

LAWS OF BRUNEI

CHAPTER 97
INVESTMENT INCENTIVES

5 of 1975

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CHAPTER 97
INVESTMENT INCENTIVES

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INVESTMENT INCENTIVES ACT

An Act to make provision for encouraging the establishment and development in Brunei Darussalam of industrial and other economic enterprises, for economic expansion and for incidental and related purposes

Commencement: 1st May 1975 [S 58/79]

PART I

Preliminary

1. This Act may be cited as the Investment Incentives Act. Short title.

2. (1) In this Act, unless the context otherwise requires — Interpretation.
 - “accounting period” means a period for which accounts have been made up in accordance with section 15(c);

 - “approved foreign loan” means a loan which is certified under section 29 to be an approved foreign loan;

 - “approved product” means a product declared under section 26 to be an approved product;

 - “Board” means the Economic Development Board established under the Brunei Darussalam Economic Development Board Act; Cap. 104.

 - “construction day”, in relation to a factory, means —
 - (a) the date specified in any application under section 4 as being the day on or before which it is intended to commence to construct the factory to which the application relates;

(b) where the factory is in existence before the date of the application,

“dollar” means the Brunei Darussalam dollar;

“expanding enterprise” means any company which has been approved by the Minister and to which an expansion certificate has been issued under section 26;

“expansion certificate” means an expansion certificate issued under section 26;

“expansion day”, in relation to an expanding enterprise, means the day specified in its expansion certificate under subsection (4) or (5) of section 26;

“foreign loan certificate” means a foreign loan certificate issued under section 29;

“industry” includes any kind of commercial undertaking;

“new business” means the business of a pioneer company deemed under section 15 to have been set up and commenced on the day following the end of its tax relief period;

“old business” means the business of a pioneer company relating to a pioneer enterprise of the company which is carried on by it in its tax relief period in accordance with section 15 and which either ceases within or is deemed under that section to cease at the end of that period;

“pioneer certificate” means a pioneer certificate given under section 5, or any such certificate as amended under section 6 or 10;

“pioneer company” means a company certified by a pioneer certificate to be a pioneer company;

“pioneer enterprise”, in relation to a pioneer company, means the manufacture at its pioneer factory (or at any other factory in Brunei Darussalam constructed by the company subsequently to the construction of its pioneer factory) of its relevant pioneer product and the sale of that product;

“pioneer factory” means a factory certified by a pioneer certificate to be a pioneer factory;

“pioneer industry” means an industry declared by an order made under section 3 to be a pioneer industry;

“pioneer product” means any product declared by an order made under section 3 to be a pioneer product;

“primary commodity” means a commodity produced or bred in Brunei Darussalam (or, in the case of fish and crustacea, caught or landed in Brunei Darussalam by the fisherman) which, although it may have been processed, has not been manufactured;

“production day”, in relation to a pioneer factory, means a day specified in accordance with section 4(2)(d), as confirmed, varied or amended by a pioneer certificate;

“productive equipment” means machinery or plant which would normally qualify for deduction under the provisions of sections 16, 17 and 18 of the Income Tax Act;

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“relevant pioneer product”, in relation to any pioneer company, means the pioneer product or products specified in its pioneer certificate;

“tax relief period”, in relation to a pioneer company, means the period ascertained in accordance with

section 13 (1), and any extension of that period made under section 13 (2) or 14.

(2) Notwithstanding subsection (1), where an industry is not a manufacturing industry, this Act shall apply with such modifications as may be necessary; and, in relation to any such industry, without prejudice to the generality of the foregoing —

(a) references to construction and construction day may be disregarded where they are not appropriate;

(b) references to a product or products may be construed as references to the activity or activities appropriate to the industry in question, references to producing a product or products may be construed as references to carrying on that activity or those activities (references to producing a relevant pioneer product or products being construed accordingly) and references to a pioneer enterprise may be construed as references to the carrying on by a pioneer company of that activity or those activities on a commercial scale;

(c) references to production day may be construed as references to the day on which a pioneer company commences to produce its relevant pioneer product in marketable quantities or to carry on that activity or those activities on a commercial scale;

(d) references to a factory may be construed as references to the premises at which a pioneer or other enterprise is carried on or, where such a construction is inappropriate, may be disregarded.

(3) Section 3(2) of the Income Tax Act shall apply to the Collector's functions under this Act as it applies to his functions under the Income Tax Act.

(4) Where this Act provides for any income to be exempt from tax under the Income Tax Act, the income in question shall be disregarded for the purposes of the Income Tax Act.

(5) Subject to the foregoing subsections, where a word or expression used in this Act has its meaning defined (or has a meaning assigned to it) by any provision of the Income Tax Act, either for the purposes of that Act as a whole or for the purposes of any particular provision thereof, then, unless the context otherwise requires, that word or expression shall have in this Act the meaning so defined or assigned.

(6) Where there is any conflict between the Income Tax Act and this Act, this Act shall prevail.

PART II

Relief from Income Tax

Chapter I

Pioneer Status

3. (1) It may be represented to the Board by any person that —

Declaration of pioneer industry and products.

(a) any industry is not being carried on in Brunei Darussalam on a commercial scale suitable to the economic requirements or development of Brunei Darussalam or at all;

(b) there are —

(i) favourable prospects of further development of the industry including development for export;

(ii) insufficient facilities in Brunei Darussalam to enable the industry to be carried on a commercial scale suitable to the economic requirements or development for export;

(c) it is expedient in the public interest to encourage the development (including development for

export) or establishment of the industry in Brunei Darussalam by the making of a statutory order declaring the industry to be a pioneer industry and any product or products of the industry to be a pioneer product or pioneer products,

and the Board may, upon receipt of any such representation, call for any further particulars which it considers necessary.

(2) Every representation made under subsection(1) by a member of the public (including a company or a body of persons) shall be accompanied by a deposit of \$500 which —

(a) shall be returned to the person making the deposit;

(b) if the Board declares the representation to be frivolous, shall be forfeited:

Provided that the Board shall not declare the representation to be frivolous unless it has given that person at least 30 days' notice of its intention to do so and has considered any objection made by that person to that intention.

(3) The Board shall consider any representation made under subsection(1) and, if it is satisfied that it is expedient to do so, shall cause to be published in the *Gazette* a notice containing —

(a) a declaration that it is considered expedient in the public interest to make, and that it is proposed to make, an order declaring such industry and such product or products as are specified in the order to be a pioneer industry and a pioneer product or pioneer products;

(b) the form of the proposed order, which may contain such conditions and restrictions as the Board may think fit to impose;

(c) provision for any person who may object to the making of the proposed order to give notice in writing of

his objection and of the grounds upon which he relies in support thereof to the Board on or before such day, not being less than 30 days from the date of publication of the notice, as may be specified in the notice.

(4) The Board —

(a) shall consider any objection which is received under subsection (3)(c) and may, if it thinks it necessary, call for further particulars of the objection;

(b) after considering any such objection shall either —

- (i) make a statutory order in the form contained in the notice published under subsection (3) (or in such other form as it may think fit) containing such conditions and restrictions as it may think fit to impose;
- (ii) decide not to make any such order.

(5) The Board may from time to time by a further statutory order amend any order made under subsection (4) by adding to the product or products declared in that order to be a pioneer product or pioneer products any further product or products, or otherwise as may appear necessary:

Provided that subsections (1) to (4) shall as nearly as may be apply to an order made under this subsection as they apply to an order made under subsection (4).

4. (1) Any company, or persons proposing to register a company, being desirous of establishing or participating in a pioneer industry for the purpose of producing any pioneer product or products and intending that a factory be constructed (or, where the factory is already in existence, be occupied) in Brunei Darussalam for that purpose, may make an application in writing to the Board for a pioneer certificate, or for a pioneer

Application
for pioneer
certificate.

certificate to be given when the proposed company has been registered, certifying —

(a) the company to be a pioneer company in relation to that industry and product or products;

(b) the factory, when constructed or occupied by the company, to be a pioneer factory for the purpose of developing or establishing that industry and for the purpose of the production of that product or products.

(2) In any application under subsection (1) the applicant shall —

(a) give particulars of the pioneer industry and of the pioneer product or products intended to be produced by the company or proposed company in the factory to which the application relates;

(b) estimate the rate of production by that factory of those products, in terms of marketable quantities which he anticipates the factory will be producing on production day;

(c) except in the case of an existing factory —

(i) give particulars of the estimated size, cost of construction and production capacity of the factory;

(ii) specify the locality in which it is proposed to construct the factory;

(iii) specify the date on which he expects that construction of the proposed factory will commence,

(d) specify the date on which the factory will commence to produce in marketable quantities the pioneer product or products intended to be produced therein.

(3) Every application under this section shall be accompanied by a deposit of \$500 which —

(a) shall be returned to the person making the deposit;

(b) if the Board declares the application to be frivolous, shall be forfeited:

Provided that the Board shall not declare that application to be frivolous unless it has given that person at least 30 days' notice of its intention to do so and has considered any objection made by that person to that intention.

5. (1) On receipt of an application made under section 4, the Board may call for any further particulars from the applicant which it considers necessary and, subject to the following subsections, may give a pioneer certificate if it is satisfied that it is expedient in the public interest to do so, having regard in particular —

Grant of
pioneer
certificate.

(a) to the number of pioneer companies already established or about to be established for the production of the product or products mentioned in the application;

(b) to the production or anticipated production of those pioneer companies;

(c) to the favourable prospects of further development of the industry including development for export;

(d) where the application is by a company, to the persons who are directors of the company and the description of persons who are members of the company;

(e) where the application is by persons proposing to register a company in connection with that application, to the persons who are proposed to be directors of the company and to the description of persons to whom the share capital or any part thereof is proposed to be offered for subscription.

(2) A pioneer certificate may be given in the terms of the application thereof or may be given subject to such variation of these terms, and subject to such conditions to be specified in the certificate as the Board thinks fit.

(3) Where an application for a pioneer certificate is made by persons proposing to register a company in connection with that application, the Board may decide to give a pioneer certificate under this section following the registration of the company —

(a) the Board's decision may be expressed to be subject to such conditions relating to any of the matters mentioned in subsection (1)(e) as it may specify;

(b) it shall give notice in writing of that decision and of any such conditions to these persons

(c) if the company is registered within 3 months of the date of the notice and the Board is satisfied that these conditions, if any, have been or will be complied with, the certificate may be given accordingly.

(4) Subject to subsection (3), no pioneer certificate shall be given otherwise than to a company registered as a Limited Company under the Companies Act.

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(5) No pioneer certificate shall be given by the Board, and no decision to give a pioneer certificate shall be taken by it, unless the terms and conditions of the certificate have had the concurrence in writing of the Minister.

(6) The Board may vary any condition imposed under subsection (2) or (3), but shall not do so without the concurrence in writing of the Minister.

Amendment
of pioneer
certificate
by adding
additional
pioneer
products.

6. (1) At any time during its tax relief period a pioneer company may make an application in writing to the Board to amend its pioneer certificate by adding an additional pioneer product to the pioneer product or products specified in the certificate.

(2) An application made under subsection(1) shall specify the additional pioneer product to which the application relates and the reasons for the application.

(3) Section 5, except subsections (1)(d) and (e) and (3) thereof, shall apply with any necessary modifications to any application under this section.

(4) An amendment of a company's pioneer certificate made under this section shall not of itself extend the company's tax relief period.

7. (1) To prevent hardship in the case of any company, an order or pioneer certificate made or given under section 3 or 5 or any amendment of a pioneer certificate under section 6 may provide that it shall be operative retrospectively from a date not earlier than 1st January 1974.

Power to make orders and pioneer certificate operate retrospectively.

(2) Where by virtue of this section a pioneer certificate is to be operative retrospectively from a date before it was given —

(a) any act or thing which has been done or which has happened for the purposes of the Income Tax Act since that date and which would not have been done or happened if that certificate had been in force at that date shall whenever necessary for the purposes of this and the Income Tax Act be treated as not having been done or not having happened;

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(b) if the act consists of the payment of any tax by a pioneer company, that tax shall be repaid in the manner provided in the Income Tax Act as soon as may be after the expiration of 90 days from the production day of that company.

8. Where a pioneer certificate has been issued to a pioneer company in respect of a proposed factory, the company shall within 14 days (or such longer period as the Board may allow on a request in writing) deliver to the Board a statement to the effect that the construction of the proposed factory was begun on

Notification of commencement of construction of pioneer factory.

or before its construction day or, where its construction was not so begun, a statement of the reasons therefor.

Production
certificate.

9. (1) Within 14 days (or such further period as the Board may allow on a request in writing) after its production day, every pioneer company shall deliver to the Board a statement showing —

(a) the marketable quantities of the relevant pioneer product or products produced by its factory prior to its production day;

(b) the rate of production of its pioneer factory in terms of marketable quantities of that product or those products on its production day;

(c) where the results shown by the statement fall short of the estimate made in accordance with section 4(2)(b) in connection with the factory, the reasons therefor.

(2) The Board may call for such further particulars or proof with regard to the statement delivered under subsection (1) as it may consider necessary and, subject thereto, shall if satisfied with the statement by reason of the fact that —

(a) the results shown by the statement equal or exceed the estimate referred to in subsection (1)(c);

(b) although the results fall short of that estimate, they are reasonable having regard to —

(i) any explanations therefor given by the company;

(ii) the efforts which it has made;

(iii) any difficulties it may have encountered,

issue a production certificate to the company to the effect that its pioneer factory is producing the relevant pioneer product or products in marketable quantities.

10. (1) Where a pioneer company fails —

Amendment
and
cancellation
of pioneer
certificates.

(a) to commence or cause to be commenced the construction of the proposed factory in relation to which that company was given a pioneer certificate on or before the construction day or such later day as the Board may have allowed;

(b) to obtain a production certificate under section 9(2),

the Board shall by notice in writing require the company, within 30 days from the date of service of the notice, to remedy the failure or to establish to the satisfaction of the Board that the failure was due to some cause beyond the control of the company and that there is a reasonable prospect of the failure being remedied by a day to be specified in the notice.

(2) Where a pioneer company has complied with a notice served on it under subsection(1) by remedying the failure or by satisfying the Board in accordance with the terms of the notice, the Board shall amend its pioneer certificate by substituting for the construction day or production day specified in the certificate either —

(a) the day on which the failure was remedied;

(b) the day specified in the notice in accordance with subsection (1),

and thereupon this Act shall have effect as if the day as substituted was the construction day or the production day, as the case may be, in relation to the company.

(3) The Board may cancel a pioneer company's pioneer certificate —

(a) where the company has failed to comply with a notice served on it under subsection (1);

(b) where it is satisfied that the company has contravened any provision of this Act or any condition imposed under section 5(2) or (3) and that in all the circumstances it is expedient to do so.

(4) Where a pioneer company's pioneer certificate is cancelled under this section, the cancellation shall be declared to be effective —

(a) from the date when the certificate first become operative;

(b) if the Board thinks fit, from such date after the date when the certificate first became operative as the Board may appoint.

(5) Where subsection (4)(a) applies in relation to the cancellation of a pioneer company's pioneer certificate —

(a) section 7(2) and sections 13 to 25 shall be deemed never to have had effect in relation to the company;

(b) any tax repaid to the company by virtue of section 7(2) shall be due and payable by the company on the date of cancellation and shall be recoverable in the manner provided by the Income Tax Act;

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(c) where section 7(2) had effect before the date of cancellation, any time running under the Income Tax Act at the date when section 7(2) first had effect in relation to the company shall be deemed to have commenced to run from the date of cancellation.

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(6) Where subsection 4(b) applies in relation to the cancellation of a pioneer company's pioneer certificate —

(a) the tax relief period of the company shall be treated for the purposes of sections 13 to 25 as having ended on the date from which the cancellation is declared to be effective;

(b) where no accounts of the company's old business have been made up to that date, the figures in the first accounts of the company made up after that date, being accounts —

- (i) made up for the purpose of preparing the last accounts of the old business and the first accounts of the new business of the company;
- (ii) relating to an accounting period which includes the date of cancellation,

shall for the purposes of sections 13 to 25 be apportioned by reference to the number of days of that period which fall before that date.

(7) This section shall apply notwithstanding any other provision of this Act.

11. The contents of any application made or of any certificate given under this Part with respect to a pioneer company shall not, except at the instance of the company, be published in the *Gazette* or in any other manner:

Restriction on publication of period, certificate, etc.

Provided that the Board shall cause to be published by notification in the *Gazette* the name of any company —

- (a) to whom a pioneer certificate has been given;
- (b) whose pioneer certificate has been cancelled.

12. The Board may by order prescribe the forms of application to be used under this Part.

Forms.

Chapter II

Tax Relief

13. (1) The Tax Relief period of a pioneer company shall commence on its production day and shall, subject to subsection (2) of this section and section 14, continue for a period of —

Tax relief pioneer.

(a) 2 years, where its fixed capital expenditure is less than \$250,000;

(b) 3 years, where its fixed capital expenditure is not less than \$250,000 but is less than \$500,000;

(c) 4 years, where its fixed capital expenditure is not less than \$500,000 but is less than \$1 million;

(d) 5 years, where its fixed capital expenditure is not less than \$1 million.

(2) Subject to subsections (3) and (4), the Board shall direct the extension of the tax relief period of a pioneer company —

(a) Where the tax relief period is 2 years and the Board is satisfied that the company has incurred by the end of the year following the end of that period fixed capital expenditure of not less than \$250,000, to 3 years from the production day;

(b) where the tax relief period of 2 or 3 years and the Board is satisfied that the company has incurred by the end of the year following the end of that period fixed capital expenditure of not less than \$500,000, to 4 years from the production day;

(c) where the tax relief period is 2, 3 or 4 years and the Board is satisfied that the company has incurred by the end of the year following the end of that period fixed capital expenditure of not less than \$1 million, to 5 years from the production day.

(3) For the purpose of obtaining a direction under this section —

(a) a pioneer company shall make an application in writing to the Board within 30 days (or such further period as the Board may allow) after the end of the year following the end of its tax relief period;

(b) the application shall contain particulars of the fixed capital expenditure incurred by the applicant, including where necessary particulars of any capital expenditure which the applicant wishes to have included in the amount of its fixed capital expenditure.

(4) On receipt of an application under subsection (3) the Board may call for any further particulars (or any proof of the correctness of the information given in the application) which it considers necessary and —

(a) if the Board is satisfied in accordance with subsection (2)(a), (b) or (c), as the case may require, shall give the direction for which application has been made;

(b) if the Board is not so satisfied, shall cause a notice of its refusal to make the direction to be sent to the applicant.

(5) In this section, “fixed capital expenditure”, in relation to a pioneer company, means capital expenditure incurred by the company on its pioneer factory or on any plant, machinery or other apparatus used in Brunei Darussalam in connection with and for the purposes of that factory or its pioneer enterprise.

14. (1) For the purposes of this section, the Board may by order —

(a) declare any manufactured product or class of manufactured product to be a priority manufactured product or priority manufactured products, or any industry to be a priority industry;

(b) specify a required percentage of Brunei Darussalam content to be incorporated into a manufactured product.

(2) Subject to the following subsections, the Board shall direct that the tax relief period of a pioneer company (or

Further extension of tax relief period.

any extension thereof directed under section 13(2)) shall be extended (or, as the case may be, further extended) by one year if it is satisfied that, by the end of the year following the end of the tax relief period or extended tax relief period, the company —

(a) has a pioneer factory in operation;

(b) produces in marketable quantities any priority manufactured product or products declared under that subsection or has established any priority industry so declared;

(c) incorporates in its manufactured products (if any) the required percentage of Brunei Darussalam content as specified under that subsection.

(3) Subject to subsection (4), more than one extension may be given at a time under subsection (2) if the Board is satisfied that the conditions appropriate to each such extension are fulfilled.

(4) The total of all extension given under subsection (2) shall in no case exceed 3 years.

(5) Any application for an extension under subsection (2) shall be made in writing to the Board.

Old and new
business.

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15. If the business of a pioneer company is carried on by it before and after the end of its tax relief period, then, for the purposes of the Income Tax Act —

(a) that business shall be deemed to have permanently ceased at the end of the tax relief period of the pioneer company;

(b) in respect of that business, the pioneer company shall be deemed to have set up and commenced a new business on the day following the end of its tax relief period;

(c) the pioneer company shall make up accounts of its old business —

- (i) for a period not exceeding one year commencing at the date when that old business of the company commenced;
- (ii) for successive periods of one year thereafter;
- (iii) for the period not exceeding one year ending at the date when its tax relief period ends.

(d) in making up the first accounts of its new business the pioneer company shall take as the opening figures for those accounts the closing figures in respect of its assets and liabilities as shown in its last accounts in respect of its tax relief period.

16. Before the end of its tax relief period, a pioneer company shall not without the consent of the Board (who may impose such conditions as it thinks fit) carry on any business other than a business the whole of the gross income from which is derived from its pioneer enterprise.

Restriction on business carried on before end of tax relief period.

17. (1) For the purposes of the Income Tax Act and this Act the Board may direct that —

Power to direct in certain events.

(a) any sums payable to a pioneer company in any accounting period which, but for this Act, might reasonably and properly have been expected to have been payable in the normal course of business after the end of that period shall be treated —

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- (i) as not having been payable in that period but as having been payable on such date after that period as the Board thinks fit;
- (ii) where that date is after the end of the tax relief period of the pioneer company, as having been so payable on that date as a

sum payable in respect of its new business;

(b) any expense incurred by a pioneer company within one year after the end of its tax relief period which, but for this Act, might reasonably and properly have been expected to have been incurred in the normal course of business during its tax relief period shall be treated as not having been incurred within that year but as having been incurred —

(i) for the purposes of its old business;

(ii) on such a date during its tax relief period as the Collector thinks fit.

(2) Where a direction has been given under this section with respect to a pioneer company and thereafter the length of the tax relief period of the pioneer company is varied under this Act, the Board may amend the direction accordingly.

Capital
allowance.

18. (1) The income of a pioneer company in respect of its old business falling to be ascertained in accordance with this Act for any accounting period shall be so ascertained (after making any necessary adjustments in consequence of a direction under section 17) without making any deductions which might otherwise fall to be made under section 13 of the Income Tax Act.

Cap. 35. (2) Notwithstanding subsection (1) and subject to subsection (3), where an asset is used for the purposes of the new business of a pioneer company, any capital expenditure incurred by the pioneer company in respect of the asset before the end of its tax relief period shall for the purposes of section 13 of the Income Tax Act be deemed to have been incurred on the day following the end of its tax relief period.

(3) Where an asset is used for the purposes of the old business of a pioneer company and in respect of that business the company incurs a loss (ascertained in accordance with

section 25(2) for the whole of its tax relief period, subsections (1) and (2) shall not apply and —

(a) there shall be ascertained for each year of assessment to which the tax relief period relates the notional amount of any allowances which, but for subsection (1), would have been made under section 13 of the Income Tax Act;

(b) the aggregate of any notional amounts ascertained under paragraph (a) shall be allowed in respect of the new business as deductions under that section for the first year of assessment after the end of the tax relief period;

(c) subject to subsection (4)(b), the residual expenditure at the end of the tax relief period shall be arrived at by deducting that aggregate from the total capital expenditure incurred by the company on the assets during the tax relief period, and that residual expenditure shall for the purposes of that section be deemed to have been incurred for the purposes of that section be deemed to have been incurred for the purposes of the new business on the day following the end of the tax relief period, so however that no initial allowance shall be allowed in respect thereof.

(4) Where in a case to which the foregoing subsections apply an asset for the purposes of a pioneer enterprise is also used for the purposes of an enterprise which is not a pioneer enterprise —

(a) there shall be made under section 13 of the Income Tax Act in respect of any capital expenditure on the asset such a deduction as is reasonable having regard to the extent to which the asset is used for the purposes of that second-mentioned enterprise;

(b) the residual expenditure arrived at under section(3)(c) shall be reduced by the amount of any deduction made under paragraph (a).

Return of
income.

Cap. 35.

19. So much of Part X of the Income Tax Act as is applicable in the case of a company shall apply in all respects as if the income of a pioneer company in respect of its old business was chargeable to tax.

Computation
of income
during tax
relief period.

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20. (1) The income of a pioneer company for each accounting period of its old business shall be computed in accordance with the Income Tax Act by —

(a) treating each such accounting period as the basis period for the year of assessment which includes the last day of the accounting period in question;

(b) ascertaining the income in question as if it were the adjusted income from the old business for that basis period.

(2) The amount of the income of a company ascertained under subsection (1) shall be subject to any condition which may be specified in the company's pioneer certificate under section 5(2).

(3) Where an amount is found under subsection (1) or, as the case may be, under subsections (1) and (2) in relation to a pioneer company, the Collector shall cause to be served on the company a statement showing the amount in question.

Cap. 35. (4) For the purposes of sections 65 and 68 of the Income Tax Act, a statement served under subsection (3) shall be deemed to be a notice of assessment served under the Income Tax Act.

Exemption
from income
tax.

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21. (1) Where a statement issued under section 20 has become final and conclusive under section 65 of the Income Tax Act, the amount shown in the statement shall be exempt from tax under the Income Tax Act.

(2) Before a statement issued under section 20 has become final and conclusive, the Collector may, if he thinks fit, declare that the whole or a specified part of the amount shown in the statement is not in dispute; and where he does so, so much of

that amount as is affected by the declaration shall be exempt from tax under the Income Tax Act.

Cap. 35.

22. (1) As soon as any amount of income of a pioneer company has become exempted under section 21, that amount shall be credited to an account to be kept by that pioneer company for the purposes of this section (that account and company being in this section and section 24 referred to as the exempt account and the relevant company respectively).

Certain dividends exempted from income tax.

(2) Where the exempt account is in credit at the date on which any dividends are paid by the relevant company out of income which has been exempted under section 21, an amount equal to those dividends or that credit, whichever is the less, shall be debited to the exempt account.

(3) So much of the amount of any dividends debited to the exempt account under subsection (2) as is received by a shareholder in the relevant company shall, if the Collector is satisfied with the entries in the exempt account, be exempt from tax under the Income Tax Act in the hands of that shareholder.

Cap. 35.

(4) Any dividends debited to the exempt account under subsection (2) shall be treated as having been distributed to the shareholders (or any particular class of shareholders) of the relevant company in the same proportions as those in which the shareholders in question were entitled to payment of the dividends giving rise to the debit.

(5) Until the Collector is satisfied that there is no further need to maintain the exempt account, the relevant company shall deliver to the Collector a copy of the exempt account made up to a date specified by him whenever it is called upon to do so by notice in writing sent by the Collector to the company's registered office.

(6) Where —

(a) an amount is received by way of dividend from the relevant company by a shareholder;

(b) that amount is exempt from tax under the foregoing subsections;

(c) that shareholder is a company,

any dividends paid by that shareholding company to its shareholders shall, to the extent that the Collector is satisfied that the dividends so paid are paid out of that amount, be exempt from tax in the hands of those shareholders.

Income
wrongly
exempted,
etc.

23. (1) Notwithstanding any other provision of this Act, where it appears to the Collector that any income of the relevant company exempted under section 21 or any dividend exempted in the hands of a shareholder under section 22 ought not to have been exempted by reason of —

(a) a direction under section 17 having been given with respect to a pioneer company after any income of the company has been exempted under section 21;

(b) the cancellation of a pioneer certificate,

he may, at any time within 6 years after the date of the direction or cancellation, make such additional assessments upon any person as appear to him to be necessary in order to counteract any benefit obtained from the exemption, or direct the relevant company to debit the exempt account with such amount as the circumstances required.

Cap. 35.

(2) A direction given under subsection (1) shall, for the purposes of section 68 of the Income Tax Act, be deemed to be a notice of assessment.

Carry forward
of loss
incurred in
tax relief
period.

24. (1) Subject to this section, where a pioneer company has for the whole of its tax relief period incurred a loss in respect of its old business, the amount of the loss shall be carried forward and treated as if it had been incurred by that company in its new business and in the year of assessment in which that new business is deemed to have commenced under this Act.

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

(a) the amount of any loss incurred in any accounting period of the old business of a pioneer company shall be computed in like manner as any income falls to be computed under section 20(1);

(b) subject to subsection (3), the amount of the loss incurred by a pioneer company for the whole of its tax relief period shall be the amount by which the total of all losses computed for all accounting periods under paragraph (a) exceeds the total of the income for all accounting periods in which a loss was not so computed.

(3) Where —

(a) the amount of any loss of a pioneer company has been computed for an accounting period;

(b) in accordance with section 20(1) and subsection (2)(a) of this section the accounting period has been treated for the purposes of the computation as the basis period for a year of assessment,

the amount of the loss shall be deducted, from any adjusted income of the company for the basis period for that year of assessment which is income not exempt from tax under this Part; and the amount of any losses carried forward under subsections (1) and (2) shall be reduced by the amount of any such deduction.

PART III

Expansion of Established Enterprises

25. (1) Subject to subsection (2) of this section, where the Board is satisfied that the increased manufacture of the product of any industry would be of economic benefit to Brunei Darussalam, it may, if it considers it expedient in the public interest to do so, by order, declare such industry to be an approved industry and the product thereof to be an approved product for the purposes of this Part.

Power and procedure for declaring an industry and a product an approved industry and an approved product.

(2) Before making an order under subsection (1), the Board shall —

(a) cause a notice to be published in the *Gazette* setting out the order which it is proposed to make and inviting any person who may object to the making of such order to give notice in writing of his objection and the grounds thereof to the Board on or before such date (not being a date less than 30 days from the date of publication of the notice) as may be specified in such notice

(b) consider any objection which has been received pursuant to such notice.

(3) The Board may, if it considers it necessary, call for further particulars of the grounds of any such objection from any person who has given due notice of such objection.

(4) The Board may revoke any order made under this section but any such revocation shall not affect the operation of any expansion certificate issued to any expanding enterprise before such revocation.

Issue of
expansion
certificate and
amendment
thereof.

26. (1) Any company intending to incur new capital expenditure for the purpose of the manufacture or increased manufacture of an approved product may —

(a) where such expenditure exceeds \$1 million;

(b) where such expenditure is less than \$1 million but exceeds \$100,000, and will result in an increase of not less than 30 per centum in value at original cost of all the productive equipment of the company,

make an application in writing to the Board to be approved as an expanding enterprise in such form and with such particulars as may be prescribed.

(2) Where the Board is satisfied that it is expedient in the public interest to do so, it may approve such company as an

expanding enterprise and issue an expansion certificate to such company, subject to such conditions as it thinks fit.

(3) For the purposes of this Part, “new capital expenditure” means expenditure incurred by a company in the purchase of productive equipment which is intended to increase its production or profitability:

Provided that expenditure incurred in the purchase of productive equipment which is not new shall be deemed not to be new capital expenditure unless it is proved to the satisfaction of the Board that —

(a) the purchase of such productive equipment is economically justifiable;

(b) the purchase price represents a fair open market value of such productive equipment.

(4) Every expansion certificate issued under this section shall specify the date on or before which the productive equipment shall be put into operation and such date shall be deemed to be the expansion day for the purposes of this Part.

(5) The Board may in its discretion, upon the application of any expanding enterprise, amend its expansion certificate by substituting for the expansion day specified therein such earlier or later date as it thinks fit and thereupon the provisions of this Part shall have effect as if the day so substituted were the expansion day in relation to such expanding enterprise.

27. (1) The tax relief period of an expanding enterprise shall begin on the first day of the accounting period commencing on or after its expansion day or, at its option, on the first day of the accounting period in which the expansion day falls and shall —

Tax relief
period.

(a) where such expanding enterprise has incurred new capital expenditure not exceeding \$250,000, continue for a period of 3 years;

(b) where such expanding enterprise has incurred new capital expenditure exceeding \$250,000, continue for a period of 5 years.

(2) Notwithstanding subsection (1) of this section, where the tax relief period of an expanding enterprise is 3 years and the Board is satisfied that it has incurred by the end of that period new capital expenditure of not less than \$250,000, it may extend the tax relief period to 5 years.

Tax relief. **28.** (1) Subject to the provisions of this Act, an expanding enterprise shall be entitled, during its tax relief period, to relief in the manner provided by this section.

Cap. 35. (2) The income of the expanding enterprise in respect of its trade or business to which its expansion certificate relates (hereinafter in this Part referred to as the “expansion income”) shall be ascertained, for any accounting period during its tax relief period, in accordance with the provisions of the Income Tax Act, save that no deduction which might otherwise fall to be made under the provisions of sections 16, 17 and 18 of that Act shall be made in respect of any new capital expenditure incurred by such expanding enterprise.

(3) Where an expanding enterprise carries on trading activities other than those to which its expansion certificate relates, the expansion income to be ascertained for the purposes of this section shall be determined in such manner as appears to the Collector to be reasonable in the circumstances.

(4) Where in the opinion of the Collector the carrying on of such trading activities is subordinate or incidental to the carrying on of the trade or business to which its expansion certificate relates, the income or loss arising from such activities shall be deemed to form part of the expansion income of the expanding enterprise.

(5) The expansion income so ascertained shall be compared with the corresponding income of the expanding enterprise for the accounting period immediately preceding the tax relief period (hereinafter in this Part referred to as the “pre-

relief income”) and relief shall be given to the following extent —

(a) where the pre-relief income equals or exceeds the expansion income no relief shall be given;

(b) where the expansion income exceeds the pre-relief income the amount of the excess shall be allowed as a deduction but the deduction allowable shall not exceed the sum which bears the same proportion to the expansion income as the new capital expenditure on productive equipment bears to the total of such new capital expenditure and the value at original cost of the productive equipment owned and used by the expanding enterprise prior to its expansion.

(6) Where an expanding enterprise has been approved as a pioneer enterprise the deduction allowable under this section shall be ascertained by reference to the expansion income of the expanding enterprise, including any part of such income which may be exempted under Part II (hereinafter in this Part referred to as the “exempted income”) but shall be so limited that the total of the exempted income and the deduction in respect of the expansion income do not exceed 100 per centum of the expansion income.

(7) Where, for the purposes of providing relief under this section, it is necessary to compare the income of different accounting periods, and any such period is greater or less than 12 months, the income of such period shall be adjusted on a time basis as may be determined by the Collector to arrive at a notional income for a period of 12 months.

PART IV

Foreign Loans for Productive Equipment

29. (1) Where a company engaged in any industry is desirous of raising a loan of not less than \$200,000 from a non-resident person (hereinafter in this Part referred to as the “foreign lender”) by means of a financial agreement whereby credit facilities are granted for the purchase of productive

Procedure and power for applying and issuing an approved foreign loan certificate.

equipment for the purposes of its trade or business, such company may apply to the Board for a certificate certifying such foreign loan to be an approved foreign loan:

Provided that the Board may, where it thinks it is expedient to do so, consider an application for a foreign loan certificate in respect of a foreign loan of less than \$200,000.

(2) The application shall be in such form and with such particulars as may be prescribed, and shall be accompanied by a copy of such financial agreement.

(3) Where the Board is satisfied as to the bona fides of such application and that it is expedient in the public interest to do so, it may issue a certificate certifying the loan specified in such application as an approved foreign loan.

(4) Every certificate issued under subsection (3) of this section shall be in such form and contain such particulars as may be prescribed, and shall be subject to such conditions as the Board thinks fit.

Restriction on disposal of specified productive equipment.

30. Any productive equipment purchased and financed from an approved foreign loan shall not be sold, transferred, or otherwise disposed of without the prior written permission of the Board, unless and until such loan has been repaid in full.

Exemption of approved foreign loan interest from tax.

31. (1) Subject to subsection (3) of this section the interest on an approved foreign loan payable to a foreign lender may be exempt from tax as the Board deems fit provided that the Collector is satisfied that such exemption does not result in an increase in liability to tax by the foreign lender in his country of residence.

Cap. 35.

(2) Where such exemption applies the company concerned upon paying such interest shall not deduct therefrom the tax which would otherwise have been deductible under section 37 of the Income Tax Act but shall forthwith submit a statement to the Collector of the amount which would otherwise have been deductible by such company under that section.

(3) Where a company has contravened section 30 or any conditions imposed by the Board under subsection (4) of section 39, the amount which, but for subsection (2), would have been deductible by such company from the interest paid by it to the foreign lender under section 37 of the Income Tax Act shall be deemed to have been deducted from such interest and shall be a debt due from such company to the Government and be recoverable in the manner provided by section 74 of the Income Tax Act.

Cap. 35.

(4) No action shall be taken by the Collector to recover any debt under subsection (3) without the prior sanction of the Board.

32. (1) Subject to subsection (2), section 31 shall apply to any additional interest payable on an approved foreign loan by reason of any arrangement whereby the period within which such loan must be repaid in full has been extended:

Exemption of additional interest on approved foreign loan from tax.

Provided that the rate of interest payable in respect of any such extended period shall not, without the prior sanction of the Board, be higher than the rate of interest specified in the certificate relating to the approved foreign loan.

(2) Any company making any such arrangement shall give notice thereof in writing to the Board within 30 days from the date on which such arrangement has been made.

PART V

Relief from Import Duties

33. Notwithstanding the provision of section 11 of the Customs Act, the Board may, with the approval in writing of the Minister, exempt, subject to such conditions as the Board may deem fit to impose, a pioneer company from the payment of the whole or any part of any customs duty which may be payable on any machinery, equipment, component parts and accessories including prefabricated factory or building structures to be installed as necessary part or parts of the factory as the Board may deem necessary:

Exemption from import duties.

Cap. 36.

Provided that similar machinery, equipment, component parts, accessories and building structures of approximately equal in price and quality are not being produced or available within Brunei Darussalam.

Restriction on disposal.

34. No machinery, equipment, component parts and accessories imported under section 33 shall be sold, transferred, mortgaged or otherwise disposed of or used for other purposes other than those specified or allowed by the Board without prior written permission of the Board.

Duty to be paid if disposed.

Cap. 36.

35. (1) Any machinery, equipment, component parts and accessories imported under section 33 which are sold or transferred or otherwise disposed of under section 34 shall be subject to payment of customs duty imposed under the Customs Act.

(2) For the purpose of determining the duty imposed under subsection (1), all machinery, equipment, component parts and accessories shall be assessed and valued by the Controller of Customs and duties shall be payable on the assessed value.

Exemption from import duties on raw material.

Cap. 36.

36. Notwithstanding the provision of section 11 of the Customs Act or any written laws or regulations in force a pioneer company shall be exempt from the payment of import duties on raw materials imported for use in a pioneer company to be used in the production of a pioneer product specified in the pioneer certificate:

Provided that such raw materials are not available or produced within Brunei Darussalam.

PART VI

Supplemental

Power to enter, etc.

37. (1) Any person authorised in writing by the Minister may at all reasonable times —

(a) have access to —

- (i) any premises occupied by a company or used for the storage of the company's goods or products;
- (ii) any records or accounts of the company, for the purpose of checking the production, composition, storage or packing of any such goods or product and generally for the purpose of ensuring the implementation of this Act;

(b) take samples of any such goods or products for any such purpose.

(2) Any person who obstructs such person in the exercise of any power conferred by subsection (1) shall be guilty of an offence: Penalty, a fine of \$2,000 and to imprisonment for one year.

38. His Majesty the Sultan and Yang Di-Pertuan in Council may make rules —

Power to
make rules.

(a) without prejudice to the generality of section 2(2), specifying any necessary modifications in the application of this Act to any particular industry which is not a manufacturing industry;

(b) generally for facilitating the operation of this Act;

(c) for any other purposes relating to expansion of economic activities not inconsistent with the provision generally by this Act.

SUBSIDIARY LEGISLATION**Orders under section 3(4)(b)(i)**

The Economic Development Board has ordered that the industries specified in Column 1 of the Schedule below and the products specified against such industries in Column 2 of the Schedule below shall be pioneer industries and Brunei Darussalam pioneer products respectively.

SCHEDULE

Column 1 Industries	.....	Column 2 Products	
1. Aircraft Catering Service	.....	Various types of food for Airlines	[S 57/77]
2. Cement Finish Mill	.....	Cement	
3. Pharmaceutical	.....	Various types of medicines, vitamins tablets, syrups, etc.	
4. Aluminium Wall Tiles	.....	Aluminium wall tiles and other decorative tiles	
5. Rolling Mill Plant	.....	Manufacturing/fabricating iron and steel, steel bars, angle iron, U-channel, etc.	
6. Industrial Chemicals	.....	Various types of chemicals for the oil and other industries including Corrosion Inhibitors, Bactericides, Demulsifiers, Gas Inhibitors, Scale Inhibitors, Oxygen Scavengers and Detergents manufactured or blended in Brunei Darussalam	[S 192/81]
7. Shipyard	.....	Ship repair and maintenance	[S 26/82]