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SAINT VINCENT AND THE GRENADINES
INCOME TAX (AMENDMENT) ACT, 2019
ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Section 2 amended
3. Section 8 amended
4. Section 10 amended
5. Section 15 amended
6. Sections 23A to 23C inserted
7. Section 25 amended
8. Section 40 amended
9. Section 41 amended
10. Third Schedule amended

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SAINT VINCENT AND THE GRENADINES

ACT NO. 5 OF 2019

I ASSENT

[L.S.]

SUSAN DOUGAN
Governor-General's Deputy
10th April, 2019.

AN ACT to amend the Income Tax Act, Chapter 435.

[16th April, 2019.]

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

- | | |
|---|------------------------------|
| 1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2019. | Short title and commencement |
| (2) This Act shall come into force on the 1st day of April, 2019. | |
| 2. The Income Tax Act, in this Act referred to as the "principal Act", is amended in section 2 by — | Section 2 amended |
| (a) deleting the definition of "management charges" and inserting the following — | |

"management charges" means the amounts paid or payable to a related person for administration fees, management fees or expenses, head office charges or allocations, technical services, shared costs and other similar charges;"

- (b) deleting the definition of "person" and inserting the following—

"person" includes an individual, a trust, the estate of a deceased person, a company or branch of a non-resident company carrying on business within Saint Vincent and the Grenadines, a partnership and every other juridical person;

- (c) inserting the following definitions in the appropriate alphabetical position—

"related person" has the meaning given in subsection (4) (a);

"trust" means a trust created—

- (a) by will or other testamentary disposition; or
- (b) by a deed or donation, settlement or other disposition *inter vivos*;

- (d) inserting the following subsections after subsection (3)—

"(4) For the purposes of this Act—

- (a) two persons are considered related when—
 - (i) one of them holds, directly or indirectly, at least twenty five percent of the capital stock or voting rights of the other;
 - (ii) any third person holds, directly or indirectly, at least twenty five percent of the capital stock or voting rights in each of the two or more related persons;

- (iii) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one person, are appointed by the other person;
 - (iv) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of each of the two persons are appointed by the same third person;
 - (v) a person directly or indirectly obtains at least twenty five percent of the earnings or profits from another person, as a result of a business collaboration contract between both persons;
 - (vi) one is the permanent establishment of the other one.
- (b) all commercial and financial transactions conducted with a non-resident person, subject to a statutory profit tax rate that is not more than twenty five percent lower than the statutory tax rate of Saint Vincent and the Grenadines, will be treated as if carried out between related persons unless the resident person discloses to the Comptroller the identity of the final shareholders of the non-resident person and demonstrates that both the resident

and the non-resident persons are not related.

(5) A branch of a non-residential company carrying on business in Saint Vincent and the Grenadines shall be treated as a resident in Saint Vincent and the Grenadines in relation to a year of assessment.”.

Section 8 amended

3. Section 8 of the principal Act is amended by inserting after subsection (3) the following subsection –

“(4). Where a person accrues income from a Member State that is a party to the Income Tax (Double Taxation Relief) (Caribbean Community Agreement), such income shall not form part of the assessable income of that person.”.

Section 10 amended

4. Section 10 of the principal Act is amended in subsection (1) by deleting paragraph (g) and substituting the following paragraph–

“(g) any provision of management services including personal services and technical and managerial skills, where such services are provided for the purposes of a business carried on in Saint Vincent and the Grenadines and the cost of such services is borne by that business, and irrespective of where the contract for such services was entered into;”.

Section 15 amended

5. Section 15 of the principal Act is amended by deleting subsection (6).

Sections 23A to 23C inserted

6. The principal Act is amended by inserting after section 23 the following sections –

“Transactions and arrangements between related persons

23A. In any arrangement, transaction or group of transactions between related persons, the Comptroller may, by notice in writing –

- (a) distribute, apportion or allocate amounts to be included or deducted in calculating income 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 a substantial economic effect or is classified as an avoidance arrangement.

Transactions involving intangible assets

23B. Transactions involving the development, acquisition, enhancement, maintenance, protection, exploitation, use and transfer of intangible assets shall abide by the arm's length principle and subject to the following special considerations –

- (a) mere legal ownership of an intangible asset does not by itself confer any right to

the return from its exploitation;

- (b) the economic return from intangible assets will be allocated to the entities that perform the functions and assume the costs and risks of developing, enhancing, maintaining and protecting them;
- (c) the arm's length royalty for the right to use or exploit an intangible asset will take into account the functions performed by the user or exploiter in developing, enhancing, maintaining and protecting the intangible asset, which may reduce the royalty as compared to that paid by a user or exploiter who does not perform these functions.

Transactions involving the provision of services

23C. Fees incurred in respect of services provided by related persons, including intra-group arrangements where administrative, managerial or other similar activities are performed by one affiliate and charged to other affiliates in the group, shall abide by the arm's length principle to be deductible for tax purposes, taking into account the following special conditions —

- (a) the deduction of expenses for services received from a related person, including management, legal, accounting, financial, technical or any other

services shall be contingent upon whether the service is actually rendered and valued with reference to individualised and comparable services contracted among independent entities;

- (b) the services referred to in subsection (a) will be deemed by the Comptroller to have been actually rendered when they provide the acquiring person with a valuable benefit that enhances or maintains its business position.”.

7. Section 25 (1) of the principal Act is amended by inserting the following new paragraph after paragraph (dd) –

Section 25
amended

“(ee) pursuant to section 8(4) income accrued under the Income Tax (Double Taxation Relief) (Caribbean Community Agreement).”.

8. Section 40 of the principal Act is amended in subsection (1) by deleting paragraphs (g) and (h) and substituting the following paragraphs-

Section 40
amended

“(g) the amount of specific individual debts due to that person to the extent to which they are bad and provided that they have been brought into account in the ascertainment of his assessable income for any year of assessment and to the extent that the carrying value exceeds the net realisable value;

- (h) such amount as the Comptroller deems reasonable in respect of

any specific individual debts due to that person which he considers doubtful of recovery, and provided they have been brought into account in the ascertainment of his assessable income for any year of assessment and to the extent that the carrying value exceeds the net realisable value;”.

Section 41 amended 9. Section 41(1) of the principal Act is amended in paragraph (b)(i) by inserting after the words “amount of such” the words “supportable”.

Third Schedule amended 10. The Third Schedule of the principal Act is amended in paragraph 1 (1)

(a) by deleting sub-paragraph (d) and substituting the following –

“(d) royalties, license, branding fees or other charges for intangible assets;”

(b) by inserting in sub-paragraph (j) after “income nature” the words “including payments made for the reimbursement of expenses,”.

Passed in the House of Assembly this 1st day of April, 2018.

NICOLE HERBERT
Clerk of the House of Assembly.

Printed by the Government Printer at the Government Printing Office,
Campden Park Industrial Estate, St. Vincent and the Grenadines.