

Amendment of
Cap 20

2. The Business Tax Act is amended as follows —

- (a) by repealing in section 2, the definition of “permanent establishment”;
- (b) by inserting after section 2, the following sections —

Definition of
permanent
establishment

“**2A.(1)** In this Act, a person shall be deemed to have a “permanent establishment” in a territory if —

- (a) it has a fixed place of business where the business of the person is wholly or partly carried on;
- (b) it has a construction site or project therein;
- (c) it provides therein, subject to subsection (4), services, including consultancy services, through employees or other personnel engaged for such purpose; or
- (d) an agent acting on behalf of the person habitually exercises therein the authority to do business on behalf of the person subject to subsections (5) to (7),

but, for the purposes of subsection (1) (a), it shall not be considered to be a

permanent establishment if the person's place of business is used solely for activities of a preparatory or auxiliary character, in accordance with subsection (8).

(2) For the purposes of subsection (1)(a), a fixed place of business includes —

- (a) a place of management, branch, office, factory, warehouse or workshop; and
- (b) a mine, oil or gas well, quarry, or other place of extraction of natural resources.

(3) For the purposes of subsection (1)(b), a construction site or project includes —

- (a) a building site or a construction, assembly or installation project; and
- (b) supervisory activities connected to and provided in such site or project,

provided that the site, project or activities (alone or combined with the site or project) continue for more than ninety days.

(4) Subsection (1)(c) applies only if the services are provided for a period or periods aggregating more than ninety days in that territory in any 12-month period commencing or ending in the financial year concerned.

(5) Subsection (1)(d) applies where an agent acting on behalf of the person —

- (a) habitually concludes contracts on his or her behalf; or
- (b) habitually plays the principal role on his or her behalf leading to the conclusion of contracts that are routinely concluded without material modification; and
- (c) the contracts concluded are —
 - (i) in the name of the person;
 - (ii) for the transfer of the ownership of or for the granting of the right to use property owned by the person or which the person has the right to use; or

(iii) for the provision of services by the person.

(6) Subsection (1)(d) shall not apply where the agent is of independent status acting in the ordinary course of the agent's business.

(7) A person who acts exclusively or almost exclusively on behalf of another person to which it is closely related shall not be considered to be an agent of independent status under subsection (6).

(8) Subsection (1) (a) shall not apply, in relation to the place of business of a person, to —

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the person;
- (b) the maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the person solely for

the purpose of processing
by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the person;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the person, any other activity;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

provided that such activity, or in the case of subparagraph (f) the overall activity of the place of business, is of a preparatory or auxiliary character.

(9) The fact that a person resident in one territory controls or is controlled by a person which is a resident in another territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute either person a permanent establishment of the other.