

I assent,



CUTHBERT M SEBASTIAN

Governor-General.

2nd April, 2012.

SAINT CHRISTOPHER AND NEVIS

No. 10 of 2012

AN ACT to amend the Income Tax Act, Cap. 20.22

[Published 2nd April 2012, Extra Ordinary Gazette No. 15 of 2012.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

1. Short Title.

This Act may be cited as the Income Tax (Amendment) Act, 2012.

2. Interpretation.

In this Act, a reference to "Act" shall mean the Income Tax Act, Cap 20.22.

3. Amendment of section 2.

The Act is amended in section 2 by inserting in the correct alphabetical order the following definitions

"related persons" means

-(a) a natural person and a relative of that natural person;
- (b) a trust and a person who is or may be a beneficiary in respect of that trust or whose relative is or may be a beneficiary;
- (c) a partnership or company limited by shares and a member thereof who, together with shares or other membership interests held by persons who are related to such member under another paragraph of this definition, owns 25% or more of the rights to income or capital of the partnership or company;
- (d) a shareholder in a company limited by shares if the shareholder, together with shares held by persons who are related to such shareholder under another paragraph of this definition

- (i) controls 25% or more of the voting power in the company limited by shares; or
- (ii) owns 25% or more of the rights to dividends or of the rights to capital; or
- (e) two companies, if a person, either alone or together with a person or persons who are related to such person under another paragraph of this definition
 - (i) controls 25% or more of the voting power in both companies; or
 - (ii) owns 25% or more of the rights to dividends or of the rights to capital in both companies; and

for purposes of paragraphs (c), (d), and (e) of this definition, a person shall be treated as owning, on a pro rata basis, shares or other membership interests which are owned or controlled by such person indirectly through one or more interposed persons

and the expressions “related to” or “a person related to”, shall be construed accordingly;”

“ “remuneration” means

- (a) wages, salary, leave-pay, fees, commissions, bonuses, gratuities or payment of a similar nature which an employee receives prior to, in the course of, or subsequent to his employment, and the value of any other benefit, monetary or otherwise, provided to an employee or to a person related to an employee, including contributions to a pension fund; and
- (b) payments or benefits given to a shareholder in return for services;”.

“tax benefit” includes any avoidance, postponement or reduction of any liability for tax;”.

4. Amendment of section 4.

The Act is amended in section 4 by inserting immediately after subsection (3) the following new subsection (4)

“ (4) Where the calculation of chargeable income involves a receipt, an outgoing, or any other amount paid or received not in cash but in the form of property, services, or other benefit, the fair market value of this property, services, or other benefit on the date the amount is taken into account for tax purposes, is used in determining the chargeable income.”.

5. Amendment of Act.

The Act is amended by inserting the following new sections 4A and 4B as follows:

“ 4A. **Transactions and Arrangements Between Related Persons and Associates**

(1) In any arrangement, transaction or group of transactions between persons who are related or associated persons, the Comptroller may, by notice in writing,

- (a) distribute, apportion, or allocate amounts to be included or deducted in calculating income and foreign income tax paid between the persons as is necessary to reflect the chargeable income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length;
- (b) re-characterise the source and type of any income, loss, amount, or payment derived, incurred, made or received under an arrangement, transaction or group of transactions the form of which does not reflect its substance or is classified as an avoidance arrangement;
- (c) disregard an arrangement, transaction or part of an arrangement or a transaction that does not have substantial economic effect or is classified as an avoidance arrangement;

(2) For the purposes of this Act, a company is associated with another company in a tax year if, at any time in the year,

- (a) one of the companies controls, directly or indirectly in any manner, the other;
- (b) both of the companies are controlled, directly or indirectly in any manner, by the same person or group of persons;
- (c) each of the companies is controlled, directly or indirectly in any manner, by a person and the person who so controlled one of the companies is related to the person who controls the other, and either of those persons owns, in respect of each company, not less than 25% of the issued shares of any class of the capital stock thereof;
- (d) one of the companies is controlled, directly or indirectly in any manner, by a person and that person is related to each member of a group of persons that so controls the other company, and that person owns, in respect of the other company, not less than 25% of the issued shares of any class of capital stock thereof; or
- (e) each of the companies is controlled, directly or indirectly in any manner, by a related group and each of the members of one of the related groups is related

to all of the members of the other related group, and one or more persons who are members of both related groups, either alone or together, owns, in respect of each company, not less than 25% of the issued shares of capital stock thereof.

(3) For purposes of this section, references to the capital stock of a company include, in the case of a partnership, references to the partnership interests and, in the case of a trust, references to a beneficial interest in the trust.”.

“ 4B. **Indirect Payments and Benefits.**

(1) For the purposes of this Act, the income of a taxpayer includes

- (a) a payment that directly or indirectly benefits the taxpayer; and
- (b) a payment dealt with as the taxpayer directs,

which would have been income of the taxpayer if the payment had been made directly to the taxpayer.

(2) The deductions of a taxpayer include a payment made on behalf of the taxpayer or as the taxpayer directs which would have been a deduction of the taxpayer if the payment had been made directly by the taxpayer.”.

6. Amendment of section 9.

The Act is amended in section 9 by

- (a) inserting immediately after paragraph (k), the following new paragraph (1),

“ (1) subject to section 11, amounts paid or payable to a related person for administration fees, management fees or expenses, head office charges and allocations, technical services, shared costs and other similar charges.”;

- (b) inserting the following new subsections (3) and (4)

“ (3) The deduction allowed in respect of the total amount of the expenses paid to related persons, referred to in subsection (1) paragraph (1), for the year of assessment shall be limited to 5% of the gross sales or revenues of the taxpayer.

(4) For the purposes of subsection (3), persons who are related and associated persons shall be treated as a single person when calculating the deductions allowed.”.

7. Amendment of section 11.

The Act is amended in section 11 by

- (a) renumbering the section as section 11(1);
- (b) by replacing, in paragraph (1), the expression “ sixty thousand” with the expression, “seventy five thousand”;
- (c) by inserting immediately after paragraph (1), the following new paragraphs

- “ (m) any remuneration paid to an employee or shareholder that is in excess of the fair market value of the services provided to the taxpayer by the employee or shareholder;
- (n) any remuneration paid to an employee or shareholder in the tax year that is in excess of the amount of seventy five thousand dollars stated in paragraph (1);
- (o) any expenditure where the taxpayer is unable to provide sufficient documentation and other proof to demonstrate that the expenditure was wholly and exclusively incurred in the production of taxable income;
- (p) any expenditure or portion of an expenditure that is incurred for the purpose of, or is attributable to, earning income which is exempt from tax;
- (q) a fine or similar penalty paid to government or any statutory body for breach of any law; or
- (r) any provisions, impairments reserves, except for those specifically allowed in this Act;
- (s) in respect of amounts paid to a related person, no amount in excess of the lesser of
 - (i) the amount of aggregate expense paid to the related person; or
 - (ii) the fair market value of the service provided by the related person.”;

- (d) by inserting the following new subsections

“ (2) Where an employee or shareholder receives remuneration in a tax year from two or more associated companies, the amount deductible by way of remuneration for that employee in that tax year by all the associated companies shall not be in excess of the amount of seventy five thousand dollars stated in paragraph (1) of subsection (1);.

(3) Where the total remuneration exceeds the amount stated in paragraph (1) of subsection (1), the amount deductible by each

associated company shall be calculated on the following basis:

$$M \times A/B,$$

where “M” is the maximum amount stated in paragraph (1), “A” is the amount of remuneration paid to the employee or shareholder by the company in question, and “B” is the total remuneration paid to the employee or shareholder by the associated companies.”.

8. Amendment of section 54.

The Act is amended in section 54 by inserting immediately after section (2) thereof the following new subsections

“ (3) Notwithstanding the generality of subsection (1), the Comptroller may take the following actions where he or she believes that action taken by a taxpayer or prospective taxpayer may be consistent with an avoidance arrangement

- (a) disregard, combine or recharacterise any steps in or parts of an avoidance arrangement;
- (b) disregard any accommodating or tax-indifferent party or combine that party with any other party;
- (c) deem persons who are related persons to be a single person for purposes of determining the tax treatment of any one of those persons;
- (d) reallocate any gross income, receipt or accrual of a capital nature, expenditure or rebate amongst the parties;
- (e) recharacterise any item of income, receipt, accrual, or expenditure;
- (f) treat an avoidance arrangement as if it had not been entered into or carried out, or take actions in such other manner as in the circumstances of the case the Comptroller deems appropriate for the prevention or diminution of the relevant tax benefit.

(4) For the purposes of this Act, an avoidance arrangement is an arrangement, transaction or group of transactions where one of the purposes is or the effect of which is to obtain a tax benefit or an arrangement and which may

- (a) be entered into or carried out by means or in a manner which would not normally be employed for bona fide business purposes, other than obtaining a tax benefit or;
- (b) lack commercial substance, in whole or in part or;
- (c) create or has created rights or obligations that would not normally be created between persons dealing at arm’s length; or
- (d) frustrate the purpose of any provision of this Act.

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(5) The Comptroller may make appropriate compensating adjustments that are necessary to ensure the consistent treatment of all parties to an avoidance arrangement.”.

CURTIS A. MARTIN

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Speaker
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Passed by the National Assembly this 29th day of March, 2012.

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JOSÉ LLOYD
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*Clerk of the
National Assembly*