrecy etc.

86R. (1) This section applies where a regulation made under section 86Q imposes a duty on a person (A) to —

(a) provide any information to another person;

(b) require A's internal auditor or appoint another person to carry out an audit for the purpose of determining the extent of compliance by A with the regulations;

(c) carry out any due diligence requirements; or

(d) provide any information to —

(i) A's internal auditor or the appointed person mentioned in paragraph (b); or

(ii) a person appointed by the Collector to carry out an audit.

(2) A is not excused from complying with a duty mentioned in subsection (1) by reason only that A is under a duty not to collect, use or disclose that information, whether imposed by written law, rule of law, any contract or any rule of professional conduct.

(3) A who in good faith and with reasonable care does any act for the purpose of complying with the regulation mentioned in subsection (1) is not to be treated as being in breach of any duty mentioned in subsection (2).

(4) No civil or criminal action for a breach of any such duty, other than criminal action for an offence under section 86M (if applicable), lies against A —

(a) for producing any document or providing any information if A does so in good faith and with reasonable care in compliance with the regulation mentioned in subsection (1); or

(b) for doing or omitting to do any act if A does or omits to do the act in good faith and with reasonable care and for the purpose of or as a result of complying with the regulation mentioned in subsection (1).

(5) Notwithstanding subsection (2), subsection (1) does not apply to any information subject to legal privilege.”

Further amendment of Act

8. The Act is amended by deleting “His Majesty the Sultan and Yang Di-Pertuan in Council” where they appear and by substituting “the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan” therefor.

Savings provision

9. Notwithstanding the substitution of Part XIVB of the Act by section 6, Part XIVB of the Act in force immediately before the date of commencement of that section shall continue to apply to any case relating to the administration of the Act, or a request made under section 86D, in respect of which an application to the High Court under that Part has been made before that date, and is pending on that date.

Made this 4th. day of Syawal, 1438 Hijriah corresponding to the 29th. day of June, 2017 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM