



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

28th March, 2003

ANTIGUA AND BARBUDA

No. 4 of 2003

AN ACT to amend the Income Tax Act Cap. 212.

[*3rd April, 2003*]

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. This Act may be **cited** as the Income Tax (Amendment) Act 2003. Short title.

2. The Income Tax Act, in this Act referred to as the principal Act, is amended in section 10 as follows — Amendment of section 10 — Deductions allowed.

(a) by inserting after paragraph (a) of subsection (1) the following —

"Provided that such interest is paid only to banks and financial institutions licensed under the Financial Institutions (Non-Banking) Act on loans borrowed at commercial rates and terms;" Cap. 169

(b) by inserting after paragraph (c) the following —

"Provided that the rent paid by a company to its shareholders, directors, spouses and children of shareholders and directors, or close family members of shareholders and directors, or to any related parties or subsidiary companies or beneficiaries shall not exceed 5% of the otherwise chargeable profits of the company; and

Provided further that the Commissioner shall allow such amounts as he considers reasonable and just."

(c) by inserting after paragraph (i) the following —

"(j) For the purposes of this Part "related parties" include —

- (i) entities that control, or are controlled by, or are under common control with the entity (e.g., holding companies, subsidiaries and fellow subsidiaries);
- (ii) associates;
- (iii) individuals who, by virtue of an interest they own in the enterprise, have control over it, and close family member of any such individual;
- (iv) key management personnel, and their close family members; and
- (v) enterprises in which a substantial interest is owned by any of the individuals included above.

(d) by the repeal of subsection (2) and the substitution of the following —

"(2) Notwithstanding anything to the contrary contained in this or any other Act, in any case approved by the Cabinet in which the erection of a new hotel or any extension of an existing hotel is commenced after the

first day of January 2003 and in which a license has been granted to any person in respect of such hotel under the Hotels Aid Act, such person shall be exempt from payment of income tax in respect of the income arising from such hotel for the period and on attainment of the bedroom capacity set out below —

- (a) where the minimum capacity of the new hotel is one hundred (100) bedrooms, the tax exemption period is twenty-five (25) years;
- (b) where the capacity of extension of an existing hotel is the addition of thirty (30) or more bedrooms but less than fifty (50) bedrooms, the tax exemption period is seven (7) years;
- (c) where the capacity of extension of an existing hotel is the addition of fifty (50) or more bedrooms, but less than one hundred (100) bedrooms, the tax exemption period is fifteen (15) years; and
- (d) in the case of the addition of one hundred (100) or more bedrooms to an existing hotel, the tax exemption period is twenty-five years.

(3) Every exemption granted under this section takes effect from the year of assessment next to the year in which the completion of the erection or extension of the hotel is reported, in writing, to the Commissioner.

(4) Where there is any dispute regarding the date of commencement or completion of such erection or extension, the onus of proving the commencement or completion

shall be on the taxpayer to furnish sufficient evidence to the satisfaction of the Commissioner."

(e) by renumbering subsection (3) as subsection (5).

Amendment of section 11 — Deductions not allowed.

3. Section 11 of the principal Act is amended as follows —

(a) by deleting the full stop after paragraph (h) and substituting a colon;

(b) by inserting after paragraph (h) the following —

"(i) salaries, wages, allowances, directors' fees and other payments made for services rendered by the owners, shareholders, directors, spouses and children of shareholders and directors or close family members in excess of 25% of otherwise chargeable profits; provided that in the case of a loss, the Commissioner shall allow such amounts as he considers reasonable and just;

(j) interest on any loan paid to owners, shareholders, directors, spouses and children of shareholders and directors or close family members or to any related party."

Amendment of section 32 — Rate of tax upon companies reduced.

4. Section 32 of the principal Act is **repealed** and substituted by the following —

"Rate of tax upon companies.

32. The tax upon the chargeable income of a company incorporated, registered or continued under the Companies Act shall be charged at the rate of thirty-five per centum (35%) on every dollar of the chargeable income.

Amendment of section 39.

5. Section 39 of the principal Act is amended as follows —

(a) by repealing subsection (1) and substituting the following —

"Where any person pays to any other person not resident in Antigua and Barbuda

mortgage or debenture interest or any rent, or expenses allocated to a resident branch or agency by a non-resident company, or annuity or any other annual payment which the payor is entitled to deduct under section 10(1) in arriving at his chargeable income, the payor shall upon paying such interest, rent, annuity or other annual payment deduct therefrom tax at the rate of twenty percentum (20%) on every dollar of such interest payable to such person and at the rate of twenty-five percentum (25%) in the case of payment as aforesaid to a company and the payor shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be recoverable in the like manner as is provided under section 69."

"Provided that the provisions of this section shall not apply to interest payments on Bank deposits made to non-resident persons."

(b) by inserting after subsection (4) the following —

"(5) 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."

6. Section 40 of the principal Act is amended by inserting after the proviso to subsection (1) the following —

Amendment of section 40.

"Provided further that a resident branch of a foreign company and its headquarters and other non-resident branches shall be regarded as two separate companies carrying two separate businesses."

7. Section 49A(1) of the principal Act is amended by deleting from paragraph (a) the words "of the gross annual income."

Amendment of section 49A.

ANTIGUA 6
AND
BARBUDA

*The Income Tax (Amendment)
Act 2003.*

No. 4 of 2003.

Passed the House of Representatives
this 7th day of February, 2003.

Passed the Senate this 21st day
of February, 2003.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives.

S. Walker,
Clerk to the Senate.

Printed at the Government Printing Office, Antigua and Barbuda,
by Walter A. Massiah, Acting Government Printer
— By Authority, 2003.

800—4.03

[Price \$2.95]