

**INCOME TAX ACT
(CHAPTER 35)**

**INCOME TAX (DEVELOPMENT OF MINERAL
RESOURCES) (ENCOURAGEMENT) ORDER**

**G.N. S 46/55
S 43/58**

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(1st December 2003)

SUBSIDIARY LEGISLATION

**INCOME TAX (DEVELOPMENT OF MINERAL RESOURCES)
(ENCOURAGEMENT) ORDER**

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SUBSIDIARY LEGISLATION

Order under section 86

INCOME TAX (DEVELOPMENT OF MINERAL RESOURCES)
(ENCOURAGEMENT) ORDER

Commencement: 1st October 1954

Citation.

1. This Order may be cited as the Income Tax (Development of Mineral Resources) Order.

Application and relation back.

2. (1) This Order shall apply to persons and to the income of persons carrying on in the State the working of a mine, oil well or other source of mineral deposits of a wasting nature.
(2) This Order shall relate back to the 1st of October 1954, and no claim for any allowance allowed under the provisions hereof shall be made in respect of any expenditure incurred before such date.

Interpretation.

3. In this Order —

“Act” means the Income Tax Act (Chapter 35);

“encouraged undertaking” means the undertaking of working a mine, oil well or other source of mineral deposit of a wasting nature;

“new” in relation to machinery and plant means unused and not secondhand.

“source” means source of mineral deposits of a wasting nature;

Annual allowance under section 13(2)(a).

4. Notwithstanding the provisions of subsection (2) of section 2 where on or after the 1st of October 1954, a person carrying on an encouraged undertaking is entitled to an annual allowance under paragraph (a) of subsection (2) of section 13 of the Act in respect of any building or structure in use for the purpose referred to in paragraph (g) of subsection (1) of section 15 thereof and provided by such person for the welfare of workers employed in such undertaking the allowance shall be equal to one-tenth instead of one-fiftieth:

Provided that the aggregate of the annual allowances granted before and after the first day of October 1954, shall in no case exceed 100 per cent of the expenditure in respect of which the allowances are granted.

[Subsidiary]

Investment allowance under section 13.

5. Where a person carrying on an encouraged undertaking incurs capital expenditure on new assets an investment allowance equal to one-tenth of the expenditure shall be made instead of an initial allowance under section 13 of the Act in respect of expenditure on the construction of a building or structure which is to be an industrial building or structure, and any provision of the Act applicable to initial allowances under section 13 thereof shall apply instead to investment allowances under this section, except that the amount of an investment allowance shall not be taken into account under subsection (4) of section 14 of the Act in ascertaining the maximum amount on which a balancing charge may be made, or under paragraph (b) of subsection (3) of section 15 of the Act in ascertaining the residue of expenditure.

Investment allowances under section 16.

6. Where a person carrying on an encouraged undertaking incurs capital expenditure on new assets an investment allowance equal to one fifth of the expenditure shall be made instead of an initial allowance under section 16 of the Act in respect of expenditure on the provision of new machinery or plant and any provision of the Act applicable to initial allowances under sections 16 and 17 thereof so far as it is applicable in relation to allowances for new assets, shall apply also to investment allowances under this section, except that the references to initial allowances in section 16(2) and in section 17(4) of the Act shall not apply:

Provided that no investment allowance shall be made under this section in respect of expenditure incurred on the provision of road vehicles (unless they are of a type not commonly used as private vehicles and unsuitable to be so used or are provided wholly or mainly for hire to or for the carriage of members of the public in the ordinary course of a trade).

Investment allowances under Third Schedule.

7. An investment allowance shall be made instead of an initial allowance under the Third Schedule of the Act, in respect of expenditure to which that Schedule applies on the construction of works, and any provision of the said Act applicable to initial allowances under that Schedule shall apply also to investment allowances under this section, except that —

(a) the amount of an investment allowance shall be one-fifth of the expenditure in respect of which it is made; and

(b) investment allowances shall not be taken into account in paragraphs 3 or 4 of that Schedule in ascertaining the residue of the expenditure.

Necessity for Certificate in making claim for investment allowance.

8. A claim for an investment allowance shall have annexed to it a certificate stating that the expenditure was incurred on new assets and giving such particulars of the purposes for

which they are to be used as show that an investment allowance falls to be made; and the certificate shall be signed by the claimant and shall be deemed to form part of the claim.

Withholding and withdrawal of allowance.

9. (1) If, in the case of any expenditure referred to in the foregoing sections any such event as is mentioned in subsection (2) occurs within the relevant period, no investment allowance shall be made in respect of the expenditure or, if an allowance has been made before the occurrence of the event, it shall be withdrawn.

(2) The events referred to in the foregoing subsection (1) are —

(a) any sale of the property representing the expenditure made by the person carrying on an encouraged undertaking or his associate where the buyer is a person not resident in the State and not buying the property for a chargeable purpose or for scrap;

(b) any change of residence of such person or his associate whereby the purpose to which the property representing the expenditure is for the time being appropriated ceases to be a chargeable purpose;

(c) any appropriation of the property representing the expenditure made by such person or his associate to a purpose other than a qualifying purpose;

(d) any sale or transfer of the property representing the expenditure made by such person or his associate otherwise than to a person acquiring the property for a qualifying purpose where it appears with respect to the sale or transfer that it is one in contemplation of which the expenditure was incurred;

(e) any sale, transfer or other dealing with the property representing the expenditure by such person or his associate being a case where it appears either —

(i) that the expenditure was incurred in contemplation of the property being so dealt with or;

(ii) that the sole or main benefit which accrued from the incurring of the expenditure and the property being so dealt with was or derived from the investment and other allowances in respect of the property;

(f) where, in the case of a road vehicle the qualifying purpose requires it to be used wholly or mainly for hire to or the carriage of members of the public, any sale or transfer of the vehicle not made to a person acquiring it for a qualifying purpose or as scrap, and any appropriation of it to a purpose other than a qualifying purpose,

and not being a case where it is shown either that the purpose of obtaining tax allowances was not the sole or main purpose of incurring the expenditure or of the property being so dealt with, or that the incurring of the expenditure and the dealing with the property in such manner were *bona fide* business transactions and were not designed for the purpose of obtaining tax allowances;

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(3) The relevant period in relation to any such event as aforesaid shall be 3 years, except that in relation to a sale or transfer falling within paragraph (d), or a sale, transfer or other dealing falling within paragraph (e) of subsection (2) the relevant period shall be 5 years.

(4) Where an investment allowance in respect of any expenditure is withheld or withdrawn under this section otherwise than by reason of a sale or transfer such initial allowance (if any) as might have been made in respect of that expenditure but for this order shall be made.

Duty to keep Collector informed of sale and other matters whereby allowances may be withdrawn.

10. (1) Where an investment allowance has been made on any expenditure incurred and has not been withdrawn the person to whom such allowance has been made shall give notice to the Collector, if to his knowledge any of the following events occurs at any time before the expiration of 3 years beginning with the date when the expenditure was incurred, that is to say —

(a) the property in respect of which it is incurred is sold by him or his associate to a person not resident in Brunei Darussalam or the property being situated outside Brunei Darussalam is sold by him or his associate to any person;

(b) the property is appropriated by him or his associate to a purpose other than a qualifying purpose; or

(c) where the property is a road vehicle, there is any sale, transfer or appropriation of it which falls within paragraph (f) of subsection (2) of section 9.

(2) Any notice of a sale or transfer given under subsection (1) shall state the name and address of the person to whom the sale or transfer is made.

(3) Every person carrying on an encouraged undertaking shall give to the Collector all such information as he may require, and as such person has or can reasonably obtain, about any sale or transfer of the property representing the expenditure or about any other dealing with the property.

(4) Any person who without reasonable cause fails to comply with any of the provisions of this section shall be liable to a penalty equal to \$200 plus 3 times the amount of the investment allowance made in respect of the expenditure in question.

Additional assessment and adjustment upon withdrawal of investment allowance.

11. All such additional assessment and adjustments of assessment shall be made as may be necessary for or in consequence of the withdrawal of an investment allowance or the substitution therefor of an initial allowance under this paragraph, and may be so made at any time.

Interpretation.

12. For the purpose of sections 9, 10 and 11 —

(a) “chargeable purpose” means the purpose of putting the property to a use such that profits or income accrue or are intended to accrue therefrom and will be chargeable to tax;

(b) “qualifying purpose” means the purpose of putting the property to such a use as aforesaid, not being a use such that, if the property was or had been intended for that use when the expenditure was incurred no investment allowance should have been made in respect of the expenditure;

(c) an act shall be deemed to be done by an associate of a person if it is done by a person who is at the time of the act under the control of the person first-mentioned or if it is done by a person to whom the property was transferred by such first-mentioned person or his associate and it appears that the transfer was made in contemplation of the act being done.

Aborative exploration allowance.

13. (1) Subject to the provisions of this section where the person carrying on an encouraged undertaking incurs expenditure in connection with that undertaking on searching for, or on discovering and testing, the mineral deposits of any source or winning access thereto but gives up the search, exploration or inquiry upon which the expenditure is incurred without having carried on any undertaking which consists of or includes the working of the source in question, then in computing for the purposes of income tax the profits or gains or losses of the undertaking in connection with which the expenditure is incurred there shall be allowed a deduction of an amount equal to the amount of that expenditure as if it were expenses incurred for the purpose of the undertaking at the time when he gives up the search, exploration or inquiry.

(2) This shall not apply —

(a) to expenditure incurred before the 1st day of October 1954; or

(b) to expenditure incurred which is, apart from this section, allowed to be deducted in computing, for the purpose of income tax, the profits or gains of that undertaking; or

(c) to any other expenditure incurred by a person in connection with a source, unless it would have been expenditure to which the Third Schedule to the Act applied if he had begun working the source in the course of his undertaking at the time when he gives up the search, exploration or inquiry.

(3) The foregoing provisions of this section shall not affect the right to any deduction or allowance under any other provision of the Act but a person shall not be entitled to a deduction or allowance in respect of the same expenditure both under this section and under some other provision of the Act.

Explanatory Note

(1) The Order is re-published because the version of the Order published at page 240 of the Revised Edition of the Subsidiary Legislation of Brunei Darussalam 1956, erroneously, omitted certain provisions.

(2) The citation of the Order, however, remains the same as that given it, in the Revised Edition, by the Commissioner in exercise of the power conferred on him by section 4(b) of the Revised Edition of the Subsidiary Legislation Enactment, 1956 (Enactment No. 22 of 1956).