

No. of 2020.

Income Tax (Amendment)
Bill, 2020.

Saint Christopher and
Nevis.

SAINT CHRISTOPHER AND NEVIS

No. of 2020

A BILL to amend the Income Tax Act, Cap. 20.22

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, 2020.

2. **Interpretation.**

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

3. **Amendment of Act.**

The Act is amended by inserting immediately after section 3, the following new sections:

“ **3A. Additional Charge.**

(1) Notwithstanding the provisions of section 3, the assessable income of a resident company in Saint Christopher and Nevis shall be all of its assessable income wherever arising.

(2) A company that is not resident within Saint Christopher and

Nevis is within the charge to Income Tax if it carries on a trade or business in Saint Christopher and Nevis through a permanent establishment in Saint Christopher and Nevis

(3) Pursuant to subsection (2), the assessable income of a company that is not resident in Saint Christopher and Nevis shall not be assessable income attributable to the permanent establishment in Saint Christopher and Nevis.

(4) For the purposes of this Part,

“resident company” means a company that is managed and controlled from within Saint Christopher and Nevis, whether or not that company is registered in Saint Christopher and Nevis”;

“company that is not resident” means a company that is not managed and controlled from within Saint Christopher and Nevis, whether or not that company is registered in Saint Christopher and Nevis”;

“managed and controlled” means the place where the central mind, management and control of a company occurs;

“permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on

(a) A permanent establishment includes especially

- (i) a place of management;
- (ii) a branch;
- (iii) an office;
- (iv) a factory;
- (v) a workshop;
- (vi) a mine, oil or gas well; and
- (vii) a quarry or any other place of extraction of natural resources.

(b) The term “permanent establishment” also encompasses

- (i) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or

activities last more than six months.

- (ii) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any twelve month period commencing or ending in the fiscal year concerned.

(c) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- (i) the use of facilities solely for the purpose of storage, display of goods or merchandise belonging to the business organization;
- (ii) the maintenance of a stock of goods or merchandise belonging to the business organization solely for the purpose of storage, display;
- (iii) the maintenance of a stock of goods or merchandise belonging to the business organization solely for the purpose of processing by another business organization;
- (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the business organization;
- (v) the maintenance of a fixed place of business solely for the purpose

of carrying on, for the business organization, any other activity of a preparatory or auxiliary character;

- (vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraph (a) subparagraphs (i) – (vii);

provided that such activity or, in the case of subparagraph (vi), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

- (d) Subparagraph (c) shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in Saint Christopher and Nevis and

- (i) that place or other place constitutes a permanent establishment for the enterprise or the related persons under the provisions of this Article, or

- (ii) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or related persons at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

- (e) Notwithstanding the provisions of subparagraphs (a) and (b), but subject to the provisions of paragraph 6, where a person is acting in Saint Christopher and Nevis on behalf of an enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (i) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
 - (A) in the name of the enterprise, or
 - (B) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
 - (C) for the provision of services by that enterprise, unless the activities of such person are limited to those mentioned in which, if exercised through a fixed place of business, other than a fixed place of business to which subparagraph (c) would apply, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
 - (D) the person does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in that State a stock of goods or merchandise from which that person regularly delivers goods or merchandise on behalf of the enterprise.

(f) Paragraph (e) shall not apply where the person acting in Saint Christopher and Nevis on behalf of an enterprise in another country carries on business in Saint Christopher and Nevis as an independent agent and acts for the enterprise in the ordinary course of that business.

- (g) Where, pursuant to subparagraph (f), a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is a related person, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

(h) The fact that a company which is a resident of Saint Christopher and Nevis, controls or is controlled by a company which is a resident of another country, or which carries on business in that other country, whether through a permanent establishment or otherwise, shall not of itself constitute either company a permanent establishment of the other.

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A. MICHAEL PERKINS
Speaker

Passed by the National Assembly this day of , 2020.

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SONIA BODDIE-THOMPSON
Clerk of the National Assembly