

No. S 57

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

INCOME TAX ACT (AMENDMENT) (NO. 2) ORDER, 2016

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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 and commencement

1. This Order may be cited as the Income Tax Act (Amendment) (No. 2) Order, 2016 and shall commence on 1st October 2016.

Amendment of section 65 of Chapter 35

2. Section 65 of the Income Tax Act, in this Order referred to as the Act, is amended, in the proviso to subsection (4), by inserting “review or” immediately before “appeal” in the penultimate line.

Amendment of Part XII

3. Part XII of the Act is amended by deleting “APPEALS” from the heading and by substituting “REVIEWS AND APPEALS” therefor.

Insertion of new sections 66A, 66B and 66C

4. The Act is amended by inserting the following three new sections immediately before section 67 —

“Board of Review

66A. (1) For the purpose of hearing petitions for review in the manner hereinafter provided, there shall be a Board of Review (referred to in this Part as the Board) consisting of 6 members appointed from time to time by the Minister.

(2) The members of the Board shall hold office for such period as may be determined by the Minister and shall be eligible for re-appointment.

(3) The Minister may at any time remove any member of the Board from office without assigning any reason.

(4) A member of the Board may resign his office by notice in writing to the Minister.

(5) The Minister may appoint from amongst the members of the Board a Chairman of the Board as the Minister thinks fit.

(6) The meetings of the Board shall be presided by the Chairman of the Board.

(7) The Minister may appoint a secretary to the Board and such other officers and employees of the Board as may be necessary.

(8) All the powers, functions and duties of the Board may be exercised, discharged and performed by a committee of the Board consisting of not less than 3 members of the Board, at least one of whom shall be the Chairman of the Board.

(9) Any act, finding or decision of any such committee shall be deemed to be the act, finding or decision of the Board.

(10) The secretary shall summon such members of the Board as may be nominated by the Chairman of the Board to constitute a committee of the Board for the purposes of giving effect to the provisions of this Part, and it shall be the duty of such members to attend at the times and places specified in the summons.

(11) The meetings of a committee shall be presided by the Chairman of the Board.

(12) All matters coming before the Board or a committee of the Board at any sitting thereof shall be decided by a majority of votes of the members of the Board present, and, in the event of an equality of votes, the Chairman of the Board shall have a second or casting vote.

(13) The members of the Board shall be entitled to receive such remuneration and such allowances as the Minister may determine.

(14) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) prescribing the manner in which the petitions for review shall be made to the Board;

(b) prescribing the procedure to be adopted by the Board in hearing the petitions for review and the records to be kept by the Board;

(c) prescribing the places where and the times at which the petitions for review shall be heard by the Board;

(d) prescribing the fees to be paid in respect of any petition for review under this Part;

(e) prescribing a scale of costs in respect of the petitions for review to the Board; and

(f) generally for the better carrying out of the provisions of this Part.

Right of review

66B. (1) Any person who, being aggrieved by an assessment made on him, has failed to agree with the Collector in the manner provided in section 65 may apply to the Board by lodging with the secretary, within 30 days of the date of the service of the decision of the Collector in respect of his notice of objection, a petition for review in quadruplicate containing a statement of the grounds of the petition.

(2) Every petition for review shall contain —

(a) an address for service; and

(b) the reasons for such objection.

(3) On receipt of a petition for review, the secretary shall immediately forward one copy thereof to the Collector.

(4) The Chairman of the Board may, in his discretion and on such terms as he thinks fit, permit any person to proceed with the review notwithstanding that the petition for review was not lodged within the time limited therefor by this section, if it is shown to the satisfaction of the Chairman of the Board that the person was prevented from lodging the petition for review in due time owing to absence from Brunei Darussalam, sickness or other reasonable cause and that there has been no unreasonable delay on his part.

(5) Except with the consent of the Board and on such terms as the Board may determine, a petitioner may not at the hearing of his petition for review rely on any grounds of petition for review other than the grounds stated in his petition for review.

Hearing and disposal of petitions for review

66C. (1) On receipt of a petition for review, the secretary shall —

(a) immediately forward one copy thereof to the Collector;

(b) fix a time and place for the hearing of the petition for review;
and

(c) give 14 days' notice thereof both to the petitioner and to the Collector.

(2) The petitioner and the Collector shall attend, either in person or by an advocate and solicitor or accountant, at such times and places as may be

fixed for the hearing of the petition for review. The Collector may direct any person authorised by him under section 3(2) to attend on his behalf or represent him before the Board.

(3) If it is proved to the satisfaction of the Board that, owing to absence from Brunei Darussalam, sickness or other reasonable cause, any person is prevented from so attending, the Board may postpone the hearing of the petition for review for such reasonable time as it thinks necessary.

(4) The onus of proving that the assessment is excessive shall be on the petitioner.

(5) The Board shall have the following powers —

(a) to summon to attend at the hearing of a petition for review any person whom it may consider able to give evidence in respect of the petition for review, to examine such person as a witness either on oath or otherwise and to require such person to produce such books, papers or documents as the Board may think necessary for the purposes of the review;

(b) to allow any person so attending, any reasonable expenses necessarily incurred by him in so attending; such expenses shall form part of the costs of the review and, pending and subject to any order by the Board as to such costs, shall be paid by the petitioner or the Collector, as the Board may direct;

(c) all the powers of a Court of a Magistrate with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;

(d) subject to section 66B(5), to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence.

(6) Every person examined as a witness by or before the Board, whether on oath or otherwise, shall be legally bound to state the truth and to produce such books, papers or documents as the Board may require.

(7) The costs of a review shall be in the discretion of the Board and shall either be fixed by the Board or, on the order of the Board, in accordance with the scale of costs prescribed by regulations made under section 66A(14)(e).

(8) Where the Collector is awarded costs of a review, he shall be entitled to his full costs of the review, including a fee for any counsel appearing on his behalf in the petition for review, and the amount of such

costs shall be added to the tax charged, if any, and be recoverable as if it were tax imposed under this Act and payable by the petitioner.

(9) Notwithstanding anything in section 70, the Board may, on the application of the Collector made at any time after the filing of the petition for review, require the petitioner to furnish security, in such sum and within such time as may be specified, for payment of tax, and if security is not furnished in the sum and within the time specified, the tax assessed by the Collector shall become payable and recoverable immediately.

(10) The Board may, after hearing a petition for review, confirm, reduce, increase or annul the assessment or make such order thereon as it thinks fit.

(11) Where, under subsection (10), the Board does not reduce or annul the assessment, the Board may, if in its opinion the petition for review was vexatious or frivolous, order the petitioner to pay, as costs of the Board and in addition to any costs awarded to the Collector, a sum not exceeding \$250, which sum shall be added to the tax charged, if any, and be recoverable as if it were tax imposed under this Act and payable by him.

(12) Every member of the Board, when and so long as he is acting as such, shall be deemed to be a public servant within the meaning of the Penal Code (Chapter 22) and shall enjoy the same judicial immunity as is enjoyed by a judge.

(13) All proceedings in the petitions for review to the Board under this Act shall be deemed to be judicial proceedings within the meaning of the Penal Code (Chapter 22).

(14) Notice of the amount of tax payable under the assessment as determined by the Board shall be served by the Collector on the petitioner either personally, electronically or by registered post.”.

Substitution of section 67

5. Section 67 of the Act is repealed and the following new section is substituted therefor —

“Appeals to High Court

67. (1) Except as provided in this section, the decision of the Board shall be final.

(2) In any case in which the amount of tax payable as determined by the Board (excluding the amount of any costs awarded) exceeds \$3,000, the appellant or the Collector may appeal to the High Court from the decision of the Board on any question of law or of mixed law and fact.

(3) The appeal shall be filed within 30 days of the receipt of the decision of the Board:

Provided that, notwithstanding the lapse of such period of 30 days, the appellant may appeal against the assessment if he shows to the satisfaction of the High 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.

(4) The procedure governing such appeals to the High Court shall be the same as for appeals to the High Court in civil suits.

(5) Notwithstanding anything contained in section 70, if in any particular case the High Court, from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, the High 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.

(6) The High Court shall hear and determine any such appeal and may confirm, reduce, increase or annul the assessment determined by the Board and make such further or other order on such appeal, whether as to costs or otherwise, as the High Court may think fit.

(7) A notice of the amount of tax payable under the assessment as determined on appeal shall be served by the Collector on the taxpayer concerned as a party in the appeal either personally, electronically or by registered post.

(8) All appeals shall be heard in camera, unless the High Court shall, on the application of the taxpayer concerned as a party in the appeal, otherwise direct:

Provided that where, in the opinion of the Chief Justice, any appeal heard in camera should be reported, he may authorise the publication of the facts of the case, the arguments and the decision without disclosing the name of the taxpayer concerned.

(9) There shall be such further right of appeal from decisions of the High Court under this section as exists in the case of decisions made by that Court in the exercise of its original civil jurisdiction.”.

Insertion of new sections 67A and 67B

6. The Act is amended by inserting the following two new sections immediately after section 67 —

“Appeals to Court of Appeal

67A. (1) In any case in which the amount of tax payable as determined by the High Court (excluding the amount of any costs awarded) exceeds \$5,000, the appellant or the Collector may appeal to the Court of Appeal from the decision of the High Court on any question of law or of mixed law and fact.

(2) The procedure governing such appeals shall be the same as for appeals to the Court of Appeal from decisions of the High Court in civil suits.

Rules as to appeals

67B. The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules providing for —

(a) the method of tendering evidence before the High Court or Court of Appeal, as the case may be, on appeals;

(b) the conduct of such appeals; and

(c) generally for giving effect to the provisions of sections 67 and 67A.”.

Amendment of section 68

7. Section 68 of the Act is amended —

(a) in paragraph (a), by inserting “, petition for review” immediately after “objection” in the first line;

(b) in paragraph (c), by inserting “, review” immediately after “objection”;

(c) by inserting “review or” immediately before “appeal” in the seventh last line;

(d) by inserting “review or” immediately before “appeal” in the last line.

Amendment of section 70

8. Section 70 of the Act is amended, in subsection (1) —

(a) by inserting “, review” immediately after “objection” in the third line;

(b) by deleting “further” from the third last line.

Amendment of section 77

9. Section 77 of the Act is amended, in subsection (1) —

(a) in paragraph *(a)*, by inserting “, review” immediately after “objection” in the third line;

(b) in paragraph *(b)*, by deleting “36 or 37” from the second line and by substituting “37, 37A or 37B” therefor.

Made this 17th. day of Zulhijjah, 1437 Hijriah corresponding to the 19th. day of September, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM