



ADDRESS BY

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DEPUTY PRIME MINISTER AND MINISTER OF FINANCE

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HOUSE OF ASSEMBLY

PARLIAMENT STREET

NASSAU, BAHAMAS

COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) BILL, 2018

REMOVAL OF PREFERENTIAL EXEMPTIONS BILL, 2018

REGISTER OF BENEFICIAL OWNERSHIP BILL, 2018

Good Morning Mr. Speaker,

I rise to address this House on five (5) very important pieces of legislation that were tabled in the Parliament last week, which will have an impact on the way entities in the Bahamas are structured and are affected by administrative and tax matters going forward. The five Bills that we will debate today as a compendium of Bills, with the concurrence of the Official Opposition, are:

1. The Commercial Entities (Substance Requirements) Bill, 2018;
2. The Removal of Preferential Exemptions Bill, 2018;
3. The Register of Beneficial Ownership Bill, 2018;
4. The Non Profit Organizations Bill, 2018 and,
5. The Penal Code (Amendment) Bill, 2018.

Mr. Speaker, these progressive pieces of legislation establish new regulations to govern the financial services sector in particular and to bring them into line with International Standards and domestic law as it relates to substance, equal tax treatment, ownership registration, reporting and fee requirements.

Mr. Speaker,

This new regulatory landscape is taking place in a context of rapid change, rising nationalism in G20 countries around the world and global upheaval in the financial services sector. It was brought about oddly, as a consequence of globalization which these same actors promoted when it was to their advantage, with many countries now attempting to curtail the unintended consequence of the free movement and access of

their citizens and money to offshore financial centers for investing and management purposes. You see, when they were selling us goods cheaper than we could manufacture them at home, or they used marketing techniques to drive demand in our markets, causing increased consumer demand and capital flows from places like the Bahamas, globalism was good. As their citizens realized they could manage their affairs in international centers in a tax neutral way, and capital flowed in the reverse, globalization in terms of international financial services became bad and had to be stopped as they considered their tax base as being “unfairly” eroded. This is quite the hypocritical situation, but it is also a serious reality we have to face.

This has led to a new round of efforts by the EU and OECD countries to further tighten international financial and tax transparency standards and cooperation protocols to further combat tax avoidance and harmful tax practices or, to put it in

simple terms, the movement of capital (money) from high tax jurisdictions to low tax jurisdictions like ours, without the need for real economic substance or physical operations in the offshore financial jurisdiction.

Mr. Speaker,

To be clear, I wish to state at the outset, that the Bahamas has consistently maintained its right to establish domestic law, to set its own tax policy and foreign policy. There has been no conceding of ground on the principle of sovereignty or our right to exist as a well-regulated, cooperative and compliant financial services jurisdiction. We have asserted and continue to assert, that our record of cooperation in tax matters with our international partners through, MLATs, TIA and other bi-lateral cooperation agreements, has demonstrated our commitment to

transparency standards and international best practices, and they have worked though we acknowledge the need for better efficiency in the processes.

As a small island state however Mr. Speaker, there are limitations to the influence or force in which the Bahamas is able to assert its position against these global initiatives. These are not only being coordinated and presented by the G20 and OECD countries but other countries around the world who are all seeking to achieve equity in the face of the CRS, AEOI and BEPS reality.

It must be emphasized for those who claim that the Bahamas has or is not fighting hard enough and those who seek to make this a political argument or debate, I remind them that this fight has been ongoing since 2000 and through successive

governments with little ability to stem the tide of change. Though we might be able to debate the proactive nature of one government over the other in dealing with the substantive matters that bring us here today, there should be little debate that the actions being taken are necessary given the current climate and imperative to do all we can to protect this valuable financial services industry.

We must accept that the Bahamas is not alone in having to adjust its laws and revenue structure to comply with the global standards. All countries around the world, from big to small are faced with the same challenges. The G20 through the OECD and the EU as a bloc, have converged to establish these rules, with the power of financial and trade sanctions and penalties that would make it very difficult for countries to operate, even outside of the financial services sector, if we are blacklisted. Such blacklisting, even without the prospect of penalties, cause

reputational damage that concern existing and potential investors and can significantly harm our economic stability, growth prospects. These are untenable risks for a young country with high debt, high unemployment, limited human and physical capacity.

Mr. Speaker,

The new provisions contained within these Bills, seek to preserve the Bahamas' position as a significant global financial services center, and to enhance our value proposition as a premier jurisdiction of choice, for the conduct of quality wealth management and asset protection services, in compliance with international regulatory standards.

Mr. Speaker,

The Bahamas was asked by The European Union's Secretariat of the Code of Conduct Group (Business Taxation) (the EU), to address concerns (Criterion 2.2) with regards to Jurisdictions facilitating offshore structures or arrangements aimed at attracting profits, which do not reflect real economic activity or substantial presence in the Bahamas and the absence of a corporate income tax or a nominal corporate income tax, which they considered harmful to the global tax system. The Bahamas was also asked to address the absence of a searchable Beneficial Owners Registry that would allow authorized designated persons to efficiently produce information on beneficial owners of entities of interest to taxing jurisdictions.

Commercial Entities (Substance Requirements) Bill, 2018.

Mr. Speaker,

I will begin with the Commercial Entities (Substance Requirements) Bill, 2018.

Mr. Speaker,

The Bahamas has up to now had two types of corporate structures for businesses: Companies incorporated under the Companies Act, which are primarily domestic operating companies (local retailers, construction companies, etc.) that have real offices or store fronts and staff in the jurisdiction, secondly companies incorporated under the International Business Companies Act (IBC), the premier investment vehicle of choice for individual and international institutional or off shore investors, that may or may not have had an office with staff in the Bahamas.

Mr. Speaker,

Under the new global standard, this distinction can no longer exist and all companies operating from the Bahamas MUST demonstrate substantial economic and operational presence or have their activity reported and taxed in the jurisdiction where the substantial relevant activity is conducted so that they can be assessed for tax purposes in that jurisdiction.

The Ministry of Finance together with the Office of The Attorney General and Ministry of Legal Affairs, the Ministry of Financial Services, Trade & Industry and Immigration along with Industry representatives have been engaged in discussions with the EU and OECD and reviews of relevant domestic and international legislation for most of the year. We have benchmarked these reviews against new draft legislation to address the Secretariat of the Code of Conduct Group (Business Taxation) concerns, ensuring that we achieve the right balance of business, economic sustainability, viability and compliance

with international standards and best practices. The Bill before us reflects the results of this work, extensive consultation with industry, international partners and subject experts.

Mr. Speaker,

As a consequence of the enactment of this substance requirement Bill, all companies carrying out, what is called “relevant activities” as defined in the Bill such as, banking, insurance, fund management, financing and leasing, shipping, distribution or service center operations, headquarter operations and holding companies with relevant activities, will be required to demonstrate that they have a substantial economic presence within The Bahamas and that they engage in real economic activity.

Mr. Speaker, these entities must conduct core income generating activities (CIGA) in the Bahamas. The types of

business activities covered under the legislation for each relevant category includes:-

Banking: the raising of funds, managing risk including credit, taking hedging positions, providing loans, credit or other financial services for customers, managing regulatory capital and preparing regulatory reports and returns;

Insurance: the predicting and calculating risk, insuring or re-insuring against risk, providing client services;

Fund Management: the taking of decisions on the holding and selling of investments, calculating risks and reserves, taking decisions on currency or interest fluctuations and hedging positions preparing regulatory reports for government authorities and investors;

Financing and leasing: the agreeing of funding terms, identifying or acquiring assets to be leased (in the case of

leasing), setting the terms and duration of any financing or leasing, monitoring and revising agreements, managing any risk;

Headquarters: the taking of relevant management decisions, incurring expenditures on behalf of group entities, coordinating group activities;

Shipping: the managing the crew (including hiring, paying and overseeing crew members), hauling and maintaining ships, overseeing and tracking deliveries, determining what goods to order and when to deliver them, organizing and overseeing voyages;

Distribution or service center: the transporting and storing of goods, managing stocks, taking orders and providing consulting or other administrative services.

Mr. Speaker,

There are also enhanced substance requirements for intellectual property income generating Included Entities. Again, these speak to the legitimacy of the activity in the jurisdiction as the domicile for taxing rights.

Mr. Speaker,

Under the legislation, businesses conducting relevant activities are required to be managed and controlled on the island. This includes having an adequate number of meetings of the board of Directors conducted in The Bahamas. Given the level of decision making required, entity records and minutes must be kept in The Bahamas. The Board of Directors as a whole must have the necessary knowledge and expertise to discharge its duties.

Another requirement of the “core income-generating activities” is that companies are required to have “an adequate

number of full time employees in relation to that activity who are physically present in The Bahamas”. They must also have “adequate” amounts of annual operating expenditure within The Bahamas and to comply with the substance requirements and reporting obligations mentioned under Clauses 10 and 11 of the Bill.

Mr. Speaker,

Another feature of this Bill is the enforcement of the substance requirements where the Authority deems a company has failed to meet the standard.

Where the Authority deems a company to have failed to meet the substance requirements, the Bill gives the Competent Authority the power to request onsite inspections and an audit at the expense of the company.

If the audit reveals deficiencies, the entity shall be issued a notice of noncompliance from the Authority stating the areas where remedial measures are required and a deadline for compliance. If the entity fails to comply, this Bill gives the Authority the power to impose an administrative penalty not exceeding \$300,000.00. In the event, the Authority concludes that the entity is in willful noncompliance with the notice, the Authority shall direct the Registrar General to strike the Company off the Register of Companies.

Further, where a company fails to satisfy the substance requirements rules, the Authority has the power to forward to the relevant reportable jurisdiction the findings of any inspection or audit conducted or commissioned in respect of any report in accordance with the schedules set out in the Bill.

Mr. Speaker, the Reportable Jurisdictions are listed in the second schedule of the Bill.

Mr. Speaker,

In essence the intent of the Commercial Entities (Substance Requirements) Bill, 2018 is to make the activities of an entity commensurate with its presence in The Bahamas. This means that at its most basic level, it requires that the included entities have a bona fide office and be more than a “brass plate” at the office of its registered agent. The entity should also have tangible assets with a direct connection to its business and the entity should be in compliance with all reporting obligations within the jurisdiction.

Mr., Speaker, the Commercial Entities (Substance Requirements) Bill, 2018 follows the guidelines set out in the EU’s scoping paper and reflects the Secretariat of the Code of

Conduct Group (Business Taxation) comments. Further, the Commercial Entities (Substance Requirements) Bill, 2018 was benchmarked against the Jersey substance requirements Bill.

Mr. Speaker,

It is clearly evident that the European Union has made heavy demands on The Bahamas and other Jurisdictions such as Cayman Islands, Bermuda, British Virgin Islands, Jersey, Guernsey, Isle of Man just to name a few. These requests are in addition to the international standards set by the Organization of Economic and Co-Operative Development which The Bahamas has met. The EU has sent a clear message that substance requirements legislation must be passed by the 31st December, 2018.

Removal of Preferential Exemptions Bill, 2018

Mr. Speaker, in addition to the EU's request for entities to have economic presence and substance in The Bahamas, they also expressed concern with respect to tax preferences afforded to non-residents that are not afforded to residents, which they term as "ring-fencing".

Speaking broadly, these preferential advantages are in the form of a number of tax exemptions and principally have regard to stamp tax and business license fees which are currently applicable to domestic companies but exempt for companies with strictly international operation.

Mr. Speaker, we are doing away with these tax exemptions and with the coming into force of the Bill, we will be removing what the European Union terms as harmful characteristics of The Bahamas' tax regime.

In the global effort to combat harmful tax practices, ring-fencing is being eliminated so that no one particular entity offers

an advantage, from a tax perspective, over another. We are removing the exemptions on the IBC in some cases and in other cases we are granting domestic companies some of the advantages previously enjoyed exclusively by IBCs. The net effect will be to equalize the two types of companies so that each is able to do what the other can.

Companies incorporated after December 31st, will benefit from this new policy effective January 1st. Existing companies will be phased in under the transitional clause in the Bill, which means they may continue to enjoy the benefit of the preferential tax treatment for three years, until December 2021, when the advantage will end.

Mr. Speaker, we intend to issue guidance notes and regulations in this regard shortly following consultation with industry, domestic corporate and civic organizations and other stakeholder agencies and regulatory bodies.

Register of Beneficial Ownership Bill, 2018

Mr. Speaker, if you will permit, I will now move on to the Register of Beneficial Ownership Bill, 2018.

The Register of Beneficial Ownership Bill allows the Competent Authority to establish a secure search system for the purpose of enabling every registered agent to maintain a database of required particulars on the beneficial ownership of a legal entity for which it has responsibility.

Mr. Speaker, the electronic database shall be:-

- (a) secure and accessible only by a designated person from a designated secured location within The Bahamas;
- (b) subject to search by either the name of an individual or the name of a legal entity; and

- (c) prevent communication to any person of the fact that a search is being made or has taken place except where the designated competent authority expressly discloses such communication.

Mr. Speaker, the Register of Beneficial Ownership Bill, 2018 will address the gaps in the current Companies Act with respect to the maintenance of Beneficial Ownership information by corporate and legal entities and the Registrar General.

The more notable Sections of the Bill are Sections 8 to 16 which places a grave responsibility on the registered agent to identify and verify beneficial owners.

Section 9 stipulates the particulars of information to be entered on the database with respect to each corporate and legal entity and with respect to each beneficial owner of the corporate

or legal entity, to each registrable legal entity of the corporate and legal entity and with respect to an exempt person.

Section 10 provides for the retention period of Beneficial Ownership information in cases of dissolution or where the legal entity cease to be a corporate and legal entity.

Section 11 provides for Beneficial Ownership information to be kept up to date by Duty to keep beneficial ownership information by registered agent and or a corporate and legal entity. This section speaks to offence for failures to keep records up to date and applicable penalties.

Section 12 states that every registered agent shall designate one or more persons to be responsible for accessing the applicable electronic data base.

Section 13 speaks to the confidentiality of submitted information and the offence and penalties and noncompliance with same.

Section 14 allows for protection for registered Agents for complying with the provisions of the Act.

Section 15 sets out the offences where by a registered agent a corporate and legal entity provides false or misleading information on the database.

Section 16 lists the applicable penalties while Section 17 allows for the Minister to make Regulations.

Non-Profit Organizations Bill, 2018

The forth bill, Mr. Speaker, is the **Non-Profit Organizations Bill, 2018**, which brings non-profit organizations under regulatory oversight. This will enhance the integrity of and mitigate abuse of these entities. The Bill creates a Registrar of

non-profit organizations (NPOs) and requires all non-profit organizations in The Bahamas to be registered and to provide details on its purpose and objectives. The Bill also imposes a strict requirement for NPOs to maintain detailed financial statements to demonstrate that the NPOs funds have been applied in a manner that is consistent with the objectives of the NPO.

Mr. Speaker, the overriding objective of this Bill is to provide for regulations to ensure that NPOs are operating in a transparent manner and are not engaged in activities which constitute an identified risk as defined in the Proceeds of Crime Act (Ch 93), namely activities involving corruption, cybercrimes, human trafficking, money laundering, or financing of terrorism or proliferation or financing of weapons of mass destruction.

Penal Code (Amendment) Bill, 2018

The fifth and final bill, Mr. Speaker, is the **Penal Code (Amendment) Bill, 2018**, which makes it a crime to intentionally defraud a person employed in the public service relating to the collection of money for the purposes of general revenue. This Bill brings tax evasion within the lexicon of criminal acts in The Bahamas and is a landmark Bill whose time has come. In making tax evasion an offence within The Bahamas and we are debunking the notion that The Bahamas encourages tax evasion or protects tax dodgers, and we are counteracting the stigma associated with being regarded as a tax haven.

Conclusion

Mr. Speaker,

Unfortunately, the G20 and the OECD countries still view The Bahamas as a “Tax Haven” sheltering illicit gained wealth via opaque and complex corporate structures. These Bills presented today, and the necessary business fee structural changes that it requires, is another plank in our tax transparency regime which sends a message to the international business community including the European Union, that The Bahamas is open for legitimate business.

Again, Mr. Speaker, I know people are asking questions like, “how it is that EU can dictate to The Bahamas?” or “Why does The Bahamas need to address the EU concerns?”

Mr. Speaker, I will take you back to March of this year when the European Union (“the EU”) Code of Conduct Group Business Taxation (the COCG) issued a list of non-co-operative tax jurisdictions and The Bahamas was placed on it. As I understand, the EU will be putting pen to paper this month to

compile another list of non-co-operative tax jurisdictions which will be published in January 2019. The Bahamas, like most other countries are doing their endeavor best to avoid being placed on the so called (“Blacklist”).

Mr. Speaker, The Bahamas is a Sovereign nation, capable of making its own laws and regulations. Financial Services is our second Industry, which provides high level jobs and this is reflected in the significant 15% contribution to the Gross Domestic Product (“GDP”). The Bahamas is a premier International Financial Center conducting trade and business with EU Member States, its citizens and other reputable Jurisdictions and Financial Markets. To be placed on a blacklist again would probably result in:-

- i. Financial Institutions leaving the Jurisdiction causing loss of jobs;

- ii. Banks implementing ‘de-risking’ strategies which puts them at risk of losing access to the global financial system; and
- iii. The withdrawal of Correspondent Banking Relations (CBRs) from banks.

Mr. Speaker, when combined, these actions undermine competitiveness and impede trade, investment, growth, development and causes serious damage to The Bahamas’ reputation.

Mr. Speaker, we understand what it takes to remain a well regulated compliant and competitive Jurisdiction and The Bahamas will undertake the requisite steps to maintain its posture and position as a premier blue chip International Financial Center.

Thank you.