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**ACT NO. 27 OF 2015**

I assent,

CÉCILE E. F. LA GRENADE
Governor-General.

25th August, 2015.

AN ACT to amend the Income Tax Act, CAP. 149.

[4th September, 2015].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Grenada, and by the authority of the same as follows—

1.—(1) This Act may be cited as the—

INCOME TAX (AMENDMENT) ACT, 2015

Short title and
commencement.

and shall be read as one with the Income Tax Act, CAP. 149, hereinafter referred to as the “principal Act”.

(2) Except as otherwise provided in this section, this Act comes into effect in respect of basis periods commencing on or after the date of enactment of this Act.

(3) Section 2(a) of this Act shall be deemed to have come into force on April 26th, 1996.

(4) Sections 2(b), 3, 12, 13, 14, and 19 of this Act apply in respect of payments made on or after the date of enactment of this Act.

(5) Section 5 (and the amendments to sections 40 and 41 of the principal Act as they relate to section 36A of the principal Act) applies with respect to property brought into use on or after the date of enactment of this Act.

(6) Section 6 (relating to section 37(1) of the principal Act and the amendment to section 40 of the principal Act as it relates to section 37(1)) applies to training expenses incurred on or after the date of enactment of this Act.

(7) Section 15 shall be deemed to come into force coextensively with the principal Act.

(8) Section 16 comes into force on the date of enactment of this Act.

(9) Section 17 comes into force in respect of property brought into use or substantially reconstructed on or after the date of enactment of this Act, and for this purpose a building is substantially reconstructed if the reconstruction costs exceed 50% of the replacement cost of the resulting structure.

Amendment
of section 2 of
principal Act.

2. Section 2(1) of the principal Act is amended as follows—

(a) by repealing the definition of “dividend” and substituting with the following definition—

““dividend” means any distribution out of the assets of a company, whether in cash or otherwise, by the company to its shareholders in respect of shares of the company and includes—

(a) any profit distributed whether of a capital nature or not;

- (b) in the event of the partial reduction of the capital of a company, any money or the value of any property which is distributed to the shareholders in excess of the amount by which the paid up value of the shares is reduced;
- (c) in the event of the reconstruction of a company, any money or the value of any property which is distributed to the shareholders in excess of the paid up value of the shares held by them before the reconstruction; and
- (d) in the event of the winding up of a company, any money or the value of any property which is distributed to the shareholders in excess of the paid up capital of the company including any amount held in a share premium reserve, being a reserve for any premium which has arisen from an issue of shares where such amount has been capitalised,

and where a dividend consists of property other than money it is deemed to be of an amount equal to the market value of the property at the time of the distribution of the dividend;”;

- (b) by repealing the definition of “withholding tax” and substituting the following definition—

““withholding tax” means any tax deducted or deductible pursuant to section 46, section 48(13), or Division II of Part VII;”.

Amendment
of section 7 of
principal Act.

3. Section 7(5) of the principal Act is repealed and substituted with the following sub-section–

“(5) Where income ascertained in accordance with Part V, accrues directly or indirectly to a non resident person from a partnership or person from any source other than from the carrying on of business, such income shall not form part of the assessable income of such person but such income shall be liable to withholding tax in accordance with section 51A or 50, respectively.”.

Amendment of
section 25 of
principal Act.

4. Section 25 of the principal Act is amended–

(a) in sub-section (1) by inserting after paragraph (ee), the following paragraph–

“(ff) business income which has been taxed under the Annual Stamp Tax Act at a rate of 0.5 percent.”;

(b) by repealing sub-section (2).

Insertion of new
sections 36A
and 36AB of
principal Act.

5. Section 36A of the principal Act is repealed and substituted with the following sections–

“Qualifying
investment
allowance.

36A (1) For purposes of determining assessable income from business, where a person, during the basis period of a year of assessment, brings into use a building, structure or equipment that qualifies as a qualifying investment pursuant to the Sixth Schedule, a deduction shall be allowed in the amount of 100 percent of the qualifying costs of the building, structure or equipment.

(2) To the extent that the allowance of the deduction pursuant to subsection (1) exceeds the person's assessable income from business (determined without taking the allowance into account), the excess shall be carried over to the following year of assessment provided that no amount may be carried over for more than nine years of assessment.

(3) Subject to subsection (4), where a person who has benefitted from a deduction under this section transfers a building, structure, or equipment in respect of the deduction within five years of the date the asset was brought into use—

(a) the chargeable income of the person shall include an amount equal to 100 percent of the fair market value of the building, structure, or equipment (but not in excess of the amount previously allowed as the deduction for years of assessment preceding the year of the transfer or any subsequent year); and

(b) no carryover shall be allowed under subsection (5) for the year of the transfer or any subsequent year.

(4) Subsection (3) shall not apply to a transfer described in section 5C of the Property Transfer Tax Act, Chapter 257C.

(5) The allowance under this section is in addition to any annual allowance under the Second Schedule.

Agricultural
research and
development.

36AB (1) For the purpose of determining a person's assessable income from business, a deduction shall be allowed for 50 percent of the costs of research and development expenses relating to agriculture, agricultural products, or agribusiness.

(2) No deduction shall be allowed under subsection (1) for—

- (a) expenditure on routine testing;
- (b) efficiency surveys or management studies;
- (c) routine data collection; or
- (d) market research or sales promotion.”

Amendment
of section 37
of principal
Act.

6. Section 37 of the principal Act is amended—

- (a) in subsection (1), by inserting after paragraph (n) the following new paragraph—

“(o) 50 percent of the qualifying training expenditure incurred by that person during the basis period for that year of assessment, but not in excess of the person's chargeable income for the year of assessment from carrying on a business in Grenada.”;

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

“(4) For the purpose of this section, “qualifying training expenditure” means the following costs (not in excess of \$5,000

of costs attributable to training during the basis period of each employee trained) for the technical or vocational training of an individual resident in Grenada who is an employee of the taxpayer—

- (a) the cost of hiring an external instructor to conduct a training course;
- (b) tuition paid to an educational or other institution offering training services;
- (c) a stipend paid to the individual being trained to cover subsistence during the training period, but not in excess of two months for a particular individual.”.

7. Section 39 of the principal Act is amended by—

Amendment of
section 39 of
principal Act.

- (a) repealing subsection (1) and substituting with the following—

“(1) Subject to sub-section (4), where the deductions allowable to any person for any year of assessment under the provisions of this Part other than this section, exceed the income from the source to which those deductions relate, the amount of such excess shall be allowed as a deduction against income accruing from other sources of income for that year of assessment, but if such excess arises from a business or rental, the excess may be deducted only from business or rental income.”;

- (b) repealing subsections (2), (3) and (4) and substituting the following—

“(2) Where after the allowance of any deduction to which the person may be entitled under subsection (1), an excess still remains and where that excess is in respect of carrying on any business or rental income, the amount of that excess (herein referred to as ‘the assessed loss’) shall—

- (a) be allowed as a deduction in ascertaining the assessable income of the subsequent year of assessment (but only to the extent of the business and rental income in such subsequent year); and
- (b) shall be carried forward and deducted in like manner in ascertaining the assessable income of the next following six years of assessment or until the amount of the assessed loss has been fully allowed, whichever is earlier.

(3) In accordance with sub-section (2) with respect to a loss, a loss from the earliest available year shall be used first, as shall any loss that does not arise from business or rental.

(4) No loss arising during a period in which the person benefited from a tax holiday is allowed as a deduction under subsection (2).”.

Amendment of section 40 of principal Act.

8. Section 40 of the principal Act is amended by inserting after subsection (2) the following new subsection—

“(3) Subsection (1) does not apply in respect of the deductions allowed under section 36A, 36AB, or 37(1)(o).”.

9. Section 41 of the principal Act is amended in subsection (2) by deleting the number “36A” and “comma” thereafter. Amendment of section 41 of principal Act.

10. Section 45 of the principal Act is amended in subsection (1) by deleting the number “36A” and “comma” thereafter. Amendment of section 45 of principal Act.

11. Section 50 of the principal Act is amended by— Amendment of section 50 of principal Act.

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

“(1) Where a person—

(a) being a resident in Grenada, makes a payment or credits an amount; or

(b) being a non-resident, makes a payment or credits an amount in relation to a permanent establishment of the person in Grenada,

to a non-resident person, and the payment or amount credited is of a kind described in the Third Schedule, the payer shall deduct tax at the rate specified in the Third Schedule and pay the amount of tax so deducted to the Comptroller within seven days after the date of payment or credit to the payee, unless the amount paid or credited represents income of the non-resident attributable to a permanent establishment of the non-resident in Grenada.”;

(b) by repealing subsection (6) and substituting the following new subsection—

“(6) For the purposes of this section a resident branch of a foreign company and its headquarters and other non-resident branches

shall be regarded as separate persons carrying on separate businesses and in such situation, “payment” includes an accrual in favor of the non-resident person, or any transaction or operation that gives rise to a deduction for the resident branch.”.

Amendment of section 51A of principal Act.

12. Section 51A of the principal Act is amended in subsection (1) by inserting after the word “specified” the words “in the Fifth Schedule”.

Amendment of section 52 of principal Act.

13. Section 52(1) of the principal Act is amended by inserting after the second appearance of the word “person” the words “who is a resident person and a related person within the meaning of section 5 of the Value Added Tax Act”.

Repeal of section 55A of principal Act.

14. Section 55A of the principal Act is hereby repealed.

Amendment of section 95 of principal Act.

15. Section 95 of the principal Act is amended by repealing subsection (2) and substituting therefor the following new subsection—

“(2) Any tax assessed on any person under section 78 or 79 shall bear interest at the rate of one and one-half percent per month or part thereof for the period during which it remains unpaid commencing on the due date for filing the return for the basis period to which the assessment relates.”.

Amendment of section 109 of principal Act.

16. Section 109 of the principal Act is amended by repealing subsections (1), (2), and (5).

Amendment of Second Schedule to principal Act.

17. The second Schedule to the principal Act is amended as follows—

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- (a) in Part I, in sub-paragraph (1) of paragraph 1; by deleting the words “qualifying business (within the meaning of paragraph 3)” and substituting the word “business”;
 - (b) in Part I, in subparagraph (2) of paragraph 1, by deleting the word “qualifying” wherever it appears;
 - (c) in Part II, in subparagraph (2) of paragraph 4 as follows—
 - (i) in the chapeau by deleting the words “subparagraphs (3), (4) and (5)” and substituting therefor the words “subparagraphs (3), (4), (5) and (7)”;
 - (ii) in item (i), by deleting the number “10%” and substituting therefor the number “15%”;
 - (iii) in item (ii), by deleting the number “16 2/3%” and substituting therefor the number “20%”;
 - (iv) in item (iii), by deleting the number “20%” and substituting therefor the number “25%”;
 - (d) in Part II by repealing paragraph 3;
 - (e) in Part II in paragraph 4, by inserting the following subparagraph after subparagraph (6):

“(7) The deduction allowable under subparagraph (2) shall be one hundred percent of so much of the cost of the plant and machinery as does not exceed, in total for the year of assessment, one hundred thousand dollars. In the case of a taxpayer whose total cost exceeds one hundred thousand dollars the taxpayer may elect which costs to deduct under this subparagraph.”.

Amendment of
Third Schedule
to principal
Act.

18. The Third Schedule to the principal Act is amended as follows—

(a) in paragraph 1 by deleting sub paragraph (1) and substituting the following paragraph—

“1. Application.

(1) This Schedule applies to any payment by way of—

(a) interest or discount;

(b) rental, lease premium, franchise fee, or licence;

(c) royalty;

(d) technical assistance fee, management charge, director’s fee, or similar commission or fee, not being in respect of an employment to which section 51 or 54 applies; or

(e) annuity or similar periodic payment.”;

(b) in paragraph 1 by inserting after subparagraph (3) the following new subparagraph—

“(4) For purposes of this Schedule and Division II of Part VII of this Act—

(a) a payment includes the crediting of an amount; and

(b) if a person carries on activities both inside and outside Grenada, the person is treated as if it were two separate persons corresponding respectively to the activities the person carries on inside and outside Grenada.”.

Insertion of
new schedule to
principal Act.

19. The principal Act is amended by inserting after the Fifth Schedule the following the new schedule—

“SIXTH SCHEDULE**INCOME TAX ACT**Qualifying costs of qualifying investment
[Section 36A]

1. For purposes of this schedule, a qualifying investment means any of the following—
 - (a) the construction of a new priority sector facility;
 - (b) the construction of a new building or structure that forms part of a priority sector facility;
 - (c) the expansion of a building or structure that forms part of a priority sector facility;
 - (d) the reconstruction of a building or structure that forms part of a priority sector facility, if the costs of the reconstruction exceed 40% of the written down value of the reconstructed building or structure;
 - (e) the installation of medical equipment in a new medical facility;
 - (f) the installation of medical equipment in an existing medical facility, if the cost of the equipment exceeds 75% of the written down value of the existing equipment.

2. For purposes of this schedule, a priority sector facility is—
 - (a) a hotel, guest house, or similar accommodation oriented to short-term visitors, and having a valid hotel or guest house licence;
 - (b) a building or structure used solely for the provision of medical services and activities ancillary to the provision of such services;
 - (c) a building or structure used as a restaurant, marina, or tourist attraction;
 - (d) a building, structure, or plant used for manufacturing, or as a film studio;

- (e) an agricultural, agribusiness, or agricultural research project;
- (f) an educational or training facility;
- (g) a health or wellness facility;
- (h) an alternative energy generation facility;
- (i) a sporting or tourism facility; or
- (j) Government housing projects.

An investment relating to a facility described in subparagraph (c), (f), (g), or (h) shall be treated as a qualified investment only if the qualifying costs exceed three million dollars. An investment relating to a facility described in subparagraphs (d) and (e) shall be treated as a qualified investment only if the qualifying costs exceed one million dollars.

3. (1) The Minister may by Regulations prescribe specified fiscal incentives and conditions in respect of investments relating to specific priority sectors, large scale projects and projected amounts of capital investment.
 - (2) Regulations under sub-section (1) shall be subject to affirmative resolution and shall when tabled in Parliament for affirmation be accompanied by a cost benefit analysis of any specified fiscal incentives that are to be granted under the regulations.
 - (3) For the purposes of this paragraph “fiscal incentives” means any exemption or relief, in respect of any tax, duty, levy, fee, fine or other impost.
4. Subject to paragraph 5, the qualifying costs taken into account for purposes of section 36A are—
 - (a) in the case of a qualifying investment described in subparagraphs(a)-(d) of paragraph 1, the cost of—
 - (i) construction materials and equipment that will become part of the buildings and equipment constructed or installed as part of the project, or that will be consumed as part of the construction or installation process;

- (ii) construction labor (including construction management); and
 - (iii) equipment and other capital goods that will be put into service upon initial operation of the project and used for operation of the project;
 - (b) in the case of a qualifying investment described in subparagraphs (e)-(f) of paragraph 1, the cost of-
 - (i) construction materials and equipment that will become part of the buildings and equipment constructed or installed as part of the project, or that will be consumed as part of the construction or installation process; and
 - (ii) construction labour (including construction management);
 - (c) in the case of qualifying investment described in subparagraphs (g) –(h) the cost of-
 - (i) construction materials and equipment that will become part of the buildings and equipment constructed or installed as part of the project, or that will be consumed as part of the construction or installation process;
 - (ii) construction labour (including construction management); and
 - (iii) equipment and other capital goods that will be put into service upon initial operation of the project and used for operation of the project.
- 5.** The following costs are not treated as qualifying costs for purposes of section 36A–
- (a) planning, permitting, design, and similar costs preparatory to construction or installation;
 - (b) legal, architectural, engineering, or other professional fees;
 - (c) the cost of land;
 - (d) interest and other financing costs;

- (e) in the case of a qualifying investment described in subparagraphs (a) to (d) of paragraph 1, the cost of materials that do not become part of the building or structure;
- (f) office equipment and furnishings, vehicles, aircraft, or boats.

6. For the purpose of this Schedule the following definitions shall apply–

Agricultural, Agri-Business or Agricultural Research Project

Any business activity that enhance contribution of jobs, income and foreign exchange of the agriculture sector to the national economy and is certified by the Ministry of Agriculture and includes the following–

- the cultivation of plants for their aromatic, savoury or medicinal properties;
- the cultivation of flowers, fruits, vegetables and ornamental plants in a garden, orchard or nursery;
- the cultivation of plants in liquid nutrient;
- the breeding, feeding and rearing of domestic animals;
- Forestry and Mining.

Education and Training (except non-profit, public and publicly funded entities)

Any business activity that involves the imparting of knowledge and skills, for a regional or international clientele, and is licensed by the Ministry of Education (MOE). Such business activity includes schools, colleges, universities, technical and vocational institutions, etc.

Energy

Any business enterprise that involves research and experimental development services and engineering, research and experimental development services on Social Services and humanities and inter disciplinary research and experimental development services.

Guest House

Any building or facility that is available for the accommodation of paying short term guest, is built in accordance with the accommodation standards, licensed in accordance with the Grenada Tourism Authority Act No.42 of 2013 and contains the following–

- a minimum of 3 bedrooms situate within the same grounds;
- a minimum of 250 sq. ft. for each bedroom (exclusive of closet space);
- a common entrance lobby and reception facilities;

- a common kitchen/dining room;
- adequate parking facilities.

Health and Wellness

Any business activity that provides medical and wellness services to regional or international clientele and is certified by the Ministry of Health (MOH). Qualifying investments include health clubs, gyms, spas, retirement homes, rehabilitation centers, hospitals, health clinics, medical facilities and veterinary institutions.

Hotels

Any building or facility that is available for the accommodation of paying short term guest, is built in accordance with the accommodation standards, is served by a common maid service, licensed in accordance with the Grenada Tourism Authority Act No.42 of 2013 and contains the following—

- a minimum of 10 bedrooms, apartment units or cottages situate within the same grounds;
- a minimum of 350 sq ft for each bedroom (exclusive of closet space);
- a common entrance lobby and reception facilities;
- a restaurant and bar or common kitchen/dining room or self contained kitchen facilities;
- adequate parking facilities.

Manufacturing

Any business activity that involves the physical or chemical transformation of material or components into new products or the industrial processing of raw material and intermediate products derived from the agricultural sector and is licensed by the Bureau of Standards.

Restaurant

Any facility that serves creole, regional and/or international cuisine and has the following—

- an a la carte or table d'hote food menu;
- a table service by a uniformed staff;
- a minimum of thirty seats.

Passed by the House of Representatives this 29th day of May, 2015.

WILLAN THOMPSON
Clerk to the House of Representatives.

Passed by the Senate this 5th day of June 2015.

WILLAN THOMPSON
Clerk to the Senate.