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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: The EU list of non-cooperative jurisdictions for tax purposes
– Barbados: final legislation and assessment under criterion 2.2
= Companies (Economic Substance) Act, 2019-43 (Part 2)

(iii) the ultimate beneficial owner,
of the resident company, is resident;

(b) where the resident company is incorporated outside Barbados, the Barbados competent authority shall forward the information to the foreign competent authority of the country or territory in which

- (i) the holding company;
- (ii) the ultimate holding company of the resident company; and
- (iii) the ultimate beneficial owner,

of the resident company, is resident.

(3) In respect of a high risk intellectual property company regardless of whether or not the Director has made a determination under section 6 in respect of it, the Director shall provide to the Barbados competent authority the information filed pursuant to section 8 relating to that resident company for the relevant period.

(4) Where the Barbados competent authority receives information from the Director under subsection (4) relating to a resident company, the Barbados competent authority shall, in accordance with any law or international agreement relating to the exchange of information, exchange full details for each fiscal period of the resident company commencing on or after 1st January 2019

(a) to the foreign competent authority of the country in which

- (i) a holding company;
- (ii) the ultimate holding company of the resident company; and
- (iii) an ultimate beneficial owner,

of the resident company, is resident;

(b) where the high risk intellectual property company is incorporated outside Barbados, the Barbados competent authority shall forward the

information to the foreign competent authority of the country or territory in which the company is resident.

(5) Where the Barbados competent authority receives information from the Director under section 8, the Barbados competent authority shall in accordance with any law or international agreement relating to exchange of information, exchange full details for each fiscal period of a company under section 8 commencing on or after 1st January, 2019 to the foreign competent authority of the country

(a) in which the company under section 8 claims to be tax resident; or

(b) in which

(i) a holding company;

(ii) the ultimate holding company of the resident company; and

(iii) an ultimate beneficial owner,

of the company, is resident.

Penalty where the economic substance test is not met

10.(1) Where the Director determines under section 6 that a resident company has failed to meet the economic substance test for a fiscal period, the Director shall within 21 days of the date of that determination issue a notice to the company notifying it

(a) that he has determined that the resident company does not meet the economic substance test for that year;

(b) of the reasons for the determination;

(c) of the amount of penalty imposed on the resident company under subsection (5);

(d) of the date from which the penalty under subsection (5) is due, being not less than 28 days after the issue of the notice;

- (e)* of what action he considers should be taken by the resident company to meet the economic substance test; and
 - (f)* of the resident company's right of appeal under section 13.
- (2) Where the Director pursuant to subsection (1) has determined that a resident company did not meet the economic substance test on account of failure to have an adequate number of employees who are physically present in Barbados in relation to that relevant activity, depending on the nature of the breach, the Director may issue a notice to the resident company notifying it
- (a)* that he has determined that the resident company does not meet the economic substance test for that year; and
 - (b)* of the reasons for that determination.
- (3) The resident company shall no later than 12 months from the date of the notice issued under subsection (1), rectify the breach and advise the Director of the rectification no later than the last day of the 12 months from the date of the notice.
- (4) Where the resident company fails to rectify the breach referred to in subsection (3) within the time given in the notice issued pursuant to subsection (1), the Director shall issue a second notice to the resident company notifying it
- (a)* that it failed to remedy the breach for which the first notice was issued;
 - (b)* of the amount of penalty imposed on the resident company under subsection (5) in addition to the penalty previously imposed under subsection (1);
 - (c)* of the date from which the penalty under subsection (5) is due, being not less than 30 days after the issue of the notice;
 - (d)* that the Director may within 2 days make a report to the Minister under this subsection; and
 - (e)* of what action the Director considers should be taken by the resident company to meet the economic substance test.

(5) For the purpose of this section, the Director may impose a penalty not exceeding \$300 000 in any subsequent year payable within 30 days of the date of notice of the imposition of the penalty.

(6) Where, for the fiscal period following a fiscal period in which a notice was issued under subsection (1), hereinafter called the "further fiscal period", the Director determines that the resident company has failed to meet the economic substance test, he shall issue a further notice to the resident company notifying it

- (a) that the Director has determined that the resident company does not meet the economic substance test for the further fiscal period;
- (b) of the reasons for the determination;
- (c) of the amount of penalty imposed on the resident company under subsection (2) in addition to the penalty previously imposed under subsection (1);
- (d) of the date from which the penalty under subsection (4) is due, being not less than 30 days after the issue of the notice;
- (e) that the Director may within 2 days make a report to the Minister under subsection (4);
- (f) of what action the Director considers should be taken by the resident company to meet the economic substance test; and
- (g) of the resident company's right of appeal under section 13.

(7) Following the issue of a notice under subsection (4), the Director shall provide the Minister with a report of the matters referred to in that notice together with any additional information, whether or not such additional information was provided to the Director under section 8.

(8) The Director shall notify the Registrar of any failure after two consecutive years. The Registrar may issue an order that the company be struck off the register of companies under section 412 of the *Companies Act*, Cap. 308.

Penalty for failure to provide information or for inaccurate information

11.(1) A person is liable to a penalty of \$10 000 where that person fails to provide the information required under section 8.

- (2) A person is liable to a penalty of \$10 000 where
- (a) in complying with a requirement under section 8 that person provides inaccurate information; and
 - (b) condition A or B set out in subsections (3) and (4), respectively is met.
- (3) Condition A is that the person referred to in subsection (2) knows of the inaccuracy at the time when information is provided but does not inform the Director at that time.
- (4) Condition B is that the person
- (a) discovers the inaccuracy after the information was provided to the Director; and
 - (b) fails to take reasonable steps to inform the Director.
- (5) A person is not liable to a penalty under this section where
- (a) that person satisfies the Director; or
 - (b) on an appeal under section 13, satisfies a judge in chambers

that there is a reasonable excuse for the failure.

(6) Where a person has a reasonable excuse for failure to provide information in accordance with subsection (1), but the excuse is no longer valid that person may be allowed to provide the information within a reasonable time after the excuse becomes invalid without the imposition of a penalty.

(7) A penalty for failure to provide accurate information may only be imposed within 12 months commencing on the date on which the inaccuracy first came to the attention of the Director.

Imposition of penalty for failure to provide information or for inaccurate information

- 12.(1) Where a person is liable to a penalty under section 10 the Director may determine the amount of penalty and impose it on that person.
- (2) Where the Director imposes a penalty, he must notify the person
- (a) of the reasons for imposing the penalty;
 - (b) the date on which the penalty is due, being not less than 28 days after the issue of the notice; and
 - (c) of the person's right of appeal under section 13.
- (3) A penalty under this section may only be imposed within a period of 6 years commencing on the date on which the person became liable to pay the penalty.

Right of appeal against penalty

- 13.(1) A person upon whom a penalty is imposed by the Director may
- (a) appeal on the ground that liability to that penalty does not arise; or
 - (b) appeal against the amount of the penalty.
- (2) An appeal under subsection (1) shall lie to a judge in chambers whose decision shall be final.

Enforcement of penalty

- 14.(1) A penalty under this Act shall be paid within 30 days after the date mentioned in subsection (2);
- (2) The date referred to in subsection (1) is the later of
- (a) the date from which the penalty is due under section 10(1)(d) or (3)(b);
- or

(b) where notice of appeal is given under section 13, the date on which the appeal is finally determined or withdrawn.

(3) A penalty under this Act is a debt due to the Crown and is recoverable in the Magistrate's Court for District A, notwithstanding that the amount exceeds the monetary limit of the jurisdiction of the Magistrate fixed by the *Magistrate's Court Act*, Cap. 116.

Confidentiality

15.(1) The Director's power to disclose information under section 8 has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(2) Disclosure of information under this Act does not breach

(a) any obligation of confidentiality in relation to the information so disclosed; or

(b) any other restriction on the access to or disclosure of the information so accessed.

Power to enter business premises and examine business documents

16.(1) An authorised person may examine and take copies of any business document that is located on business premises.

(2) The power under subsection (1) may be exercised only for the purpose of investigating any issue relating to compliance with any provision of this Act.

(3) An authorised person may at any reasonable time enter business premises for the purpose of exercising the power under subsection (1).

(4) An authorised person may by notice require any person to produce any specified business document at the business premises where the business document is located for the purpose of enabling the authorised person to exercise the power under subsection (1) in relation to that document.

Obstructing an authorised person

- 17.(1) A person who, without reasonable excuse,
- (a) obstructs an authorised person in the exercise of his powers under section 16; or
 - (b) fails to provide such reasonable assistance as the authorised person may require in the exercise of his powers under section 16 is guilty of an offence.
- (2) A person who intentionally alters, suppresses or destroys any business document specified in a notice under section 7(2) is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of \$50 000 or to imprisonment for 2 years, or to both.
- (4) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine of \$100 000 or imprisonment for 5 years or to both.

Regulations

- 18.(1) The Minister may make such regulations as may be necessary to give effect to this Act and for prescribing anything that is required by this Act to be prescribed.
- (2) The Director shall issue Guidelines in respect of the application and interpretation of this Act and all such Guidelines shall have the force of law.

Repeal

19. The *Business Companies (Economic Substance) Act (Act 2018-41)* is repealed.