

# **LAWS OF BRUNEI**

## **CHAPTER 35 INCOME TAX ACT**

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(Cap. 35 of 1951)**

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**LAWS OF BRUNEI  
REVISED EDITION 2003**

**CHAPTER 35  
INCOME TAX ACT**

**ARRANGEMENT OF SECTIONS**

**Section**

**PART I**

**PRELIMINARY**

1. Citation and extent.
2. Interpretation.

**PART II**

**ADMINISTRATION**

3. Collector and other officers.
4. Official secret.
5. Rules.
6. Service and signature of notices.
7. Free postage.

**PART III****IMPOSITION OF INCOME TAX**

8. Charge of income tax.
9. Taxable profits and gains.
10. Income exempted.

**PART IV****ASCERTAINMENT OF INCOME**

11. Deductions allowed.
  - 11A. Further deduction for expenses relating to approved trade fairs, exhibitions or trade missions or to maintenance of overseas trade office.
  - 11B. Further deduction for export market development expenditure and certain advertising expenses.
  - 11C. Expenditure on research and development.
  - 11D. Further deduction for expenditure on research and development project.
12. Deductions not allowed.
13. Initial and annual allowances. Industrial buildings and structure.
14. Balancing allowances and charges. Industrial buildings and structures.
15. Definitions.
16. Initial and annual allowances. Machinery or plant.
  - 16A. Writing-down allowances for approved know-how or patents.
17. Balancing allowances and charges in respect of machinery or plant.
18. Replacement of machinery or plant.
19. Mines, oil wells etc.

20. Carry forward of allowances.
21. Insurance companies.
22. Profits of non-resident shipowner and charterer.
23. Profits of non-resident's air transport and cable undertakings.
24. Income from certain dividends to include tax thereon.
25. Collector may disregard certain transaction and dispositions.

#### **PART V**

##### **ASCERTAINMENT OF STATUTORY INCOME**

26. Basis for computing statutory income.
27. Executors and beneficiaries.
28. Apportionment of income.
29. Partnership.

#### **PART VI**

##### **ASCERTAINMENT OF ASSESSABLE INCOME**

30. Assessable income from all sources.

#### **PART VII**

##### **ASCERTAINMENT OF CHARGEABLE INCOME AND PERSONAL RELIEFS**

31. Chargeable income.
32. Resident individual allowances.
33. *(Omitted)*.

**PART VIII****RATES OF TAX, RIGHTS OF DEDUCTION AND  
ALLOWANCES FOR TAX CHARGED***A. — Rates of Tax*

- 34. Rate of tax upon individuals.
- 35. Rate of tax upon companies.
- 35A. Liquefied Natural Gas.

*B. — Rights of Deductions of Tax*

- 36. Deduction of tax from dividends of companies.
- 37. Deductions of and accounting for tax on interest due under a charge, and loan interest.

*C. — Allowances for Tax Charged*

- 38. Tax deducted from dividends, interest paid under a charge, debenture and loan interest.

*D. — Relief in Case of Double Taxation*

- 39. *(Omitted)*.
- 40. Relief in respect of Commonwealth income tax.
- 41. Double taxation arrangements.
- 42. Tax credits.

**PART IX****PERSONS CHARGEABLE ETC.***A. — Husband and Wife*

43. Wife's income.

*B. — Trustees, Agents and Curators*

44. Chargeability of trustees etc.
45. Chargeability of agent of person residing out of Brunei Darussalam.
46. Acts to be done by trustees and certain others.
47. Managers of companies or bodies of persons.
48. Indemnification of representative.
49. Deceased persons.
50. Company wound up.
51. Joint trustees.

**PART X****RETURNS**

52. Notice of chargeability and returns.
53. Duty to give notice of chargeability.
54. Collector may call for further returns.
55. Power to call for returns, books.
- 55A. Power to call for statements of bank etc.
- 55B. Power of excess to building and document etc.
56. Returns to be deemed to be furnished by due authority.

- 57. Returns to be made by Government officers and employers.
- 58. Lists to be prepared by representative or agent.
- 59. Occupiers to furnish returns of rent payable.
- 60. Returns to be made by a partnership.

## **PART XI**

### **ASSESSMENTS**

- 61. Collector to make assessments.
- 62. Additional assessment.
- 63. List of persons assessed and notices of assessments.
- 64. Appointment of agents.
- 65. Service of notices of assessment.
- 66. Errors and defects in assessment and notice.

## **PART XII**

### **APPEALS**

- 67. Appeals against assessments.
- 68. Assessment to be final and conclusive.

## **PART XIII**

### **COLLECTION, RECOVERY AND REPAYMENT OF TAX**

- 69. *(Repealed)*.
- 70. Time within which payment is to be made.
- 71. Recovery of tax from persons leaving Brunei Darussalam.



72. Penalty for non-payment of tax; and enforcement of payment.
73. (*Repealed*).
74. Suit for tax by Collector and refund of port clearance.
- 74A. Statement of Collector sufficient.
75. Deduction of tax from emoluments and pensions.
76. Remission of tax.
77. Repayment of tax and deduction where tax paid or payable affected by double taxation relief.

#### PART XIV

#### OFFENCES AND PENALTIES

78. Offences and penalties.
79. Penalty for making incorrect return.
80. Penal provisions relating to fraud etc.
81. Penalties for offences by authorised and unauthorised persons.
82. Tax to be payable notwithstanding any proceedings for penalties.
83. Sanction for prosecution.
84. Jurisdiction of Courts.
85. Saving for criminal proceedings.
86. Concessions for special cases.

**PART XV**

**TRANSITIONAL PROVISIONS**

**87.** Transitional Provisions.

**FIRST SCHEDULE** — **EXTENT TO WHICH ACT  
APPLIES**

**SECOND SCHEDULE** — **CHARGEABLE INCOME  
RATE OF TAX**

**THIRD SCHEDULE** — **MINES, OIL WELLS ETC.**

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**INCOME TAX ACT**

**An Act to impose a tax upon income and to regulate the collection thereof**

*Commencement: 31st December 1949*

**PART I****PRELIMINARY****Citation and extent.**

1. (1) This Act may be cited as the Income Tax Act.
- (2) This Act shall come into force on the 31st day of December 1949, to the extent specified in the First Schedule to this Act.

**Interpretation.**

2. In this Act, unless the subject or context otherwise requires —

“Auditor” means the Auditor General;

“basis period” for any year of assessment means the period on the profits of which tax for that year falls to be assessed;

“body of persons” means any body politic, corporate or collegiate and any company, fraternity, fellowship, or society of persons whether corporate or not corporate;

“Collector” means the Collector of Income Tax appointed under section 3 of this Act and includes for all purposes of this Act, except the powers conferred on the Collector by sections 76, 79, 80 and 83 of this Act, a Deputy Collector so appointed;

“company” means a company incorporated or registered under the Companies Act (Chapter 39) or any law in force elsewhere;

[S 45/01]

“crops” includes any form of vegetable produce;

“executor” means any executor, administrator or other person administering the estate of a deceased person;

“goods” includes currency and specie;

“harvesting” includes the collection of crops however effected;

“incapacitated person” means any infant, lunatic, idiot or insane person;

“Minister” means the Minister of Finance;

[S 45/01]

“permanent establishment” means a fixed place where a business is wholly or partly carried on including —

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a warehouse;

(f) a workshop;

(g) a farm or plantation;

(h) a mine, oil well, quarry or other place of extraction of natural resources;

(i) a building or work site or a construction, installation or assembly project,

and without prejudice to the generality of the foregoing, a person shall be deemed to have a permanent establishment in Brunei Darussalam if that person —

(j) carries on supervisory activities in connection with a building or work site or a construction, installation or assembly project; or

(k) has another person acting on that person’s behalf in Brunei Darussalam who —

- (i) has and habitually exercises an authority to conclude contracts;
  - (ii) maintains a stock of goods or merchandise for the purpose of delivery on behalf of that person; or
  - (iii) habitually secures orders wholly or almost wholly for that person or for such other enterprises as are controlled by that person;
- [S 45/01]*

“person” includes a company and a body of persons;

“plantation” means any land used for the growing and harvesting of crops;

“prescribed” means by rules made under section 5 of this Act;

“replanting” means the replacement of the crop of any product on any area of land by the planting on the same area of a crop of the same product;

“research and development” means any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce, or processes, but does not include —

- (a) quality control or routine testing of materials, devices or products;
- (b) research in the social sciences or the humanities;
- (c) routine data collection;
- (d) efficiency surveys or management studies; or
- (e) market research or sales promotions;

*[S 45/01]*

“research and development company” means a company which provides research and development services for any trade or business;

*[S 45/01]*

“resident in Brunei Darussalam,” when applied to an individual, means an individual who resides in Brunei Darussalam except for such temporary absence as to the Collector may seem reasonable and not inconsistent with the claim of such individual to be resident in Brunei Darussalam; when applied to a company or a body of persons, means a company or a body of persons the control and management of whose business is exercised in Brunei Darussalam;

“tax” means the income tax imposed by this Act;

“year of assessment” means the period of 12 months commencing on the 1st day of January 1950 and each subsequent period of 12 months.

## PART II

### ADMINISTRATION

#### **Collector and other officers.**

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

(2) The Collector may by public notification or in writing authorise any person, within or without Brunei Darussalam, to perform or to assist in the performance of any specific duty imposed upon the Collector by this Act.

(3) Subject to such conditions as the Collector may specify, the Collector may by public notification direct that any information, return or document required to be supplied, forwarded or given to the Collector may be supplied to such other persons as the Collector may direct.

(4) 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.

**Official secret.**

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 or items of the income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before the Collector.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person, who 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 person; or

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

shall be guilty of an offence against this Act.

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

(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 this 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 committed in relation to income tax.

(5) Where, under any law in any part of the Commonwealth, provision is made for the allowance of relief from income tax in respect of the payment of income tax in Brunei Darussalam, the obligation as to secrecy imposed by this section of this Act shall not prevent the disclosure to the authorised officers of the Government in that part of the Commonwealth of such facts as may be necessary to enable the proper relief to be given in cases

where relief is claimed from income tax in Brunei Darussalam, or from income tax in that part or place aforesaid.

(6) Notwithstanding anything contained in this section, the Collector shall permit the Auditor or any officer duly authorised in that behalf by him to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any such officer shall be deemed to be a person employed in carrying out the provisions of this Act for the purposes of this section.

### **Rules.**

5. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, from time to time make rules —

[S 45/01]

(a) to provide for the deduction and payment of tax at the source in respect of income from any employment, and for the recovery of tax so deducted;

(b) to specify the form of returns, claims, statements and notices under this Act; and

(c) to provide for such other matters as are authorised or required by this Act to be prescribed.

(2) Such rules may prescribe the penalty, not exceeding a fine of \$10,000 and in default of payment imprisonment for a term not exceeding 2 years, with which the contravention of or failure to comply with any rule made under this section shall be punishable.

(3) Rules made under this section may be expressed to take effect retrospectively from any date after the commencement of this Act specified therein.

### **Service and signature of notices.** [S 45/01]

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

(2) Where a notice is served by ordinary or registered post, it shall be deemed to have been served on the day succeeding the day on which the



notice would have been received in the ordinary course of post if the notice is addressed —

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

(b) in the case of a company incorporated outside Brunei Darussalam, either to the individual authorised to accept service of process under the Companies Act (Chapter 39), or to the registered office of the company wherever it may be situated;

(c) in the case of an individual or a body of persons, to the last known business or private address of such individual or body of persons.

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

(4) Every notice to be given by the Collector under this Act shall be signed by the Collector or by some person or persons from time to time authorised by him in that behalf under section 3, and every such notice shall be valid if the signature of the Collector 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.

### **Free postage.**

7. All returns, additional information and resulting correspondence and payment of tax under the provisions of this Act may be sent post free to the Collector in an envelope marked "Income Tax".

**PART III****IMPOSITION OF INCOME TAX****Charge of income tax.**

8. (1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in, derived from, or received in, Brunei Darussalam in respect of —

(a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

(b) gains or profits from any employment including the estimated annual value of any quarters or board or residence or of any other allowance other than a subsistence, travelling or an entertainment allowance which is proved to the satisfaction of the Collector to have been expended for purposes other than those in respect of which no deduction is allowed under section 12 of this Act granted in respect of employment whether in money or otherwise;

(c) the net annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit;

(d) dividends, interest, or discounts;

(e) any pension, charge or annuity;

(f) rents, royalties, premiums and any other profits arising from property.

(2) Any sum realised under any insurance against loss of profits shall be taken into account in the ascertainment of any profits or income.

(3) Where, under the provisions of sections 14, 17 or 18 of this Act, a balancing charge falls to be made, the amount thereof shall be deemed to be income chargeable with tax under this Act.

**Taxable profits and gains.**

9. (1) Subject to the provisions of paragraph (1) of subsection (1) of section 10 of this Act, where a non-resident person carries on either —

- (a) the business of shipowner or charterer; or
- (b) the business of air-transport,

and any ship or aircraft owned or chartered by him calls at a port, aerodrome or airport in Brunei Darussalam, his full profits arising from the carriage of passengers, mails, livestock or goods shipped, or loaded into an aircraft in Brunei Darussalam shall be deemed to accrue in Brunei Darussalam:

Provided that this subsection shall not apply to passengers, mails, livestock or goods which are brought to Brunei Darussalam solely for transshipment, or for transfer from one aircraft to another or from an aircraft to a ship or from a ship to an aircraft.

(2) Where a non-resident person carries on in Brunei Darussalam the business of transmitting messages by cable or by any form of wireless apparatus, his full profits arising from the transmission in Brunei Darussalam of any such messages, whether originating in Brunei Darussalam or elsewhere, to places outside Brunei Darussalam shall be deemed to accrue in Brunei Darussalam.

(3) The gains or profits from any employment exercised in Brunei Darussalam shall be deemed to be derived from Brunei Darussalam whether the gains or profits from such employment are received in Brunei Darussalam or not.

**Income exempted.**

10. (1) There shall be exempt from tax —

- (a) the official emoluments received by His Majesty;
- (b) the income of any organisation exempted from payment of tax under or by order made under any written law for the time being in force in Brunei Darussalam relating to the extension of diplomatic privileges and the income of any officer of any such organisation or any other person exempted from payment of tax by order made under any such law;

(c) the official emoluments of consuls-general, consuls, vice-consuls and persons employed on the staff of any consulate-general or consulate, who are subjects or citizens of the State which they represent, but only to the extent to which reciprocal treatment is accorded by the State which they represent to Brunei Darussalam consular officers;

(d) *(Omitted)*;

(e) the income of any municipal or local authority or other similar authority constituted by or under any written law for the time being in force;

(f) the income of any charitable institution or of any body or persons or trust established for charitable purposes only:

Provided that where a trade or business is carried on by such institution, body of persons or trust, the income derived from such trade or business shall be exempt from tax only if such income is applied solely for charitable purposes and either —

(i) the trade or business is exercised in the course of the actual carrying out of a primary purpose of such institution, body of persons or trust; or

(ii) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution, body of persons or trust was established;

(g) sums received by way of commutation of pensions;

(h) sums received by way of retiring or death gratuities or as consolidated compensation for death or injuries;

(i) sums withdrawn by individuals on retirement from any provident society or fund approved by the Collector under paragraph (f) of subsection (1) of section 11 of this Act;

(j) wound and disability pensions granted to members of the Royal Brunei Armed Forces or of the Brunei Volunteer Force or the Commonwealth forces, and pensions granted to dependent relatives of any such member killed on war service and disability pensions granted to members of civil defence organisations in Brunei Darussalam in respect of war service injuries;

(k) the investment income of any pension or provident fund or society approved by the Collector under the provisions of paragraph (f) of subsection (1) of section 11 of this Act;

(l) gains or profits from the business of shipowner or charterer or of air transport carried on by a person not resident in Brunei Darussalam:

Provided that —

- (i) the Collector is satisfied that an equivalent exemption from tax is granted by the country in which such person is resident to persons resident in Brunei Darussalam;
- (ii) a person shall be deemed to be resident in that country only in which the central management and control of his business are exercised.

(2) His Majesty in Council may, by public notification, provide that the interest payable on any loan charged on the public revenue of Brunei Darussalam shall be exempt from tax, either generally or in respect of interest payable to persons not resident in Brunei Darussalam, and such interest shall as from the date and to the extent specified by such notification be exempt accordingly.

(3) There shall be exempt from tax any income arising from sources outside Brunei Darussalam and received therein by any person who is in Brunei Darussalam for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Brunei Darussalam at one or more times for a period equal in the whole to 6 months in the year of assessment.

## PART IV

### ASCERTAINMENT OF INCOME

#### **Deductions allowed.**

**11.** (1) For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Act, in this Part referred to as “the income”, there shall be deducted all outgoings and

expenses wholly and exclusively incurred during that period by such person in the production of the income, including —

(a) any sum paid by way of interest upon any money borrowed by such person where the Collector is satisfied that the interest was payable on capital employed in acquiring the income;

(b) rent paid by any person in respect of any land or building or part thereof occupied by him for the purpose of acquiring the income;

(c) any expenses incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that no deduction shall be made for the cost of renewal of any plant, machinery or fixture, which is the subject of an allowance under section 16 of this Act, or for the cost of reconstruction or rebuilding of any premises, buildings, structures or works of a permanent nature which are the subjects of an allowance under section 13 of this Act;

(d) bad debts incurred in any trade, business, profession or vocation, which have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they are respectively estimated, to the satisfaction of the Collector, to have become bad during the said period, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that —

- (i) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts, other than debts incurred before the commencement of the basis period for the first year of assessment under this Act, shall for the purposes of this Act be treated as receipts of the trade, business, profession or vocation for that period;
- (ii) the debts in respect of which a deduction is claimed were included as a trading receipt in the income of the year within which they were incurred;

(e) any contribution or abatement deducted from the salary or pension of a public officer employed in the service of Brunei Darussalam under any written law for the time being in force in Brunei Darussalam or elsewhere relating to widows' and orphans' pensions or under any approved scheme within the meaning of any such law;

(f) any contribution to a pension, provident or other society or fund which may be approved by the Collector subject to such conditions as he may impose;

(g) such other deductions as may be prescribed.

(2) The Collector may prescribe the method of calculating or estimating deductions under this section.

**Further deduction for expenses relating to approved trade fairs, exhibitions or trade missions or to maintenance of overseas trade office.**  
[S 45/01]

**11A.** (1) Where the Collector is satisfied that expenses have been incurred —

(a) on or after 1st January 2001 by an approved company resident in Brunei Darussalam in establishing, maintaining or otherwise participating in an approved overseas trade fair, exhibition or trade mission which is for the primary purpose of promoting the export of goods manufactured in Brunei Darussalam;

(b) on or after 1st January 2001 by an approved company resident in Brunei Darussalam in establishing, maintaining or otherwise participating an approved local trade fair or exhibition which is for the primary purpose of promoting the export of goods manufacture in Brunei Darussalam;

(c) on or after 1st January 2001 by an approved company resident in Brunei Darussalam which is engaged in the manufacture of goods in Brunei Darussalam or the export of goods manufactured in Brunei Darussalam, in maintaining an approved overseas trade office established exclusively for the purpose of promoting the export of such goods;

(d) on or after 1st January 2001 by an approved company in Brunei Darussalam and carrying on in Brunei Darussalam the

business of providing services in establishing, maintaining or otherwise participating in an approved local or overseas trade fair or exhibition, trade mission or trade promotion activity for the primary purpose of promoting the provision of services overseas;

(e) on or after 1st January 2001 by an approved company resident in Brunei Darussalam and carrying on in Brunei Darussalam the business of providing services in maintaining an approved overseas trade office established exclusively for the purpose of promoting the provision of services overseas;

(f) on or after 1st January 2001 by an approved company resident in Brunei Darussalam which is the holder of a master franchise or master intellectual property licence in establishing, maintaining or otherwise participating in an approved local or overseas promotion activity for the primary purpose of promoting the provision of services overseas in connection with the use overseas of any right under the franchise or licence; or

(g) on or after 1st January 2001 by an approved company resident in Brunei Darussalam which is the holder of a master franchise or master intellectual property licence in maintaining an approved overseas trade office established exclusively for the purpose of promoting the provision of services overseas in connection with the use overseas of any right under the franchise or licence,

there shall be allowed a further deduction of the amount of such expenses in addition to the deduction allowed under section 11 subject to the following provisions of this section.

(2) In respect of the deduction allowable to a company under paragraph (b) of subsection (1), if the export sales of the manufacturer do not exceed 50 per cent of his total sales in the basis period for the year of assessment, the amount of deduction to be allowed shall be determined in accordance with the formula.

$$\frac{B}{A \times C}$$

where A is the amount of expenses incurred;

B is the export sales in the basis period for the year of assessment; and



C is the total sales in the basis period for the year of assessment.

(3) In respect of the deduction allowable to a company for expenses incurred in establishing, maintaining or otherwise participating in an approved local trade fair or exhibition under paragraph (d) of subsection (1), if the gross revenue of the company in the basis period for any year of assessment from the provision of services on persons not resident in Brunei Darussalam and having no permanent establishment in Brunei Darussalam or to permanent establishments outside Brunei Darussalam of persons resident in Brunei Darussalam or elsewhere does not exceed 50 per cent of its total gross revenue in that basis period from the provision of services, the amount deduction to be allowed to the company or firm shall be determined in accordance with the formula.

$$\frac{A \times B}{C}$$

where A is the amount of expenses incurred;

B is the gross revenue in the basis period for the year of assessment from the provision of services to persons not resident in Brunei Darussalam and having no permanent establishment in Brunei Darussalam or to permanent establishments outside Brunei Darussalam of persons resident in Brunei Darussalam or elsewhere; and

C is the total gross revenue in the basis period for the year of assessment from the provision of services.

(4) The Minister may specify the maximum amount of expenditure (or any item thereof) to be allowed under subsection (1).

(5) No deduction shall be allowed under this section in respect of —

(a) any expenses which are not allowed as deductions under section 11;

(b) travelling, accommodation and subsistence expenses or allowances for more than 2 employees taking part in the approved overseas trade fair, exhibition or trade mission;

(c) any expenses incurred during its tax relief period (or qualifying period in the case of investment allowance) by a company which is given tax relief under the Investment Incentives Order, 2001; and

(d) any expenses relating to an approved overseas trade office —

- (i) which are incurred in the establishment of the approved overseas trade office;
- (ii) by way of remuneration, travelling, accommodation and subsistence expenses or allowances for more than 3 employees of the approved overseas trade office;
- (iii) which are specifically excluded as a condition for the approval of the overseas trade office under this section;
- (iv) which are incurred after the end of the first 2 years of the date of establishment of the approved overseas trade office; and
- (v) which are incurred by a company having a permanent establishment subject to tax in the county in which the approved trade office is established.

(6) As soon as any amount of further deduction is allowed to any company under this section, section 11B or 11D, a sum equal to that amount shall be credited to an account (referred to in this section as the further deduction account) to be kept by the company for the purposes of any of those sections.

(7) Where for any year of assessment a further deduction account of a company is in credit, the company shall —

(a) debit from that account such amount as which have been the chargeable income had the further deduction not been allowed or the amount of the credit in that account, whichever is the less; and

(b) credit the amount debit under paragraph (a) to an account to be called a tax exempt account which shall be kept by the company for the purposes of this section, section 11 B or 11D,

and any remaining balance in the further deduction account shall be carried forward to be used by company in the first subsequent year of assessment

when the company has chargeable income had the further deduction not been allowed, and so on for subsequent years of assessment until the credit in the further deduction account has been fully used.

(8) Where a tax exempt account of a company is in credit at the date on which any dividends are paid by the company out of the net amount credited to that account, an amount equal to those dividends or to that credit, whichever is the less, shall be debited to the tax exempt account.

(9) So much of the amount of any dividends debited to the account as is received by a shareholder of the company shall, if the Collector is satisfied with the entries in the account, be exempt from tax in the hands of the shareholder.

(10) Section 36 shall not apply to any dividends or part thereof which is exempt from tax under this section.

(11) Where an amount of dividends exempt from tax under this section has been received by a shareholder, which is a holding company owning, at the time such dividends are received, not less than 50 per cent beneficial interest in the issued capital of the company, any dividends paid by the holding company to its shareholders, to the extent that the Collector is satisfied that those dividends are paid out of such amount, shall be exempt from tax in the hands of those shareholders; and section 36 shall not apply to any such dividends or part thereof.

(12) Notwithstanding subsections (9) and (11), no dividend paid on any share of a preferential nature shall be exempt from tax in the hands of the shareholder.

(13) A company shall deliver to the Collector a copy of the account made up to any date specified by him whenever called upon to do so by notice in writing.

(14) Notwithstanding anything in this section, where it appears to the Collector that in any year of assessment —

(a) any further deduction which has been allowed under this section, section 11B or 11D; or

(b) any dividend, including a dividend paid by a holding company, which has been exempted from tax in the hands of any shareholder,

ought not to have been so allowed or exempted, as the case may be, the Collector may, within the year of assessment or within 6 years after the expiration thereof —

- (i) make such assessment or additional assessment upon the company or any such shareholder as may be necessary in order to make good any loss of tax; or
- (ii) direct the company to debit its tax exempt account with such amount as the circumstances require.

(15) In this section —

“approved” means approved by the Minister charged with the responsibility for industrial development;

“master franchise” means any agreement under which the franchisor authorises or permits the franchisee to use in Brunei Darussalam or overseas a business system owned to controlled by the franchisor, including the sub-franchising of the business system;

“master intellectual property licence” means any licence under which the licensor authorises or permits the licensee to use in Brunei Darussalam or overseas the rights under a patent, copyright, trademark, design or know-how, including the sublicensing of the same.

**Further deduction for export market development expenditure and certain advertising expenses. [S 45/01]**

**11B.** (1) Subject to this section, where the Collector is satisfied that —

(a) export market development expenditure for the carrying out of an approved marketing project overseas; or

(b) advertising expenses in respect of advertisements placed in any approved Brunei Darussalam publication designed for publicity overseas,

have been incurred —

- (i) on or after 1st January 2001 by an approved company resident in Brunei Darussalam principally for

promoting the export of goods manufactured in Brunei Darussalam;

- (ii) on or after 1st January 2001 by an approved company resident in Brunei Darussalam and carrying on in Brunei Darussalam the business of providing services principally for promoting the provision of services overseas; or
- (iii) on or after 1st January 2001 by an approved company resident in Brunei Darussalam which is the holder of a master franchise or master intellectual property licence principally for promoting the provisions of services overseas in connection with the use overseas of any right under the franchise or licence,

there shall be allowed a further deduction of the amount of such expenditure in addition to the deduction allowed under section 11.

(2) The Minister may specify the maximum amount of export market development expenditure (or any item thereof) or of advertising expenses to be allowed under subsection (1).

(3) No deduction shall be allowed under this section in respect of —

(a) any expenses which are not allowed as deductions under section 11;

(b) any expenses incurred during its tax relief period (or qualifying period in the case of investment allowance) by a company which is given tax relief under the Investment Incentives Order, 2001;

(c) any expenses which are allowed as deductions under section 11A; or

(d) travelling, accommodation and subsistence expenses or allowances for more than 2 employees taking part overseas in the approved marketing project.

(4) In this section —

“approved” means approved by the Minister charged with the responsibility for industrial development;

“export market development expenditure” means —

(a) expenses directly attributable to the carrying out of export market research or obtaining of export market information, including any feasibility study;

(b) expenses in respect of advertisements placed in overseas news media, including television, newspapers and trade journals;

(c) expenses incurred on overseas export promotion campaigns; or

(d) expenses incurred in the design of the packaging, or in the certification, of goods manufactured in Brunei Darussalam for export or in the certification of services to be provided overseas where such certification is carried out by an approved person;

“master franchise” and “master intellectual property licence” have the same meanings as in section 11A.

**Expenditure on research and development.** [S 45/01]

**11C.** (1) For the purpose of ascertaining the income of any person carrying on a manufacturing trade or business or trade or business for the provision of specified services, the following expenditure incurred on or after the respective dates referred to in subsection (2) (other than any amount which is allowable as a deduction under section 11) by that person shall be allowed as a deduction —

(a) expenditure incurred on research and development undertaken directly by him and related to that trade or business (except to the extent that it is capital expenditure on plant, machinery, land or buildings or on alterations, additions or extensions to buildings or in the acquisition of rights in or arising out of research and development); and

(b) payments made by that person to an approved research and development company for undertaking on his behalf research and development related to that trade or business.

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

(a) any person carrying on a manufacturing trade or business shall only be allowed as deduction expenditure incurred on or after 1st January 2001; and

(b) any person carrying on a trade or business for the provision of specified services shall only be allowed as deduction expenditure incurred on or after 1st January 2001.

(3) In this section —

“approved” means approved by the Minister charged with the responsibility for industrial development;

“specified services” means —

(a) services and activities which relate to the development of computer programs;

(b) services and activities which relate to the technology involved in acquiring, storing, processing or distributing information by the use of computers or computer programs;

(c) services and activities which relate to technology applied to agriculture, horticulture or the farming of livestock, fish or other forms of aquatic life;

(d) laboratory and testing services;

(e) services and activities which relate to medical research; and

(f) any other services or activities as may be prescribed by the Minister.

(4) For the purposes of this section, and expenditure incurred by a person prior to the commencement of his trade or business shall be deemed to have been incurred by that person on the first day on which he carries on that trade or business.

**Further deduction for expenditure on research and development project.** [S 45/01]

**11D.** (1) Subject to this section, where the Collector is satisfied that —

(a) a person carrying on a manufacturing trade or business has incurred expenditure on or after 1st January 2001 in undertaking directly by himself, or in paying a research and development company to undertake on his behalf, an approved research and development project in Brunei Darussalam which is related to that trade or business;

(b) a research and development company has incurred expenditure on or after 1st January 2001 in undertaking an approved research and development project in Brunei Darussalam and no deduction under this section has been allowed to another person in respect of any expenditure for that project or for another project of which that project forms a part; or

(c) a person carrying on a trade or business for the provision of any specified services has incurred expenditure on or after 1st January 2001 in undertaking directly by himself, or in paying a research and development company to undertake on his behalf, an approved research and development project in Brunei Darussalam which is related to that trade or business,

there shall be allowed to that person or research and development company a further deduction of the amount of such expenditure in addition to the deduction allowed under section 11 or 11C.

(2) The Minister may —

(a) specify the maximum amount of the expenditure (or any item thereof) incurred to be allowed under section (1);

(b) impose such conditions as he thinks fit when approving the research and development project; and

(c) specify the period or periods for which deduction is to be allowed under this section.

(3) No deduction shall be allowed under this section in respect of any expenditure which is not allowed under section 11 or 11C.

(4) In this section —

“approved” means by the Minister charged with the responsibility for industrial development;

“specified services” has the same meaning as in section 11C.



**Deductions not allowed.**

**12.** Subject to the provisions of this Act for the purpose of ascertaining the income of any person no deduction shall be allowed in respect of —

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any capital employed in improvements, other than improvements effected in the replanting of a plantation;
- (e) any sum recoverable under an insurance or contract of indemnity;
- (f) rent or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) any amount paid or payable in respect of United Kingdom income tax or surtax or Commonwealth income tax as defined by section 40 of this Act or in respect of any excess profits tax or profits tax charged in any part of the Commonwealth;
- (h) any payment to any provident, savings, widows' and orphans' or other society or fund, except such payments as are allowed under paragraphs (e) and (f) of section 11 of this Act.

**Initial and annual allowances. Industrial buildings and structure.**

**13.** (1) Where in or after the basis period for the first year of assessment under this Act a person incurs capital expenditure on the construction of a building or structure which is to be an industrial building or structure occupied for the purposes of a trade, there shall be made to the person who incurred the expenditure for the year of assessment in the basis period for which the expenditure was incurred an allowance to be known as an "initial allowance" equal to one-tenth thereof.

The provisions of this subsection shall apply in relation to expenditure incurred by a person on or after the 1st day of January 1946 but before the

commencement of the first basis period as if it had been incurred by him on the first day of that period.

(2) (a) Where any person is, at the end of the basis period for any year of assessment, entitled to an interest in a building or structure which is an industrial building or structure and where that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure, an allowance, to be known as an “annual allowance”, equal to one-fiftieth of that expenditure shall be made to him for that year of assessment;

(b) Where at any time in or after the basis period for the first year of assessment under this Act the interest in a building or structure which is the relevant interest in relation to any expenditure is sold while the building or structure is an industrial building or structure, the annual allowance, in the years of assessment the basis periods for which end after the times of that sale, shall be computed by reference to the residue of that expenditure immediately after the sale and shall be the fraction of the said residue the numerator of which is one and the denominator of which is the number of years of assessment comprised in the period which —

- (i) begins with the first year of assessment for which the buyer is entitled to an annual allowance or would be so entitled if the building or structure had at all material times continued to be an industrial building or structure; and
- (ii) ends with the fiftieth year after that in which the building or a structure was first used,

and so on for any subsequent sales;

(c) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount of an annual allowance made to a person for any year of assessment in respect of any expenditure exceed what, apart from the writing off falling to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of his basis period for that year of assessment.

**Balancing allowances and charges. Industrial buildings and structures.**

**14.** (1) Where any capital expenditure has been incurred on the construction of a building or structure and, in or after the basis period for the first year of assessment under this Act, any of the following events occurs while the building or structure is an industrial building or structure, that is to say —

(a) the relevant interest in the building or structure is sold; or

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

(c) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used,

an allowance or charge, to be known as a “balancing allowance” or a “balancing charge”, shall, in the circumstances mentioned in this section, be made to or, as the case may be, on the person entitled to the relevant interest immediately before that event occurs for the year of assessment in the basis period for which that event occurs:

Provided that no balancing allowance or balancing charge shall be made to or on any person for any year of assessment by reason of any event occurring after the end of the fiftieth year after that in which the building or structure was first used.

(2) Where there are no sale, insurance, salvage or compensation moneys, or where the residue of the expenditure immediately before the event exceeds those moneys, a balancing allowance shall be made and the amount thereof shall be the amount of the said residue or, as the case may be, of the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made and the amount on which it is made shall be an amount equal to the excess or, where the residue is nil, to the said moneys.

(4) Notwithstanding anything in the last preceding subsection, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say —

(a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;

(b) the amount of the annual allowances, if any, made to him in respect of the expenditure in question.

**Definitions.**

**15.** (1) Subject to the provisions of this section in sections 13 and 14 of this Act an “industrial building or structure” means a building or structure in use —

(a) for the purposes of trade carried on in a mill, factory or other similar premises; or

(b) for the purposes of a transport, dock, water or electricity undertakings; or

(c) for the purposes of a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or

(d) for the purposes of a trade which consists in the storage of goods or materials which are to be used in the manufacture of other goods or to be subjected, in the course of a trade, to any process; or

(e) for the purposes of a trade which consists of the storage of goods or materials on their arrival in Brunei Darussalam; or

(f) for the purposes of a trade which consists in the working of a plantation; or

(g) for the purposes of a trade which consists in the working of any mine, oil well or other source of mineral deposits,

and, in particular, the said expression includes any building or structure provided by the person carrying on such a trade or undertaking for the welfare of workers employed in that trade or undertaking and in use for that purpose.

(2) Notwithstanding anything in subsection (1) of this section, the expression “industrial building or structure” does not include any building or structure in use as, or as part of, a dwelling house, retail shop, showroom, hotel or office or for any purpose ancillary to the purposes of a dwelling house, retail shop, showroom, hotel or office:

Provided that this subsection shall not apply to, or to part of, a building or structure which was constructed for occupation by, or for the welfare of

persons employed at or in connection with the working of a mine, oil well or other source of mineral deposits, or for occupation by, or welfare of persons employed on, or in connection with the growing and harvesting of crops, on a plantation, if the building or structure is likely to have little or no value to the person carrying on the trade when the mine, oil well or other source, or the plantation is no longer worked or will cease to belong to such person on the coming to an end of a concession in respect of the mine, oil well or other source, or the plantation.

(3) In sections 13 and 14 of this Act —

(a) the “relevant interest” means, in relation to any expenditure incurred on the construction of a building or structure, the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it;

(b) the “residue of expenditure” shall be the amount of capital expenditure incurred in the construction of a building or structure reduced by —

- (i) the amount of any initial allowance made; and
- (ii) any annual allowance made; and
- (iii) any balancing allowances granted,

and increased by any balancing charges made. For the purpose of computing the residue of expenditure there shall be written off an amount of one-fiftieth of the expenditure in respect of any year in which no initial or annual allowance has been made.

### **Initial and annual allowances. Machinery or plant.**

**16.** (1) Where, in or after the basis period for the first year of assessment under this Act, a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of that trade, profession or business, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance, to be known as an “initial allowance”, equal to one-fifth of that expenditure.

The provisions of this subsection shall apply in relation to expenditure incurred by a person on or after the 1st day of January 1946, but before the commencement of the first basis period as if it had been incurred by him on

the first day of that period if such machinery or plant was in use for the purposes of that trade, profession or business at the commencement of that period.

(2) Where at the end of the basis period for any year of assessment a person has in use machinery or plant for the purpose of his trade, profession or business, there shall be made to him in respect of that year of assessment an allowance to be known as an “annual allowance” for depreciation by wear and tear of those assets. The allowance shall be calculated at rates to be prescribed and shall be computed on the reducing value of the asset, which shall be the original cost of the asset reduced by —

(a) any initial allowance granted in accordance with the provisions of this section; and

(b) by the annual allowances made under the provisions of this section:

Provided that —

- (i) where the asset was acquired before the basis period for the first year of assessment under this Act, the value at the end of the basis period shall be computed by deducting from the amount paid for the asset by its present owner any initial allowance granted and any annual allowances as if this subsection had been in force during the whole period of ownership of the asset excluding any period during which the owner was deprived of the use of the asset by reason of enemy occupation;
- (ii) the Collector may, in his discretion, allow a higher rate than that prescribed.

(3) Notwithstanding the foregoing, where chargeable income of a company resident in Brunei Darussalam derives from the business of transportation by sea of liquefied natural gas and that company incurs capital expenditure on the purchase of a vessel or vessels for the purposes of that business, the initial allowance in respect of the expenditure so incurred shall be one sixth of that expenditure. Thereafter there shall be a maximum of 5 annual allowances in respect of such expenditure, which annual allowances shall be made consecutively in each of the next succeeding 5 basis periods in

respect of any such vessel in use by such company, each such annual allowance being equal to the initial allowance.

[S 2/87]

**Writing-down allowances for approved know-how or patents.** [S 45/01]

**16A.** (1) Subject to this section, where on or after 1st January 2001 a person carrying on a manufacturing trade or business has incurred capital expenditure in acquiring any approved know-how or any approved patent rights for use in that trade or business (referred to in this section as the relevant trade or business), writing-down allowances in respect of that expenditure shall be made to him during a writing-down period of 4 years beginning with the year of assessment relating to the basis period in which that expenditure is incurred.

(2) The writing-down allowance to be made to a person under this section for any year of assessment shall be an amount equal to 25 per cent of the expenditure incurred by him on the acquisition of the approved know-how or patent rights, as the case may be.

(3) Any expenditure incurred on the acquisition of any approved know-how or patent rights by a person before the commencement of his trade or business shall be treated for the purpose of this section as if it has been incurred by him on the first day he commences that trade or business.

(4) Where writing-down allowances have been made to any person under this section in respect of any approved patent rights and, before the end of the writing-down period, any of the following events occurs —

(a) the rights come to an end without being subsequently revived;

(b) he sells all those rights or so much thereof as he still owns;  
or

(c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the expenditure remaining unallowed,

no writing-down allowance in respect of the approved patent rights shall be made to that person for the year of assessment relating to the basis period in which the event occurs or for any subsequent year of assessment.

(5) Where writing-down allowances have been made to any person under this section in respect of any approved patent rights and, before the end of the writing-down period, either of the following events occurs —

(a) the rights come to an end without being subsequently revived; or

(b) he sells all those rights, or so much thereof as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the expenditure remaining unallowed,

there shall be made to him for the year of assessment relating to the basis period in which the event occurs a balancing allowance equal, if the event is the right coming to an end, to the amount of the expenditure remaining unallowed, and, if the event is a sale, to the amount of the expenditure remaining unallowed less the net proceeds of the sale.

(6) Where a person to whom writing-down allowances have been made under this section in respect of any approved patent rights —

(a) sells all or any part of those rights and the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the expenditure remaining unallowed, if any, there shall be made on him for the year of assessment relating to the basis period in which the sale occurs a charge (referred to in this section as a balancing charge) on an amount equal to the excess or, where the amount of the expenditure remaining unallowed is nil, to the net proceeds;

(b) sells a part of those rights and paragraph (a) does not apply, the amount of any writing-down allowance made in respect of the capital expenditure incurred in acquiring the approved patent rights for the year of assessment relating to the basis period in which the sale occurs or any subsequent year of assessment shall be the amount arrived at by —

(i) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale; and

(ii) dividing the result by the number of complete years of the writing-down period remaining at the beginning of the year of assessment relating to the basis period in which the sale occurs,



and so on for any subsequent sales.

(7) References in subsections (5) and (6) to the amount of any expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any writing-down allowances made in respect thereof for the years of assessment before the year of assessment relating to the basis period in which the event occurs, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.

(8) Notwithstanding anything in subsection (6), the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total writing-down allowances actually made in respect of that expenditure, less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

(9) Where a person to whom writing-down allowances have been made under this section in respect of any approved know-how disposes of the approved know-how, the amount of value of any consideration received by him for the disposal shall, so far as it is not chargeable to tax as a revenue or income receipt, be treated for all purposes as a trading receipt of the relevant trade or business.

(10) Where a person to whom writing-down allowances have been made under this section ceases to carry on the relevant trade or business, an allowance equal to the amount of the expenditure remaining unallowed in respect of the approved know-how or patent rights, as the case may be, shall be made to him in computing his income for the year of assessment relating to the basis period in which the cessation occurs.

(11) In this section —

“approved” means approved by the Minister charged with the responsibility for industrial development;

“know-how” means any industrial information and techniques likely to assist in the manufacture or processing of goods or materials;

“patent rights” means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent.

(12) For the purposes of this section —

(a) any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the acquisition of patent rights includes a reference to the acquisition of a licence in respect of a patent;

(b) any disposal or sale which occurs the date on which the relevant trade or business permanently ceases, shall be deemed to have occurred immediately before the cessation.

### **Balancing allowances and charges in respect of machinery or plant.**

17. (1) Where, in or after the basis period for the first year of assessment under this Act, any of the following events occur in the case of any machinery or plant in respect of which an initial allowance or annual allowance has been made for any year of assessment to a person carrying on a trade, profession or business, that is to say, either —

(a) the machinery or plant is sold, whether while still in use or not; or

(b) the machinery or plant is destroyed; or

(c) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required,

and the event in question occurs before the trade, profession or business is permanently discontinued, an allowance or charge, to be known as a “balancing allowance” or a “balancing charge”, shall, in the circumstances mentioned in this section, be made to or, as the case may be, on that person for the year of assessment in the basis period for which that event occurs.

(2) Where there are no sale, insurances, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the plant or machinery still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount thereof shall be the amount of the expenditure still allowed as aforesaid, or, as the case may be, the excess thereof over the said moneys.

(3) If the sale, insurance, salvage or compensation moneys exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said moneys.

(4) Notwithstanding anything in the last preceding subsection, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say —

(a) the amount of the initial allowance, if any, made to him in respect of the expenditure in question;

(b) the amount of the annual allowances, if any, made to him in respect of the expenditure in question, including any allowance computed under proviso (ii) of subsection (2) of section 16 of this Act at a rate higher than that prescribed.

### **Replacement of machinery or plant.**

**18.** (1) Where machinery or plant in the case of which any of the events mentioned in subsection (1) of section 17 of this Act has occurred is replaced by the owner thereof and a balancing charge falls to be made by him by reason of that event or, but for the provisions of this section, would have fallen to be made on him by reason thereof, then, if by notice in writing to the Collector he so elects, the following provisions shall have effect, that is to say —

(a) if the amount on which the charge would have been made is greater than the capital expenditure on providing the new machinery or plant —

- (i) the charge shall be made only on an amount equal to the difference; and
- (ii) no initial allowance, no balancing allowance and no annual allowance shall be made or allowed in respect of the new machinery or plant or the expenditure on the provision thereof; and
- (iii) in considering whether any and, if so, what balancing charge falls to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;

(b) if the capital expenditure on providing the new machinery or plant is equal to or greater than the amount on which the charge would have been made —

- (i) the charge shall not be made; and
- (ii) the amount of any initial allowance in respect of the said expenditure shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made; and
- (iii) in considering what annual allowance is to be made in respect of the new machinery or plant, there shall be left out of account a proportion of the machinery or plant equal to the proportion which the amount on which the charge would have been made bears to the amount of the said expenditure; and
- (iv) in considering whether any and, if so, what balancing allowance or balancing charge falls to be made in respect of the new machinery or plant, the initial allowance in respect thereof shall be deemed to have been increased by an amount equal to the amount on which the charge would have been made.

(2) Expenditure on the provision of machinery or plant shall include capital expenditure on alterations to an existing building incidental to the installation of that machinery or plant for the purposes of the trade, profession or business.

### **Mines, oil wells etc.**

**19.** Where any person carries on in Brunei Darussalam the working of a mine, oil well or other source of mineral deposits of a wasting nature, the provisions set out in the Third Schedule to this Act shall have effect.

### **Carry forward of allowances.**

**20.** Where, in any year of assessment, full effect cannot, by reason of an insufficiency of gains or profits chargeable for that year of assessment, be given to any allowance falling to be made under the provisions of sections 13, 14, 16, 17, or 19 of this Act, then, so long as the person entitled thereto continues to carry on the trade, profession or business in respect of the gains or profits of which the allowance falls to be made, the balance of the allowance shall be added to, and be deemed to form part of, the corresponding allowance, if any, for the next succeeding year of assessment, and, if no such corresponding allowance falls to be made for that year, shall

be deemed to constitute the corresponding allowance for that year, and so on for subsequent years of assessment.

### **Insurance companies.**

**21.** Notwithstanding anything to the contrary contained in this Act, it is hereby provided that —

(a) in the case of an insurance company whether mutual or proprietary (other than a life insurance company) where the gains or profits accrue in part outside Brunei Darussalam the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in Brunei Darussalam (less any premium returned to the insured and premiums paid on re-insurances), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the period for which the gains or profits are being ascertained, and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance) the agency expenses in Brunei Darussalam and a fair proportion of the expenses of the head office of the company;

(b) in the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses, including commission:

Provided that where such company received premiums outside Brunei Darussalam the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in Brunei Darussalam bore to the total premiums received after deducting from the amount so arrived at the agency expenses in Brunei Darussalam and a fair proportion of the expenses of the head office of the company;

(c) in the case of an insurance company carrying on life insurance business in conjunction with any other insurance business, the assessment of the gains or profits on which tax is payable shall be made in one sum, but the gains or profits arising from the life insurance business shall be computed in accordance with the

provisions of paragraph (b) of this section as if such life insurance business were a separate business from the other insurance business carried on by the company.

**Profits of non-resident shipowner and charterer.**

22. (1) Where for any period a non-resident person who carries on the business of shipowner or charterer produces the certificate mentioned in subsection (2) of this section, the profits accruing in Brunei Darussalam from the business for such period, before deducting any allowance for depreciation, shall be a sum bearing the same ratio to the sums receivable in respect of the carriage of passengers, mails, livestock and goods shipped in Brunei Darussalam as the total profits for the said period bear to the total sum receivable by him in respect of the carriage of passengers, mails, livestock and goods, as shown by the certificate.

(2) The certificate shall be one issued by or on behalf of any income tax authority with regard to which the Collector is satisfied that it computes and assesses the full profits of the non-resident person from his shipping business on a basis not materially different from that provided by this Act, and shall certify for any accounting period as regards such business —

(a) the ratio of the profits or, where there are no profits, of the loss, as computed for the purposes of income tax by that authority, without making any allowance by way of depreciation, to the total sums receivable in respect of carriage of passengers, mails, livestock or goods; and

(b) the ratio of the allowance for depreciation as computed by that authority to the said total sums receivable in respect of the carriage of passengers, mails, livestock and goods.

(3) Where, at the time of assessment, the provisions of subsection (1) of this section cannot, for any reason, be satisfactorily applied, the profits accruing in Brunei Darussalam may be computed on a fair percentage of the full sum receivable on account of the carriage of passengers, mails, livestock and goods shipped in Brunei Darussalam:

Provided that where any person has been assessed for any year of assessment by reference to such percentage, he shall be entitled to claim at any time within 6 years after the end of such year of assessment that his liability to tax for the year be recomputed on the basis provided by subsection (1) of this section.

(4) Where the Collector decides that the call of a ship belonging to a particular non-resident shipowner or charterer at a port in Brunei Darussalam is casual and that further calls by that ship or others in the same ownership are improbable, the provisions of this section shall not apply to the profits of such ship and no tax shall be chargeable thereon.

**Profits of non-resident's air transport and cable undertakings.**

23. Where a non-resident person carries on the business of air transport or the business of the transmission of messages by cable or by any form of wireless apparatus, he shall be assessable to tax as if he were a non-resident shipowner and the provisions of the preceding section shall apply *mutatis mutandis* to the computation of the gains or profits of such business.

**Income from certain dividends to include tax thereon.**

24. The income of a person from a dividend paid by a company liable to tax under this Act shall, where any such tax has been deducted therefrom, be the gross amount before making such deduction; where no such deduction has been made, the income arising shall be the amount of the dividend increased by an amount on account of such taxes corresponding to the extent to which the profits out of which the said dividend has been paid have been charged with such taxes.

**Collector may disregard certain transaction and dispositions.**

25. (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.

[S 45/01]

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

[S 45/01]

(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 appeal against an assessment in accordance with Part XII of this Act.

## PART V

### ASCERTAINMENT OF STATUTORY INCOME

#### **Basis for computing statutory income.**

**26.** (1) Save as provided in this section, the income of any person for each year of assessment from each source of his income (hereinafter referred to as “statutory income”) shall be the full amount of the income from each such source during the year preceding the year of assessment, notwithstanding that he may have ceased to possess any such source or that any such source may have ceased to produce income.

(2) Where the Collector is satisfied that any person usually makes up the accounts of a trade, business, profession, vocation, or employment carried on or exercised by him to some day other than that immediately preceding any year of assessment, he may direct that the statutory income from that source be computed on the amount of the gains or profits of the year ending on that day in the year preceding the year of assessment. Where, however, the statutory income of any person from a trade, business, profession, vocation, or employment has been computed by reference to an account made up to a certain day, and such person fails to make up an account to the corresponding day in the year following, the statutory income from that source both of the year of assessment in which such failure occurs and of the 2 years of assessment following shall be computed on such basis as the Collector in his discretion thinks fit.



**Executors and beneficiaries.**

27. (1) The statutory income of an executor shall be the income of the estate administered by such executor for the year preceding the year of assessment:

Provided that any income of the estate received by, distributed to, or applied to the benefit of any beneficiary of the estate during the year preceding the year of assessment shall be deducted.

(2) The statutory income for any year of assessment of any beneficiary of the estate of a deceased person administered by an executor shall include the amount of the income received by or distributed to him or applied to his benefit out of the estate during the year preceding that year of assessment (otherwise than as the capital amount or any part of the capital amount of his interest in the estate).

**Apportionment of income.**

28. Where in the case of any trade, business, profession, vocation, or employment it is necessary in order to arrive at the income of any year of assessment or other period to divide and apportion to specific periods the income of any period for which accounts have been made up, or to aggregate such income or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods, unless the Collector having regard to any special circumstances, otherwise directs.

**Partnership.**

29. Where a trade, business, profession or vocation is carried on by 2 or more persons jointly, the income of any partner from the partnership for any period shall be deemed to be the share to which he was entitled during that period in the income of the partnership, such income being ascertained in accordance with the provisions of this Act, and shall be included in the return of income to be made by such partner under the provisions of this Act.

## PART VI

## ASCERTAINMENT OF ASSESSABLE INCOME

**Assessable income from all sources.**

**30.** (1) The assessable income of any person from all sources chargeable with tax under this Act for any year of assessment shall be the remainder of his statutory income for that year after the deductions allowed in this Part of this Act have been made.

(2) There shall be deducted —

(a) the amount of a loss incurred by him during the year of assessment in any trade, business, profession or vocation, which, if it had been a profit would have been assessable under this Act:

Provided that no such deduction shall be made unless it is claimed in writing within one year after the end of the year of assessment;

(b) the amount of a loss similarly incurred by him in any such trade, business, profession or vocation during any of the 6 years preceding the year of assessment which has not been allowed against his statutory income of a prior year:

Provided that —

- (i) in no circumstances shall the aggregate deduction from statutory income in respect of any such loss exceed the amount of such loss;
- (ii) a deduction under this paragraph shall be made as far as possible from the statutory income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made, then from the statutory income of the next year of assessment, and so on;
- (iii) no deduction under this paragraph shall be made in respect of a loss incurred prior to the commencement of the year preceding the first year of assessment under this Act;

(c) an amount, not exceeding one-sixth of the net statutory income remaining after the deductions authorised by paragraphs (a) and (b) of this subsection have been made, in respect of gifts of money made by him in the year preceding the year of assessment to any institution of a public character in Brunei Darussalam approved by His Majesty in Council:

Provided that His Majesty in Council 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.

(3) For the purposes of subsection (2) of this section the loss incurred during any year of assessment shall be computed, where the Collector so decides, by reference to the year ending on a day in such year of assessment which would have been adopted under subsection (2) of section 26 of this Act for the computation of the statutory income of the following year of assessment if a profit had arisen.

## PART VII

### ASCERTAINMENT OF CHARGEABLE INCOME AND PERSONAL RELIEFS

#### Chargeable income.

**31.** The chargeable income of any person for any year of assessment shall be the remainder of his assessable income for that year after the deductions allowed in this Part have been made.

**Resident individual allowances.**

**32.** (1) In the case of an individual resident in Brunei Darussalam in the year preceding the year of assessment there shall be allowed a deduction of \$3,000.

(2) In the case of an individual resident in Brunei Darussalam in the year preceding the year of assessment, who, in that year —

(a) had a wife living with or maintained by him there shall be allowed a deduction of \$2,000;

(b) paid alimony or maintenance to a previous wife whose marriage with him has been dissolved by any court of competent jurisdiction, there shall be allowed a deduction of the amount of such alimony or \$2,000 whichever is the less;

(c) made payment in accordance with an order of court or deed of separation to a wife from whom he was separated by such order or deed, there shall be allowed a deduction of the amount of such payments or \$2,000 whichever is the less:

Provided that the total deduction allowed to any individual under paragraphs (a), (b) and (c) of this section shall not exceed \$2,000;

(d) maintained an unmarried child who was either under the age of 16 years at any time within that year or was receiving full time instruction at any university, college, school or other educational establishment, or was serving under articles or indentures with a view to qualifying in a trade or profession, there shall be allowed a deduction of \$750 in respect of such child; and where such individual maintained more than one such child, a deduction of \$500 each for the second and third of such children and a deduction of \$300 each for the fourth and fifth and such children:

Provided that —

- (i) where such individual satisfies the Collector that a sum exceeding the appropriate deduction was during the year preceding the year of assessment expended by him directly on the maintenance and education of any such child elsewhere than in Brunei Darussalam there shall be allowed, in lieu of such deduction, a deduction equal to the total amount so expended but not

exceeding an amount equal to twice the appropriate deduction;

- (ii) no deduction shall be allowed in respect of any child whose assessable income for the year preceding the year of assessment exceeded the amount of the deduction which would otherwise be allowed under this section;
- (iii) in calculating the assessable income of the child for the purpose of the foregoing proviso, no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary or other similar educational endowment;
- (iv) no deduction under this paragraph shall be allowed to any individual in respect of more than 5 children.

The expression “child” in this paragraph includes a stepchild or a child adopted in accordance with any statutory provision who was during the year preceding the year of assessment wholly maintained by the individual but does not include an illegitimate child;

(e) has paid a premium for an insurance made by him on his life of the life of his wife with any insurance company there shall be allowed a deduction of the amount paid by him for such insurance:

Provided that —

- (i) in the case of any policy securing a capital sum on death (whether in conjunction with any other benefit or not), the amount to be deducted in respect of that policy shall not exceed 7 per centum of that capital sum, exclusive of any additional benefit by way of bonus, profits or otherwise;
- (ii) no such deduction shall be allowed in excess of one-sixth part of the assessable income of such individual for the year of assessment or \$4,000, whichever is the less.

33. (Omitted).

**PART VIII****RATES OF TAX, RIGHTS OF DEDUCTION AND  
ALLOWANCES FOR TAX CHARGED***A. — Rates of Tax***Rate of tax upon individuals.**

**34.** There shall be levied and paid for each year of assessment upon the chargeable income of every person, other than a company, tax at the rates specified in the Second Schedule to this Act.

**Rate of tax upon companies.**

**35.** There shall be levied and paid for each year of assessment upon the chargeable income of every company tax at the rate of 30 per centum on every dollar of the chargeable income thereof.

**Liquefied Natural Gas.** [S 2/87]

**35A.** Notwithstanding the foregoing, where chargeable income of any company derives from the liquefaction of gas in its natural state or the production of any other liquid petroleum or petroleum product from such gas or the sale or other disposition for reward of natural gas so liquefied or of such liquid petroleum or petroleum product from such gas there shall be levied and paid in respect of each consecutive basis period after 31 December 1985 tax (in lieu of that which would otherwise be applicable under section 35 hereof) at such rate per centum on every dollar of the chargeable income of the company as the Minister of Finance shall from time to time determine.

*B. — Rights of Deduction of Tax***Deduction of tax from dividends of companies.**

**36.** (1) Every company which is resident in Brunei Darussalam shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the rate paid or payable by the company double taxation relief being

left out of account on the chargeable income of the year of assessment in which the dividend is declared payable:

Provided that, where tax is not paid or payable by the company on the whole income out of which the dividend is paid, the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.

(2) Every such company shall, upon payment of a dividend, whether tax is deducted therefrom or not, furnish each shareholder with a certificate setting forth the amount of the dividend paid to that shareholder and the amount of tax which the company has deducted or is entitled to deduct in respect of that dividend, and also, where the tax paid or payable by the company is affected by double taxation relief, the rate (hereinafter in this Act referred to as “the net Brunei Darussalam rate”) of the tax paid or payable by the company after taking double taxation relief into account.

(3) In this section, the expression “double taxation relief” means any credit for foreign income tax which is allowable against income tax chargeable under this Act by virtue of arrangements made under section 41 of this Act, and any relief allowable under section 39 or section 40 of this Act, including any credit or relief which has been taken into account in determining the net Brunei Darussalam rate application to any dividends received by the company.

### **Deductions of and accounting for tax on interest due under a charge, and loan interest.**

**37.** (1) Where any person pays interest due under a charge, or debenture or loan interest, to a person not resident in Brunei Darussalam, he shall upon paying the interest deduct there from tax at the rate of 20 per centum on every dollar of such interest, and shall forthwith render an account to the Collector of the amount so deducted and every such amount shall be a debt from him to the Government and shall be recoverable as such.

(2) In the case of a company the account aforesaid shall be rendered by the manager or principal officer of the company.

*C. — Allowances for Tax Charged***Tax deducted from dividends, interest paid under a charge, debenture and loan interest.****38.** Any tax —

(a) which a person has deducted or is entitled to deduct from any dividend under the provisions of section 36 of this Act or has deducted from any interest paid under a charge or from debenture or loan interest under the provisions of section 37 of this Act;

(b) applicable to the share to which any person is entitled in the income of a body of persons or trust or in the income of the estate of a deceased person,

shall, when such dividend, interest paid under a charge, debenture interest, loan interest or share is included in the chargeable income of any person, be set off for the purpose of collection against the tax charged on that chargeable income.

*D. — Relief in Case of Double Taxation***39.** *(Omitted).***Relief in respect of Commonwealth income tax.**

**40.** (1) If any person resident in Brunei Darussalam who has paid, by deduction or otherwise, or is liable to pay tax under this Act for any year of assessment on any part of his income, proves to the satisfaction of the Collector that he has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of his income he shall be entitled to relief from tax in Brunei Darussalam paid or payable by him on that part of his income at a rate thereon to be determined as follows —

(a) if the Commonwealth rate of tax does not exceed one-half of the rate appropriate to his case under this Act in Brunei Darussalam, the rate at which relief is to be given shall be the Commonwealth rate of tax;



(b) in any other case the rate at which relief is to be given shall be half the rate of tax appropriate to his case under this Act.

(2) If any person not resident in Brunei Darussalam who has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of his income proves to the satisfaction of the Collector that he has paid by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of this income he shall be entitled to relief from tax paid or payable by him under this Act on that part of his income at a rate thereon to be determined as follows —

(a) if the Commonwealth rate of tax appropriate to his case does not exceed the rate of tax appropriate to his case under this Act, the rate at which relief is to be given shall be one-half of the Commonwealth rate of tax;

(b) if the Commonwealth rate of tax appropriate to his case exceeds the rate of tax appropriate to his case under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax appropriate to his case under this Act exceeds one-half of the Commonwealth rate of tax.

(3) For the purposes of this section “Commonwealth income tax” means any income tax charged under any law in force in any part of the Commonwealth:

Provided that the legislature of that part or place has provided for relief in respect of tax charged on income both in that part or place and Brunei Darussalam in a manner which appears to the Collector to correspond to the relief granted by this section.

(4) For the purposes of this section the rate of tax under this Act shall be computed in the manner provided by subsection (3) of section 39 of this Act and the Commonwealth rate of tax shall be computed in a similar manner.

(5) Where a person is for any year of assessment resident both in Brunei Darussalam and in a place or territory in which Commonwealth income tax is charged, he shall for the purposes of this section be deemed to be resident where during that year he resides for the longer period.

**Double taxation arrangements.**

**41.** (1) If His Majesty in Council by order declares that arrangements specified in the order have been made with the Government of any territory outside Brunei Darussalam with a view to affording relief from double taxation in relation to tax under this Act and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under this Act notwithstanding anything in any written law.

(2) *(Transitional)*.

(3) On the making of an order under this section with respect to arrangements relating to any territory forming part of the Commonwealth, section 40 of this Act shall cease to have effect as respects that territory and shall be deemed to have ceased to have had effect from the beginning of the first year of assessment for which the arrangements are expressed to apply except in so far as the arrangements otherwise provide.

(4) Any order made under this section may be revoked by a subsequent order.

(5) Where any arrangements have effect by virtue of this section the obligation as to secrecy imposed by section 4 of this Act shall not prevent the disclosure to any authorised officer of the Government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(6) His Majesty in Council may make rules for carrying out the provisions of any arrangements having effect under this section.

**Tax credits.**

**42.** (1) The provisions of this section shall have effect where, under arrangements having effect under section 41 of this Act, 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; and in this section the expression “foreign tax” means any tax payable in that territory which under the arrangements is to be so allowed and the expression “income tax” means tax chargeable under this Act.

(2) The amount of the income tax chargeable in respect of the income shall be reduced by the amount of the credit:

Provided that credit shall not be allowed against income tax for any year of assessment unless the person entitled to the income is resident in Brunei Darussalam during that year.

(3) The credit shall not exceed the amount which would be produced by computing the amount of the income in accordance with the provisions of this Act and then charging it to incoming tax at a rate ascertained by dividing the income tax chargeable (before allowance of credit under any arrangements having effect under section 41 of this Act) on the assessable income of the person entitled to the income by the amount of his assessable income.

(4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a person for any year of assessment for foreign tax under all arrangements having effect under section 41 of this Act shall not exceed the total income tax payable by him for that year of assessment, excluding any tax payable by him under the provisions of section 37 of this Act.

(5) In computing the amount of the income —

(a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);

(b) where the income tax chargeable depends on the amount received in Brunei Darussalam, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income;

(c) 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 whether any, and if so what, credit is to be given against income 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 credit; but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(6) Paragraphs (a) and (b) of subsection (5) of this section (but not the remainder thereof) shall apply to the computation of assessable income for the purposes of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all income in the case of which

credit falls to be given for foreign tax under arrangements for the time being in force under section 41 of this Act.

(7) Where —

(a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provided,

then if the dividend is paid to a company which controls, directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Credit shall not be allowed under the arrangements against income tax chargeable in respect of the income of any person for any year of assessment if he elects that credit shall not be allowed in the case of his income for that year.

(9) 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 claim shall be subject to objection and appeal in like manner as an assessment.

(10) 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 relief shall apply to any assessment or claim to which the adjustment give rise, being an assessment or claim made not later than 2 years from the time when all such assessment 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.

## PART IX

## PERSONS CHARGEABLE ETC.

A. — *Husband and Wife***Wife's income.**

**43.** (1) The income of a married woman living with her husband shall, for the purposes of this Act, be deemed to be the income of the husband, and shall be charged in the name of the husband and not in her name nor in that of her trustee:

Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of the assessable income of the wife bore to the amount of the assessable income of the husband and wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her.

(2) (a) When a married woman is not living with her husband each spouse shall for all purposes of this Act be treated as if he or she was unmarried;

(b) Any amount payable by way of alimony or allowance under any judicial order or written agreement of separation or under any decree or divorce shall be returned as the separate income of the person to whom it is paid.

(3) For the purposes of this Act a married woman shall be treated as living with her husband unless —

- (i) they are separated under an order of court of competent jurisdiction or by deed or separation; or
- (ii) they are in fact separated in such circumstances that the separation is likely to be permanent; or
- (iii) she is resident in Brunei Darussalam and her husband is not resident in Brunei Darussalam.

B. — *Trustees, Agents and Curators***Chargeability of trustees etc.**

**44.** A receiver appointed by the Court, a trustee, guardian, curator, or committee, having the direction, control, or management of any property or concern on behalf of any incapacitated person shall be chargeable to tax in like manner and to the like amount as such person would be chargeable if he were not an incapacitated person:

Provided that this section shall not be construed to make any person chargeable to tax in respect of an incapacitated person, liable, in such respect, for a greater amount of tax than that for which the incapacitated person would have been liable had no receiver, trustee, guardian, curator or committee been appointed.

**Chargeability of agent of person residing out of Brunei Darussalam.**

**45.** (1) (a) A person not resident in Brunei Darussalam hereinafter in this section referred to as a “non-resident person”, shall be assessable and chargeable to tax either directly or in the name of his trustee, guardian, or committee, or of any attorney, factor, agent, receiver, branch, or manager, whether such attorney, factor, agent, receiver, branch, or manager has the receipt of the income or not, in like manner and to the like amount as such non-resident person would be assessed and charged if he were resident in Brunei Darussalam and in actual receipt of such income:

Provided that in the case of any individual who is not resident in Brunei Darussalam no deduction shall be allowed under the provisions of section 32 of this Act.

(b) A non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch, or management, and shall be so assessable and chargeable in the name of the attorney, factor, agent, receiver, branch or manager.

(2) Where a non-resident person carries on business with a resident person and it appears to the Collector that owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person the course of business between those persons can be so arranged and

is so arranged that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(3) Where the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot in any case be readily ascertained, the Collector may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid, and in such case the provisions of this Act relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged:

Provided that the amount of the percentage shall in each case be determined with regard to the nature of the business and shall, when determined by the Collector, be subject to appeal in accordance with the provisions of Part XII of this Act.

(4) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker, general commission agent or agent is not an authorised person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subsections (2) and (3) of this section, in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(5) The fact that a non-resident person executes sales or carries out transactions with other non-resident persons in circumstances which would make him chargeable in pursuance of subsections (2) and (3) of this section in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(6) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver or manager, in respect of any gains or profits arising from the sale of goods or produce manufactured or produced outside Brunei Darussalam by the non-resident person, the person in whose

name the non-resident is so chargeable may, if he thinks fit, apply to the Collector to have assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had brought from the manufacturer or producer direct, and on proof to the satisfaction of the Collector of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

(7) The master of any ship and the captain of any aircraft owned or chartered by a non-resident person who is chargeable under the provisions of section 9 of this Act shall (though not to the exclusion of any other agent) be deemed the agent of such non-resident person for all the purposes of this Act.

(8) The income of any non-resident partner or partners from a partnership shall be assessable in the name of the partnership or of any resident partner or of any agent of the partnership in Brunei Darussalam, and the tax charged thereon shall be recoverable by all means provided in this Act out of the assets of the partnership or from any partner or from any such agents.

#### **Acts to be done by trustees and certain others.**

**46.** The person who is chargeable in respect of any incapacitated person, or in whose name a non-resident is chargeable, shall be answerable for all matters requiring to be done by virtue of this Act for the assessment of the income of any person for whom he acts and for paying the tax chargeable thereon.

#### **Managers of companies or bodies of persons.**

**47.** The manager or principal officer in Brunei Darussalam of every company or body of persons shall be answerable for doing all such acts matters and things as are required to be done by virtue of this Act for the assessment of such company or body and payment of tax.

#### **Indemnification of representative.**

**48.** Every person answerable under this Act for the payment on behalf of another person may retain out of any money coming to his hands on behalf of such other person 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.

### **Deceased persons.**

**49.** Where an individual dies, then as respects income arising before his death all rights and duties which would have attached to him, and any liability to be charged with or to pay tax to which he would have been subject under this Act if he had not died, shall pass to his executor, and the amount of any tax payable by the executor under this section shall be a debt due from and payable out of the estate of the deceased:

Provided that —

(a) any assessment or additional assessment on any such income shall not be made later than the end of the third year of assessment following that in which the individual died;

(b) in the case of an individual dying during the year preceding the year of assessment, if his executor distributes the estate before the commencement of the year of assessment, such executor shall pay any tax for that year of assessment at the rate or rates in force at the date of distribution of the estate, if the rate of tax for that year of assessment has not been varied at that date.

### **Company wound-up.**

**50.** 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.

### **Joint trustees.**

**51.** Where 2 or more persons act in the capacity of trustees of a trust they may be charged jointly or severally with the tax with which they are chargeable in that capacity and shall be jointly and severally liable for payment of the same.

**PART X****RETURNS****Notice of chargeability and returns.**

**52.** The Collector may by notice in writing require any person to furnish him in such form and manner as the Collector may determine within a reasonable time with a return of income and such particulars as may be required for the purpose of ascertaining the income, if any, for which such person is chargeable under this Act.

[S 45/01]

**Duty to give notice of chargeability.**

**53.** Every person chargeable with tax for any year of assessment who has not been required within 3 months after the commencement of such year of assessment to make a return of his income for that year as provided in section 52 shall within 14 days after the expiration of that period give notice to the Collector that he is so chargeable:

[S 45/01]

Provided that any individual who arrives in Brunei Darussalam during any year of assessment shall give such notice within one month of the date of his arrival.

**Collector may call for further returns.**

**54.** The Collector may give notice in writing to any person when and as often as he thinks necessary requiring him 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.**

**55.** For the purpose of obtaining full information in respect of any person's income the Collector may give notice in writing to such person requiring him 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 him 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.** [S 45/01]

**55A.** 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 have 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 building and document etc.** [S 45/01]

**55B.** (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 on 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 in the Malay or English languages of those books, accounts or records.

#### **Returns to be deemed to be furnished by due authority.**

**56.** A return, statement or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognizant of all matters therein.

#### **Returns to be made by Government officers and employers.**

**57.** (1) 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.

(2) Every employer when required to do so by notice in writing from the Collector shall, within the time limited by the notice, prepare and deliver for any year a return containing —

(a) the names and places of residence of such persons or classes of persons employed by him as may be specified in such notice; and

(b) the full amount of remuneration, whether in cash or otherwise, paid or payable to those persons in respect of that employment for the period specified in the notice.

(3) Where the employer is a company or a body of persons, the manager or principal officer in Brunei Darussalam shall be deemed to be the employer for the purposes of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

### **Lists to be prepared by representative or agent.**

**58.** Every person who, in whatever capacity, is in receipt of any money or value being income arising from any of the sources mentioned in this Act of or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in Brunei Darussalam and not an incapacitated person, shall, whenever required to do so by any notice in writing from the Collector prepare and deliver within the period mentioned in such notice a return signed by him, containing —

(a) a true and correct statement of all such income; and

(b) the name and address of every person to whom the same shall belong.

### **Occupiers to furnish returns of rent payable.**

**59.** The Collector may give notice in writing to any person who is the occupier of any land or premises 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 return containing —

(a) the name and address of the owner of such land or premises or the name and address of the person to whom he pays rent therefor; and

(b) a true and correct statement of the rent payable and any other consideration passing in respect of such occupation.

**Returns to be made by a partnership.**

**60.** (1) Where a trade, business, profession or vocation is carried on by 2 or more persons jointly, the precedent partner, that is to say, the partner who, of the partners personally present in Brunei Darussalam —

(a) is first named in the agreement of partnership; or

(b) if there be no agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the firm; or

(c) is the precedent acting partner if the partner named with precedence is not an acting partner,

shall, when required to do so by notice in writing from the Collector, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Act, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year.

(2) Where no partner is personally present in Brunei Darussalam, the return shall be made and delivered by the attorney agent, manager, or factor of the firm in Brunei Darussalam.

**PART XI****ASSESSMENTS****Collector to make assessments.**

**61.** (1) The Collector shall proceed to assess every person chargeable with tax as soon as may be after the expiration of the time allowed to such person for the delivery of the return provided for in section 52 of this Act.

[S 45/01]

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

(a) accept the return 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 person and make an assessment accordingly.

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

### **Additional assessment.**

**62.** Where it appears to the Collector that any person 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 6 years after the expiration thereof, assess such person 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 shall apply to such assessment or additional assessment and to tax charged thereunder.

### **List of persons assessed and notices of assessments.**

**63.** (1) The Collector shall as soon as possible prepare lists of persons assessed to tax.

(2) Such lists, hereinafter called “the assessment lists”, shall contain the names and addresses of the persons assessed to tax, the amount of the chargeable income of each person, the amount of tax payable by him, 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.

### **Appointment of agents.**

**64.** For the purpose of facilitating the assessment of the income of persons residing in, and of persons the accounts of whose trade or business are audited in, the United Kingdom or elsewhere His Majesty may appoint agents in the United Kingdom and elsewhere any one of whom shall make enquiries on behalf of the Collector in respect of any such person who has

applied to be dealt with through such an agent and whose application has been approved by the Collector, and shall ascertain and report to the Collector the amount of the chargeable income of such person in accordance with this Act and shall forward to the Collector the accounts and computations upon which his report is based. The Collector on receipt of the report shall enter the amount reported in the assessment lists:

Provided that —

(a) if it appears to the Collector that any error has occurred in the accounts or computations he may refer the report back for further consideration;

(b) nothing in this section shall affect any right of appeal under Part XII of this Act.

#### **Service of notices of assessment.**

**65.** (1) The Collector shall cause to be served personally on or sent by registered post to each person whose name appears on the assessment lists a notice stating the amount of his chargeable income, the tax payable by him, the place at which such payment should be made, and informing him of his rights under subsection (2) of this section:

Provided that where a person has applied under section 64 of this Act to be dealt with through an agent in the United Kingdom or elsewhere and has applied for and been granted permission to make payment of the tax in the United Kingdom or elsewhere, the Collector may direct that the notice of assessment shall be served by the agent in the manner above prescribed; and

Provided further that nothing in the above proviso shall affect the responsibility of the manager or principal officer of any company or body of persons under section 47 of this Act for the payment of tax.

(2) If any person disputes the assessment, he may apply to the Collector, by notice of objection in writing, to review the assessment made upon him. Such application shall state precisely the grounds of his objections 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 absence from Brunei Darussalam, sickness or other reasonable cause, the person 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) of this section, the Collector may, by notice in writing, require the person giving the notice of objection to furnish such particulars as the Collector may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, he thinks, is able to give evidence respecting 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 person assessed, who has objected to an assessment made upon him, agreeing with the Collector as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person:

Provided that in the event of any person, who under subsection (2) of this section has applied to the Collector for revision of the assessment made upon him, failing to agree with the Collector as to the amount at which he is liable to be assessed, his right of appeal under the provisions of this Act against the assessment made upon him shall remain unimpaired.

### **Errors and defects in assessment and notice.**

**66.** (1) No assessment, warrant or other proceeding 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 the same 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 if the person 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 or surname of a person liable; or

(ii) the description of any income; or

(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 person intended to be charged and such notice shall contain in substance and effect the particulars on which the assessment is made.

## PART XII

### APPEALS

#### **Appeals against assessments.**

**67.** (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Collector in the manner provided in subsection (4) of section 65 of this Act, 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 said 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 69 or 70 of this Act, 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 tax payable as determined by the High Court (excluding the amount of costs awarded) exceeds \$5,000, 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 person appealing shall attend in person before the Court on the day and at the time fixed for the hearing of the 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, the taxpayer concerned as a party in the appeal 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 to appear on his behalf a qualified accountant duly authorised by him or any clerk or servant in his service or any agent regularly employed by him, or the Court may permit him to conduct his case in writing.

(6) The onus of proving that the assessment complained of is excessive shall be on the taxpayer concerned as a party in 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 either personally on, or by registered post to, the taxpayer concerned as a party in the appeal.

(9) All appeals shall be heard in camera, unless the 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 publication of the facts of the case, the arguments and the decision without disclosing the name of the taxpayer concerned.

(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 Chief Justice with the approval of His Majesty in Council may 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.

**Assessment to be final and conclusive.**

**68.** 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 income assessed thereby or where the amount of the chargeable income has been agreed to under subsection (4) of section 65 of this Act, or where the amount of such chargeable income 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 and regards the amount of such chargeable income:

Provided that nothing in this Part shall prevent the Collector from making any refund under the provisions of section 77 of this Act or any assessment or additional assessment for any year of assessment which does not involve reopening any matter which has been determined on appeal for the year.

**PART XIII****COLLECTION, RECOVERY AND REPAYMENT  
OF TAX**

**69.** (*Repealed*).

**Time within which payment is to be made.**

**70.** Subject to the provisions of section 75 of this Act, tax for any year of assessment levied in accordance with section 34 or 35 of the Act shall, notwithstanding any objection or appeal against the assessment on which the tax is levied, be payable at the place stated in the notice of assessment under section 65 of this Act within 30 days after the service of the notice:

[S 45/01]

Provided that the Collector at his discretion may extend the time within which payment may be made.

**Recovery of tax from persons leaving Brunei Darussalam.**

**71.** (1) Where the Collector is of opinion that any person is about to, or likely to, leave Brunei Darussalam without paying all tax assessed upon him, he may issue a certificate containing particulars of such tax and a direction to the Commissioner of Police to prevent such person leaving Brunei

Darussalam without paying the tax or furnishing security to the satisfaction of the Commissioner of Police for payment thereof.

(2) The Commissioner of Police shall, on receipt of any such certificate and direction issued by the Collector, take or cause to be taken by any police, such measures as may be necessary to prevent the person named in such direction from leaving Brunei Darussalam until payment of the tax has been made or secured as aforesaid, including the use of such force as may be necessary and the seizure, removal or retention of any passport, certificate of identity or other travel document relating to such person and of any exit permit or other document authorising such person to leave Brunei Darussalam.

(3) At the time of issue of his certificate, the Collector shall issue to such person a notification thereof by personal service, or registered post: but the non-receipt of any such notification by such person shall not invalidate proceedings under this section.

(4) Production of a certificate signed by the Collector, stating that the tax has been paid or that security has been furnished therefor, or payment of the tax to a police officer in charge of a police station, shall be sufficient authority for allowing such person to leave Brunei Darussalam.

(5) Any person who, knowing that a direction has been issued under this section for the prevention of his departure from Brunei Darussalam, leaves or attempts to leave Brunei Darussalam without paying all tax assessed upon him or furnishing security to the satisfaction of the Collector for payment thereof shall be guilty of an offence against this Act and may be arrested, without warrant, by any police officer.

(6) No civil or criminal proceedings shall be instituted or maintained against the Government, the Commissioner of Police or any other police officer in respect of anything lawfully done under the authority of this section.

### **Penalty for non-payment of tax; and enforcement of payment.**

**72.** (1) Subject to the provisions of subsection (2) of this section, if any tax is not paid within the periods prescribed in section 70 of this Act —

(a) a sum equal to 5 per centum 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 shall apply to the collection and recovery of such sum;

(b) the Collector shall serve a demand note upon the person 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;

[S 45/01]

(bb) 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 of 1 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 shall apply to the collection and recovery of tax of such additional penalty;

[S 45/01]

(c) a penalty imposed under this subsection shall not be 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) of this section.

**73.** (*Repealed*).

#### **Suit for tax by Collector and refund of port clearance.**

**74.** (1) Tax may be sued for and recovered in a Court of competent jurisdiction by the Collector in his official name with full costs of suit from the person charged therewith as a debt to the Government.

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

(3) In any suit under subsection (1) of this section, 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 said amount.

(4) In addition to any other powers of collection and recovery provided in this Act, the Collector may, with the approval of the Minister and where the tax charged on the income of any person who carries on the

business of ship owner or charterer or of air-transport has been in default for more than 3 months, whether such person is assessed directly or in the name of some other person, issue to the Controller of Customs or other authority by whom the clearance may be granted, a certificate containing the name or names of the said person and particulars of the tax in default. On receipt of such certificate, the Controller of Customs or other authority shall be employed and is hereby required to refuse clearance from any port, aerodrome or airport in Brunei Darussalam to any ship or aircraft owned wholly or partly or chartered by such person until the said tax has been paid.

(5) No civil or criminal proceedings shall be instituted or maintained against the Government, the Controller of Customs or other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship or aircraft is detained under this section affect the liability of the owner, charterer, or agent to pay harbour or other dues and charges for the period of detention.

#### **Statement of Collector sufficient.**

**74A.** (1) In any civil or criminal proceedings under this Act, every statement purporting to be under the hand of the Collector contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter stated therein.

(2) This section shall apply to any matter so stated although —

(a) evidence in support or rebuttal of the matter stated or of any other matter is given; or

(b) the matter stated is a mixed question of law and fact, but in such case the statement shall be *prima facie* evidence of the fact only.

(3) This section shall not apply to —

(a) a statement of the intent of the defendant; or

(b) proceedings for an offence punishable by imprisonment.

#### **Deduction of tax from emoluments and pensions.**

**75.** (1) Where any income chargeable under paragraph (b) or (e) of subsection (1) of section 8 of this Act is payable to any individual, deduction on account of tax which is or will be payable by him for any year of

assessment shall, if the Collector so directs, be made out of the income or any arrears thereof.

(2) Subject to the provisions of any rules made under section 5 of this Act, deductions authorised by this section shall be made at such times and in such months as the Collector shall direct whether or not the tax has been assessed:

Provided that —

- (i) if on the assessment becoming final and conclusive it appears that the deductions made exceed the tax payable, the tax overpaid by means of the previous deductions shall be repaid; and
- (ii) where any deduction has been made from the income so chargeable of any individual, he shall have the same right of objection or appeal against the deduction as he has against an assessment made upon him.

(3) If and so far as any such income is paid without deduction of tax as aforesaid, the tax may be collected and payment thereof enforced in accordance with the provisions of sections 70, 71 and 72 of this Act:

Provided that for the purpose of section 70 the Collector shall determine the period within which the tax shall be payable.

### **Remission of tax.**

76. (1) The Collector may remit, wholly or in part, the tax payable by any person on the ground of poverty.

(2) His Majesty in Council may, in his discretion, remit, wholly or in part, the tax payable by any person if he is satisfied that it is just and equitable to do so.

### **Repayment of tax and deduction where tax paid or payable affected by double taxation relief.**

77. (1) If it be proved to the satisfaction of the Collector that any person for any year of assessment has paid tax, by deduction or otherwise, 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 —

- (i) 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; and
- (ii) where any person has suffered tax by deduction in accordance with section 36 or section 37 of the Act he shall not be entitled by virtue of this section to any relief greater than that provided by section 38 of this Act.

(2) Where the tax paid or payable by a company is affected by double taxation relief the amount to be set off under section 38 of this Act, or to be repaid under subsection (1) of this section in respect of the tax deductible from any dividend paid by the company shall be reduced as follows —

(a) if no tax is chargeable on the recipient in respect of the dividend, the reduction shall be an amount equal to tax on the gross dividend at the rate of double taxation relief applicable thereto;

(b) if the rate of tax chargeable on the recipient in respect of the dividend is less than the rate of double taxation relief applicable to the dividend, the reduction shall be an amount equal to tax on the gross dividend at the difference between those 2 rates.

(3) For the purposes of this section —

(a) if the income of the person chargeable includes one dividend such as is mentioned in subsection (1) of this section, that dividend shall be deemed to be the highest part of his income;

(b) if his income includes more than one such dividend, a dividend shall be deemed to be a higher part of his income than another dividend if the net Brunei Darussalam rate applicable to the former dividend is lower than that applicable to the latter dividend;

(c) where tax is chargeable at different rates in respect of different parts of any such dividend, or where tax is chargeable in respect of some part of any such dividend and is not chargeable in respect of some other part thereof, each part shall be deemed to be a separate dividend;

(d) the expression “double taxation relief” has the same meaning as in section 36 of this Act, and the expression “the rate of double taxation relief” means the rate which represents the excess of the rate of tax deductible from the dividend over the net Brunei Darussalam rate applicable thereto.

(4) Where through death, incapacity, bankruptcy, liquidation, or other cause a person who would, but for such cause, have been entitled to make a claim under subsection (1) of this section is unable to do so, his executor, trustee, or receiver, as the case may be, shall be entitled to have refunded to him for the benefit of such person or his estate any tax paid in excess within the meaning of subsection (1) of this section.

#### PART XIV

### OFFENCES AND PENALTIES

#### Offences and penalties.

78. (1) Every person who without reasonable excuse —

(a) fails to comply with the requirements of a notice given to him under any of the following sections or subsections of this Act, that is to say —

section 52, section 53, section 54, section 55, section 55A, subsection (1) of section 57, subsection (2) of section 57, section 58, section 59, subsection (1) of section 60, subsection (2) of section 60 or subsection (3) of section 65; or

[S 45/01]

(b) fails to comply with the requirements of section 53 of this Act or with a direction given to him under section 75 of this Act;

[45/01]

(c) fails to attend in answer to a summons issued under subsection (3) of section 65 of this Act or having attended fails without sufficient cause to answer any questions lawfully put to him; or

[S 45/01]

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

[S 45/01]

shall be guilty of an offence against this Act.

(2) Any person guilty of an offence against this Act for which no other penalty is provided shall be liable, on conviction, to a fine of \$10,000 and in default of payment to imprisonment for 12 months:

Provided that no person shall be 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 personally or by registered post.

[S 45/01]

### **Penalty for making incorrect return.**

**79.** (1) Every person who without reasonable excuse —

(a) makes an incorrect return by omitting or understating any income 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 own liability to tax or the liability of any other person or of a partnership,

shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 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 12 months.

(2) *(Deleted).*

[S 45/01]

(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 at the instance of or with the sanction of the Public Prosecutor shall not be stayed or compounded without the consent of the Public Prosecutor.

**Penal provisions relating to fraud etc.**

**80.** (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 which should be included; or

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

(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; or

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

shall be guilty of an offence, and shall for each such offence be liable on conviction to a fine of \$10,000 and treble the amount of tax for which he is liable under this Act for the year of assessment in respect of or during which the offence was committed and to imprisonment for 3 years.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return furnished under this Act by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade tax.

(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 at the instance of or with the sanction of the Public Prosecutor shall not be stayed or compounded without the consent of the Public Prosecutor.

**Penalties for offences by authorised and unauthorised persons.**

**81.** 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 tax;
- (ii) withholds for his own use or otherwise any portion of the amount of tax collected;
- (iii) renders a false return, whether verbal 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,

shall be guilty of an offence and be liable on conviction to a fine of \$10,000 and to imprisonment for 3 years.

**Tax to be payable notwithstanding any proceedings for penalties.**

**82.** 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.**

**83.** No prosecution in respect of an offence under section 78, 79, 80 or 81 of this Act shall be commenced except at the instance of or with the sanction of the Collector or the Public Prosecutor.

**Jurisdiction of Courts.**

**84.** A conviction for any offence under or against this Act or any rules made thereunder may be had before the Court of a Magistrate, but the

provisions of this section shall not empower the Court of a Magistrate to inflict any penalty which it is otherwise incompetent to impose.

**Saving for criminal proceedings.**

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

**Concessions for special cases.**

**86.** (1) Notwithstanding anything contained in this Act if His Majesty in Council is of opinion that the grant of any of the concessions hereinafter mentioned is necessary or expedient —

- (a) to facilitate the development of Brunei Darussalam;
- (b) to encourage the establishment or expansion in Brunei Darussalam of any trade, industry or undertaking;
- (c) to procure the investment of capital in any undertaking established or to be established in Brunei Darussalam; or
- (d) in the public interest,

he may by order signified in the *Gazette* direct that —

- (i) tax shall be levied upon the income of persons carrying on a specified trade, industry, undertaking or occupation or falling within a specified class or description at a lower rate or rates than the rate from time to time in force; and
- (ii) in connection with the ascertainment or assessment of any income of the persons to whom the order applies and the levying of any tax thereon such deductions, allowances, concessions and modifications shall be made and allowed as may be specified in such order either in addition to or in lieu of any lawful deduction or allowance:

Provided that the directions given by any order under this subsection shall as regards any person to whom any such order applies apply only if such person notifies the Collector in writing that he desires to avail himself thereof.

(2) The power conferred by subsection (1) shall include power —

(a) to impose such liabilities upon persons benefiting thereunder in connection with the supply of information to the Collector and otherwise as may be reasonably necessary or expedient to ascertain whether any concession granted by the order is applicable and generally to carry the order into effect;

(b) to direct that any lower rate of tax and any deduction, allowance, concession or modification shall —

- (i) be applicable for such period as may be specified or determined in the order;
- (ii) relate back to such date as may be specified in the order;
- (iii) be contingent upon the performance of any condition; and
- (iv) determine, be withdrawn or be revocable upon the occurrence of any contingency, including any failure or omission; and
- (v) to provide for pecuniary penalties for failure to discharge any liability imposed under the order:

Provided that such penalties shall not exceed 3 times the value of the concession in respect of or in connection with which the liability is imposed and may be recovered under the provisions of section 74 of the Act in like manner as if they were tax.

(3) Any direction given under this section shall have effect according to its tenor and the Act, the Schedules thereto and any rules made under the Act, shall for such purpose be construed, applied and enforced with such adaptations as may be necessary to give effect thereto.

**PART XV****TRANSITIONAL PROVISIONS****Transitional Provisions.**

**87.** (1) Where notice of an objection or appeal was given prior to the commencement of this Act, and the collection of tax for any year of assessment levied in accordance with section 34 or 35 of the Principal Enactment in respect of which such notice of objection or appeal was given has, but for the provisions of this Act, remained in abeyance in accordance with the provisions of the repealed section 69 of the Principal Enactment, such tax shall, notwithstanding such notice of objection or appeal, become payable at the place stated in the notice of assessment under section 65 of the Principal Enactment, not later than the 1st day of April 1985.

(2) Where payment of tax in whole or in part has been held over in accordance with the provision of the repealed section 69 of the Principal Enactment and payment of such tax has become payable in accordance with paragraph 1 of this Schedule and such tax is not paid within the period prescribed in the said paragraph 1 of this Schedule, the provisions of section 72 shall apply as if such tax has not been paid within the period prescribed in section 70.

**FIRST SCHEDULE****(section 1)****EXTENT TO WHICH ACT APPLIES**

(a) Tax shall be charged, levied and collected only in respect of the incomes of companies within the meaning of section 2 of the Act, and the provisions of the Act shall not have effect in respect of incomes of any other persons or bodies of persons.

(b) Without prejudice to the generality of the foregoing paragraph (a), the following sections of the Act shall not have effect —

- (i) section 36 which relates to deduction of tax from dividends paid or payable by companies;



(ii) *(deleted)*;

[S 45/01]

(iii) section 38 which relates to tax deducted from dividends or from interest paid under a charge or from debenture or loan interest, except where such interest paid under a charge or such debenture or loan interest has been received by a company and tax has been deducted therefrom and accounted for in accordance with the provisions of section 37;

(iv) section 75 which relates to deduction of tax from emoluments and pensions;

(c) There shall be excluded from the chargeable income of any company any dividend or part of a dividend receivable by that company and paid by any other company out of income which is liable to be assessed to tax under the Act.

## SECOND SCHEDULE

(section 34)

CHARGEABLE INCOME	RATE OF TAX
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## THIRD SCHEDULE

(section 19)

**MINES, OIL WELLS ETC.**

### **Expenditure to which the Third Schedule applies.**

1. (1) In this Schedule, the expression “expenditure to which this Schedule applies” means capital expenditure incurred by any person in connection with the working of a mine, oil well or other source of mineral deposits of a wasting nature —

(a) on searching for or on discovering and testing deposits, or winning access thereto; or

(b) on the construction of any works which are likely to be of little or no value when the source is no longer worked or, where the source is worked under a foreign concession, which are likely to become valueless when the concession comes to an end to the person working the source immediately before the concession comes to an end:

Provided that the said expression does not include —

- (i) any expenditure on the acquisition of the site of the source, or of the site of any such works as aforesaid, or of rights in or over any such site;
- (ii) any expenditure on the acquisition of, or of rights in or over, the deposits;
- (iii) any expenditure on machinery or plant, or on any asset which has been treated for any year of assessment as machinery or plant;
- (iv) any expenditure on works constructed wholly or mainly for subjecting the raw product of the source to any process, except a process designed for preparing the raw product for use as such;
- (v) any expenditure on buildings or structures provided for occupation by or for the welfare of workers;
- (vi) any expenditure on a building where the whole of the building was constructed for use as an office;
- (vii) any expenditure on so much of a building or structure as was constructed for use as an office, unless the capital expenditure of the construction of the part of the building or structure constructed for use as an office was not more than one-tenth of the capital expenditure incurred on the construction of the whole of the building or structure.

(2) Any reference in this Schedule to assets representing any expenditure includes, in relation to expenditure on searching for, discovering

and testing deposits, any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

### **Initial allowances.**

2. Where, on or after the first day of January 1949, a person carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature incurs for the purposes of the trade any expenditure to which this Schedule applies on the construction of works likely to have little or no value to him when the source is no longer worked, there shall be made to him for the year of assessment in the basis period for which the expenditure is incurred an allowance (in this Schedule referred to as “an initial allowance”) equal to one-tenth of that expenditure.

### **Annual allowances.**

3. (1) Where a person carrying on a trade which consists of or includes the working of any mine, oil well or other source of mineral deposits of a wasting nature has, at any time after the first day of January 1949, and before the end of his basis period for any year of assessment, incurred for the purposes of that trade expenditure to which this Schedule applies, an allowance (in this Schedule referred to as “an annual allowance”) shall be made to him for that year in respect of the whole of the expenditure to which this Schedule applies which he has incurred for the purposes of the trade and in connection with that source in the period which begins with the said day and ends with the end of the said basis period.

(2) The amount of the said allowance shall be the amount which results from applying to the residue of the expenditure the fraction of which —

(a) the numerator represents the output from the source in question in the basis period for the year in question; and

(b) the denominator represents the sum of that output and the total potential future output of the source, estimated as at the end of that period, or the fraction one-twentieth, whichever is the greater.

(3) Where the source ceases to be worked or, in the case of a source worked under a foreign concession, the concession comes to an end, the person carrying on the trade 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 total potential future output of the source estimated as at the end of the basis period were a reference to the actual output of the source between the end of the basis period and the happening of the said event, and the said 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 assessments shall be made as are necessary to enable effect to be given to this sub-paragraph.

(4) Where, on the first day of January 1949, a person was carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature, the preceding provisions of this paragraph shall have effect as if he had on that day incurred for the purposes of the trade and in connection with the source expenditure to which this Schedule applies of an amount which shall be ascertained by —

(a) ascertaining the total expenditure to which this Schedule applies which was incurred by the trader before the first day of January 1949, for the purposes of the trade and in connection with the source; and

(b) subtracting therefrom the amount of any such expenditure so incurred which is attributable to any asset which has been sold by the trader before the first day of January 1949; and

(c) applying to the result the fraction of which —

(i) the numerator represents the total potential future output from the source estimated as at the first day of January 1949; and

(ii) the denominator represents the sum of the total output from the source before the first day of January 1949, and the said total potential future output.

(5) References in this paragraph to the residue of any expenditure, in relation to the annual allowance to be made for any year of assessment, are references to the amount thereof which remains after deducting therefrom —

(a) any initial allowances made in respect of that expenditure or any part thereof for that or any previous year of assessment;

(b) any annual allowances made in respect of that expenditure or any part thereof for any previous year of assessment;

(c) subject to the provisions of the next succeeding paragraph, if, before the end of the basis for the year of assessment for which the allowance is to be made, any asset representing the expenditure is sold or demolished or destroyed, the sale, insurance, salvage or compensation moneys.

#### **Sale of source or part of source as going concern.**

4. (1) The provisions of this paragraph shall have effect where —

(a) a person who is, on or after the first day of January 1949, carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature sells assets representing expenditure to which this Schedule applies; and

(b) the buyer of those assets buys them for the purposes of a trade carried on or to be carried on by him, being a trade which consists of or includes the working of the whole or any part of the source in connection with which the assets were provided.

(2) If the net proceeds of the sale are less than the residue of the expenditure on the assets immediately before the sale, an allowance (in this Schedule referred to as “a balancing allowance”) shall be made to the seller, for the year of assessment in the basis period for which the sale took place, equal to the difference.

(3) If the net proceeds of the sale exceed the residue of the expenditure on the assets immediately before the sale, a charge (in this schedule referred to as “balancing charge”) shall be made on the seller, for the years of assessment in the basis period for which the sale took place, on the amount of the excess.

(4) If the source in connection with which the expenditure was incurred has been worked before the first day of January 1949, the last 2 preceding sub-paragraphs shall have effect subject to the modification that the amount of the balancing allowance or the amount on which the balancing charge is made shall be reduced by applying thereto the fraction of which the numerator represents the total output from the source in the period which begins with the first day of January 1949, and ends with the time of the sale,

and the denominator represents the total output from the source up to the time of the sale.

(5) In no case shall the amount on which a balancing charge is made upon a person in respect of any assets exceed the difference between —

(a) the expenditure to which this Schedule applies which he incurred upon the assets; and

(b) the residue of that expenditure immediately before the sale.

(6) Whether a balancing allowance or balancing charge is made upon the seller or not, the deduction to be made in the case of the seller in respect of the assets under sub-paragraph (5)(c) of the last preceding paragraph shall, instead of being the sale, insurance, salvage or compensation moneys, be the residue of the expenditure attributable to the assets immediately before the sale.

(7) The buyer shall, for the purposes of the provisions of this Schedule relating to annual allowances, balancing allowances and balancing charges, be deemed to have incurred on the assets at the time of the sale expenditure to which this Schedule applies equal to whichever is the less of the following amounts, that is to say —

(a) so much of the price as is attributable to the assets; and

(b) the residue of the expenditure on the assets immediately after the sale.



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