

BUSINESS TAX (AMENDMENT) BILL, 2018*(Bill No. 10 of 2018)***OBJECTS AND REASONS**

The Bill seeks to amend sections 2, 5, 6, 11, 15, 16, 25, 39, 54, 57, 64, 66, 77, 78, First Schedule, Fourth Schedule, Seventh Schedule, Eighth Schedule and Tenth Schedule of the Business Tax Act (Cap 20) for the purpose of giving effect to the progressive income tax policy of the Government.

The Bill *inter alias* seeks to amend—

- (a) section 2 to include the definition of 'arrangement';
- (b) section 5 to repeal and substitute subsection (1);
- (c) section 6(2) to provide how different businesses of a person are to be considered for the purpose of taxation;
- (d) section 11 (1)(f) to exclude net gain on disposal of business asset from the assessable income;
- (e) section 15(1) to insert a new non-deductible item;
- (f) section 16 to repeal and substitute subsection (5);
- (g) section 25(5) to provide that carrying forward of a loss in a business applies separately to each business;
- (h) section 39 (1) to provide that partnership is liable to tax and not the partners; and to insert a new subsection (4) to provide that no deduction is allowed to a partnership for any payment made to a partner as wage, interest, rent or otherwise;
- (i) section 54 to make provisions for calculating the income of a business where there exists arrangements between associates or different businesses of a person;

- (j) section 57 to elaborate the scope of filing return, not only for business under section 6 of the Act but under any provisions of the Act;
- (k) section 64 to do away with the requirement of withholding of tax from payment to a specified business;
- (l) section 66 by including provisions for withholding tax from 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;
- (m) section 77 by repealing subsections (10) and (11);
- (n) section 78(1) to make an enabling provision for payment of tax at the rate under the seventh and eighth schedule;
- (o) the First Schedule to provide the new rates of tax under the progressive income tax regime;
- (p) the Fourth Schedule by repealing it;
- (q) the Seventh Schedule;
- (r) the Eighth Schedule; and
- (s) the Tenth Schedule by substituting it.

Dated this 6th day of July, 2018.

FRANK D.R. ALLY
ATTORNEY-GENERAL

BUSINESS TAX (AMENDMENT) BILL, 2018

(Bill No. 10 of 2018)



A BILL OF

AN ACT 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, other than section 2(b), (q) (ii) and (o) (iii), shall come into operation on 1st January, 2019.

(3) Section 2(b) and (o) (iii) shall come into operation on such date the Minister may, by notice published in the Gazette, appoint.

2. The Business Tax Act is hereby amended as follows—

- (a) in section 2 by inserting before the definition of "Associate" the following definition—

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

- (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 the residence of the parties participating in the transactions and regardless of the place where the agreements are subscribed.";

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

"(4) Remittance of an amount outside Seychelles is taxable only if the payer of the amount is liable to business tax.";

- (c) by repealing section 6(2) and substituting therefor the following—

"(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 that person taxed at a different set of rates;
- (b) the person shall prepare separate accounts for each of those businesses; and
- (c) the person shall calculate the taxable income separately for each business for each tax year.

(3) All businesses of a person that are 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 businesses were conducted by independent persons";

- (d) by repealing section 11(1)(f) and (3);

- (e) in section 15(1)—

- (i) by repealing the word "or" appearing at the end of paragraph (i);

Interpretation

- (ii) by repealing the full stop appearing at the end of paragraph (j) and substituting therefor a semi colon;
- (iii) by inserting after paragraph (j) the following paragraph —
- “(k) expenditure incurred for deriving non-taxable business income.”;
- (f) by repealing section 16 (5) and substituting therefor the following subsections —

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

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

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) If a business disposes of a depreciable asset in a tax year, there is no depreciation deduction allowed for that year.

(7) If the consideration received on disposable asset exceeds the written down value of the asset at the time of disposal, the excess is included in the assessable income of the business for that year.

(8) If the consideration received is less than the written down value of the asset at the time of disposal, the difference is allowed as a deduction for that year.

(9) If a depreciable asset has been used partly to derive taxable business income and partly for another purpose, the amount included in assessable income under subsection (7) or allowed as a deduction under subsection (8) is reduced by the proportion of the non-business use.

(10) 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 section 25 (5) 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 so that a loss from one business cannot be set-off against the income from another business.”;

(h) in section 39 —

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

“(1) A partnership is liable for tax with respect to its income instead of the partners.”;

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

“(4) No deduction is allowed to a partnership for a payment made by the partnership to a partner, whether by way of wage, interest, rent or otherwise.”;

- (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 persons must calculate their 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 amounts 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 section 57(1) the words “under section 6” and substituting therefor the words “under this Act”;

(k) by repealing section 64;

- (l) by inserting after section 66(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 forreward—

(i) performs any activity as a theatre, motion picture, radio or television artiste or a musician;

(ii) takes part in any type of sports; or

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

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

(m) by repealing in section 77, subsections (10) and (11);

(n) in section 78—

(a) by repealing subsection (1) and substituting therefor the following subsection—

“(1) Notwithstanding any other provisions of this Act, businesses listed

in the Seventh and Eighth Schedules are liable to Business tax in accordance with the rates specified in those Schedules.”;

(b) by inserting after subsection (3) the following subsection—

“(4) Notwithstanding subsection (1) the Business tax payable by a person with respect to assessable income from a single business in terms of section 6, shall be as specified in the Tenth Schedule.”;

(o) in the First Schedule—

(i) by repealing item 1 and substituting therefor the following item—

“1. The following shall be rate of business tax payable under section 6 by a person with respect to the taxable income of a business for a tax year—

(a) in the case of—

(i) an individual who is not deriving income as a trustee or beneficiary of a trust; or

(ii) a resident partnership consisting exclusively of individual partners—

TAXABLE INCOME	TAX PAYABLE
Not exceeding SR150,000	NIL
Exceeding SR150,000 but not exceeding SR1 million	15%
Exceeding SR1 million	30%

- (b) in the case of telecommunications service providers, banks, insurance companies and alcohol and tobacco manufacturers —

TAXABLE INCOME	TAX PAYABLE
Not exceeding SR1 million	25%
Exceeding SR1 million	SR250,000 plus 33% of the amount in excess of SR1million

- (c) in the case of a Seychelles Securities Exchange defined in the Securities Act (Cap 208), 25% on their taxable income.
- (d) in the case of any other person, including an entity, a trustee or beneficiary of a trust or a resident partnership consisting of at least one resident entity partner —

TAXABLE INCOME	TAX PAYABLE
Not exceeding SR1million	25%
Exceeding SR1million	SR250,000 plus 30% of the amount in excess of SR1million

- (ii) by repealing item 6;
- (p) by repealing the Fourth Schedule;
- (q) in the Seventh Schedule—
- (i) by repealing item 2;
- (ii) in item 3—
- (a) by repealing paragraph (1) and substituting therefor the following paragraph—
- “(1) A Company registered 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 opt 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 paragraph—
- “(3) 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.”;
- (iii) in item 4—
- (a) by repealing the words “15%” in paragraph (i) and substituting therefor the words “3%”;
- (b) by repealing paragraph (iii) and substituting therefor the following paragraph—

“(iii) the tax payable in respect of income derived from rental or leasing of a building or part of a building used exclusively for residential purposes is a final tax thereon and shall not be allowed to be included in computing any other taxable income of the person for any tax year.”;

(iv) by repealing items 8 and 9;

(r) in the Eighth Schedule—

(i) under item 2—

(a) by repealing Part I, Part III, and Part IV;

(b) by inserting in Part V, after the words “licenced accommodation”, the words “or restaurant”;

(ii) by repealing item 3 “Accelerated Depreciation” and the entries under it;

(s) by repealing the Tenth Schedule and substituting therefor the following Schedule—

“TENTH SCHEDULE

[Section 78(4)]

Notwithstanding the rates specified under the First Schedule, a person may opt to pay the business tax in accordance with and subject to the conditions of this Schedule.

1. For the purpose of this Schedule—

“Turnover” means the sum of the following amounts derived by a person during a tax year from sources in Seychelles—

(a) the gross receipts from the carrying on of the business, including the consideration received from the disposal of trading stock; and the gross fees for the provision of services;

(b) the gross receipts from the employment of the capital of the business, royalties, rent, technical services fee and natural resource amounts;

(c) the amount of any bounty or subsidy derived in relation to the carrying on of the business;

(d) the amount of an expense, loss, or bad debt allowed as a deduction in the year before the entry into force of the turnover tax, that has been reimbursed or recovered by the business, including by way of insurance, compensation, damages, or an indemnity;

(e) an amount derived by way of an indemnity, compensation, or damages for the non-performance of the lessee of an obligation to carry out repairs to property of a business.

2. The rate of business tax payable under this Schedule is—

(a) SCR3000 for a person deriving a turnover of not more than SCR500,000;

(b) 3% for a person deriving a turnover of not less than SCR500,000 and not more than SCR25 million.

3. The turnover from a person for a tax year shall not be more than SCR25 million.

4. A person opting to pay business tax under this Schedule shall continue to pay tax under this Schedule for a minimum period of 5 years.

5. Payment of instalments as provided in section 77 may be applicable in the payment of tax under this Schedule, if requested in writing by taxpayer not later than 31st December of the year preceding the tax year covered.
- 6.(1) Where a person has a net loss and opts to pay business tax under this Schedule in a given tax year, that person may deduct the net loss that would have been allowable under section 25 as if the person had not opted to pay tax under this Schedule.
- (2) The net loss can only be deducted once against the turnover derived by the person in the first tax year covered by the option to pay business tax under this Schedule.”.