



BUSINESS TAX (AMENDMENT) ACT, 2018

(Act 14 of 2018)

I assent



Danny Faure
President

19th December; 2018

ANACT to amend the Business Tax Act (Cap 20).

ENACTED by the President and the National Assembly.

- 1.(1) This Act may be cited as the Business Tax (Amendment) Act, 2018.
- (2) This Act shall come into force on the 1st January, 2019.

Short title and
commencement

Amendment of
Cap 20

2. The Business Tax Act is hereby amended follows-

(a) in section 2-

(i) by inserting before the definition of "Associate" the following definitions-

"arrangement" means an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceeding and whether unilateral or involving more than one person";

"assessable income" means the income specified in section 11;

(ii) by inserting after the definition of „Non resident person" the following definition -

"non-taxable business income" means an income not sourced in Seychelles and not included in the assessable income of a business.

(b) in section 5-

(i) by repealing subsection (1) and substituting therefor the following subsection -

(1) An amount derived by a resident person in carrying on business is derived from sources in Seychelles if derived from activities conducted, goods situated

or rights used in Seychelles regardless of residence of the parties participating in transactions and regardless of the place where the agreements are executed;

- (ii) by inserting after subsection (3) the following subsection-

"(4) (a) For the purpose of clarity, the remittance of an amount to a person outside Seychelles, out of non-taxable business income under this Act, shall not be subject to tax.

(b) Where a business derives income that is both taxable business income and non-taxable business income and makes a remittance the fraction of the remittance that is subject to tax under this Act shall be computed as follows-

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

Where-

A= Assessable income;

B=Total Income;

C =Sum remitted; and

D = Remittance subject to business tax;

- (c) by repealing in section 6, subsection 2 and substituting therefor the following subsections-

"(2) Where the business of a person is liable to be taxed at different rates under this Act-

- (a) the businesses of the person taxed at one set of rates are treated as an independent business from the businesses of the person taxed at a different set of rates; and
- (b) the person shall at the request of Commissioner General provide separate accounts for each of those businesses.
- (3) All businesses taxed at the same rate under this Act are amalgamated and treated as a single business of that person.
- (4) A person conducting more than one business shall allocate all items of income, gain, deduction, cost and loss between those businesses to reflect how those amounts would have been allocated if the business were conducted by independent persons.";
- (d) in section 8, by inserting after subsection (3) the following subsection-
- "(4) For the purpose of clarity, subsection (1) shall not apply if dividends, interest, royalties or other payments are made by a resident person from income that is not sourced in Seychelles";
- (e) in section 11-
- (i) by repealing subsections 11(1)(f);
- (ii) by repealing subsection 2 and substituting therefor-
- “(2) An amount that is exempt income or income that has been

subject to withholding tax is not included in assessable income.";

(iii) by repealing subsection (3).;

repealing subsection 16(5) and substituting therefor the following subsection-

"(5) If a depreciable asset is not used, available for use, or held for the whole of the tax year in deriving taxable business income, the depreciation deduction for the year is computed according to the following formula-

A x B

C

Where-

A= is the depreciation deduction computed under subsection (2), after taking account of subsection(4);

B= is the number of days in the tax year the asset is used, available for use, or held in deriving taxable business income; and

C= is the total number of days in the tax year.

(6) The computation under subsection (5) shall be subject to the following conditions-

(a) if the consideration received on disposal exceeds the written down value of the asset at the time of disposal, the amounts

claimed for tax depreciation in prior years shall be included in the taxable business income of the business for that year; or

(b) if the consideration received on disposal is less than the written down value of the asset at the time of disposal, the difference shall be an allowable deduction for the business for that year; or

(c) if a depreciable asset has been used partly to derive taxable business income and partly for another purpose, the amount allowed as a deduction under paragraph (a) is reduced by the proportion of the non-taxable business income; or

(d) the written down value of an asset at the time of disposal of the asset is the cost of the asset reduced by the total depreciation deductions allowed under this section or that would have been allowed but for subsection(4).";

(g) by repealing paragraph (a) of section 17(7) and substituting therefor the following paragraph-

"(a) if the consideration received on disposal exceeds the written down value of the asset at the time of disposal, the amounts claimed for tax amortisation in prior years shall be included in the taxable business income of the business for that year"; or

- (h) by repealing subsection (5) of section 25 and substituting therefor the following subsection-

"(5) If a person carries on more than one business in terms of section 6, this section applies separately to each business cannot be set-off against the income from another business.";

- (i) by repealing section 54 and substituting therefor the following section-

Transfer pricing **54.**(1) Where an arrangement exists between-

- (a) associates;
- (b) different businesses of a person; or
- (c) businesses and other activities of a person,

the person shall calculate the income and tax payable according to the arm's length standard.

(2) The arm's length standard requires associates to quantify, characterise, apportion and allocate amount to be included or deducted in calculating income to reflect arrangements that would have been made between independent persons.

(3) Where, in the opinion of the Commissioner General, a person fails to comply with subsection (1), the Commissioner General may make adjustments consistent with subsection (1) and in doing so the Commissioner General may-

- (a) re-characterise an arrangement made between associated

persons, including re-characterising debt financing as equity financing;

- (b) re-characterise the source and type of any income loss amount or payment; and
- (c) apportion and allocate expenditure, including that of a permanent establishment, based on turnover.";
- (j) by repealing in subsection 57(1) the words "under section 6" and substituting therefor the words "under this Act";
- (k) in section 66, by inserting after subsection (2) the following subsections-

"(3) Any remuneration paid in respect of a performance in Seychelles of a non-resident entertainer or sports person to a person other than the non-resident entertainer or sports person shall be deemed to be a remuneration paid to the non-resident entertainer or sports person and shall be liable to withholding tax in accordance with subsection 2(a).

- (4) For the purpose of this section-
 - (a) an "entertainer" or "sports person" means any person who for reward-
 - (i) performance any activity as a theatre, motion picture, radio or television artist or a musician;

(ii) takes part in any type of sports;

(iii) takes part in any other activity of an entertainment character; and

(b) a promoter means a person who organises or finances a sporting or entertainment event.

(l) in the First Schedule, by inserting after item 6 the following item -

„7. If the rate of withholding tax under section 66(2) is 5%."

(m) in the Seventh Schedule

(i) in item 3-

by repealing paragraph (1) and substituting therefor the following paragraph-

"(I) Subject to paragraphs (3) and (4), a company issued with a special licence under the Companies (Special Licences) Act (Cap 253) on or before 16th October, 2017 and which has not notified the Financial Services Authority, in writing, that it opts not to benefit from the tax treatment stated under this Schedule shall pay business tax on its global taxable income at the rate of 1.5%";

(b) by inserting after paragraph (2) the following paragraphs-

"(3) Paragraph (1) shall apply until 30th June, 2021 to a Company specified under that paragraph.

(4) Paragraphs (1) and (2) shall not apply to assets or activities introduced in respect of a Company specified under paragraph (1), on or after 17th October, 2017.";

(ii) by repealing item 5 and substituting therefor the following-

"5. Licensees under the Mutual Fund and Hedge Fund-Act (Cap 285)

(1) For the purposes of this item, a licensee means a „fund administrator" licensed under the Mutual Fund and Hedge Fund Act, (Cap 285).

(2) Subject to paragraph (3), the rate payable by a licensee under the Mutual Fund and Hedge Fund Act (Cap 285) in respect of income shall be the aggregate of the following-

(a) 10% of fees in respect of new mutual fund licences; and

(b) 5% of fees in respect of annual renewal of mutual fund licences and all other fees under that Act.

(3) Subject to paragraph (4), in order to benefit from the rate stated in

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paragraph (2), a licensee shall comply with the substantial activity requirements as stated under the Mutual Fund and Hedge Fund Act (Cap 285).

(4) Paragraph (3) shall apply to a licensee issued with a licence under the Mutual Fund and Hedge Fund Act (Cap 285) on or before 16th October, 2017 as from 1st July, 2021, provided that the benefits shall not extend to assets or activities introduced in the business of the licensee on or after 17th October, 2017.

(5) For the purpose of clarity, failure to comply with paragraph (3) shall result in the licensee losing the benefit of the rate specified in paragraph (2).";

(iii) by repealing item 6 and substituting therefor the following-

"6. Licensees under the Securities Act (Cap 208)

(1) For the purpose of this item, a licensee means a securities exchange, clearing agency, securities facility, securities dealer or investment advisor licensed under the Securities Act (Cap 208).

(2) Subject to paragraph (3), the rate payable by a licensee under the Securities Act (Cap 208) is-

(a) 1.5% in respect
assessable income;

(b) 0% in respect of
withholding tax levied by
a licensee referred to in
subparagraph (a).

(3) Subject to paragraph
(4), in order to benefit from the
rate stated in paragraph (2), a
licensee shall meet the
substantial activity requirements
as stated under the Securities Act
(Cap 208).

(4) Paragraph (3) shall
apply to a licensee issued with a
licence under the Securities Act
(Cap 208) on or before
16th October, 2017 as from
1st July, 2021, provided that the
benefits shall not extend to assets
or activities introduced in the
business of the licensee on or
after 17th October, 2017.

(5) For the purpose of
clarity, failure to comply with
paragraph (3) shall result in
the licensee losing the benefit
of the rate specified in
paragraph (2)".

I certify that this is a correct copy of the Bill which was passed by the
National Assembly on 6th December, 2018

Mrs. Tania Isaac
Deputy Clerk to the National Assembly