

SAINT LUCIA

No. 15 of 2020

AN ACT to amend the Economic Substance Act, No. 33 of 2019.

[30th December, 2020]

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

Short title

1. This Act may be cited as the Economic Substance (Amendment) Act, 2020.

Interpretation

2. In this Act, “principal Act” means the Economic Substance Act, No. 33 of 2019.

Amendment of section 2

3. Section 2 of the principal Act is amended —

(a) by deleting the definition of “high risk intellectual property company” and by substituting the following —

“ “high risk intellectual property company” means —

(a) an intellectual property company that owns an intellectual property asset that —

(i) has been acquired from related parties or obtained through the funding of overseas research and development activities by another entity, and

(ii) is licensed to related parties or otherwise generates income as a consequence of activities performed by foreign related parties; or

(b) an intellectual property company that owns an intellectual property asset and does not carry out research and development as part of its core income-generating activity in Saint Lucia;”;

(b) by deleting the definition of “holding company” and by substituting the following —

“ “holding company” —

(a) means a company that holds assets from which income in the form of interest, rent and royalties is derived;

- (b) includes —
- (i) a company holding tangible assets,
 - (ii) a company holding intangible assets;”;
- (c) by deleting the definition of “intellectual property asset” and by substituting the following —
- “ “intellectual property asset” means —
- (a) a patent;
 - (b) technical know-how;
 - c) an industrial design;
 - (d) software that is subject to copyright;
 - (e) an intangible asset that is non-obvious, useful or novel; and
 - (f) other similar intangible assets that are functionally equivalent to a patent;
- where such assets are legally protected and subject to an approval and registration process;”;
- (d) by deleting the definition of “pure equity holding company” and by substituting the following —
- “ “pure equity holding company” means a company which only holds equity participations in other entities from which the only form of income derived are dividends and capital gains and which —
- (a) holds voting rights in another company;
 - (b) has the right to appoint or remove a majority of the board of directors of that other company; or
 - (c) controls alone, under an arrangement with other members, a majority of the voting rights in that other company;”;
- (e) in the definition of “relevant sector”, by deleting the words “the Schedule” and by substituting the words “Schedule 1”.

Amendment of section 8

4. Section 8(1) of the principal Act is amended by inserting immediately after the words “section 7” the words “or section 11A”.

Amendment of section 11

5. Section 11 of the principal Act is amended —

(a) by deleting subsection (1) and by substituting the following

—

“(1) A relevant entity shall, for each year of income in which it operates or carries out activities in a relevant sector, have adequate economic substance.”;

(b) by deleting subsection (7) and by substituting the following

—

“(7) Notwithstanding subsection (1), an intellectual property company shall demonstrate a direct relationship between the income arising from intellectual property assets and the expenditure of the company that contributes to the generation of that income to qualify for an exemption on income accruing from a source outside of Saint Lucia under the Income Tax Act, Cap. 15.02.”;

(c) by inserting immediately after subsection (7) the following new subsections (7A), (7B), (7C), (7D) and (7E) —

“(7A) In determining whether income qualifies for an exemption under subsection (7), the formula specified in Schedule 2 applies.

(7B) The application of the CARICOM Double Taxation Agreement under the CARICOM (Double Taxation Agreement) Act, Cap. 19.05 applies to all intellectual property income.

(7C) An entity holding or exploiting an intellectual property asset only qualifies for the tax exemption on foreign source income if —

(a) the entity’s total group-wide turnover does not exceed Fifty Million Euros or the equivalent in Eastern Caribbean Dollars, using a five year average; and

(b) the entity's domestic income does not exceed Seven Point Five Million Euros or the equivalent in Eastern Caribbean Dollars, using a five year average.

(7D) Where an entity meets the requirements under subsection (7C) and qualifies for the tax exemption on foreign source income, the Competent Authority shall make the necessary information exchanges in accordance with the standards set out by the Organization for Economic Cooperation and Development on harmful tax practices.

(7E) Notwithstanding subsections (7A) and (7C), the treatment of income arising from intellectual property assets is subject to the provisions of all regional and international Agreements and Conventions in relation to tax matters.”;

(d) in subsection (8), by deleting the words “marketing, branding or distribution activities,”.

Insertion of new section 11A

6. The principal Act is amended by inserting immediately after section 11 the following new section 11A —

“Investigative powers of the Competent Authority

11A.—(1) Subject to subsection (2) or (3), the Competent Authority or a public officer authorized by the Competent Authority may, after giving seven days notice to the relevant entity, enter premises where information relating to the relevant entity is kept and assess whether or not the relevant entity satisfies the economic substance requirements by —

- (a) carrying out or causing to be carried out an examination or inspection of records, books and documents of the relevant entity;
- (b) requiring the owner, employee, or agent of the relevant entity to —
 - (i) give the Competent Authority reasonable assistance in connection with the examination or inspection as may be necessary, and

- (ii) answer orally or in writing questions relating to the examination or inspection;
 - (c) taking possession of any records, books and documents for further examination and retain or make copies of the records, books and documents.
- (2) A relevant entity may give written consent to the Competent Authority within seven working days of receipt of a notice under subsection (1).
- (3) Where a relevant entity does not give its written consent under subsection (2), section 8 applies.”.

Amendment of section 12

7. Section 12 of the principal Act is amended by deleting paragraph (i) and by substituting the following —

- “(i) in the case of a relevant entity with income from holding intangible assets —
- (i) conducting research and development without acquiring or outsourcing research and development,
 - (ii) taking strategic decisions, managing and bearing principal risks relating to —
 - (A) the development and subsequent exploitation of the intangible asset; and
 - (B) the third party acquisition and subsequent exploitation of the intangible asset,
 - (iii) carrying on the underlying trading activities through which the intangible asset is exploited for the generation of revenue from third parties;”.

Amendment of section 13

8. Section 13 of the principal Act is amended —

- (a) by deleting subsection (1) and by substituting the following —
- “(1) A relevant entity registered after the 31st day of December, 2018 shall submit to the Competent Authority

an economic substance return within twelve months after its first year of income.”;

(b) by inserting immediately after subsection (1) the following new subsections (1A), (1B) and (1C) —

“(1A) Notwithstanding subsection (1), a relevant entity shall, in subsequent years of income, submit to the Competent Authority an economic substance return within three months after a year of income.

(1B) A relevant entity exempted under section 3(1)(a) shall, from the 1st day of July, 2021, submit an economic substance return to the Competent Authority twelve months after the end of its year of income in the first instance.

(1C) Notwithstanding subsection (1B), a relevant entity exempted under section 3(1)(a) shall, in subsequent years of income, submit to the Competent Authority an economic substance return within three months after a year of income.”.

Insertion of new section 18A

9. The principal Act is amended by inserting immediately after section 18 the following new section 18A —

“Provision of false information

18A.—(1) A person shall not knowingly or willfully supply false information to the Competent Authority.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.”.

Amendment of section 23

10. Section 23 of the principal Act is amended by deleting the words “the Schedule” and by substituting the words “Schedule 1 or Schedule 2”.

Substitution of the Schedule

11. The principal Act is amended by deleting the Schedule and by substituting the following Schedule 1 —

“SCHEDULE 1

(Section 2)

RELEVANT SECTOR

1. Banking business.
2. Insurance business.
3. Shipping.
4. International mutual funds business.
5. Financing and leasing.
6. Headquatering.
7. Activities of a company holding tangible assets.
8. Activities of a company holding intangible assets.
9. Activities of a pure equity holding company.
10. Distribution and service centre business.
11. A combination of a business or activity carried on under paragraphs 1 to 10.”.

Insertion of new Schedule 2

12. The principal Act is amended by inserting immediately after Schedule 1 the following new Schedule 2 —

“SCHEDULE 2

(Section 7A)

FORMULA

In determining whether income qualifies for an exemption under section 11(7), the formula is —

$$\frac{A}{B} \times C = D, \text{ where —}$$

“A” represents the qualifying expenditure —

- (a) if the expenditure is directly connected to the intellectual property asset and is related to research and development and expenditure from unrelated party outsourcing,
- (b) if the expenditure is not directly associated with the research and development of a particular intellectual property asset, the expenditure is divided proportionately across intellectual property assets and products,

to develop the intellectual property asset;

“B” represents the overall expenditure incurred to develop the intellectual property asset and includes research and development expenditure, expenditure of unrelated party outsourcing, acquisition costs and expenditure for related party outsourcing;

“C” represents the overall income arising from the intellectual property asset; and

“D” represents the income receiving the tax benefits.”.

Passed in the House of Assembly this 15th day of December, 2020.

ANDY G. DANIEL,
Speaker of the House of Assembly.

Passed in the Senate this 17th day of December, 2020.

JEANNINE GIRAUDY-MCINTYRE,
President of the Senate.