

LEGAL UPDATE

REMOVAL OF PREFERENTIAL EXEMPTIONS ACT, 2018

The Removal of Preferential Exemptions Act, 2018 (the "Act") was enacted in December 2018 to abolish "ring-fencing," a term used to describe a situation where a certain category in a group is entitled to benefits which are not available to the rest of the group. In The Bahamas, certain non-resident entities were entitled to tax exemptions which were not available to similar resident entities. The Act came into force on 31 December, 2018 and applies to entities which satisfy the following criteria:

- i) they are incorporated, registered or continued under the International Business Companies Act, the Exempted Limited Partnership Act, the Investment Condominium Act, 2014 or the Executive Entities Act, 2011 (the "Originating Acts");
- ii) their operations are or are intended to be exclusively carried on outside of The Bahamas; and
- iii) they are entitled to preferential exemptions which are not available to entities which operate in The Bahamas or they are not authorized to operate within The Bahamas.

Every entity to which the Act applies must pay any tax which is non-nominal, meaning that it is not equal to zero or almost zero. Any provision in the Originating Acts which grants a preferential tax exemption is no longer in force. Specifically, the Act repeals the following statutory provisions:

- i) Parts X and XII of the International Business Companies Act (although a limited duration company already in existence shall continue to exist until the expiration of the relevant period of duration stipulated in its Memorandum of Association);
- ii) Section 17 of the Exempted Limited Partnership Act;
- iii) Section 25 of the Investment Condominium Act, 2014; and
- iv) Section 64 of the Executive Entities Act, 2011.

If there is any conflict between the provisions of the Act and those of the Originating Acts or the Exchange Control Regulations Act (or any regulations made thereunder), then the provisions of the Act shall prevail.

The Act provides for a three (3) year transition period, which runs from 31 December, 2018 to 31 December, 2021. During the transition period the following statutory provisions, which grant certain preferential exemptions, remain in force for the relevant entities so long as the entity was in existence prior to 31 December, 2018:

- i) Sections 187(8) and 187A of the International Business Companies Act;
- ii) Section 17(6) of the Exempted Limited Partnership Act; and
- iii) Section 25(7) of the Investment Condominium Act, 2014.

Entities created after 31 December, 2018 are not entitled to the transitional exemptions.



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