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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	Saint Kitts and Nevis' Offshore Companies regime (KN001) – Final description and assessment

ROLLBACK REVIEW PROCESS (JANUARY 2019)

The Offshore Companies regime (KN001) covered provisions in the Nevis Business Corporation Ordinance, Nevis Limited Liability Company (LLC) ordinance and Companies Act.

The Nevis Business Corporation Ordinance

Bill No 6 amending the Ordinance was adopted on 28 December.

The general tax rate in St. Kitts & Nevis is 33%. The amended bill provides for an exemption for certain income if certain criteria are met. The provisions are worded as follows:

136.1: “*A corporation subject to this Ordinance which does not carry on business in Saint Christopher and Nevis, shall not be subject to any corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls, or other fees or taxes based upon or measured by assets or income originating outside of Saint Christopher and Nevis or in connection with other activities outside of Saint Christopher and Nevis or in connection with matters of corporate administration which may occur in Saint Christopher and Nevis.*”

136.2: “*Any dividend paid by a corporation which does not carry on business in Saint Christopher and Nevis to its shareholders, shall be exempt from any tax or withholding provisions of the laws of Nevis which would otherwise be applicable to such corporation or the recipient of the dividend.*”

The amended measure continues to provide for a significantly lower level of taxation.

However, the amended Bill also provides that no new entrants to the regime are allowed after 31 December 2018 and that grandfathering will be allowed until 30 June 2021 (136.4 and 5). The regime is therefore considered abolished with grandfathering which is in line with the criteria.

The Nevis Limited Liability Company Ordinance

Bill No 7 amending the Ordinance was adopted on 28 December.

The general tax rate in St. Kitts & Nevis is 33%. The amended bill provides for an exemption for certain income if certain criteria are met. The provisions are worded as follows:

96.1: *“A limited liability company subject to this Ordinance which does not carry on business in Saint Christopher and Nevis, shall not be subject to any corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls, or other fees or taxes based upon or measured by assets or income originating outside of Saint Christopher and Nevis or in connection with other activities outside of Saint Christopher and Nevis or in connection with matters of corporate administration which may occur in Saint Christopher and Nevis.”*

96.2 *“Any profits on member’s interest paid by a limited liability company which does not carry on business in Saint Christopher and Nevis to its members, shall be exempt from any tax or withholding provisions of the laws of Nevis which would otherwise be applicable to such limited liability company or the recipient of the profits.”*

The amended measure continues to provide for a significantly lower level of taxation.

However, the amended Bill also provides that no new entrants to the regime are allowed after 31 December 2018 and that grandfathering will be allowed until 30 June 2021 (96.4 and 5). The regime is therefore considered abolished with grandfathering which is in line with the criteria.

The Companies Act

Act No 14 amending the Companies Act was adopted on 27 December 2018.

The general tax rate in St. Kitts & Nevis is 33%. The amended act provides for an exemption for certain income if certain criteria are met. The provisions are worded as follows:

224.1: *“Subject to subsections (4) and (5), a company that carries on business exclusively with persons that are not resident in the Federation, shall be exempt from all income, capital gains and withholding taxes.”*

The amended measure continues to provide for a significantly lower level of taxation.

However, the amended Act also provides that no new entrants to the regime are allowed after 31 December 2018 and that grandfathering will be allowed until 20 June 2021. The regime is therefore considered abolished with grandfathering which is in line with the criteria.

Overall assessment:

The Code of Conduct Group meeting of 30 January 2019 approved the rollback of the regime. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

Annex 1: Assessment of the old KN001 regime in 2017 (standstill review)

Annex 2: final legislation

Assessment of the old KN001 regime in 2017 (standstill)**a. Description**

Companies carrying on business exclusively with persons who are not resident in St. Kitts are exempt from tax. Such companies must register to be exempt from all income, capital gains and withholding taxes. Offshore companies are established under the Nevis Business Corporation Ordinance, the Nevis Limited Liability Company Ordinance or the Companies Act.

Similar legislation exists for tax-free trusts and limited partnerships.

Offshore companies can take various forms like: exempt private company, international business company, exempt limited partnership and international exempt trust.

The exemption from tax will not be affected even where the company:

- carries on business with, or buys or sells or otherwise deals in any securities issued or created by, or acts as manager or agent for or consultant or adviser to any tax-exempt resident person;
- effects or concludes in St. Kitts contracts or arrangements (including contracts or arrangements with any resident for employment with or the supply of goods and services to the company) and exercises in St. Kitts all other powers, as far as may be necessary for the purpose of enabling it to carry on its business;
- administers its internal affairs within St. Kitts and holds meetings of its directors or members within the country;
- owns or leases property in the country for carrying on its business or as residence for its directors or employees;
- reinsures risks undertaken by any resident who is authorized to carry on insurance business under any law of St. Kitts; or
- transacts banking business (to meet local operating requirements) with any resident who is authorized to carry on the business of banking under any of the country's laws.

A resident person in this context is defined as a person who ordinarily resides within St. Kitts or carries on business from an office or other fixed place within the country, but excludes an exempt company.

b. Preferential features

The exemption is granted exclusively to companies carrying on business with persons who are not resident.

c. Possible concerns

A regime limited to foreign taxpayers and/or to operations outside the territory of the jurisdiction does not meet criteria 1 & 2 of the Code of Conduct which forbid this type of ring fencing

Sources of information

IBFD, PWC Tax Summaries

d. Assessment :

	1a	1b	2a	2b	3	4	5
St. Kitts and Nevis – offshore companies (KN001)	X	V	X	V	V	X	X

V = harmful

X = not harmful

Explanation

Gateway criterion - Significantly lower level of taxation:

The general tax rate in St. Kitts & Nevis is 33%. Offshore companies (OC) are established under the Companies Act, the Nevis Business Cooperation Ordinance or Nevis Limited Liability Company Ordinance. OC that are registered in St Kitts & Nevis are exempt from all income tax capital gains and withholding taxes, if they don't carry on business activities therein. The exemption is not affected, even where the OC carries on business with, buys or sells or otherwise deals in any security issued or created by, or acts as manager or agent for consultant to ant tax exempt resident person; effects or concludes contracts or arrangements and exercises there all other powers, as far as may be necessary for the purpose of enabling it to carry on its business; administers its affairs and holds meetings of its directors within the country; owns or leases property for carrying on its business or as residence for its directors, reinsurances risks undertaken by any resident who is authorizes to carry on insurance business or transacts banking business with any resident who is authorized to carry on business of banking under any law of St Kitts. The measure provides for a significantly lower level of taxation. It is therefore potentially harmful within the meaning of paragraph A of the Code.

Criterion 1 – Targeting non-residents:

Criterion 1 contains two elements. The first element is whether the measure is exclusively available to non-residents or in respect of transactions carried out with non-residents (criterion 1a). The second element is whether it is only or mainly used by non-residents or for transactions with non-residents (criterion 1b).

1a) Criterion 1a concerns the de jure application of the measure.

The law does not expressly prohibit OC from doing business with residents neither does it expressly state that only non-residents can incorporate OC.

1b) Criterion 1b is used to complement the assessment under criterion 1a which only looks at the literal interpretation of the measure. It takes account of the de facto effect of the measure. Where the majority of taxpayers (or counterparties to transactions) benefitting from the measure are in fact non-residents the measure will fall foul of criterion 1b.

Although St. Kitts argues that it provides various exemptions under the Companies Act and other acts to residents, it doesn't detail the scope of such exemption and their factual nature. The purpose of this measure is to exempt income arising to offshore companies and applies mostly with respect to transactions carried out with non-residents.

Criterion 2 – Ring-fencing:

By analogy to the assessment against criterion 1,

Criterion 3 - Substance:

It is not clear whether the measure does not include any express requirement for real economic activity or substantial economic presence. In the past practice of the Code of Conduct Group the absence of such requirements is usually assessed as harmful under criterion 3. Furthermore, the registration requirements as advertise by agents facilitating opening OC there suggest lack of substance requirements.

Criterion 4 – Internationally accepted principles:

The measure (notably the exemption from taxes) does not as such violate any internationally accepted principle even though the 'harmful' character of it has been widely recognised.

Criterion 5 - Transparency:

The benefits of the measure are granted on the basis of the provisions without express approval in advance.

Overall assessment

In light of the assessment made under all Code criteria, the regime is considered as overall harmful from a Code of Conduct point of view.

Final legislation

No. 14 of 2018.

Companies (Amendment) Act, 2018

Saint Christopher
and Nevis.

I assent,



SAMUEL WEYMOUTH TAPLEY SEATON
Governor-General

27th December, 2018.

SAINT CHRISTOPHER AND NEVIS

No. 14 of 2018

AN ACT to amend the Companies Act, Cap. 21.03.

[Published 28th December 2018, Extra-Ordinary Gazette No. 67 of 2018.]

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

1. Short title.

This Act may be cited as the Companies (Amendment) Act, 2018.

2. Interpretation.

In this Act, the term "Act" means the Companies Act, Cap 21.03.

3. Amendment of section 2.

The Act is amended in section 2 by inserting in the correct alphabetical order, the following definitions:

"finance business" means any trust or corporate business carried on for profit or reward from within the Federation;

"resident in the Federation" means a person who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation.

4. Amendment of section 224.

The Act is amended by replacing section 224 as follows:

" 224. Exemption from Taxes.

(1) Subject to subsections (4) and (5), a company that carries on business exclusively with persons who are not resident in the Federation, shall be exempt from all income, capital gains and withholding taxes."

(2) No estate tax, inheritance tax, succession tax or gift tax, rate, duty, levy or other charge is payable by any person with regard to any property owned by, or securities issued or created by or in respect of, an exempt company.

(3) An exempt company shall not lose its exemption under subsection (1) by reason only that it is

- (a) administering its internal affairs within the Federation, including holding meetings of its directors or members;
- (b) owning or leasing property in the Federation for the purpose of carrying on of its business or to provide accommodation for its directors or employees; or
- (c) maintaining a bank account for the purposes of the business.

(4) An exempt company that wishes to carry on business pursuant to subsection (1), shall only do so if it is registered in the Federation on or before the 31st of December, 2018.

(5) Notwithstanding the provisions of subsections (1), (2), (3) and (4), all exempt companies shall cease to operate in the Federation after 20th June, 2021.

(6) For the purposes of this section, "person" includes a natural person and a legal person."

5. Amendment of section 225.

Section 225 of the Act is amended by deleting the expression,

"Notwithstanding any provision to the contrary in any enactment".

6. Amendment of section 244.

Section 244 of the Act is amended by replacing section 244 as follows:

" **244. Companies doing finance business.**

(1) Companies that are carrying on or intend to carry on any business which may be classified as being finance business in the Federation, shall be subject to the provisions of the Financial Services Regulatory Commission Act, Cap 21.10.

(2) An existing company or external company which intends to carry on finance business shall obtain authorisation from the Financial Services Regulatory Commission to carry on that finance business.

(3) Where a company is to be incorporated for the purpose of carrying on finance business, the subscribers to the Memorandum and Articles of Association shall first obtain the requisite authorisation to carry on finance

Companies (Amendment) Act, 2018 - 14.

business, before delivering the Memorandum and Articles of Association to the Registrar pursuant to section 5(1).

AKILAH BYRON NISBETT
Deputy Speaker

Passed by the National Assembly this 19th day of December, 2018.

SONIA BODDIE-THOMPSON
Clerk of the National Assembly



I assent,

HYLEETALIBURD, M.H.

Deputy Governor-General

28th December 2018.

ISLAND OF NEVIS

No. 6 of 2018

A BILL to amend the Nevis Business Corporation Ordinance, No. 1 of 2017 and for matters related thereto or connected therewith

[Published 28th December 2018, Extra Ordinary Gazette No. 67 of 2018.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same, as follows:–

1. Short Title.

This Ordinance may be cited as the Nevis Business Corporation (Amendment) Ordinance, 2018.

2. Interpretation.

The “Principal Ordinance” means the Nevis Business Corporation Ordinance, No. 1 of 2017.

3. Repeal and replacement of PART XV – TAX AND EXEMPTIONS.

PART XV of the Principal Ordinance is hereby repealed and replaced with the following:

PART XV – CORPORATE TAXATION

136. Corporate taxation

(1) A corporation subject to this Ordinance which does not carry on business in Saint Christopher and Nevis, shall not be subject to any corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls, or other fees or taxes based upon or measured by assets or income originating outside of Saint Christopher and Nevis or in connection with other activities outside of Saint Christopher and Nevis or in connection with matters of corporate administration which may occur in Saint Christopher and Nevis.

(2) Any dividend paid by a corporation which does not carry on business in Saint Christopher and Nevis to its shareholders, shall be exempt from any tax or withholding

provisions of the laws of Nevis which would otherwise be applicable to such corporation or the recipient of the dividend.

(3) No corporation shall be considered to be carrying on business in Nevis solely because it engages in one (1) or more of the following activities:

- (a) maintaining bank accounts in Nevis;
- (b) holding meetings of directors or shareholders in Nevis;
- (c) maintaining corporate or financial books and records in Nevis;
- (d) maintaining an administrative office in Nevis with respect to assets, business or activities done outside of Nevis;
- (e) maintaining a registered agent in Nevis;
- (f) investing in shares of a Nevis company, international business corporations, or investing in the interest of Nevis limited liability companies, acting as a partner of a partnership registered under the Partnership Act or the Limited Partnership Act, or as a beneficiary of an international trust or a qualified foreign trust; or
- (g) acquires real property in a local, industrial or tourist facility provided always that such property shall be situated in a project or development approved and authorised by the Nevis Island Administration.

(4) Any corporation that wishes to carry on business pursuant to subsection (1) shall do so only if it is incorporated in Nevis on or before the 31st of December, 2018.

(5) Notwithstanding the provisions of subsections (1), (2), (3), and (4), the tax exemptions granted to all corporations shall cease to take effect after 30th June, 2021.

HONOURABLE FARREL SMITHEN
President

Passed by the Nevis Island Assembly this 28th day of December, 2018.

MYRA A WILLIAMS
Clerk of the Nevis Island Assembly

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I assent,

HYLEETA LIBURD, M.H.

Deputy Governor-General

28th December 2018.

ISLAND OF NEVIS

No. 7 of 2018

A BILL to amend the Nevis Limited Liability Company Ordinance, No. 2 of 2017 and for matters related thereto or connected therewith

[Published 28th December 2018, Extra Ordinary Gazette No. 67 of 2018.]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same, as follows:–

1. Short Title.

This Ordinance may be cited as the Nevis Limited Liability Company (Amendment) Ordinance, 2018.

2. Interpretation.

The “Principal Ordinance” means the Nevis Limited Liability Company Ordinance, No. 2 of 2017.

3. Repeal and replacement of PART XV1 – TAX AND EXEMPTIONS.

PART XV 1 of the Principal Ordinance is hereby repealed and replaced with the following:

PART XV1 – CORPORATE TAXATION

96. Corporate taxation

(1) A limited liability company subject to this Ordinance which does not carry on business in Saint Christopher and Nevis, shall not be subject to any corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls, or other fees or taxes based upon or measured by assets or income originating outside of Saint Christopher and Nevis or in connection with other activities outside of Saint Christopher and Nevis or in connection with matters of corporate administration which may occur in Saint Christopher and Nevis.

(2) Any profits on member's interest paid by a limited liability company which does not carry on business in Saint Christopher and Nevis to its members,

shall be exempt from any tax or withholding provisions of the laws of Nevis which would otherwise be applicable to such limited liability company or the recipient of the profits.

(3) No limited liability company shall be considered to be carrying on business in Nevis solely because it engages in one (1) or more of the following activities:

- (a) maintaining bank accounts in Nevis;
- (b) holding meetings of managers or members in Nevis;
- (c) maintaining company or financial books and records in Nevis;
- (d) maintaining an administrative office in Nevis with respect to assets, business or activities done outside of Nevis;
- (e) maintaining a registered agent in Nevis;
- (f) investing in shares of a Nevis company, international business corporations or investing in the interest of Nevis limited liability companies, acting as a partner of a partnership registered under the Partnership Act or the Limited Partnership Act, or as a beneficiary of an international trust or qualified foreign trust; or
- (g) acquires real property in a local, industrial or tourist facility provided always that such property shall be situated in a project or development approved and authorised by the Nevis Island Administration.

(4) Any limited liability company that wishes to carry on business pursuant to subsection (1), shall only do so if it is formed in Nevis on or before the 31st of December, 2018.

(5) Notwithstanding the provisions of subsections (1), (2), (3) and (4), the tax exemptions granted to all limited liability companies shall cease to take effect after 30th June, 2021.

HONOURABLE FARREL SMITHEN
President

Passed by the Nevis Island Assembly this 28th day of December, 2018.

MYRA A WILLIAMS
Clerk of the Nevis Island Assembly

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