BARBADOS

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Act 2024-15

INCOME TAX (AMENDMENT AND VALIDATION) ACT, 2024-15

Arrangement of Sections

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BARBADOS

I assent
S. MASON
President of Barbados
21st May, 2024.

2024-15

An Act to amend the *Income Tax Act*, Cap. 73 to make provision for the reform of corporation tax in Barbados and other related matters.

[Commencement: 24th May, 2024]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Income Tax (Amendment and Validation) Act, 2024*.

Amendment of section 10 of Cap. 73

2. ***Section 10(1) of the Income Tax Act, Cap. 73, in this Act referred to as the principal Act, is amended by inserting immediately after paragraph (s) the following:***

"*(t)* amounts paid to a tertiary institution approved by the Minister by order for the purpose of enabling the institution to undertake research and development activities or engage in the teaching of educational programmes involving the research and development activities as defined in section 65I where such activities are of use or benefit to the company.".

Insertion of Division JA into Cap. 73

3. ***The principal Act is amended by inserting immediately after Division J the following:***

"DIVISION JA

CALCULATION OF ASSESSABLE INCOME FROM QUALIFYING INTELLECTUAL PROPERTY

Income arising from the exploitation of intellectual property

22A.(1) With effect from income year 2024, in calculating the assessable income of a person for an income year, the income of that person earned in Barbados from qualifying intellectual property shall

be determined according to the following formula:

Nexus Ratio x Overall Income

Where

$$\text{Nexus Ratio} = \frac{\text{Qualifying Expenditures Incurred} + \text{Uplift Expenditures}}{\text{Overall Expenditures Incurred}}$$

(2) Subject to this Act, overall income for an income year from qualifying intellectual property is the profit derived from qualifying intellectual property for that income year.

(3) Where an expenditure is not fully deductible in the income year in which it is incurred because it is capitalised or otherwise, such expenditure shall be included in full in the nexus ratio starting in the income year in which it is incurred.

(4) In calculating income from qualifying intellectual property, a person may apply "up-lift" expenditures which shall be qualifying expenditures increased by 30 per cent but only to the extent that the person has non-qualifying expenditures.

(5) Notwithstanding subsection (1), a person may apply to the Commissioner in writing for permission to replace the nexus ratio with a "replacement ratio" which is in accordance with the arm's length principle.

(6) The Commissioner may grant the permission referred to in subsection (5) only when

(a) the nexus ratio referred to in subsection (1) is greater than 32.5 per cent; and

(b) the replacement ratio is significantly greater than the nexus ratio because of exceptional circumstances beyond the control of the company.

(7) The permission referred to in subsection (5) shall be valid for a period of 5 income years, provided that the conditions mentioned in

subsection (6) continue to be met at the close of each of the income years concerned.

(8) The arm's length principle referred to in subsection (5), shall be deemed to have been met where the conditions made or imposed between the two associated enterprises in their commercial or financial relations do not differ from those which would be made between independent enterprises.

(9) In addition to records and books of accounts required to be kept under section 75, for the purposes of determining income from qualifying intellectual property, a company shall maintain all records, books and documents evidencing

(a) ownership and the right to exploit the qualifying intellectual property;

(b) qualifying expenditures and overall expenditures incurred;

(c) overall income derived from the qualifying intellectual property;

(d) the correlation between the qualifying expenditures and overall expenditures and overall income derived from qualifying intellectual property; and

(e) where the replacement ratio under subsection (5) applies

(i) qualifying intellectual property benefiting from the replacement ratio; and

(ii) overall income derived from qualifying intellectual property benefiting from the replacement ratio.

(10) Where from the records kept by a company it is not possible to determine the income or loss from qualified intellectual property, the company shall pay tax at the rate specified under section 43 or 43A.

(11) For the purposes of this section

"associated enterprises" means a company or enterprise

(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other company or enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other company or enterprise;

"copyrighted software" means any copyright subsisting in software granted under any enactment in Barbados or granted under the relevant law of a foreign jurisdiction;

"overall expenditures" means total expenditures incurred to fund activities to develop, enhance, protect, maintain and exploit qualifying intellectual property that are carried out by the company including qualifying expenditures, acquisition costs, and expenditures for outsourcing that do not count as qualifying expenditures;

"overall income" means royalties or any other income derived from qualifying intellectual property, including

(a) fees or charges arising from the licence for qualified intellectual property;

(b) compensation for infringement of qualified intellectual property rights if obtained in litigation proceedings, including court proceedings or arbitration;

(c) income from the disposal of qualifying intellectual property excluding profit of a capital nature; and

(d) embedded intellectual property income derived from the sale of products and the use of processes directly related to the qualifying intellectual property as determined in accordance with the arm's length principle;

"patents" means any patent granted under any enactment in Barbados or granted under the relevant law of a foreign jurisdiction;

"qualifying expenditures" means expenditures incurred to fund activities to develop, enhance, protect, maintain and exploit qualifying intellectual property that are carried out by the company, outsourced to any person in Barbados, or outsourced to a person outside Barbados that is not a related party and does not include interest payments, building costs, acquisition costs, or any costs that could not be directly linked to a specific intellectual property asset;

"qualifying intellectual property" means

(a) rights to an invention patents;

(b) copyrighted software;

(c) additional protection rights for the invention;

(d) rights from the registration of an industrial design;

(e) rights from the registration of integrated circuit topography;

(f) additional protection rights for a patent for medicinal product or plant protection product;

(g) rights from the registration of medicinal or veterinary product;

(h) rights from the registration of new plant varieties

and any other right functionally equivalent to a patent that is both legally protected and subject to a similar approval and registration

process to a patent under any enactment in Barbados or under the relevant law of a foreign jurisdiction.".

Amendment of section 23 of Cap. 73

4. ***Section 23 of the principal Act is amended***

(a) ***in subsection (2) by deleting paragraph (b) and substituting the following:***

"*(b)* With effect from income year 2025, no loss or part of a loss shall be carried forward beyond the fifth income year following the income year in which the loss was sustained;";

(b) ***by deleting subsection (3) and substituting the following:***

"(3) With effect from income year 2025, notwithstanding subsections (1) and (2), in calculating the assessable income of a person for an income year in respect of residential property, a loss sustained by that person in respect of residential property in an income year shall be deducted from the assessable income in respect of rent from residential property in that income year; and where that loss exceeds the assessable income in respect of rent from residential property of that person, the amount of the excess shall be carried forward and shall be deducted in computing the assessable income from residential property of that person for the ensuing 5 income years.";

(c) ***by inserting immediately after subsection (5) the following:***

"(6) With effect from income year 2024, notwithstanding subsections (1) and (2) in calculating the assessable income of a person for an income year in respect of qualifying intellectual property, a loss sustained by that person in respect of qualifying intellectual property

in an income year shall be deducted from the assessable income in respect of income from qualifying intellectual property in that income year; and where that loss exceeds the assessable income in respect of income from qualifying intellectual property of that person, the amount of the excess shall be carried forward and shall be deducted in computing the assessable income from qualifying intellectual property of that person for the ensuing five income years.".

Insertion of sections 23M to 23X into Cap. 73

5. ***The principal Act is amended by inserting immediately after section 23 the following:***

"Interpretation in respect of sections 23M to 23X

23M.(1) For the purposes of sections 23M to 23X

"accounting period" means the period in respect of which corporation tax is chargeable;

"capital allowances" means the allowances specified in sections 12 and 13 of the Act;

"claimant company" means a company which utilises the trading loss of a surrendering company;

"75 per cent subsidiary" means a body corporate of which

(a) 75 per cent or more of the ordinary share capital of that body corporate is beneficially owned, whether directly or indirectly, by another body corporate; and

(b) 75 per cent or more of the voting rights are attached to its share capital;

"surrendering company" means a company which suffers a trading loss and surrenders this loss to another company for the purposes of group relief;

"trading losses" means the losses referred to in section 23 but does not include capital allowances and expenses payable to a group member and claimed as a deduction if corresponding amounts have not been included in the income of the group member for the income year.

(2) Group relief is a relief that allows the current trading losses of a surrendering company to be set off, by way of relief from corporation tax, against the profits of a claimant company whether in whole or in part, if, throughout their respective accounting periods both companies satisfy the provisions of the group test set out in subsections (3) and (4).

(3) Group relief is available where a surrendering company and a claimant company are members of the same group.

(4) For the purposes of subsection (3), two companies are regarded as being members of the same group where

(a) one company is a 75 per cent subsidiary of the other company; or

(b) both companies are 75 per cent subsidiaries of a third company.

(5) Every company engaged in group relief must be resident in Barbados.

(6) This section and sections 23N to 23X apply to and take effect from

(a) income year 2024, with respect to a company that has trading losses brought forward from income years prior to income year 2024 and such losses are in excess of $100 000 000;

(b) income year 2025, with respect to a company other than a company referred to in paragraph *(a)*.

Determination of subsidiary company

23N.(1) In determining, for the purposes of group relief, whether a company is a 75 per cent subsidiary of another, the other company shall be treated as not being the owner

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade;

(b) of any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in Barbados.

(2) Notwithstanding that any time a company is a 75 per cent subsidiary of another company the former company shall not be treated at that time as such a subsidiary with respect to group relief unless, additionally at that time

(a) the parent company is beneficially entitled to not less than 75 per cent of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to not less than 75 per cent of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

Claim for group relief

23O.(1) A claim for group relief shall specify the following:

(a) the name of the claimant company;

(b) the accounting period for which relief is claimed by the claimant company;

(c) the name of the surrendering company;

(d) the accounting period for which relief is claimed by the surrendering company;

(e) the amount claimed in respect of the surrendering company; and

(f) the total amount of profits of the claimant company to be covered by group relief.

(2) A claim for group relief

(a) shall not be allowed unless the profits of the claimant company are first applied against any previous years' losses of that company;

(b) need not be for the full amount available to the claimant company;

(c) shall require the consent of the surrendering company which shall be submitted to the Commissioner in the form prescribed by the Commissioner;

(d) must be made within 2 years of the date of the end of the surrendering company's accounting period to which the claim relates; and

(e) shall only be allowed by the Commissioner after all taxes due to the State and all national insurance contributions have been

satisfied by both the claimant company and the surrendering company.

Losses which may be surrendered

23P.(1) Where a surrendering company

(a) incurs a trading loss in income year 2024 or subsequent income years, or

(b) has trading losses brought forward from income years prior to income year 2024 and such losses are in excess of $100 000 000,

the loss may be set off against the total profits of the claimant company for the corresponding accounting periods of the claimant company.

(2) Notwithstanding subsection (1), where a surrendering company has trading losses arising from qualifying intellectual property in income year 2024 or subsequent income years, the loss may be set off against the total profits arising from qualifying intellectual property of a claimant company for the corresponding accounting periods of the claimant company.

(3) The reduction, by means of group relief, of tax payable by a claimant company in an income year shall not exceed 50 per cent of the amount of tax which would have been payable had the relief not been granted.

(4) The accounting period of a company, for the purpose of corporation tax, shall begin whenever the company not then being within the charge to corporation tax comes within the charge, whether by the company becoming resident in Barbados or acquiring a source of income, or otherwise.

(5) An accounting period of a company shall end for the purpose of corporation tax on the first occurrence of any of the following:

(a) the expiration of 12 months from the beginning of the accounting period;

(b) the end of the fiscal period of the company; or

(c) the company ceasing to be within the charge to corporation tax.

Corresponding accounting periods

23Q.(1) For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.

(2) For the purposes of group relief an accounting period is calculated in the manner specified in the *Eighth Schedule*.

Companies joining or leaving group

23R.(1) Group relief shall be given only if the surrendering company and the claimant company are members of the same group throughout the whole of the surrendering company's accounting period to which the claim relates and throughout the whole of the corresponding accounting period of the claimant company.

(2) Where on any occasion two companies become or cease to be members of the same group then for the purposes of subsection (4), it shall be assumed as respects each company that

(a) on that occasion, unless a true accounting period of the company begins or ends then, an accounting period of the company ends and a new one begins, the new accounting period to end with the end of the true accounting period,

unless before then there is a further break under this subsection; and

(b) the losses of the true accounting period are apportioned to the component accounting periods referred to in paragraph *(a)*; and

(c) the amount of total profits for the true accounting period of the company against which group relief may be allowed is also apportioned to the component accounting periods.

(3) An apportionment under subsection (2) shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears that that method would work unreasonably or unjustly, such other methods shall be used as appears to the Commissioner just and reasonable.

(4) Where the one company is the surrendering company and the other company is the claimant company references in subsection (1) to accounting periods shall be so construed, so that if the two companies are members of the same group in the surrendering company's accounting period, they must under that section also be members of the same group in any corresponding accounting period of the claimant company.

Relief obtainable once for the same amount

23S.(1) Relief shall not be given more than once in respect of the same amount, whether by giving group relief or by giving some other relief, in any accounting period, to the surrendering company, or by giving group relief more than once.

(2) In accordance with subsection (1), two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose

corresponding accounting period coincided with the accounting period of the surrendering company.

Aggregate of claim

23T.(1) Subject to subsection (2), two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company

(2) Notwithstanding subsection (1) where the claimant companies referred to in subsection (1) make claims, the aggregate of the claims shall not exceed the amount of the loss surrendered by the surrendering company.

Capital allowances

23U. A claimant company shall only be eligible to claim group relief where that company, has first claimed all its available capital allowances.

Tax recovery

23V. Where the Commissioner discovers that any group relief which has been given is or has become excessive, he may make an assessment to corporation tax in the amount which ought in his opinion to be charged.

Exempt companies

23W.(1) Group relief is not available to

(a) any company registered under the *Small Business Development Act*, Cap. 318C;

(b) any other company which has been granted tax concessions or exemptions under any other enactment including companies operating under the *Tourism Development Act*, Cap. 341;

(c) any other company that is an authorised or exempt mutual fund under the *Mutual Funds Act*, Cap. 320B;

(d) any other company carrying on international shipping activities;

(e) any other company carrying on insurance business; or

(f) a company to whom section 43(10) and (11) applies.

(2) For the avoidance of doubt, group relief shall be available only to a company which is subject to a 9 per cent corporation tax rate pursuant to section 43(8).

Profits and losses and distribution or charge on income vis-a-vis group relief

23X.(1) A payment for group relief

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes; and

(b) shall not for the purposes of the *Income Tax Act*, Cap. 73, be regarded as a distribution or charge on income.

(2) In subsection (1)*(a)* "payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.".

Amendment of section 43 of Cap. 73

6. ***Section 43 of the principal Act is amended by inserting immediately after subsection (7) the following:***

"(8) With effect from income year 2024, commencing 1st January, 2024, the tax payable by a company upon its taxable income shall be 9 per cent.

(9) Notwithstanding subsection (8), with effect from income year 2024, commencing 1st January, 2024

(a) the tax payable by a company,

(i) the gross income of which is $2 000 000 or less; and

(ii) which is registered as an approved small business under the *Small Business Development Act*, Cap. 318C,

shall be 5.5 per cent upon its taxable income

(b) the tax payable by a company on income earned from international shipping shall be as follows:

(i) 5.5 per cent on all taxable income up to $1 000 000;

(ii) 3 per cent on all taxable income exceeding $1 000 000 but not exceeding $20 000 000;

(iii) 2.5 per cent on all taxable income exceeding $20 000 000 but not exceeding $30 000 000;

(iv) 1 per cent on all taxable income exceeding $30 000 000.

(10) Notwithstanding subsection (8), with effect for income year 2024, commencing 1st January 2024, where a company is part of an in-scope MNE group, the tax payable by that company shall be in accordance with subsection (11) where the ultimate parent entity or intermediate parent entity of the company is located in a jurisdiction that has not implemented top-up tax legislation which provides for in-scope MNE groups to pay at least a 15 per cent effective tax rate in each jurisdiction where such groups operate.

(11) The tax payable by a company referred to in subsection (10) shall be as follows:

(a) 5.5 per cent on all taxable income up to $1 000 000;

(b) 3 per cent on all taxable income exceeding $1 000 000 but not exceeding $20 000 000;

(c) 2.5 per cent on all taxable income exceeding $20 000 000 but not exceeding $30 000 000;

(d) 1 per cent on all taxable income exceeding $30 000 000.

(12) For the avoidance of doubt, the tax payable pursuant to subsections (8), (9) and (10) shall only be applicable to the portion of the taxable income which is earned on and after 1st January, 2024.".

Insertion of section 43B into Cap. 73

7. ***The principal Act is amended by inserting immediately after section 43A the following:***

"Rate of tax on income from intellectual property

43B.(1) Notwithstanding section 43, with effect from income year 2024, the tax payable by a person on income from qualifying intellectual property, calculated in accordance with section 22A, may be 4.5 per cent, subject to an election made by the company.

(2) Subject to subsection (1), the rate of 4.5 per cent shall apply to qualifying intellectual property that have been created, developed, or improved by a person with respect to the corresponding research and development.".

Insertion of new section 46G into Cap. 73

8. ***The principal Act is amended by inserting immediately after section 46F the following:***

"Amendment of Division S

46G.(1) The Minister may by order amend the rate of tax as specified in Division S.

(2) An order referred to in subsection (1) is subject to negative resolution.".

Insertion of new section 64B.1 into Cap. 73

9. ***The principal Act is amended by inserting immediately after section 64B the following:***

"Prepayment of corporation tax

64B.1.(1) For income year 2024, commencing 1st January, 2024, a company to whom this subsection applies shall pay to the Commissioner, on or before the 15th January, 2024, and thereafter no later than the 15th day of each calendar month a prepayment of corporation tax an amount equal to one-twelfth of the tax payable on its taxable income calculated in accordance with subsection (4).

(2) Subsection (1) shall only apply to a company which is part of an in-scope MNE Group, the ultimate parent entity or intermediate parent entity of which is located in a jurisdiction that has implemented top-up tax legislation which provides for in-scope MNE groups to pay at least a 15 per cent effective tax rate in each jurisdiction where such groups operate.

(3) With effect from income year 2025 and every subsequent income year, every company shall pay to the Commissioner no later than the 15th day of each calendar month as a prepayment of corporation tax an amount equal to one-twelfth of the tax payable on its taxable income calculated in accordance with subsection (4).

(4) For the purposes of subsections (1) and (3) the taxable income of any company for an income year shall be taken to be the taxable income for the income year before the preceding income year as disclosed in its return filed in accordance with section 52.

(5) The prepayments shall be calculated based on the taxable income multiplied by the applicable corporation tax rate as specified in section 43, net of tax credits other than the tax credits referred to in sections 65H and 65I, divided by 12.

(6) The balance of tax payable under subsections (1) and (3), if any, shall be payable, on or before the date that the company is due to file a return as required under section 52.

(7) Where a company referred to in subsections (1) or (3)

(a) was not liable to tax in the income year before the preceding income year;

(b) is of the opinion that the taxable income in respect of the current income year may be less than the taxable income for the income year before the preceding income year

that company shall, not later than 15th July apply in writing to the Commissioner for a determination or reduction, as the case may be, of the amount payable under subsections (1) or (3).

(8) On an application made under subsection (7), the Commissioner may,

(a) in the case of an application under paragraph *(a)* of subsection (7), determine; or

(b) in the case of an application under paragraph *(b)* of subsection (7), if he is satisfied that the taxable income in respect of the current income year is likely to be less than that of the preceding income year, reduce

the amount payable under subsections (1) or (3).

(9) This section shall not apply to a company referred to in section 43(9)*(a)*, but such company shall pay the corporation tax payable under section 43(9)*(a)* in accordance with section 64B.".

Insertion of sections 65H and 65I into Cap. 73

10. ***The principal Act is amended by inserting immediately after section 65G the following:***

"Jobs credit

65H.(1) With effect from income year 2024, a jobs credit may be claimed by an eligible company, at the credit amount specified in subsection (2), that incurs eligible payroll expenditure after 1st January, 2024, where that company engages the number of employees specified in subsection (2).

(2) Pursuant to subsection (1) the number of employees and the jobs credit amount is set out as follows:

(a) for up to 50 employees, a credit equal to 25 per cent of eligible payroll expenditure;

(b) 51 to 100 employees, a credit equal to 50 per cent of eligible payroll expenditure;

(c) 101 to 150 employees, a credit equal to 75 per cent of eligible payroll expenditure;

(d) more than 151 employees, a credit equal to 100 per cent of eligible payroll expenditure.

(3) An eligible company shall not be permitted to include in a claim for a jobs credit expenditure that was not incurred in the income year to which the eligible payroll expenditure relates.

(4) An eligible company shall not receive a jobs credit

(a) unless that company has paid

(i) national insurance contributions payable by the company for all periods before 1st January, 2024;

(ii) amounts deducted or withheld from emoluments to employees in respect of their income; or

(b) where the eligible payroll expenditure can reasonably be considered by the Commissioner to be excessive and unreasonable in relation to the company's business.

(5) Pursuant to subsection 4*(b)*, eligible payroll expenditure shall not be deemed excessive and unreasonable if it is an ordinary and necessary business expense incurred primarily for producing assessable income.

(6) Where a jobs credit becomes payable to a company, the Commissioner may

(a) in the first instance, provide an offset of the amount to be paid by the Commissioner against

(i) the national insurance contributions payable by the company as an employer;

(ii) corporation tax payable; and

(iii) value added tax payable, and the surplus, if any, shall be refunded to the company in cash or cash equivalent;

(b) in the second instance, satisfy the jobs credit in the form of bonds, debenture or other long term or short-term government debt instruments and the surplus, if any, shall be refunded to the company in cash or cash equivalent; and

(c) if *(a)* or *(b)* is not appropriate, refund to the company the jobs credit in cash or cash equivalent,

within 4 years from the date in which the company satisfies the condition for receiving the credit.

(7) Where the Commissioner seeks to satisfy the jobs credit in the form of bonds pursuant to subsection (6)*(b)*, he shall first seek to obtain the consent of the company to do so and where the company

(a) gives its consent to the receipt of the jobs credit in the form of bonds, the bonds shall be issued in the form and on such terms and conditions as the Minister determines; or

(b) does not give its consent, the Commissioner shall pay the jobs credit in cash,

within 4 years from the date in which the company satisfies the condition for receiving the credit.

(8) For the purposes of this section,

"cash equivalent" includes cheques and anything else treated as a cash equivalent under the financial accounting standard used in the consolidated financial statements;

"eligible company" means a company that

(a) carries on business, in an income year, in the following sectors:

(i) financial technology, provided that it is the principal business of the company;

(ii) wholesale trade and distribution of goods, without physical inventory or storage in the State;

(b) employs the number of employees referred to in subsection (2); and

(c) is subject to tax under this Act;

"eligible payroll expenditure" means the aggregate expenditure for salary, wages, overtime remuneration, bonus, commission, retirement plan benefits and retiring allowances, medical insurance, benefit of a rent free residence or any sum paid *in lieu* thereof, or directors' fees payable to eligible employees;

"employee" means an individual who has entered into or, works under, or where the employment has ceased worked under, a contract of employment and that individual must be working or worked full-time for a minimum period of 12 months;

"jobs credit" means a credit claimed on the eligible payroll expenditure by an eligible company in an income year.

Research and development credit

65I.(1) With effect from income year 2024, a company may claim a research and development credit of 50 per cent of eligible expenditure incurred after 1st January, 2024 in relation to qualifying research and development activities.

(2) A company shall not be permitted to include in a claim for a research and development credit on eligible expenditure on qualified research and development activities not incurred in the income year to which the expenditure relates.

(3) A company shall qualify for a research and development credit where the company is

(a) subject to corporation tax; and

(b) carrying out qualifying research and development activities.

(4) Qualifying research and development activities for the purposes of this section shall be systematic, investigative or experimental activities which

(a) are carried on wholly or mainly in Barbados;

(b) involve innovation and technical risk; and

(c) are carried on for the purpose of

(i) acquiring new knowledge with a view to that knowledge having a specific commercial application;

(ii) developing enhancing, protecting, maintaining, and exploiting intellectual property assets;

(iii) creating new or improved materials, products, devices, processes or services.

(5) Qualified research and development activities for the purposes of this section shall not include any of the activities specified in section 12D and Part I of the *Second Schedule*.

(6) Where a research and development credit becomes payable to a company, the Commissioner may

(a) in the first instance, provide a refundable offset of the amount to be paid by the Commissioner against

(i) the national insurance contributions payable by the company as an employer;

(ii) corporation tax payable; and

(iii) value added tax payable, and the surplus, if any, shall be refunded to the company in cash or cash equivalent;

(b) where there is no refundable offset as referred to in *(a)*, refund to the company the research and development credit in cash or cash equivalent,

within 4 years from the date in which the company satisfies the condition for receiving the credit.

(7) A company shall not receive a research and development credit where the eligible expenditure can reasonably be considered by the Commissioner to be excessive and unreasonable in relation to the company's business.

(8) Pursuant to subsection (7), an eligible expenditure shall not be deemed excessive and unreasonable if it is an ordinary and necessary business expense incurred primarily for producing accessible income.

(9) Where the Commissioner determines that

(a) the dominant purpose of a company making a claim under subsection (1) is to

(i) enable it to get the refundable offset referred to in subsection (6)*(a)*; or

(ii) get a refund pursuant to subsection (6)*(b)*; or

(b) a company has at any time entered into an arrangement or engaged in a transaction

(i) which lacks any substantial business purpose, other than increasing the credit to which it or any other company may claim under subsection (1); or

(ii) to artificially increase the credit that may be claimed by it or any other qualified company under subsection (1),

any tax benefit obtained from subsection (6) can be disallowed.

(10) The expenditure, in this section, shall not be taken into account for the purposes of determining any other credit under section 65H.

(11) For the purposes of this section,

"cash equivalent" includes cheques and anything else treated as a cash equivalent under the financial accounting standard used in the consolidated financial statements;

"eligible employee" means an individual who has entered into or, works under, or where the employment has ceased worked under, a contract of employment and that individual must be working or worked fulltime for a minimum period of 12 months;

"eligible expenditure" means

(a) a sum paid to another person, not being a person connected with the company, in order that such person may carry out research and development activities related to the company's trade or business;

(b) non-capital expenditure incurred by a company which is

(i) an amount equal to 50 per cent of the aggregate of the amounts of such part of the emoluments paid by the company to employees of the company engaged in the carrying out of research and development activities related to the company's trade as is laid out for the purposes of those activities; and

(ii) expenditure incurred by the company on materials or goods used solely by the company in the carrying out of research and development activities related to the company's trade,

but where expenditure referred to in paragraphs *(b)*(i) and (ii) is incurred by a company which is a member of a group on behalf of another company which is a member of the group, the other company shall be treated for the purposes of the corporation tax as having incurred the expenditure and the first mentioned

company shall be treated for those purposes as not having incurred the expenditure;

"research and development activities" means

(a) an activity undertaken in the field of medical sciences, namely

(i) basic medicine, including anatomy, cytology, physiology, genetics, pharmacy, pharmacology, toxicology, immunology and immunohaematology, clinical chemistry, clinical microbiology and pathology;

(ii) clinical medicine, including anaesthesiology, paediatrics, obstetrics and gynaecology, internal medicine, surgery, dentistry, neurology, psychiatry, radiology, therapeutics, otorhinolaryngology and ophthalmology, or

(iii) health sciences, including public health services, social medicine, hygiene, nursing and epidemiology;

(b) an activity undertaken in the field of engineering and technology, namely

(i) civil engineering, including architecture engineering, building science and engineering, construction engineering, municipal and structural engineering and other allied subjects;

(ii) electrical engineering, electronics, including communication engineering and systems, computer engineering (hardware) and other allied subjects;

(iii) other engineering sciences such as chemical, aeronautical and space, mechanical, metallurgical and materials engineering, and their specialised

subdivisions, forest products, applied sciences such as geodesy and industrial chemistry, the science and technology of food production, specialised technologies of interdisciplinary fields, for example, systems analysis, metallurgy, mining, textile technology and other allied subjects;

(c) an activity undertaken in the field of natural sciences, namely

(i) mathematics and computer sciences, including mathematics and other allied fields, computer sciences and other allied subjects and software development;

(ii) physical sciences, including astronomy and space sciences, physics, and other allied subjects;

(iii) chemical sciences, including chemistry and other allied subjects;

(iv) earth and related environmental sciences, including geology, geophysics, mineralogy, physical geography and other geosciences, meteorology and other atmospheric sciences, including climatic research, oceanography, volcanology, palaeoecology, and other allied sciences; or

(v) biological sciences, including biology, botany, bacteriology, microbiology, zoology, entomology, genetics, biochemistry, biophysics and other allied sciences, excluding clinical and veterinary sciences;

(d) an activity undertaken in the field of financial technology namely

(i) code for new financial technologies and financial software applications or platforms;

(ii) functional enhancements and new capabilities for existing applications, designed to create a competitive advantage;

(iii) flexible, high-quality, and scalable rule engines to manage and automate complex business structures and data models;

(iv) specialized technologies which seek to enhance the safety, security, and efficiency of the financial service industry, such as artificial intelligence, voice recognition applications, or liveliness recognition software;

(v) cybersecurity enhancements for existing financial technology applications.".

Amendment of section 67 of Cap. 73

11. ***Section 67 of the principal Act is amended in***

(a) ***in subsection (2) by inserting immediately after the words "64B" the words "***64B.1***";***

(b) ***in subsection (3) by inserting immediately after the words "64B" the words "***64B.1***"; and***

(c) ***in subsection (3A) by inserting immediately after the words "64B" the words "***64B.1***".***

Insertion of new Part IVA into Cap. 73

12. ***The principal Act is amended by inserting immediately after Part IV the following:***

"PART IVA

ADMINISTRATIVE DIRECTIONS AND GUIDELINES

Administrative Directions and Guidelines

83B. The Commissioner may issue administrative directions and guidelines, generally, to provide information and guidance in relation to compliance with

(a) this Act or any statutory instruments made thereunder; or

(b) double taxation agreements, multilateral instruments on taxation, bilateral agreement or any international agreement related to taxation.".

Amendment of section 85 of Cap. 73

13. ***Section 85 of the principal Act is amended by inserting, in the appropriate alphabetical order, the following:***

" "consolidated financial statements" means financial statements, prepared by an entity in accordance with an acceptable financial accounting standards, in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity;

"entity" means a company, a partnership, a trust or any other arrangement, association, organization or body for which separate financial accounts or statements are prepared, but shall not include central government, or their administration or agencies that carry out government functions;

"financial technology" means technology-enabled innovation in financial services that result or may result in new business models,

applications processes or products with an associated material effect on the provision of financial services;

"group" means

(a) a collection of entities which are related through ownership or control as defined by the acceptable financial accounting standard for the preparation of consolidated financial statements by the ultimate parent entity, including any entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on materiality grounds or on the grounds that it is held for sale; or

(b) an entity that has one or more permanent establishments, provided that it is not part of another group as defined in paragraph *(a)*,

and includes associated or related companies as defined under section 8(2);

"in-scope MNE group" means an MNE Group with a consolidated revenue of Euro 750 000 000 or more in the consolidated financial statements of the ultimate parent entity in at least two of the four income years immediately preceding the tested income year which is income year 2024;

"intermediate parent entity" means a entity that owns, directly or indirectly, an ownership interest in another entity in the same MNE group and that does not qualify as an ultimate parent entity, a partially owned parent entity, a permanent establishment or an investment entity;

"international shipping" means the operation of a ship owned or leased by an entity that is engaged primarily in transporting passengers or goods in international traffic;

"MNE" means multinational enterprise;

"MNE group" means any group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity;

"parent entity" means an ultimate parent entity which is not an excluded entity, an intermediate parent entity or a partially-owned parent entity;

"permanent establishment" means

(a) a company with a fixed place of business through which the business is wholly or partly carried on, including

(i) a branch;

(ii) a place of management;

(iii) an office;

(iv) a factory;

(v) a workshop;

(vi) a warehouse;

(vii) a building site or construction or assembly project;

(viii) quarry or place of extraction of natural resources; or

(b) where the company does not have a fixed place of business, the principal place in which the company's business is conducted;

"ultimate parent entity" means

(a) an entity that owns, directly or indirectly, a controlling interest in any other entity and that is not owned, directly or indirectly, by another entity with a controlling interest in it; or

(b) the entity of a group as defined in paragraph *(b)* of the definition of "group".".

Insertion of Eighth Schedule into Cap. 73

14. ***The principal Act is amended by inserting immediately after the Seventh Schedule the following:***

"EIGHTH SCHEDULE

(Section 23Q)

Method of Calculating Accounting Period

1. Where an accounting period of a surrendering company and a corresponding accounting period of a claimant company do not coincide

(a) the amount which may be set off against the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction

$$\frac{A}{B}$$

where that fraction is less than unity; and

(b) the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction

$$\frac{A}{C}$$

where that fraction is less than unity.

2. For the purpose of calculation

(a) "A" is the length of the period common to the two accounting periods;

(b) "B" is the length of the accounting period of the surrendering company;

(c) "C" is the length of the corresponding accounting period of the claimant company. ".

Validation

15. Notwithstanding sections 3(2) and 5 of the *Provisional Collection of Taxes Act*, Cap. 85, all taxes purportedly paid and collected pursuant to the *Income Tax Act*, Cap. 73, from November 7th, 2023 to the date of commencement of this Act shall be deemed to have been lawfully and validly paid and collected.