

i

SAINT VINCENT AND THE GRENADINES
INTERNATIONAL TAX CO-OPERATION (ECONOMIC SUBSTANCE)
ACT 2020

ARRANGEMENT OF SECTIONS

Sections

PART I

PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Meaning of “finance and leasing business”
4. Meaning of “high-risk IP entity”
5. Excluded entities
6. Criteria for determining control of a resident entity
7. Meaning of “holding entity” and “pure equity holding entity”.
8. Core income-generating activities in Saint Vincent and the Grenadines.

PART II

ECONOMIC SUBSTANCE REQUIREMENTS

9. Economic substance requirements applicable to relevant entities
10. Direction and management in Saint Vincent and the Grenadines.
11. Reporting obligations
12. Requirement to provide information and documents
13. Assessment of compliance with economic substance requirements
14. Failure to satisfy economic substance requirements, first assessment period of default

15. Failure to satisfy economic substance requirements, second or subsequent assessment period of default
16. Penalties
17. Application for internal review
18. Decision of Comptroller on internal review
19. Appeals
20. Application to Court
21. Search warrant

PART III

EXCHANGE OF INFORMATION

22. Exchange of information with competent authorities
23. Exchange of information, high-risk IP entities
24. Confidentiality with respect to information received under this Part

PART IV

MISCELLANEOUS PROVISIONS

25. The Comptroller and application of the Tax Administration Act, 2019
26. Protection of persons disclosing confidential information
27. False and misleading information
28. Liability of directors or other officers
29. Approval of forms by the Comptroller
30. Guidance
31. Comptroller to consult
32. Regulations
33. Transitional provisions



SAINT VINCENT AND THE GRENADINES

ACT NO. 21 OF 2020

I ASSENT

[L.S.]

SUSAN DOUGAN
Governor-General
30th December, 2020.

AN ACT to require certain entities resident in Saint Vincent and the Grenadines that carry on specified types of geographically mobile business to meet economic substance requirements designed to ensure that real economic activity is being carried on or undertaken in Saint Vincent and the Grenadines in respect of the income generated by the entity from those types of business, for enforcing those obligations; and to provide for connected purposes.

[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 of Saint Vincent and the Grenadines and by the authority of the same, as follows:

PART I

PRELIMINARY

- | | |
|----------------------------------------------------------------------------------------------------|------------------------------|
| 1. (1) This Act may be cited as the International Tax Co-operation (Economic Substance) Act, 2020. | Short title and commencement |
| (2) This Act comes into force on 1 January, 2021. | |
| 2. In this Act, unless the context otherwise requires – | Interpretation |

“approved form” means a form approved by the Comptroller under section 28;

“assessment period”, in relation to a resident entity, means –

- Cap. 435
- (a) in the case of a resident entity chargeable to tax under section 7(1) of the Income Tax Act, the resident entity’s basis period under section 11 of that Act;
 - (b) in any other case, a calendar year;

“banking business” has the meaning specified in the Banking Act 2015;

No. 4 of 2015

“board” or “board of directors”, in relation to an entity, means –

- (a) the directors of the entity acting together as the board of directors, by whatever name called; or
- (b) if the entity has only one director, that director;

“commencement date” means the date on which this Act comes into force;

“Comptroller” means the Comptroller of Inland Revenue appointed under section 5 of the Tax Administration Act 2019;

No. 30 of 2019

“core income-generating activity” has the meaning specified in section 8;

“country” includes a territory;

“Court” means the High Court of Saint Vincent and the Grenadines or a judge thereof;

“directed and managed” shall be construed in accordance with section 10;

“director, in relation to an entity, includes –

- (a) a person who is a member of the governing body of the entity and, in the case of a limited partnership, includes a general partner; and

- (b) a person who, in relation to the entity, occupies or acts in the position of director, by whatever name called;

“distribution and service centre business” means, as the sole or main activity, the business of either or both of the following –

- (a) purchasing from a group entity –
 - (i) materials or component parts for products; or
 - (ii) products ready for sale; and

reselling such materials, component parts or products outside Saint Vincent and the Grenadines; or

- (b) providing services to another group entity in connection with the business outside Saint Vincent and the Grenadines;

but excludes an activity included within any other relevant activity;

“document” means a document in any form and includes –

- (a) any writing or printing on any material;
- (b) information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;
- (c) a book, graph or drawing; and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

“economic substance requirements” is to be construed in accordance with section 9;

“entity” means a body corporate whether incorporated, formed or otherwise constituted in or outside Saint Vincent and the Grenadines;

Cap. 154

“excluded entity” has the meaning specified in section 5;

“finance and leasing business” has the meaning specified in section 3;

“foreign group entity” means a group entity that is incorporated, formed or otherwise constituted outside Saint Vincent and the Grenadines;

“fund” has the meaning specified for “mutual fund” in the Mutual Funds Act;

“fund management business” means managing funds and includes the management of investments for and on behalf of funds;

“group”, in relation to an entity (the “first entity”), means the first entity and any other entity that is –

- (a) a holding entity of the first entity;
- (b) a subsidiary of the first entity;
- (c) a subsidiary of a holding entity of the first entity;
- (d) a holding entity of a subsidiary of the first entity;

“group entity”, in relation to an entity (the “first entity”), means another entity that is in the same group as the first entity;

“headquarters business” means the business, carried on by a relevant entity, of providing any of the following services to one or more foreign group entities of the relevant entity –

- (a) the provision of senior management;
- (b) the assumption or control of material risk for activities carried out by, or assets owned by, any of those foreign group entities; or
- (c) the provision of substantive advice in relation to the assumption or control of risk activities or assets referred to in paragraph (b);

but excludes an activity included within banking business, finance and leasing business, insurance business or intellectual property holding business;

“high-risk IP entity” has the meaning specified in section 4;

“holding entity” has the meaning specified in section 7(a);

“holding entity business” means the business of being a holding entity;

“income”, in relation to an intellectual property asset, includes

- (a) royalties;
- (b) income from a franchise agreement;
- (c) income from licensing the asset; and
- (d) capital gains and other income from the sale of the asset;

“insurance business” has the meaning specified in the Insurance Act;

Cap. 306

“intellectual property asset” means a property right or interest of one of the following types –

- (a) copyrighted software;
- (b) patents;
- (c) technical know-how; or
- (d) industrial design rights;

“intellectual property holding business” means the business of holding, exploiting or receiving income from an intellectual property asset or assets;

“Minister” means the Minister charged with responsibility for finance;

“multinational enterprise group” means a group that includes –

- (a) two or more entities the tax residence for which is in different countries; or
- (b) an entity that is resident for tax purposes in one country and is subject to tax with respect to the business carried out through a permanent establishment in another country;

Cap. 435

“permanent establishment” has the meaning specified in the Income Tax Act;

“prescribed” means prescribed by regulations;

“pure equity holding entity” has the meaning specified in section 7(b);

Cap. 143

“registered external company” means an external company registered under the Companies Act;

“relevant activity” means –

- (a) banking business;
- (b) distribution and service centre business;
- (c) finance and leasing business;
- (d) fund management business;
- (e) headquarters business;
- (f) holding entity business;
- (g) insurance business;
- (h) intellectual property holding business; and
- (i) shipping business;

“relevant entity” means a resident entity that is not an excluded entity;

“resident entity” means –

- (a) a company within the meaning of the Companies Act;

- (b) a registered external company; or
- (c) a business company within the meaning of the Business Companies (Amendment and Consolidation) Act;

Cap. 149

“ship” includes every description of vessel used in navigation but does not include –

- (a) a fishing vessel;
- (b) a vessel of a type used primarily for sport or recreation; or
- (c) a vessel under twenty four metres in length;

“shipping business” means any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of Saint Vincent and the Grenadines –

- (a) the business of transporting, by sea, persons, animals, goods or mail;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea;
- (e) the management of the crew of a ship;

“subsidiary”, in relation to an entity (the “first entity”), means an entity of which the first entity is a holding entity;

“ultimate beneficial owner”, in relation to a resident entity, means a person who–

- (a) holds, directly or indirectly, more than twenty five percent of the issued shares in the entity;

- (b) is entitled, directly or indirectly, to exercise, or control the exercise of, more than twenty five percent of the voting rights in the entity;
- (c) has the right, directly or indirectly, to appoint or remove a majority of the directors of the entity; or
- (d) has the right to exercise, or actually exercises, significant influence or control over the entity.

Meaning of
"finance and
leasing business"

3. (1) In this Act, "finance and leasing business" means the business of providing credit facilities of any kind for consideration but excludes an activity included within the definition of "banking business", "fund management business" or "insurance business".

(2) For the purposes of subsection (1) –

- (a) consideration includes consideration by way of interest;
- (b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with –
 - (i) the supply of goods by hire purchase;
 - (ii) leasing, excluding a lease over land or an interest in land; or
 - (iii) conditional sale or credit sale; and
- (c) where an advance or credit repayable by a customer to a person is assigned to another person, that other person is considered to be providing the credit facility.

Meaning of
"high-risk
entity"

4. (1) For the purposes of this Act, an entity is a high-risk IP entity if it carries on intellectual property holding business and –

- (a) the entity –
 - (i) acquired the intellectual property asset –
 - (A) from a group entity; or

(B) in consideration for funding research and development by another person situated in a country other than Saint Vincent and the Grenadines; and

(ii) licences the intellectual property asset to one or more group entities or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by foreign group entities; or

(b) the entity does not carry out either research and development or branding and distribution as part of its core-income-generating activities in Saint Vincent and the Grenadines.

(2) Subsection (1)(b) does not apply with respect to intellectual property assets that comprise technical know-how, performers rights or both.

5. A resident entity is an excluded entity if the resident entity—

Excluded entities

(a) is tax resident in a country outside Saint Vincent and the Grenadines which is not on the European Union list of non-cooperative jurisdictions for tax purposes; or

(b) meets each of the following conditions –

(i) the resident entity conducts its activities exclusively in Saint Vincent and the Grenadines;

(ii) the resident entity is locally controlled within the meaning of section 6; and

(iii) the resident entity is not part of a multinational enterprise group.

6. (1) For the purposes of this section, a person is a “local person” if the person is –

Criteria for determining control of a resident entity

(a) an individual who has a right to reside in Saint Vincent and the Grenadines, including under a permit to reside granted under the Residence Act;

Cap. 116

- (b) the Government;
- (c) a local authority; or
- (d) a publicly owned entity within the meaning prescribed by regulations;

(2) The Regulations may specify criteria for a trust registered under the Trusts Act to be regarded as a local person for the purposes of this section.

(3) A resident entity is locally controlled if –

(a) local persons –

(i) own, directly or indirectly, at least sixty percent of the issued shares of the resident entity; and

(ii) are entitled, directly or indirectly, to exercise or control the exercise of at least sixty percent of the voting rights in the resident entity; and

(b) at least sixty percent of the directors are local persons within subsection (1)(a).

(4) For the purposes of subsection (3)(a)(i), a person is considered to own an issued share in a resident entity indirectly if –

(a) the person has a controlling interest in a legal entity and the legal entity-

(i) owns the issued share in question; or

(ii) is part of a chain of legal entities –

(A) each of which, other than the last, has a controlling interest in the legal entity below it in the chain; and

(B) the last of which owns the share; or

(b) the person owns the share through a nominee.

(5) For the purposes of subsection (3)(a)(ii), a person is considered to exercise or control the exercise of a voting right in a resident entity indirectly if—

- (a) the person has a controlling interest in a legal entity and the legal entity —
 - (i) is entitled to exercise or control the exercise of the voting right in question; or
 - (ii) is part of a chain of legal entities —
 - (A) each of which, other than the last, has a controlling interest in the legal entity below it in the chain; and
 - (B) the last of which is entitled to exercise or control the exercise of the voting right; or
- (b) the person exercises or controls the exercise of the voting right through a nominee.

(6) A person has a controlling interest in a legal entity if the person —

- (a) owns at least sixty percent of the issued shares of the legal entity; and
- (b) holds at least sixty percent of the voting rights in the legal entity.

7. For the purposes of this Act —

- (a) an entity (the first entity) is the “holding entity” of another entity (the second entity) if the first entity —
 - (i) holds a majority of the issued shares in the second entity;
 - (ii) holds a majority of the voting rights in the second entity;
 - (iii) is a member of the second entity and, under an agreement with other members of the second entity,

Meaning of
“holding entity”
and “pure equity
holding entity”.

controls a majority of the voting rights in the second entity;

(iv) is a member of the second entity and has the right to appoint or remove the majority of the directors of the second entity; or

(v) is the holding entity of a holding entity of the second entity; and

(b) a “pure equity holding entity” is a relevant entity that –

(i) is a holding entity;

(ii) has, as its primary function, the acquisition and holding of shares or equitable interests in other entities; and

(iii) does not carry on any commercial activity.

Core income-generating activities in Saint Vincent and the Grenadines.

8. (1) For the purposes of this Act, “core income generating activities” in relation to a relevant activity includes –

(a) with respect to banking business –

(i) raising funds;

(ii) managing risk including credit, currency and interest risk;

(iii) taking hedging positions;

(iv) providing loans, credit or other financial services to customers;

(v) managing regulatory capital; and

(vi) preparing regulatory reports or returns;

(b) with respect to distribution and service centre business –

(i) transporting and storing goods, components and materials;

(ii) managing stocks;

- (iii) taking and processing orders; and
- (iv) providing consulting or other administrative services;
- (c) with respect to finance and leasing business –
 - (i) agreeing funding terms;
 - (ii) in the case of leasing business, identifying and acquiring assets to be leased;
 - (iii) setting the terms and duration of financing or leasing agreements;
 - (iv) monitoring and revising finance and leasing agreements; and
 - (v) managing risks associated with finance and leasing agreements;
- (d) with respect to fund management business –
 - (i) taking decisions on the holding and selling of investments;
 - (ii) calculating risk and reserves;
 - (iii) taking decisions on currency or interest fluctuations and hedging positions; and
 - (iv) preparing reports and returns to investors and to the Financial Services Authority of Saint Vincent and the Grenadines established by the Financial Services Authority Act 2011, any authority or body with equivalent functions to the Financial Services Authority with respect to the regulation or supervision of fund management or other government authorities;
- (e) with respect to headquarters business –
 - (i) taking relevant management decisions;

- (ii) incurring expenditures on behalf of group entities;
and
 - (iii) co-ordinating group activities;
- (f) with respect to insurance business –
- (i) predicting and calculating risk;
 - (ii) insuring or re-insuring against risk;
 - (iii) providing insurance business services to clients;
- (g) with respect to intellectual property holding business where the entity holds, exploits or receives income from one or more patents, research and development relating to the patent including –
- (i) advancing the understanding of scientific relations or technologies;
 - (ii) addressing scientific or technological obstacles;
and
 - (iii) increasing scientific or technical knowledge or developing new applications;
- (h) with respect to intellectual property holding business where the entity holds, exploits or receives income from any intellectual property assets or assets, other than patents –
- (i) marketing, branding and distribution activities relating to the asset or assets; or
 - (ii) in exceptional cases, provided that the relevant entity is not a high-risk IP entity –
 - (A) taking strategic decisions and managing, as well as bearing, the principal risks related to development and subsequent exploitation of the asset or assets that generate the income;

- (B) taking the strategic decisions and managing, as well as bearing, the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the asset or assets; and
- (C) carrying on the underlying trading activities through which the asset or assets are exploited leading to the generation of income from third parties;
 - (i) with respect to shipping business –
 - (i) managing crew, including hiring, paying and overseeing crew members;
 - (ii) hauling and maintaining ships;
 - (iii) overseeing and tracking deliveries;
 - (iv) determining what goods to order and when to deliver them; and
 - (v) organising and overseeing voyages; and
 - (j) with respect to holding entity business –
 - (i) where the entity is a pure equity holding entity, complying with its statutory obligations under the Companies Act or the Business Companies (Amendment and Consolidation) Act, as the case may be; Cap. 143
Cap. 149
 - (ii) where the entity is not a pure equity holding entity, the activities specified in paragraphs (a) to (i) that are associated with the income that the entity earns from the relevant activity concerned.

(2) An entity carries on core income-generating activities in Saint Vincent and the Grenadines to the extent that it carries on the activity in Saint Vincent and the Grenadines.

PART II**ECONOMIC SUBSTANCE REQUIREMENTS**

Economic
substance
requirements
applicable to
relevant entities

9. (1) A relevant entity which, in any assessment period, undertakes a relevant activity shall ensure that, during the assessment period, it satisfies the economic substance requirements specified in subsection (3) or in the case of a pure equity holding entity subsection (5), in relation to any relevant activity that it carries on.

(2) A relevant entity which, in any assessment period, carries on more than one relevant activity shall satisfy the economic substance requirements in respect of each activity.

(3) Subject to subsection (6), a relevant entity, other than a pure equity holding entity, satisfies the economic substance requirements in relation to a relevant activity if the entity –

- (a) is directed and managed in Saint Vincent and the Grenadines in relation to that activity;
- (b) having regard to the level of relevant activity carried on in Saint Vincent and the Grenadines –
 - (i) has an adequate number of appropriately experienced and, if appropriate, qualified fulltime employees proportionate to the level of that activity who are physically present in Saint Vincent and the Grenadines, whether or not employed by the relevant entity or by another entity and whether on temporary or long-term contracts;
 - (ii) has an adequate level of operating expenditure in Saint Vincent and the Grenadines proportionate to the level of that relevant activity carried on in Saint Vincent and the Grenadines;
 - (iii) has adequate physical assets or physical presence in Saint Vincent and the Grenadines, proportionate to the level of that relevant activity carried on in Saint Vincent and the Grenadines; and

(c) conducts core income-generating activity in Saint Vincent and the Grenadines.

(4) For the purposes of subsection (3)(c), a relevant entity may outsource core-income-generating activity where –

- (a) the activity is conducted in Saint Vincent and the Grenadines;
- (b) it is able to demonstrate adequate supervision of the outsourced activity; and
- (c) only that part of the activities of the outsourcing service provider which are solely attributable to generating income for the relevant entity and not for any other entity shall be taken into account when considering if the relevant entity meets the economic substance requirements.

(5) A pure equity holding entity satisfies the economic substance requirements if the entity has an adequate number of persons and has adequate premises for managing the shares or equitable interests that it holds.

(6) A relevant entity carrying on intellectual property holding business shall satisfy the economic substance requirements specified in the Regulations.

(7) In the case of a high-risk IP entity, there is a presumption that the entity does not conduct core income generating activity in Saint Vincent and the Grenadines, which the entity may rebut by providing sufficient evidence to the contrary.

(8) The presumption in subsection (7) may be rebutted by demonstrating that there is, and in the past there has been, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intellectual property asset exercised by an adequate number of suitably qualified full-time employees of the entity who reside in, and perform their functions from within, Saint Vincent and the Grenadines.

10. For the purposes of section 9(3)(a), a relevant entity carrying on a relevant activity is directed and managed in Saint Vincent and the Grenadines if –

Direction and management in Saint Vincent and the Grenadines

- (a) determine whether the resident entity is a relevant entity in an assessment period;
- (b) determine whether, in an assessment period, the relevant entity is or was an entity required by section 9(1) to meet the economic substance requirements; or
- (c) make an assessment of compliance with the economic substance requirements.

(2) The Comptroller may, if the conditions specified in subsection (3) are met in relation to a person and to information or documents, give the person written notice to –

- (a) provide to the Comptroller information, or information of a description, specified in the notice; or
- (b) to produce to the Comptroller documents, or documents of a description, specified in the notice.

(3) The conditions referred to in subsection (2) are that the Comptroller reasonably believes that –

- (a) in the case of –
 - (i) information, the person has the information; or
 - (ii) documents, the documents are in the person's possession or control; and
- (b) the documents or information are relevant to the Comptroller's –
 - (i) determination as to whether a resident entity is a relevant entity in an assessment period;
 - (ii) determination as to whether, in an assessment period, a relevant entity is or was an entity required by section 9(1) to meet the economic substance requirements; or
 - (iii) assessment of a relevant entity's compliance with the economic substance requirements.

(4) A notice issued under subsection (1) or (2) shall specify the time period within which the information must be provided or the documents must be produced.

(5) The Comptroller may require –

- (a) any information required to be provided under subsection (1) or (2) to be provided in such form as the Comptroller may specify;
- (b) any information required to be provided or documents required to be produced under this section to be verified or authenticated in such manner as the Comptroller may reasonably specify; and
- (c) that the information is to be provided to, or the documents are to be produced –
 - (i) to a person; and
 - (ii) at the place;

specified in the notice.

(6) The Comptroller may take copies or extracts of any document produced under this section.

(7) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(8) A resident entity which, without reasonable excuse, fails to comply with the requirements of a written notice issued by the Comptroller under subsection (1), commits an offence and is liable on summary conviction, to a fine not exceeding one hundred thousand dollars or two years imprisonment or both.

(9) A person who, without reasonable excuse, fails to comply with the requirements of a written notice issued by the Comptroller under subsection (2), commits an offence and is liable on summary conviction, to a fine not exceeding seventy five thousand dollars or one year imprisonment or both.

Assessment of compliance with economic substance requirements

13. (1) The Comptroller may determine that a relevant entity has not met the economic substance requirements during any assessment period commencing on or after the commencement date.

(2) Subject to subsection (3), the Comptroller shall not make a determination under subsection (1) –

- (a) more than two years after the Comptroller becomes aware of the failure of a relevant entity to satisfy the economic substance requirements; or
- (b) more than six years after the end of the assessment period to which the determination relates.

(3) Subsection (2) does not apply if the Comptroller is not able to make a determination within the two or six year period by reason of any deliberate misrepresentation or negligent or fraudulent action by the relevant entity or by any other person.

Failure to satisfy economic substance requirements, first assessment period of default

14. (1) If the Comptroller determines under section 13 that a relevant entity carrying on a relevant activity has not satisfied the economic substance requirements during an assessment period, the Comptroller shall impose a penalty on the entity in accordance with this section.

(2) Within fourteen days of making a determination that a relevant entity carrying on a relevant activity has not satisfied the economic substance requirements during an assessment period, the Comptroller shall issue a penalty notice to the entity notifying it of –

- (a) the Comptroller's determination that the entity does not satisfy the economic substance requirements for that assessment period;
- (b) the reasons for the Comptroller's determination;
- (c) the amount of the penalty imposed on the entity in accordance with subsection (3);
- (d) the date on which the penalty is due to be paid to the Comptroller, being a date not earlier than twenty-eight days after the issue of the notice;

- (e) what action the Comptroller considers should be taken by the entity to meet the economic substance requirements; and
- (f) the entity's right of appeal under section 19.

(3) The penalty imposed by the Comptroller on a relevant entity carrying on a relevant activity that has not satisfied the economic substance requirements shall be such amount, not exceeding sixty thousand dollars, as the Comptroller considers appropriate.

(4) A relevant entity that receives a penalty notice under subsection (2) shall pay the penalty stated in the notice to the Comptroller on or before the date specified in the notice.

(5) A relevant entity that fails to pay a penalty on or before the date stated in the notice commits an offence and is liable on summary conviction, to a fine not exceeding seventy five thousand dollars or one year imprisonment or both.

15. (1) If, the Comptroller determines that a relevant entity carrying on a relevant activity has not satisfied the economic substance requirements during an assessment period that immediately follows an assessment period in which a notice was issued under section 14(2) or during a subsequent assessment period, the Comptroller shall impose a penalty on the entity in accordance with this section.

Failure to satisfy
e e c o n o m i c
s u b s t a n c e
r e q u i r e m e n t s ,
s e c o n d o r
s u b s e q u e n t
a s s e s s m e n t p e r i o d
o f d e f a u l t

(2) Within fourteen days of making a determination under subsection (1) that a relevant entity carrying on a relevant activity has not satisfied the economic substance requirements during the following or a subsequent assessment period, the Comptroller shall issue a penalty notice to the entity notifying it of –

- (a) the Comptroller's determination that the entity does not satisfy the economic substance requirements for that assessment period;
- (b) the reasons for its determination;
- (c) the amount of the penalty imposed on the entity in accordance with subsection (3), in addition to the

penalty or penalties imposed under a previous assessment period or periods:

- (d) the date on which the penalty is due to be paid to the Comptroller, being a date not earlier than twenty-eight days after the issue of the notice;
- (e) what action the Comptroller considers should be taken by the entity to satisfy the economic substance requirements; and
- (f) the entity's right of appeal under section 19.

(3) The penalty imposed by the Comptroller on a relevant entity under this section shall be such amount, not exceeding seventy five thousand dollars as the Comptroller considers appropriate.

(4) A relevant entity that receives a penalty notice under subsection (2) shall pay the penalty stated in the notice to the Comptroller on or before the date specified in the notice.

(5) A relevant entity that fails to pay a penalty imposed under this section on or before the date stated in the notice commits an offence and is liable on summary conviction, to a fine not exceeding one hundred thousand dollars or two years imprisonment or both.

Penalties

16. (1) A penalty imposed under section 14 or 15 which is not paid by the due date is a debt to the Crown and the Comptroller may commence proceedings in a court of competent jurisdiction to recover the debt.

No. 30 of 2019

(2) Sections 63 and 64 of the Tax Administration Act apply with respect to a penalty imposed under section 14 or 15 as if a reference in those sections to tax due is a reference to the penalty imposed.

(3) The Comptroller shall pay all penalties received by the Comptroller under this Act into the Consolidated Fund.

Application for internal review

17. (1) For the purposes of this section and section 19, the following are reviewable decisions –

- (a) a determination that the entity is a relevant entity;
- (b) a determination that the relevant entity is required to meet the economic substance requirements;
- (c) a determination that a relevant entity has failed to satisfy the economic substance requirements; and

(d) the imposition of a penalty under section 14 or 15 on a relevant entity.

(2) A relevant entity against which a reviewable decision has been made may apply to the Comptroller for an internal review of the decision within –

(a) fourteen days of the date of the penalty notice issued under section 14 or 15; or

(b) such longer period, not exceeding twenty-eight days after the date of the penalty notice, as the Comptroller allows.

(3) An application for internal review shall –

(a) set out in detail the grounds upon which the application is made; and

(b) be made in the approved form.

18. (1) Subject to subsection (3), the Comptroller shall review the reviewable decision and make a decision within twenty one days after the application for internal review is received.

Decision of
Comptroller on
internal review

(2) The Comptroller may –

(a) confirm or vary the reviewable decision;

(b) set aside the reviewable decision; or

(c) set aside the reviewable decision and substitute another decision that the Comptroller considers appropriate.

(3) The Comptroller may seek further information from the relevant entity, and, if the Comptroller does –

(a) the relevant entity shall provide the information within the period, not less than seven days, specified by the Comptroller in the request for information; and

(b) the period specified in subsection (1) ceases to run until the relevant entity provides the information to the Comptroller.

(4) If the relevant entity does not provide the further information within the required time, the Comptroller may make a decision on the internal review on the basis of the information held by the Comptroller.

(5) If the reviewable decision is not varied or set aside within the period specified in subsection (1), the decision is treated as having been confirmed by the Comptroller.

(6) The Comptroller shall, within ten days of making a decision on an internal review, give written notice to the relevant entity of the decision and the reasons for the decision.

(7) If an application is made by a relevant entity for an internal review of a reviewable decision, the time for payment of the penalty ceases to run during the period from the date on which the application for an internal review is made to the Comptroller to—

- (a) the date of the Comptroller's decision on the application for internal review; or
- (b) the date on which the decision is treated as having been confirmed under subsection (5).

Appeals

19. (1) A relevant entity against which a reviewable decision has been made may appeal to the Court against the decision.

(2) An appeal under subsection (1) shall be made —

- (a) if the relevant entity applies to the Comptroller for an internal review under section 17, within fourteen days of —
 - (i) the date of the Comptroller's decision on the application for internal review; or
 - (ii) the date on which the decision is treated as having been confirmed under section 18 (5); or
- (b) if the relevant entity does not apply to the Comptroller for an internal review under section 17, within twenty-eight days of the date of that the determination was made or the penalty notice was issued.

(3) An appeal under this section may be made on questions of law or fact or both and the Court may affirm or reverse the determination and penalty or substitute its own determination or penalty for that made or imposed by the Comptroller.

(4) An appeal under subsection (1) does not stay the enforcement of the penalty.

20. (1) If the Comptroller determines that a relevant entity carrying on a relevant activity has not satisfied the economic substance requirements during the assessment period that immediately follows an assessment period in which a notice was issued under section 15(2) or during a subsequent assessment period, the Comptroller shall apply to the Court for an order under this section.

Application to Court

(2) If, on an application under subsection (1), the Court is satisfied that the entity has not satisfied the economic substance requirements during the relevant assessment period, it may make an order –

- (a) requiring the entity to take such action as the Court considers appropriate or necessary for the entity to satisfy the economic substance requirements;
- (b) in the case of a company –
 - (i) directing the Registrar of Companies to strike the company off the Register of Companies maintained under section 494 of the Companies Act; or
 - (ii) that the company be wound up by the Court under Part IV of the Companies Act;
- (c) in the case of a business company –
 - (i) directing the Registrar of International Business Companies to strike the company off the Register of Business Companies maintained under section 5(3) of the Business Companies (Amendment and Consolidation) Act; or

Cap. 143

- Cap. 149
- (ii) for the liquidation and dissolution of the company under section 170 of the Business Companies (Amendment and Consolidation) Act; or
- (d) in the case of a registered external company –
- (i) directing the Registrar of Companies to cancel the registration of the external company under the Companies Act; or
 - (ii) that the company be wound up as an unregistered company under Division E of Part IV of the Companies Act,
- Cap. 143

and may give such directions or make such further order as it considers appropriate for giving effect to the order.

(3) If the Court directs the Registrar of Companies to strike a company off the Register of Companies or directs the Registrar of International Business Companies to strike the company off the Register of Business Companies, the Court shall not restore the company or business company to the register unless it is satisfied that the company or business company satisfies, or within such period after its restoration as the Court may specify in the order, will satisfy, the economic substance requirements.

Search warrant

21. (1) The Comptroller may apply to a judge or a magistrate for a search warrant under this section.

(2) The judge or magistrate may issue a search warrant under subsection (1) if the judge or magistrate considers that there are reasonable grounds for believing that one or more of the following conditions have been satisfied –

- (a) a person has failed to fully comply with a notice issued by the Comptroller under section 12(1) or (2) within the time period specified in the notice and that on the premises specified in the warrant –
 - (i) there are documents that have been required to be produced; or

- (ii) there is information that has been required to be provided; or
 - (b) that –
 - (i) a notice could be issued by the Comptroller under section 12(1) against a resident entity or section 12(2) against a person;
 - (ii) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under section 12(1) or (2) could be issued; and
 - (iii) if a notice under section 12(1) or (2) was to be issued, it would not be fully complied with, the documents or information to which the notice related would be removed, tampered with or destroyed or the purposes for which the notice was intended to be issued might otherwise be seriously prejudiced; or
 - (c) it would not be appropriate to issue a notice under section 12(1) or (2) to require the information or documents because –
 - (i) it is not practicable to communicate with any person entitled to provide the information or produce the documents; or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the information or documents or entitled to grant entry to the premises on which the information or documents are situated.
- (3) A warrant issued under this section shall authorise a named representative of the Comptroller, together with a police officer and any other person named in the warrant –
 - (a) to enter the premises specified in the warrant at any time within one week from the date of the warrant;

- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
 - (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
 - (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
 - (e) to use such force as may be reasonably necessary to execute the warrant.
- (4) In this section, "premises" includes a vehicle, vessel or aircraft.

PART III

EXCHANGE OF INFORMATION

22. (1) If a resident entity claims to be tax resident in a jurisdiction outside Saint Vincent and the Grenadines during an assessment period, the Comptroller shall provide such of the information provided to the Comptroller under section 11 as may be prescribed –

Exchange of
information with
c o m p e t e n t
authorities

- (a) to the Competent Authority of any country in the European Union in which –
 - (i) the resident entity claims to be resident;
 - (ii) each holding entity of the resident entity is located;
 - (iii) each ultimate holding entity of the resident entity is located; or
 - (iv) each ultimate beneficial owner of the resident entity is located; and
- (b) under and in accordance with an exchange of information agreement that permits the spontaneous exchange of information, to the Competent Authority under that agreement.

(2) If the Comptroller determines that a relevant entity carrying on a relevant activity has not satisfied the economic substance requirements during an assessment period, whether the first assessment period specified in section 14 or a subsequent assessment period, the Comptroller shall provide such of the information provided to the Comptroller under section 11 as may be prescribed –

- (a) to the Competent Authority of any country in the European Union in which is located –
 - (i) each holding entity of the relevant entity;
 - (ii) each ultimate holding entity of the relevant entity;
 or

(iii) each ultimate beneficial owner of the relevant entity;
and

(b) under and in accordance with an exchange of information agreement that permits the spontaneous exchange of information, to the Competent Authority under that agreement.

(3) Subsections (1) and (2) have effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any other enactment, contract or rule of law and disclosure of information under this Act does not breach –

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

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

Exchange of
information,
high-risk IP
entities

23. (1) This section applies with respect to a high-risk IP entity, regardless of whether or not the Comptroller has made a determination under section 13(1) with respect to the entity.

(2) The Comptroller shall provide such of the information provided to the Comptroller under section 11 as may be prescribed with respect to a high-risk IP entity for the entity's first assessment period and each of the entity's subsequent assessment periods –

(a) to the Competent Authority of any country in the European Union in which is located –

(i) each holding entity of the relevant entity;

(ii) each ultimate holding entity of the relevant entity;
or

(iii) each ultimate beneficial owner of the relevant entity;
and

(b) under and in accordance with an exchange of information agreement that permits the spontaneous exchange of information, to the Competent Authority under that agreement.

24. (1) Any information received under this Part by a Competent Authority shall be kept confidential and may be disclosed only to –

- (a) a person or authority or court in the Competent Authority's jurisdiction for the purposes of the administration and enforcement of its tax laws or the determination of appeals relating thereto; or
- (b) a person employed or authorised by the government of the Competent Authority to oversee data protection.

Confidentiality with respect to information received under this Part

(2) Any information received under this Part by a Competent Authority may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the Comptroller.

PART IV

MISCELLANEOUS PROVISIONS

25. (1) The Comptroller is responsible, subject to the general control and supervision of the Minister, for –

- (a) collecting and accounting for penalties to which this Act applies; and
- (b) administering and applying the provisions of this Act.

The Comptroller and application of the Tax Administration Act 2019

(2) Sections 5(5), 6, 7 and 8 of the Tax Administration Act 2019 apply with respect to the exercise by the Comptroller of functions and powers under this Act as if exercised under the Tax Administration Act 2019, with such modifications as the circumstances require.

No. 30 of 2019

26. A person who divulges any confidential information in compliance with an obligation under this Act or gives evidence in a proceeding under this Act is deemed not to commit any offence under any Act in force in Saint Vincent and the Grenadines, by reason only of such disclosure or the giving of such evidence; and such disclosure or evidence shall be deemed not to be in breach of any confidential relationship between that person and any other person, and no civil claim or action shall be brought against the person making such disclosure or giving such evidence.

Protection of persons disclosing confidential information

- False and misleading information
27. (1) A person shall not knowingly or wilfully provide to the Comptroller –
- (a) false information; or
 - (b) misleading information, including by the omission of material information.
- (2) A person who contravenes subsection (1), commits an offence and is liable on summary conviction, to a fine not exceeding one hundred thousand dollars or two years imprisonment or both.
- Liability of director or other officers
28. Where an offence under this Act is committed by an entity, a director or officer of the entity who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the penalty specified for the commission of the offence.
- Approval of forms by the Comptroller
29. (1) The Comptroller may approve forms to be used for returns to be made and documents to be issued, produced or submitted under this Act or the regulations.
- (2) The Comptroller shall publish an approved form in the prescribed manner.
- (3) Where the Comptroller has published an approved form with respect to a return or other document, the return or document shall –
- (a) be in the form of, and contain the information specified in, the approved form; and
 - (b) have attached to it such documents as may be specified by the approved form.
- Guidance
30. (1) The Comptroller may, with the approval of the Minister, issue guidance concerning compliance with the requirements of this Act and concerning such other matters as it considers relevant to its functions under or in relation to this Act.
- (2) Without limiting subsection (1), the guidance may –
- (a) provide for how the economic substance requirements may be met;

- (b) provide guidance on the interpretation of any words or expressions used in section 9 for the purpose of assessing the economic substance requirements, including the meaning of “adequate”.

(3) The Comptroller may revise guidance issued under subsection (1) from time to time and a reference to guidance includes a reference to revised guidance.

31. (1) Before issuing, amending or replacing any approved form or issuing any guidance, the Comptroller shall –

Comptroller to consult

- (a) provide persons that the Comptroller considers will be substantially affected with a copy of the proposed –
 - (i) approved form or guidance;
 - (ii) amendments to the approved form or guidance; or
 - (iii) replacement of the approved form or guidance;
- (b) give those persons a reasonable opportunity to make representations to the Comptroller; and
- (c) consider any representations that it receives.

(2) The Comptroller may comply with the obligations under –

- (a) subsection (1)(a), by publishing the relevant documents on its Internet site,
- (b) subsection (1), in respect of a person by consulting with any professional or trade association of which the person is a member and considering representations by that association.

(3) The failure of the Comptroller to comply with subsection (1) does not affect the validity of any approved form or guidance issued.

32. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or

Regulations

convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) The regulations may make different provision in relation to different persons, circumstances and cases.

Transitional provisions

33. (1) For the purposes of this section –

“transitioning business company” means a business company of the type specified in section 199A(1) of the Business Companies (Amendment and Consolidation) Act, except to the extent that section 199A(2) of that Act applies to the business company; and

Cap. 149

“transition period” means the period commencing on the commencement date and ending on 30 June 2021.

(2) This Act shall not apply to a transitioning business company during the transition period.

(3) The first assessment period of a transitioning business company is –

- (a) the period of six months commencing on 1 July 2021 and ending on 31 December 2021; or
- (b) such other period as may, on the application of the business company, be approved by the Comptroller.

Passed in the House of Assembly this 28th day of December, 2020.

NICOLE HERBERT
Clerk of the House of Assembly.

Printed by the Government Printer at the Government Printing Office,
Campden Park Industrial Estate, St. Vincent and the Grenadines.