

**REVIEW OF LEGISLATION PERTAINING TO THE SAINT LUCIA SERVICES SECTOR  
FOR THE  
DEVELOPMENT OF A LEGISLATIVE FRAMEWORK  
FOR THE  
PROVISION OF INCENTIVES TO SAINT LUCIA SERVICES SECTOR  
  
LEGAL GAP ANALYSIS**

**(DEVELOPING SAINT LUCIA SERVICES SECTOR, LOAN GRANT NO GA 29 /STL CONTRACT NO 006/SDB  
/15)**

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**Acknowledgement**

The Consultant acknowledges with gratitude the information shared and the insights of those with whom the Consultant met or interacted in addressing this assignment, and whose support for and commitment to the realisation of the objectives of this assignment influenced the content of this Report and the draft Bill.

**Executive Summary**

Major reforms are being undertaken in various sectors of the economy to enable Saint Lucia to meet its obligations under various international instruments, in particular, the *WTO Agreement on Subsidies and Countervailing Measures* (SCM Agreement) and the *CARIFORUM-EU Economic Partnership Agreement* (EPA), to facilitate trade liberation.

The Saint Lucia Coalition of Services Industries Inc. (SLCSI), is the umbrella private sector organisation of the services sector in Saint Lucia and represents the interests of all the services industries in the country. SLCSI has received a grant from the Caribbean Aid for Trade and Regional Integration (CARTFund) to be used under a project to improve the operating environment for the services sector. Included in the project, is a component aimed at identifying or confirming gaps, if any, in the existing legal framework and facilitating the drafting of fiscal incentives legislation for the support and growth of the Saint Lucia services sector.

The Consultant was engaged by the SLCSI, to undertake a comprehensive review and analysis of the relevant legislation relating to the services sector; with a view to identifying, amongst other things, legislative gaps in the provision of incentives to the services sector, to make the necessary recommendations so that an appropriate legislative framework is developed for the sustainable development of 4 areas of the services sector of Saint Lucia, namely: the Creative Industries Services, Professional Services, Spa and Wellness Services and Information Technology and Communications

Services (ICT); and to draft appropriate legislation, for enactment by the Parliament of Saint Lucia, which seeks to enhance the legal environment for the support and growth of the 4 areas of the Saint Lucia services sector.

This Report is presented in Parts, which focus on the legislation governing the main areas of the Saint Lucia services sector: *Part 1* Introduction, which provides a synopsis of the *Background, Scope of Work, Methodology and Challenges*. *Part 2*, which provides a synopsis of the Existing Legal Framework which includes the *Regional, Sub-Regional and International Obligations*, the *Current Legislation with Provisions Imposing Fiscal Measures on the Services Sector*, the *Current Legislation with provision relating to Fiscal Incentives provided to the Services Sector*, the *Current Legislation Governing some Professions in the Services Sector* and which summaries other *Proposed Draft Legislation* and *Part 3* which includes the *Conclusion and Way Forward* in designing an appropriate legislative framework, to provide incentives to certain service providers.

### **General Observations**

The following general recommendations are subject to the requirements of the respective service providers or stakeholders and policy confirmation.

1. The impact of the provision of incentives or subsidies to the services sector was examined against Saint Lucia's obligations under the relevant provisions of the revised *Treaty of Chaugaramas* and the *WTO Agreement on Subsidies and Countervailing Measures* (SCM Agreement); and the level of export of goods or services should not be a condition for the provision of incentives to a service provider under the proposed law (see paragraphs 2.1.1. (2) and 2.1.4.(3))
2. The impact of the proposed provision of incentives or subsidies to nationals was examined against Saint Lucia's obligations under the *CARIFORUM-EU Economic Partnership Agreement* EPA and it is not being suggested that the proposed law extend to nationals or service providers of the non-CARICOM Member States that are parties to the EPA,<sup>1</sup> unless there is evidence of reciprocity (see paragraph 2.13).
3. Subject to any agreed policy and the requirements of the stakeholders, it is not proposed that further allowances, deductions or exemptions be provided to such a varied and wide group of service providers under the *Income Tax Act*. The financial and economic implications of such an exemption need to be confirmed by the relevant authorities (see paragraphs 2.2.1). The relevant stakeholders or representative bodies in the respective service areas and the relevant authorities need to confirm the nature of the required exemptions under the *Income Tax Act*, if any. For example, the legal profession may require exemptions in respect of

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<sup>1</sup> I.e. other CARIFORUM States and Europe

payments for subscriptions for online legal resources, which the Bar Association, as a representative body, may confirm for consideration by the relevant authority.

4. Consistent with any agreed policy, a general or partial exemption may be provided to the approved areas in the services sector under the *Customs Duties Act* by an appropriate amendment to that Act or by the enactment of a new law that provides for such an exemption. The financial and economic implications of this proposed exemption also need to be confirmed (see paragraph 2.2.2).
5. Subject to any agreed policy and confirmation of the financial and economic implications, the *Customs (Service Charge) Act* may be amended to provide for the reduction of the percentage of the customs service charge (6%) generally or at intervals in relation to approved items, as Cabinet may determine. The proposed law may provide for exemption under this Act for the benefit of a service provider. Policy to be confirmed (see paragraph 2.2.4).
6. Subject to any agreed policy and confirmation of the financial and economic implications, it is not proposed that further allowances, deductions or exemptions be provided to such a wide and varied group of persons under the *Land and House Tax Act* (see paragraph 2.2.6).
7. The proposed increased threshold may have the effect of reducing the cost of administration of the tax by some service suppliers. However, consideration may be given to exemptions in relation to value added tax on certain approved items, if required. Policy to be confirmed (see paragraph 2.2.7).
8. The incentives provided under the *Fiscal Incentives Act* include exemption from income tax or tax holidays up to a maximum of 15 years; a waiver of import duties and consumption tax on imported plant machinery and equipment, raw materials and packaging; the possibility to carry forward losses for up to 5 years and export allowance tax relief on export earnings. The level of incentives granted is dependent on —

The quantum of the entity's exports to non-CARICOM markets.

The local value added content.

The level of capital outlay.<sup>2</sup>

As noted, under the relevant provisions of the revised *Treaty of Chaugaramas* and the *WTO Agreement on Subsidies and Countervailing Measures* (SCM Agreement); and the provision of incentives to the services sector should not be contingent on the export of goods or services. In other words, the level of export of goods or services should not be a condition for the provision of incentives to a service provider under the proposed law (see paragraphs 2.1.1, 2.1.4 and 2.3.1).

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<sup>2</sup> See paragraph and summary in the Policy document

- 9 As a long term measure, there is need to reform and consolidate the laws relating to fiscal incentives for the services sector for the more efficient administration of such incentives i.e. a general law presented in Parts for the more effective enforcement and administration of the benefits (see paragraph 2.3).
- 10 The *Micro and Small Scale Business Enterprise Act* does not exclude a service provider within the meaning of the proposed Act but there is a need to confirm that the benefits are not duplicated. In this regard, persons receiving benefits under the Micro and Small Scale Business Enterprise Act should not qualify for a similar benefit under the proposed Act. There is need to confirm the criteria for the provisions of a benefit under the proposed Act (see paragraph 2.3.6).
- 11 The extent to which all the allowances and deductions under the legislation with provision imposing fiscal measures on the services sector are effectively utilised by service providers liable to tax may need to be confirmed.
- 12 There is need to reform and consolidate the law relating to fiscal incentives for the services sector for the more efficient administration of such incentives i.e. a general law presented in Parts for the more effective enforcement and administration of the benefits.
13. *Appendix 1* lists the suggested approved service areas within the creative industries, professional services, and spas/wellness services and ICT services for confirmation with stakeholders in the respective areas and the relevant authorities, as required, and subsequent incorporation in the draft legislation (see paragraphs 3.1.2, 3.2.3, 3.3.1 and 3.4.1).
14. *Appendix 2* lists inputs that may be subject to duties or taxes and which are proposed as approved items for the grant of benefits to approved service providers in the creative industries, undertaking professional services or engaged in the provision of spas/wellness services; for confirmation with stakeholders in the respective areas and the relevant authorities, as required, and subsequent incorporation in the draft legislation (see paragraphs 3.1.3, 3.2.4, 3.3.2 and 3.4.3).
15. The draft proposed law should apply to a service provider who is a national of a CARICOM Member State. See list of proposed Member States to which the draft proposed law may also apply in *Appendix 3*, for confirmation with the relevant authorities, as required, and subsequent incorporation in the draft legislation (see paragraphs 2.1.1 and 2.1.2).
16. The Bibliography is provided in *Appendix 4*.

## REVIEW OF LEGISLATION PERTAINING TO THE SAINT LUCIA SERVICES SECTOR

### FOR THE

## DEVELOPMENT OF A LEGISLATIVE FRAMEWORK FOR THE SAINT LUCIA SERVICES SECTOR

### LEGAL GAP ANALYSIS

#### PART 1 INTRODUCTION

##### 1.1 Background

**1.1.1** The operating environment of the services sector in Saint Lucia, in particular, of the creative industries, professional, spas/wellness and information technology and communications services sectors, appears to be affected by weak policies relating to the sector, stemming from limited consideration of these sectors as viable contributors to economic development<sup>3</sup> as well as considerable duties and/or taxes.<sup>4</sup> These factors impede efficiency and the ability of service providers to compete regionally and internationally, or even locally, since the inputs for the provision of these services are not adequately supplemented by other tangible benefits.

**1.1.2** The Saint Lucia Coalition of Services Industries Inc. (SLCSI), is the umbrella private sector organisation of the services sector in St. Lucia and represents the interests of all the services industries in the country. SLCSI has received a grant from the Caribbean aid for Trade and Regional Integration (CARTFund) to be used to improve the operating environment for services sector, included in the project is a component aimed at identifying or confirming gaps, if any, in the existing legal framework and facilitating the drafting of fiscal incentive legislation for the support and growth of the Saint Lucia's services sector.

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<sup>3</sup> Creative Industries Strategies and Action Plan, Saint Lucia, page 7

<sup>4</sup> Creative Industries Strategies and Action Plan, Saint Lucia, page 7

*Caribbean Aid for Trade and Regional Integration (CARTFund)*

**1.1.3** SLCSI has received a grant from the Caribbean Aid for Trade and Regional Integration (CARTFund) to be used to improve the operating environment for the services sector; which includes enhancements in the legal environment for the support and growth of 4 areas in the services sector of Saint Lucia, namely the–

1. *Creative Industries Services*: which include theatrical producer, singer group, band and orchestra entertainment services, services provided by authors, composers, sculptors, entertainers and other individual artists, ancillary theatrical services, circus, amusement park and similar attraction services, ballroom, discotheque and dance instructor services other entertainment services, audio-visual, fashion design and interior design services.<sup>5</sup>

The creative industries services sector in Saint Lucia also comprises live and recorded music, music publishing, songwriting, writing (literature and poetry), dance, paintings and sculptures, fashion design, crafts and festivals.<sup>6</sup>

2. *Professional Services* which are services such as: legal, accounting, auditing, bookkeeping and taxation services architectural, engineering, urban planning and landscape, architectural medical, dental, midwife, nursing, paramedical, physiotherapy veterinary services management consulting and related services.<sup>7</sup>

Other Business Services such as: advertising services, market research and public opinion polling services, management consulting services also fall in this areas.

3. *Spa and Wellness Services* which include: services provided by massage therapists, registered acupuncturists, dieticians, herbalists, homeopaths, naturopaths and reflexologists.<sup>8</sup>

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<sup>5</sup> Creative Industries Strategies and Action Plan, Saint Lucia, page1

<sup>6</sup> Creative Industries Strategies and Action Plan, Saint Lucia, page1

<sup>7</sup> Professional Services Strategies and Action Plan, Saint Lucia, page1

<sup>8</sup> Spa and Wellness Services Strategies and Action Plan, Saint Lucia,

4. *Information Technology and Communications Services (ICT)* which include: ICT project management, hardware and software procurement and installation, software development, data management (e.g. data recovery), ICT consulting (e.g. policy and strategy development, research, security), ICT training, computer maintenance and repair, IT hardware and software procurement, networking, ICT support, website development, ICT outsourcing, computer sales.

## **1.2 Scope of Work**

- 1.2.1** The Consultant is required to provide legislative drafting assistance to SLCSI to facilitate the development of a legal framework for a new incentive regime for 4 the areas of the services sector in Saint Lucia (see paragraph 1.1.3).
- 1.2.2** The Scope of Work is understood to cover all the activities necessary to accomplish the Contract Objectives, whether or not a specific activity is cited in the Terms of reference (TOR). The main tasks/activities are to undertake —
  1. a comprehensive review of the White Paper on Services, the Inception Report for the development of a Services Strategy and Action Plan for Saint Lucia, the Investment Policy, the *Fiscal Incentive Act, Chapter 15.16* of the Revised Laws of Saint Lucia and the New Incentive Framework for the Services and Manufacturing Sectors, as well as all other relevant fiscal incentives legislative instruments currently in existence in Saint Lucia;
  2. a review of Saint Lucia's institutional framework for investment, to ensure consistency of policies, procedures and the identification of legislative gaps;
  3. a review of the legal framework for the Services Sectors in other similar jurisdictions (OECS/CARICOM, and another relevant mature jurisdiction), with a view to adopting a 'best practice' approach;
  4. a national workshop to validate and finalise the legal framework that will involve high-level civil servants, representatives of statutory agencies, the private sector and civil society; and
  5. the drafting of appropriate legislation for the Services Sector.

### 1.3 Methodology

**1.3.1** The methodology used in giving effect to the Scope of Work referred to in *paragraph 1.2.2* included —

- (1) an extensive desk review and examination of all reports and documents provided by the SLCSI to confirm policy and required action. (See *Appendix 4*);
- (2) examination of the laws of Saint Lucia and of other countries relating to the provision of incentives to the services sector, including the other OECS and CARICOM Member States, to assist in determining the appropriate legislative framework for the provision of incentives to the services sector in Saint Lucia. (See *Appendix 4*);
- (3) confirmation of the broad legal framework within which the draft legislation will be shaped —
  - (a) Examination of relevant existing laws to ensure consistency, or extent to which any existing law may have to be amended or repealed to achieve the contract and expected output objectives;
  - (b) Examination of obligations under relevant regional sub regional and international agreements e.g. the Revised *Treaty of Chaguaramas*, Revised *Treaty of Basseterre*, *CARIFORUM-EU Economic Partnership Agreement (EPA)* and *WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)*;
  - (c) examination of relevant judicial decisions or case law; and
  - (d) confirmation of relevant common and civil law principles.

### 1.4 Challenges

**1.4.1** Since the focus of this assignment is on the development of a legislative framework, as distinct from a policy or investment framework, which should inform the legislative framework, the Consultant undertook a review of the relevant laws to confirm the extent to which incentives are provided to the services sector and the nature of the incentives available to the services sector, to inform the required provisions of the proposed law to grant fiscal incentives to service providers in 4 main areas. The observations or recommendations that are not in the draft policy are to be confirmed by the relevant authorities.

- 1.4.2** This report was prepared prior to consultation with the relevant stakeholders and the recommendations are subject to confirmation of the requirements of the relevant stakeholders.

## **PART 2            EXISTING LEGAL FRAMEWORK**

### **2.1.    *Some of the Regional Sub-regional and International Obligations***

The services sector is threatened by a number of global factors, and regional and international trade initiatives, aimed at *trade liberation*, which support the case for incentives to be provided to the participants in that sector.

Increasingly, the services sector operates in a competitive global environment where knowledge management and the use of advanced technology techniques are assuming prominence. *Sustainable development* parameters are becoming an intricate part of the provision of quality services at the national and regional and sub-regional levels. The *CARICOM Single Market and Economy (CSME)* and the *OECS Economic Union* are initiatives at the regional and sub-regional levels with implications for the sustainable development of the services sector.

#### **2.1.1    *Revised Treaty of Chaugaramas establishing the CARICOM Single Market and Economy (CSME)***

- (1)** At the regional or CARICOM level, the CARICOM Single Market Economy CSME, established under the *Revised Treaty of Chaugaramas (Revised Treaty)* proposes free movement of the factors of production, namely: goods, services, capital and labour. It is intended to provide broadened and increased opportunities for nationals of CARICOM Member States, hence, increase international competitiveness. A specific requirement within the CSME framework is the removal of all impediments or restrictions to one's right to work and provide services in a CARICOM Member State. The *Revised Treaty* specifically requires a CARICOM Member State, like Saint Lucia, to ensure that nationals from other CARICOM Member States can exercise the right of establishment on a non-discriminatory basis for the purpose, which is directly related to the provision of services in its State.
- (2)** Also relevant in relation to the grant of incentives to the services sector is *Article 96* of the *Revised Treaty*, under which a subsidy shall be deemed to exist if there is a financial contribution by a Government or any public body within the territory of

a Member State (hereinafter referred to as "government") where government revenue that is otherwise due is foregone or not collected (e.g., fiscal incentives, such as tax credits. However, a Government should neither grant nor maintain *subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, and subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.*<sup>9</sup>

### Observations

The impact of the provision of incentives or subsidies to nationals must be viewed having regard to Saint Lucia obligations under the *Revised Treaty of Chaguaramas*. **Therefore, the draft Bill on incentives should apply to a service provider who is a national of a Member State. (See list of proposed Member States to which the draft proposed law may also apply in Appendix 3); and the provision of incentives to the services sector should not be contingent on the level of export of goods or services under the proposed law.**

#### 2.1.2 Revised Treaty of Basseterre: OECS Economic Union

- (1) At the sub regional level, within the OECS Economic Union, like the CARICOM and CARIFORUM grouping and internationally, obligations also exist regarding the free movement of services but there are wide disparities amongst, existing and potential professional and technical expertise, research and development facilities, economic and social data base systems, the quality and viability of institutions and entrepreneurial experiences. Sustainable growth and development within the economic union and other recognized trade groupings will require a cadre of large, medium, small and micro enterprises which are adaptive and innovative, and can compete effectively in national, OECS, CARICOM and international markets.

One of the guiding principles<sup>10</sup> to achieve the *Economic Union* objectives set out in the revised *Treaty of Basseterre*,<sup>11</sup> include the establishment of a common policy toward development in tourism, information and communications technology, and other services.<sup>12</sup> The Protocol Member States have also agreed to adopt policies and programmes which stimulate creative thinking and develop skills which facilitate the most effective utilisation of all the Economic Union Area's resources, human and natural, for achieving equitable social and economic development.<sup>13</sup>

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<sup>9</sup> Article 99

<sup>10</sup> Article 3, Protocol of Eastern Caribbean Economic Union

<sup>11</sup> Article 2, Protocol to the Eastern Caribbean Economic Union

<sup>12</sup> Articles 3(h)

<sup>13</sup> In the area of Education, Article 22.5 of the Protocol to the Treaty

As regards services, under *Article 26*, each Protocol Member State has agreed to work towards the progressive harmonisation of policies on the services sector. This involves, where advisable, the adoption of a common policy towards development and regulation of the services sector.<sup>14</sup>

The common policy towards development and regulation of the services sector is to have as its ultimate objective the creation of a facilitative environment for balanced growth and development of services in the Economic Union Area, as well as the establishment of appropriate regulatory frameworks to ensure optimal social outcomes in areas where monopolies or near-monopolies exist.<sup>15</sup>

The Protocol Member States have also agreed to co-ordinate policies towards the harmonious and optimal development of the services sectors<sup>16</sup> and information and communications technology.<sup>17</sup>

Under *Article 27*, which addresses the *Right of Establishment and Freedom of Trade in Services*, a Protocol Member State may not impose or maintain restrictions on the freedom of establishment of nationals of a Protocol Member State in the territory of another Protocol Member State, and in particular, no restrictions other than restrictions which apply to the nationals of the Protocol Member State may be imposed or maintained on —

- (a) the establishment of agencies, branches or subsidiaries by nationals of another Protocol Member State;
- (b) the right to take up and pursue activities as self-employed persons; or
- (c) the right to set up and manage undertakings.<sup>18</sup>

A Protocol Member State may not impose or maintain restrictions on the provision of economic services by nationals of another Protocol Member State to persons in any other Protocol Member State which exceed restrictions on the provision of those services which apply to limit the provision of those services by the nationals of the Protocol Member State imposing the restrictions.<sup>19</sup>

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<sup>14</sup> Article 26.1

<sup>15</sup> Article 26.2

<sup>16</sup> Article 13.4 (a)(iv)

<sup>17</sup> Article 13.4 (a)(vi)

<sup>18</sup> Article 27.1

<sup>19</sup> Article 27.2

Under their development policies, the OECS Protocol Member States are also committed to linking to the harmonisation process, consistent with the status of an Economic Union, their fiscal policy programme.<sup>20</sup>

### Observations

The impact of the provision of incentives or subsidies to Saint Lucian nationals was viewed having regard to Saint Lucia's obligations under the *Revised Treaty of Basseterre*; and **as far as practicable, the proposed law on incentives should apply to OECS Nationals that are service providers. (See list of proposed Member States to which the draft proposed law may also apply in Appendix 3).**

#### 2.1.3 CARIFORUM-EU Economic Partnership Agreement (EPA)

- (1) Initiatives at the international level which would have an impact on the services sector include the *CARIFORUM-EC Economic Partnership Agreement (EPA)*<sup>21</sup>, which was signed by the CARIFORUM States and the European Union and its Member States (EU) in October 2008. **The EPA provisions contain the trade principles of asymmetry, cooperation and financial and non-financial development assistance from Europe, reciprocity, Most Favoured Nation (MFN) tenet: whereby, CARIFORUM and Europe are obliged to extend to each other benefits granted to third parties, fostering of regional integration, national treatment, differentiation of treatment of CARICOM LDCs and regional preference.**<sup>22</sup>
- (2) Under the EPA states like Saint Lucia have sought "to reaffirm their commitment to support the regional economic integration process among CARIFORUM States, as a key instrument to facilitate their integration into the world economy and help them face the challenges of globalisation and achieve the economic growth and social progress compatible with sustainable development to which they aim".
- (3) The chapters of the EPA on *investment and trade in services*,<sup>23</sup> contain comprehensive provisions to facilitate and attract investment within CARIFORUM States, and to develop and improve the CARIFORUM services sector. These chapters are significant in that the CARIFORUM States and European Union have agreed to 'open up' their services sectors and deal with investment policy under a

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<sup>20</sup> Article 13. 1 (1)(a)

<sup>21</sup> now referred to as the CARIFORUM-EU Economic Partnership Agreement (EPA) by virtue of the Treaty of Lisbon which renamed the European Community as the European Union.

<sup>22</sup> The EPA at a Glance... An Overview of the CARIFORUM-EC Economic Partnership Agreement Prepared by the CRNM Information Unit Revised April 2009 Copyright © CRNM 2008

<sup>23</sup> Title 2 of the EPA.

framework which provides arrangements for the progressive, **reciprocal** and asymmetric **liberalisation of investment and trade in services**.<sup>24</sup>

- (4) Chapter 2 on *commercial presence* addresses the way either CARIFORUM or European investors, and businesses established in either CARIFORUM States or in Europe are to be treated in order to facilitate trade in services and investment between the parties.
- (5) Discrimination against CARIFORUM Investors operating in the EU and European investors operating within CARIFORUM is prohibited through the application of the National Treatment Principle. CARIFORUM investors in Europe must be treated no worse than domestic European investors. European investors within CARIFORUM must be treated no worse than domestic CARIFORUM investors. Similar to what obtains under trade in goods, there is a triggering of the Most Favoured Nation (MFN) principle as a result of new Free Trade Agreements (FTAs) with competing countries.<sup>25</sup>

### **Observations**

The implication is that Saint Lucia may need to establish and enforce appropriate standards in its services sector to enhance its economically disadvantageous position and competitiveness within the regional and global investment environment.

However, the impact of the proposed provision of incentives or subsidies to nationals was examined against Saint Lucia obligations under the *EPA* and **it is not proposed that the proposed law extend to the non-CARICOM Member States of the EPA unless there is evidence of reciprocity.**

#### **2.1.4 Agreement on Subsidies and Countervailing Measures (SCM Agreement).**

- (1) The *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) became effective on 1 January 1995 and builds on Article XVI of the General Agreement on Tariffs and Trade 1947 (GATT) and the earlier Agreement on Interpretation of and Application of Articles VI, XVI and XXIII. The SCM Agreement provides a more or less complete code in relation to the use of subsidies so that reference back to GATT 1947 and the earlier Agreement on Interpretation is not necessary in most instances.

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<sup>24</sup> See article 60 of the EPA.

<sup>25</sup> *ibid* The EPA at a Glance....

- (2) The provisions of the SCM Agreement apply to a “subsidy” which is broadly defined as a government measure that confers a benefit on the recipient and is specific, such as, a financial contribution by a government or any public body, which includes a direct transfer of funds (e.g. a grants loan and an equity infusion), government revenue that is forgone or not collected (e.g. a tax credit or a fiscal incentive: like a tax deduction or tax exemption), provision of goods or services by a government, other than infrastructure.
- (3) The broad definition of a subsidy is further refined in *Article 3* of the SCM Agreement to include two categories of subsidies: prohibited export subsidies and actionable subsidies. Prohibited subsidies (like prohibited subsidies under the *Revised Treaty of Chaugaramas*) are those that are “contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance,” or require a recipient to meet certain export targets, and “subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods” i.e. provided on condition that the recipient uses domestic goods instead of imported goods. *They are prohibited because they confer an unfair advantage in international trade to their beneficiaries and are therefore likely to adversely affect other countries’ trade.* Actionable subsidies, on the other hand, are those subsidies that have an adverse effect on the interests, or cause injury to the domestic industry, of other WTO Members.
- (4) Annex 1 of the SCM Agreement provides an illustrative list of prohibited export subsidies or incentives that might be offered to enterprises, which include the provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

### **Observations**

The impact of the provision of incentives or subsidies to the services sector was examined against Saint Lucia obligations under the *WTO SCM Agreement* and *it is notable that **the provision of incentives to the service sector should not be contingent on the export of goods or services. In other words, the level of export of goods or services should not be a condition for the provision of incentives to a service provider under the proposed law.***

## 2.2 Current Legislation with Provisions Imposing Fiscal Measures on the Services Sector

A review was undertaken of the following legislation with provision imposing fiscal measures on the services sector in Saint Lucia —

- 1 *Income Tax Act*, Chapter 15.02
- 2 *Customs Duties Act*, Chapter 15.04
- 3 *Customs (Control and Management) Act*, Chapter 15.05
- 4 *Customs (Service Charge) Act*, Chapter 15.06
- 5 *Excise Tax Act*, Chapter 15.07
- 6 *Land and House Tax*, Chapter 15.13
- 7 *Value Added Tax Act, 2012 (No 7 of 2012)* Chapter 15.42

### 2.2.1 *Income Tax Act*, Chapter 15.02

#### *Legal Framework*

The *Income Tax Act* consolidates the law on income tax. The Act addresses the imposition of tax on income and the persons chargeable to tax, which includes persons in the services sector. A significant percentage of persons in the services sector are liable to pay income tax.

#### *General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

In so far as it relates to the services sector, Part 4 of the *Income Tax Act*<sup>26</sup> provides exemptions in a number of areas including in relation to the income earned by way of tips by artistic, entertainment and sports personnel, office clerks, customer service clerks, housekeeping and restaurant service workers and other employees in similar categories working in restaurants and hotels, but excluding managers and heads of department; “tips” includes any amount paid by a guest as a gratuity for services rendered by an employee of an hotel or a restaurant, and includes service charge.

A specified amount may also be exempted from tax of the income accruing to any person from the construction and sale by him or her, or on his or her behalf, of residential accommodation in Saint Lucia.<sup>27</sup>

Distributions from companies and the income of any approved pension fund are exempt from tax.<sup>28</sup>

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<sup>26</sup> Sections 25 to 31

<sup>27</sup> Section 27

Any income accrued to any individual by way of interest on a deposit in any bank in Saint Lucia, or discounts arising on Treasury Bills are exempt from income tax.<sup>29</sup> Additionally, any income accruing from trading in securities under the *Securities Act* to any citizen or resident of any Member State of the Organisation of Eastern Caribbean States or to any company incorporated in and registered in any Member State of the Organisation of Eastern Caribbean States are exempt from tax.

*Part 5, Division 2 of the Income Tax Act*<sup>30</sup> addresses deduction allowable in ascertaining assessable income for tax purposes. However, deductions and allowances are approved in various areas including subscription or donation to a professional association approved by the Comptroller, for capital expenditure, with respect to repairs of premises, plant and machinery used by a person in his or her business, legal expenses, taxes imposed on any immovable property used by the person for the purpose of producing assessable income, premiums incurred under a policy of insurance, amount contributed under the National Insurance Corporation Act by that person in respect of persons employed in his or her business, expenditure incurred by that person during the income year by way of audit fees, accountancy fees, maintenance, education, housekeeping, dependent relatives, medical expenses etc.

### **Observations**

**The extent to which all the allowances and deductions under the *Income Tax Act* are utilised by service providers liable to tax needs to be confirmed. Subject to any agreed policy, it is not proposed that further allowances, deductions or exemptions be provided to such a varied and wide group of service providers under the *Income Tax Act* in the proposed law.**

However, the draft policy document<sup>31</sup> suggests that the fiscal incentives should include **income tax holiday; whereby every investor would be required to pay a minimum tax rate of 8% on taxable income over a period of 5 years.**

**The term investor may need to be defined, the criteria for provision of the tax exemption to be established and the policy to be confirmed.**

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<sup>28</sup> Section 25(1)(x)

<sup>29</sup> Section 25(1)(g)

<sup>30</sup> Sections 37-43

<sup>31</sup> An Investment Incentives Regime for Saint Lucia (Manufacturing and Services Sectors) Revised October 13, 2014

## 2.2.2 Customs Duties Act, Chapter 15.04

### *Legal Framework*

*The Customs Duties Act* consolidates the law relating to customs duties.

*General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

*The Customs Duties Act* provides for the imposition of customs duties<sup>32</sup> conditional duty exemptions and reductions,<sup>33</sup> relief from customs duties on importation.<sup>34</sup> Exemptions for religious and charitable organisations to the extent that the Minister may waive customs duties on goods, including motor cars imported by a recognised religious or charitable organisation, to be used exclusively for the work of that organisation.<sup>35</sup> It empowers the Minister to impose a flat rate customs duty in respect of certain goods.<sup>36</sup> It authorises the Minister to impose customs duties on the exportation of specified goods at the rates specified.<sup>37</sup> *The Customs Duties Act* is to be read as one with *Customs (Control and Management) Act*<sup>38</sup> and the Customs Tariff<sup>39</sup>.

### **Observations**

The draft policy document<sup>40</sup> suggests the provision **to investors/service providers of 100% import duty exemptions on plant, equipment, for a period of 18 months.**

**There is need to confirm the policy in this regard; as well as to confirm the objectives and the criteria for the grant of the proposed exemption i.e. whether the exemption is to be provided to assist new enterprises and service providers as start up or would be applicable to all service providers; and under what conditions.**

**Subject to any agreed policy, a general or partial exemption may be provided to certain areas in the services sector under the *Customs Duties Act* by an**

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<sup>32</sup> section 3

<sup>33</sup> section 4

<sup>34</sup> section 5

<sup>35</sup> section 6

<sup>36</sup> Section 7

<sup>37</sup> Section 9

<sup>38</sup> Section 11

<sup>39</sup>The Common External Tariff of the Caribbean Common Market with the list of conditional duty exemptions and reductions (including the list of commodities ineligible for conditional duty exemptions) based on the Harmonised Commodity Description and Coding System (H.S.) Second Edition (1996) as approved by the special meetings of the Conference of Heads of Government of the Caribbean Community in October 1992 and the 9 and 10 of June 1997.

<sup>40</sup> An Investment Incentives Regime for Saint Lucia (Manufacturing and Services Sectors) Revised October 13, 2014

**appropriate amendment to that Act, or by the enactment of a new law that provides for such an exemption.**

### **2.2.3 Customs (Control and Management) Act, Chapter 15.05**

#### *Legal Framework*

*The Customs (Control and Management) Act* consolidates the law relating to customs and addresses the provisions for the importation and exportation of goods by any person.

#### *General Fiscal Benefits*

*The Customs (Control and Management) Act* does not provide for the imposition of duties.

However, the *Customs Duties Act* is to be read as one with *Customs (Control and Management) Act*<sup>41</sup> and the *Customs Tariff*<sup>42</sup> in relation to the administration of customs duties and charges in relation to certain goods.

### **2.2.4 Customs (Service Charge) Act, Chapter 15.06**

#### *Legal Framework*

*The Customs (Service Charge) Act* imposes a service charge on goods imported under any customs law.

The customs service charge payable to the Comptroller is the equivalent of 6% of the CIF value of all goods imported by an importer under any customs law.<sup>43</sup>

#### *General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

The Act lists in a Schedule the goods on which service charge may not be levied i.e. this includes goods imported by certain organizations.

However, the Cabinet is authorised on the application of an importer to vary the rate of service charge payable by an importer under the Act if it is satisfied that it is just and necessary to do so.<sup>44</sup>

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<sup>41</sup> Section 11

<sup>42</sup> The Common External Tariff of the Caribbean Common Market with the list of conditional duty exemptions and reductions (including the list of commodities ineligible for conditional duty exemptions) based on the Harmonised Commodity Description and Coding System (H.S.) Second Edition (1996) as approved by the special meetings of the Conference of Heads of Government of the Caribbean Community in October 1992 and the 9 and 10 of June 1997.

<sup>43</sup> Section 4(4), Customs (Service Charge) Order, 2015 (No. 62 of 2015).

<sup>44</sup> [section 6(1)(b)]

### Observations

**Subject to any agreed policy and confirmation of the financial and economic implications, the customs service charge may be reduced at intervals in relation to an approved item (in Appendix 2), as Cabinet may determine.**

**The proposed law may provide for exemption under this Act for the benefit of a service provider. Policy to be confirmed.**

#### 2.2.5 *Excise Tax Act, Chapter 15:07*

##### *Legal Framework*

The *Excise Tax Act* consolidates the law relating to the distillation and disposal of spirits.

*General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

A levy is imposed on spirits made in Saint Lucia.

### Observations

**Distillers would not fall in the category of service providers and may be entitled to incentives under the Fiscal Incentives Act.**

#### 2.2.6 *Land and House Tax Act, Chapter 15:13*

##### *Legal Framework*

The *Land and House Tax Act* consolidates the law relating to the management, assessment and collection of tax on land and houses in Saint Lucia.<sup>45</sup>

The Comptroller of Inland Revenue makes assessment for taxes on the basis of the market value in relation to commercial property or residential property, where a property is used as both a residential property and commercial property,<sup>46</sup> the tax rolls of the preceding year, information given by the Registrar of Lands, Registrar of Deeds and Mortgages or by any owner under this Act and by any other lawful source.<sup>47</sup>

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<sup>45</sup> Section 3

<sup>46</sup> Perhaps also using the market value

<sup>47</sup> Section 13, Sources of Assessment; as amended by Act No 4 of 2011

*General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

The Minister may remit or refund a tax.<sup>48</sup> The Minister may also remit wholly or in part any tax on the ground of poverty of the person liable to pay the tax; where the tax is oppressive or where it seems to the Minister to be just and proper so to do. The power to remit a tax includes the power to remit any interest, fees or other charges on it, special abatements in taxation.<sup>49</sup>

The *Land and House Tax Act* also empowers the Minister to provide special exemptions which includes a house which, in the special circumstances submitted, the Minister considers should be exempted from the payment of taxes under that Act.

Exemption is also provided to an owner of residential property and the rate of exemption shall be based on the assessed market value<sup>50</sup> of a prescribed amount.

### **Observations**

**Subject to any agreed policy and confirmation of the financial and economic implications, it is not proposed that further allowances, deductions or exemptions be provided to such a wide and varied group of persons under the *Land and House Tax Act*.**

## **2.2.7 Value Added Tax Act, 2012 (No 7 of 2012) Chapter 15:42**

### *Legal Framework*

The *Value Added Tax Act* provides for the imposition and collection of value added tax.

The Act applies to the supply of services or goods by any business, profession, trade, venture, or undertaking and to the provision of personal or technical and managerial skills.<sup>51</sup>

The Act defines a taxable activity as one that is carried on continuously or regularly by any person in Saint Lucia,<sup>52</sup> whether or not for profit, and involves the supply of taxable goods or services to another person for consideration.

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<sup>48</sup> Section 5.

<sup>49</sup> Section 6.

<sup>50</sup> Section 7(2) *Land and House Tax (Amendment) Act, 2013*, (Act No 10 of 2013). (Any further amendments to date to be confirmed)

<sup>51</sup> Section 2

<sup>52</sup> Section 6

The *Value Added Tax Act* provides for the imposition of a tax of 15% of the value of taxable goods or services imported into Saint Lucia or of the value of taxable supplies of goods or services, except in the case of a supply that is zero rated.<sup>53</sup>

*General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

Certain persons are exempted from the application of the *Value Added Tax Act* or entitled to a tax refund.<sup>54</sup> The supply of certain goods are also not subject to the imposition of value added tax and are zero rated.

However *section 12* of the Act establishes a threshold in respect of liability for taxable activity and a person whose taxable supplies exceeds \$400,00.00 within 12 months, or whose taxable supplies exceeds \$100,000.00 within 3 months, would be liable to be registered as a taxable person under that Act.<sup>55</sup>

### **Observations**

**The proposed increased threshold may have the effect of reducing the cost of administration of the tax by some service suppliers. However, consideration may be given to exemptions in relation to value added tax on certain approved items, if required. Policy to be confirmed.**

### **Recommendations**

**Whilst it is not being recommended that further exemptions be provided under the *Income Tax Act and Land and House Tax Act*, it is proposed that consideration be given to whether exemptions could be provided under the *Customs Duties Act* and the *Customs (Service Charge) Act*.**

**The extent to which all the allowances and deductions under the legislation with provision imposing fiscal measures on the services sector are effectively utilised by service providers liable to tax may need to be confirmed.**

**In addition to the proposed draft Bill, appropriate amendments may be required to facilitate the provision of exemptions under the *Customs Duties Act* and the *Customs (Service Charge) Act*, if required.**

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<sup>53</sup> Section 10

<sup>54</sup> Including approved charitable organisations and regional organisations See e. g SI Nos 8 of 2014 and 9 of 2014 and sporting goods, equipment and clothing imported by national sporting organisations affiliated with the Ministry for certain sports like boxing, golf, lawn tennis etc. See Act No 15 of 2013

<sup>55</sup> *Value Added Tax (Amendment) Act 2016* No 5 of 2016, effective 1 April 2016.

## 2.3 Current Legislation with provisions relating to Fiscal Incentives to the Services Sector

A review was undertaken of the following legislation with provision of fiscal incentives to the services sector in Saint Lucia—

- 1 Fiscal Incentives Act, Chapter 15:16
- 2 Development Incentives Act, Chapter 15:14
- 3 Development Agencies (Tax Concessions) Act, Chapter 15:34
- 4 Free Zone Act, Chapter 15:17
- 5 Agriculture and Fisheries Incentives Act, 2014 (No. 13 of 2014)
- 6 Micro and Small Scale Business Enterprises Act, Chapter 13:19
- 7 Tourism Incentives Act, Chapter 15:30

### 2.3.1 Fiscal Incentives Act, Chapter 15:16

#### *Legal Framework*

The *Fiscal Incentives Act*, gives effect to the agreement on harmonisation of fiscal incentives to industry.

The Act seeks to provide certain subsidies, as defined in the SCM Agreement, to certain approved enterprises for production or manufacturing purposes. The Act makes provision for the granting of tax holiday<sup>56</sup> and duty exemption<sup>57</sup> to approved enterprises and products, but not to approved services.

An enterprise is defined as a company engaged or about to engage in an industry. However, “industry” is defined as manufacturing or processing industry and includes deep sea fishing and shrimping where they form part of an integrated processing operation, but does not include agriculture and tourism.<sup>58</sup>

#### *General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

Subject to the approvals of the Minister and to Comptroller of Customs an approved enterprise may import plant, equipment, machinery, spare parts, raw materials or their components, free from customs duty, for constructing, altering, reconstructing or extending the approved enterprise or for equipping the enterprise for the purpose of manufacturing an approved product.<sup>59</sup>

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<sup>56</sup> Section 6

<sup>57</sup> Section 7

<sup>58</sup> Section 2

<sup>59</sup> Section 7, (licence to import)

Benefits may be granted under that Act to certain classified enterprises with consideration given to their estimated local value added.<sup>60</sup> Certain benefits exist for enterprises engaged in a highly capital intensive industry.<sup>61</sup>

Complete or partial exemption from income tax may be granted by Cabinet to an approved enterprise from the production day for a period from 10 to 15 years based on its classification.<sup>62</sup> In computing the profits of an approved enterprise for the purposes of exemption from income tax, allowance is made for any depreciation in value resulting from any wear and tear which would, but for the exemption, be claimable in the financial year.<sup>63</sup> Deduction as an initial allowance for capital expenditure is allowable only in respect of expenditure incurred at the end of the period of exemption from income tax.<sup>64</sup> Dividends when paid to shareholders<sup>65</sup> or their nominees (including a company) is exempt from the payment of income tax.<sup>66</sup> Interest, in whatever form, on loan capital and any other monies borrowed by an approved enterprise, whether in the form of overdraft, debenture or otherwise when paid to the recipient, is not exempt from the payment of income tax.<sup>67</sup>

On the expiration of the tax holiday period, the net losses<sup>68</sup> incurred during that period, may be carried forward for the purpose of set-off in computing the profits of an approved enterprise for the 5 years period following the tax holiday period.<sup>69</sup>

An export allowance may be granted<sup>70</sup> once in respect of any one product, where a company has made export sales to a specified territory.

## Observations

**The *Fiscal Incentives Act* may be amended to extend to approved services, as required or a separate law may be enacted to address approved services.**

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<sup>60</sup> Section 10.

<sup>61</sup> Section 11

<sup>62</sup> Section 12(1) (Act No. 3 of 2013). Schedule 3

<sup>63</sup> Section 13

<sup>64</sup> Section 14

<sup>65</sup> Resident in a Member State

<sup>66</sup> Section 20

<sup>67</sup> Section 21

<sup>68</sup> The excess of all losses over all profits made during the tax holiday period

<sup>69</sup> Section 15

<sup>70</sup> Section 16

### 2.3.2 Development Incentives Act, Chapter 15:14

#### *Legal Framework*

The *Development Incentives Act* encourages the establishment, conduct and expansion of development enterprises in Saint Lucia, and makes provision for the granting of certain relief from customs duties and income tax or “declared benefits” to companies engaging in such enterprises.

A “development company” or a “development enterprise” is a company or enterprise so declared in a development order.<sup>71</sup>

#### *General Fiscal Benefits ((Subject to confirmation of all amendments to the Act to date)*

The “declared benefit” in relation to income tax, is the percentage relief during the tax holiday period from the whole of the chargeable income of a development company in respect of profits or gains earned from the operation of the development enterprise, and in relation to customs duty, is the percentage relief during the tax holiday period from the whole of the customs duty otherwise leviable on articles imported by a development company as specified in the development order.

The “tax holiday period” is a period commencing from the date of the development order and terminating 7 years after the date of production.

A development company may import from the date of the development order, to the end of the tax holiday period any of the articles specified in Schedule 2 to the Act and any other article as may be specified in the development order with the declared benefit in respect of customs duty, if the development company satisfies the Comptroller of Customs that the articles are imported for the construction, alteration, reconstruction or extension of the development premises of the development enterprise specified in the development order, or for equipping the premises or any extension of the premises used or intended to be used for conducting or expanding the development enterprise.<sup>72</sup>

### 2.3.3 Development Agencies (Tax Concessions) Act, Chapter 15:34

#### *Legal Framework*

The *Development Agencies (Tax Concessions) Act* provides tax concessions to certain development agencies, like the Saint Lucia Chamber of Commerce, Industry and Agriculture, Saint Lucia Hotel and Tourism Association (SLHTA), National

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<sup>71</sup> Section 2

<sup>72</sup> Section 13(1)

Research and Development Foundation (NRDF), Saint Lucia Industrial and Small Business Association (SLISBA) and the Saint Lucia Arts Festival Company Ltd.

*General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

A development agency may apply to the Minister for a permit for the importation of equipment or vehicles free of customs duties,<sup>73</sup> and may import the vehicle or equipment free from customs duties and taxes.<sup>74</sup> The disposal of equipment and vehicles shall be after 5 years from the date of import unless all customs duties are paid exemption from taxes.<sup>75</sup> The Development Agency must keep an inventory of exempt articles.<sup>76</sup>

Under that Act professional staff are also exempt from the payment of taxes.<sup>77</sup>

Non-national professional staff employed by a development agency are exempt from the payment of income tax and other duties and taxes on all emoluments received by reason of their employment with the development agency.<sup>78</sup>

Professional staff employed by a development agency are exempt from the payment of travel tax when travelling out of Saint Lucia on the official business of a development agency.<sup>79</sup>

Professional staff employed by a development agency and recruited from outside Saint Lucia, within 6 months of their arrival in Saint Lucia, are entitled to import free of all customs duty, all personal and household effects including one motor vehicle per family.<sup>80</sup>

On completion of their tour of duty, non-national professional staff employed by a development agency are entitled to export out of Saint Lucia all personal and household effects including one motor vehicle free of all export duties, and other related taxes.<sup>81</sup>

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<sup>73</sup> Section 3

<sup>74</sup> Section 5

<sup>75</sup> Section 7

<sup>76</sup> Section 8

<sup>77</sup> Section 10.

<sup>78</sup> Section 10(1)

<sup>79</sup> Section 10(2)

<sup>80</sup> Section 10(3)

<sup>81</sup> Section 10(4)

### 2.3.4 Free Zone Act, Chapter 15:17

#### *Legal Framework*

The *Free Zone Act* provides for the establishment and operation of free zones in Saint Lucia to foster commerce, trade and investment with other countries, to promote economic growth and development.

A Free Zone is a geographical area in Saint Lucia designated as such by the Cabinet, where investors may establish businesses and conduct trade and commerce, outside of the national customs territory and may include a single business and its facilities, referred to as a “Special Free Zone”.<sup>82</sup>

A “free zone business” is a private or public party which has been granted approval to operate a business under the *Free Zone Act* and which conducts a trade or business, including but not limited to manufacturing, commercial, office, warehousing, professional or other activity, within any free zone established under the *Free Zone Act*.

#### *General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

All merchandise, articles, or other goods entering a free zone for commercial purposes is exempt from all customs duties, taxes and related charges.<sup>83</sup>

All fuel and goods including building materials, furniture, equipment, supplies and parts required for the proper functioning of a free zone business is also exempt from all duties, taxes and charges.<sup>84</sup>

Despite anything contained in the *Income Tax Act*, income tax at the prescribed rates is levied on the chargeable income of a free zone business within a free zone.<sup>85</sup>

In the computation of income tax, credits are provided based on the number of citizens of Saint Lucia that are employed on a continuous basis by a free zone business in accordance with the prescribed scale.<sup>86</sup>

During the first 5 years of its operation, a free zone business is exempt from income tax or capital gains tax or any new corporate tax levied by the Government

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<sup>82</sup> Section 2

<sup>83</sup> Section 12 (1)

<sup>84</sup> Section 12 (2)

<sup>85</sup> Section 19 (1)

<sup>86</sup> Section 19 (2)

after the commencement of the Act, and any dividends paid by a free zone business is exempt from the tax for the first 20 years of its operation.<sup>87</sup>

If a free zone business incurs a total net loss over the first 5 year of its operation and tax holiday period that loss may be carried forward and deducted against profits in the 3 years following the tax holiday period.<sup>88</sup>

Any proceeds from the sale of stock or other partial or complete ownership interest in a free zone business is also exempt from tax under this Act.<sup>89</sup>

The tax levied under the Act is collected by the Comptroller of Inland Revenue and any appropriate action may be taken under the *Income Tax Act* against a defaulter.<sup>90</sup>

A free zone fee equal to 5% of tax collected by the Comptroller of Inland Revenue under section 19 of the Act, in any year of assessment would be placed to the credit of the Free Zone Management Authority (FZMA). The FZMA is exempt from all taxes.<sup>91</sup>

Despite the *Income Tax Act* gross receipts tax and any form of value added tax does not apply within a free zone.<sup>92</sup>

### Observations

**Some service providers may be undertaking a free zone business and obtaining benefits under the *Free Zone Act* but that *Act* applies in a designated geographical area; unlike the proposed draft law which is intended to apply outside that geographical area.**

#### 2.3.5 Agriculture and Fisheries Incentives Act, 2014 (No. 13 of 2014)

##### *Legal Framework*

The *Agriculture and Fisheries Incentives Act* seeks to provide for agriculture and fisheries incentives to be provided to persons within the agriculture and fisheries sectors.

The law provides for an Agriculture and Fisheries Incentives Committee. The law also provides for an Appeals Board.

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<sup>87</sup> Section 19 (3)

<sup>88</sup> Section 19 (4)

<sup>89</sup> Section 19 (5)

<sup>90</sup> Section 19 (6)

<sup>91</sup> Section 19 (7) (8)

<sup>92</sup> Section 19 (9)

*General Fiscal Benefits (Commencement date of Act to be confirmed)*

A person who wishes to apply for agriculture and fisheries incentives is required to satisfy the prescribed eligibility criteria, which includes the land area, flock size in the case of poultry or compliance with the provisions of the relevant laws.<sup>93</sup>

Exemptions are provided from customs duties and taxes,<sup>94</sup> as it relates to the importation of agricultural inputs.

Cabinet may provide complete or partial exemption from the payment of import duties, and excise tax.

Provisions also exist for exemption from the payment of income tax on the income accruing from an approved agricultural project and Cabinet may grant a complete or partial exemption from the payment of the income tax.<sup>95</sup> The tax holiday period under the Act does not exceed 10 years.<sup>96</sup> Provisions also exist for the grant by Cabinet of a complete or partial exemption from the payment of customs service charge.<sup>97</sup>

**Observations**

**Similar benefits may be sought for the service providers and may be inserted in the proposed law.**

**2.3.6 Micro and Small Scale Business Enterprises Act, Chapter 13.19***Legal Framework*

The *Micro and Small Scale Business Enterprises Act* provides a legislative base for micro and small scale business enterprises, to make provision for developmental support and financial relief with respect to micro and small scale business enterprises.

A “micro business enterprise” is a small business enterprise—

- (a) in which not more than 5 persons are employed;
- (b) whose annual turnover does not exceed \$100,000;
- (c) whose net assets do not exceed \$75,000; and
- (d) which is locally owned.

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<sup>93</sup> section 3

<sup>94</sup> Section 13

<sup>95</sup> Section 18(2)

<sup>96</sup> Section 18(3)

<sup>97</sup> Section 21(1)

*General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

Under *section 10* of the Act the Minister responsible for Commerce may recommend relief to a micro or small scale business enterprise under the *Fiscal Incentives Act*.

However, a micro or small scale business enterprise is not entitled to apply or qualify to receive any relief under section 10 if it is in receipt of fiscal incentives under the *Fiscal Incentives Act*.

### **Observations**

**The *Micro and Small Scale Business Enterprise Act* does not exclude a service provider within the meaning of the proposed Act but there is a need to confirm that the benefits are not duplicated. In this regard, persons receiving benefits under the *Micro and Small Scale Business Enterprise Act* should not qualify for a similar benefit under the proposed Act. There is need to confirm the criteria for the provisions of a benefit under the proposed Act.**

### **2.3.7 Tourism Incentives Act, Chapter 15:30**

#### *Legal Framework*

*The Tourism Incentives Act* encourages the development of the tourism industry by providing relief from income tax.

*General Fiscal Benefits (Subject to confirmation of all amendments to the Act to date)*

The income accruing from any approved tourism product is exempt where the construction of an approved tourism product or of any extensions to the approved tourism product started on or after a prescribed date.

If a person has been granted an interim approval, the Minister may grant that person a permit for the importation of building materials, articles or equipment, as specified in the permit, free of customs duty.

A permit is subject to the condition that the building materials, articles or equipment as specified is used exclusively for the construction and equipping the tourism product for which the interim approval has been granted.<sup>98</sup>

The holder of a permit may, on the production of the permit to the Comptroller of Customs, import free of all import duty but subject to the terms of the permit the construction materials, articles or equipment as are specified in the permit.

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<sup>98</sup> Section 13

The holder of the permit is entitled to a refund of such customs duties paid if the holder of the permit satisfies the Comptroller of Customs that any building materials, articles or equipment have been purchased by the holder of the permit in Saint Lucia in accordance with the terms of the permit; that customs duties were paid on the importation of the building materials, articles or equipment and of the amount of the customs duties that have been paid.<sup>99</sup>

### **General observations**

**There is need to reform and consolidate the law relating to fiscal incentives for the services sector for the more efficient administration of such incentives i.e. a general law presented in Parts for the more effective enforcement and administration of the benefits.**

#### **2.4.4 Current Legislation Governing some Professions in the Services Sector**

A review was undertaken of the following legislation with provision governing some professions in the services sector in Saint Lucia—

- 1 Architects Registration Act, 2005 (No 11 of 2005)
- 2 Engineers (Registration) Act, Chapter 13:10
- 3 Institute of Chartered Accountants of the Eastern Caribbean (Agreement) Act, Chapter 19:18
- 4 Legal Profession Act, Chapter 2:04
- 5 Registration of Nurses and Midwives Act, Chapter 11:08
- 6 Customs Brokers and Customs Clerks Act, Chapter 15:38
- 7 Veterinary Surgeons Act, Chapter 11:09
- 8 Medical Officers Act, Chapter 11:05
- 9 Health Practitioners Act, 2006 (No 33 of 2006)

##### **2.4.1 Architects Registration Act, 2005 (No 11 of 2005)**

###### *Legal Framework*

The *Architects Registration Act*, provides for, amongst other things, the registration of Architects.

###### *General Fiscal Benefits*

No fiscal benefits are provided for under this Act.

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<sup>99</sup> Section 17

## 2.4.2. Engineers (Registration) Act, Chapter 13:10

### *Legal Framework*

The *Engineers (Registration) Act*, provides for, amongst other things, the registration of engineers, establishment of a Registration Board<sup>100</sup> for engineers, the maintenance of an Engineers Register,<sup>101</sup> qualifications for registration as an engineer,<sup>102</sup> the registration of persons with experience,<sup>103</sup> the factors not to be considered for registration,<sup>104</sup> the registered engineer entitlement to practice,<sup>105</sup> and the practice of engineering by unregistered persons.<sup>106</sup>

The Schedule to that Act lists the engineering operations to include public utilities, industrial works, harbour works, drainage works, irrigation works, sewerage works and sewerage disposal works, and hydraulic works, industrial processes, tramways, bridges, tunnels, roads, highways, canals and river improvements, lighthouses, wet docks, dry docks and floating docks, cranes, dredges, hoists, lifts and winches, waterworks, water purification plants, incinerators, power transmission systems, electric lighting and electrical or electronic communications systems and equipment, any electrical apparatus or machinery, garages, hotels any industrial building to be used for any industrial purpose, public buildings and places used for or offered for use as places for public assembly, commercial domestic and other buildings which are more than 2 floors high or are greater than 240 square metres in area, generally all other engineering works including the engineering works and installation relating to airports, airfields or landing strips or relating to town and community planning.

### *General Fiscal Benefits*

No fiscal benefits are provided for under this Act.

## 2.4.3. Institute of Chartered Accountants of the Eastern Caribbean (Agreement) Act, Chapter 19:18

### *Legal Framework*

The *Institute of Chartered Accountants of the Eastern Caribbean (Agreement) Act*, gives legal effect to and provides for the implementation of the *Institute of Chartered Accountants of the Eastern Caribbean Agreement*.

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<sup>100</sup> Section 5.

<sup>101</sup> Section 6

<sup>102</sup> Section 7

<sup>103</sup> Section 8

<sup>104</sup> Section 9

<sup>105</sup> Section 10.

<sup>106</sup> Section 12.

That Agreement provides for the establishment of the Institute, its objects, power to make rules, membership, the management of the Institute, meetings of the Institute and discipline of members.

*General Fiscal Benefits*

Provisions do not exist with regard to the grant of relief to members of the Institute under this Act.

**2.4.4. Legal Profession Act, Chapter 2:04**

*Legal Framework*

The *Legal Profession Act* provides for the reorganisation and regulation of the legal profession, for the qualification, enrolment and discipline of its members.

*General Fiscal Benefits*

Provisions do not exist with regard to the grant of relief to members of the legal profession under this Act.

**2.4.5. Registration of Nurses and Midwives Act, Chapter 11:08**

*Legal Framework*

The *Registration of Nurses and Midwives Act* seeks to provide for the registration of nurses and midwives and for, the enrolment of nursing assistants and to regulate their training, practice and conduct.

*General Fiscal Benefits*

Provisions do not exist with regard to the grant of relief to Nurses and Midwives under this Act.

Any medical benefits provided under other instruments to be confirmed.

**2.4.6. Customs Brokers and Customs Clerks Act, Chapter 15:38**

Regulates the licensing and operations of customs brokers, customs clerks, and apprentices.

*General Fiscal Benefits*

No fiscal benefits are provided for under this Act.

## 2.4.7 Veterinary Surgeons Act, Chapter.11:09

### *Legal Framework*

The *Veterinary Surgeons Act* was first enacted in 1957 to regulate the practice of veterinary surgery. It was amended in 2006<sup>107</sup> to facilitate the movement of professionals in the CARICOM and OECS Member States; as a result of the establishment of the CARICOM Single Market and Economy (CSME).

### *General Fiscal Benefits*

No fiscal benefits are provided for under this Act.

The practice of veterinary surgery was regulated under the *Medical Registration Act*<sup>108</sup> which has been repealed by the *Health Practitioners Act, 2006*. The Medical Board appointed under the *Medical Registration Act*, has been replaced by a Council responsible for medical and dental practitioners and one responsible for allied health care.

There is no evidence that there was a savings in respect of the *Medical Registration Act*. There is no evidence that the Medical Board still has jurisdiction or authority with respect to the registration of a veterinary surgeon. It is not clear which entity is now responsible for the registration of veterinary surgeons.

There appears to be a need for greater control over the practice of a veterinary surgeon and perhaps new law to regulate the activities of that profession.

Consideration be given to the suggested amendments to be made to the *Veterinary Surgeons Act*, which include the following<sup>2</sup>

- (1) the criteria for registration as a veterinary surgeon in Saint Lucia should be confirmed;
- (2) the body responsible for the registration of a veterinary surgeon in Saint Lucia should be confirmed;
- (3) the registration fee of \$5 may be increased to \$300.00;
- (4) the role of the Registrar of the High Court in the registration of a veterinary surgeon should be confirmed;
- (5) the role of the Governor General and how officers are appointed should be confirmed.

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<sup>107</sup> by Act No. 21

<sup>108</sup> Chapter 11:06

## Observations

**Changes have occurred in the practice of veterinary surgery since 1957 which may require that amendments be made to that Act.**

### 2.4.8 Medical Officers Act, Chapter 11:05

#### *Legal Framework*

The *Medical Officers Act* was first enacted in 1903 and last amended in 1966.

The *Medical Officers Act* authorises the Governor General to divide the Island into medical districts and to appoint a Chief Medical Officer, a resident medical officer and a surgeon for the Victoria Hospital, and other medical officers for Saint Lucia. The Act outlines the duties of the Chief Medical Officer, resident medical officer and the other medical officers.

#### *General Fiscal Benefits*

No fiscal benefits are provided for under this Act. The instruments under which medical benefits may be provided are to be confirmed.

#### **General Observations**

**There is need for a general policy review to confirm the relevance and applicability of the *Medical Officers Act*.**

**Most of the provisions of that Act appear to have been impliedly repealed by the *Constitution of Saint Lucia* and the *Public Health Act* and may be obsolete and should be expressly repealed to ensure certainty and consistency in the application of the law.**

### 2.4.9 Health Practitioners Act, 2006 (No 33 of 2006)

#### *Legal Framework*

The *Health Practitioners Act* provides for the registration and regulation of health practitioners and allied health professionals such as those listed under the spas/wellness namely: Dietician, Herbalists, Homeopaths, Massage therapists, Masseuse, Naturopaths, Reflexologists and Registered acupuncturists

#### *General Fiscal Benefits*

No fiscal benefits are provided for under this Act.

## 2.5 Creative Industries (Incentives) Bill

This *Creative Industries (Incentives) Bill* provides for the establishment of an incentives framework to facilitate and encourage the sustainable growth and development of the creative industries and national festivals.

An “approved creative industry project” would be a creative industry project that has been declared to be an approved creative industry project by the Minister under section 11.

A “creative goods and services” would be goods and services which result from individual or collective creativity or which derive from or result in the creation of intellectual property and activities aimed at satisfying creative interests or needs.

A “creative industry” would include those enterprises which provide the general public with commercially viable creative goods and services that are developed for reproduction and distribution, in the following areas —

- (a) arts and culture— performing arts, visual arts, literary arts, photography, craft, culinary arts, libraries, galleries, museums, archives, heritage sites, festivals and art supporting enterprises;
- (b) design— advertising, architecture, web and software design, graphics, industrial design, fashion, interior and environmental design;
- (c) media— broadcast media including radio, television and cable, digital media, audio-visual content, recorded music and computer games.

An “approved creative entrepreneur” would be a person who organizes, manages and assumes the risk of a business or enterprise in the creative industries sector.

A “creative industry project” would include —

- (a) work in arts and culture, design and media and entertainment;
- (b) the use of new technologies and the development of the social media and data bases for the purpose of enhancing the operation and management of the creative industries sector; and
- (c) the training and professional development of artists, artisans and students of the arts and creative workers.

### *Fiscal Benefits*

Under *clause 13* of the draft Bill an approved creative entrepreneur responsible for an approved creative industry project would be exempt from the payment of import duty, [value added tax] and stamp duty on imports of listed equipment; on operating non-capital supplies necessary for preparing for listed national festivals on building materials and capital equipment purchased locally; and other capital assets. “capital assets” would refer to equipment, apparatus and materials and “imports of operating non-capital supplies” would be defined as goods used in the preparation of national festivals and approved creative industry projects.

A government supported entity would be exempt from the payment of all duties and taxes on imports used for the construction and furnishing of a new building or for the renovation and furnishing of an existing building where that building is to be used primarily for the creative industry project.

The exemption from the payment of duties and taxes would be for a period of 15 years from the date of the importation of the imports or capital assets.

### **Observations**

**The proposed Bill seems to focus on a creative industry project and seems limited in its applicability to the creative industry and does not apply to other service providers, including professional service providers.**

## **PART 3 CONCLUSION AND WAY FORWARD**

### **CONCLUSION**

#### **3.1 *Creative Industries Services Sector***

**3.1.1** The creative industries services sector is growing at 10%<sup>109</sup> annually but is marred by high duties and/or taxes on all inputs to creative expressions, particularly digital or electronic equipment.<sup>110</sup> This includes, musical instruments which must also be logged with customs officials during travel performances to avoid duties on re-entry, as well as duties and taxes on CDs on which the music of artists have been recorded<sup>111</sup>.

**3.1.2** There is therefore an urgent need to enhance the benefits to enable persons operating within the creative industries services sector to invest in various creative

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<sup>109</sup> Creative Industries Strategies and Action Plan, Saint Lucia, page 8

<sup>110</sup> Creative Industries Strategies and Action Plan, Saint Lucia page 7

<sup>111</sup> Creative Industries Strategies and Action Plan, Saint Lucia, page 13

outputs without much difficulty.<sup>112</sup> **(See Appendix 1 for list of suggested approved service areas within the creative industries).**

**3.1.2** The generous incentives extended to the hotel sector, in comparison with the high duties and taxes charged on inputs to the creative industries, which facilitates the services provided by the hotel sector, is a cause of concern within the creative industries<sup>113</sup>. **(See Appendix 2 for list of inputs or items that may be subject to duties or taxes within the creative industries which may be proposed as approved items for the grant of relief).**

### **3.2 Professional Services**

**3.2.1** The professional services sector, as noted in paragraph 2.4, include a wide range of traditional and newer professions; and are high value-added services. It has been suggested that increasing exports of those services from Saint Lucia would provide the opportunity for significant foreign exchange earnings. The knowledge-intensity within the professional services may also lead to multiple spill-over effects within the economy and benefit Saint Lucia socially by encouraging learning, elevating public debates and promoting traditional professional ethics.<sup>114</sup>

**3.2.2** Regrettably, there are no formal investment incentives for the professional services sector, but some *ad hoc* measures.<sup>115</sup> It is noted that most professional services may not be capital-intensive and may not be granted concessions and fiscal incentives as are granted to some industries e.g the manufacturing and agricultural sectors.<sup>116</sup>

**3.2.3** it has been proposed that an incentive system may be established to provide greater weight (in terms of bidding approval points) to international firms that include local service providers in their bids for public procurement tenders in Saint Lucia.<sup>117</sup> **(See Appendix 1 for list of suggested approved professional services for the provision of incentives)**

**3.2.4** Moreover, it has been suggested that tax incentives should be granted to companies that seek advice from local service providers in areas that directly impact growth. To this end, all ICT inputs (the primary tool of professional service providers) should be duty free and such incentive should not be limited to

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<sup>112</sup> Creative Industries Strategies and Action Plan, Saint Lucia page 10

<sup>113</sup> Creative Industries Strategies and Action Plan, Saint Lucia page 13

<sup>114</sup> Professional Services Strategies and Action Plan, Saint Lucia page 4

<sup>115</sup> Professional Services Strategies and Action Plan, Saint Lucia page 10

<sup>116</sup> Under the *Fiscal Incentives Act Cap 15:16*; and the *Agriculture and Fisheries Incentives Act, 2014 (No 13 of 2014)*

<sup>117</sup> see Professional Services Strategies and Action Plan, Saint Lucia

computers but should include e-boards, smart phones, tablets, projectors, etc.<sup>118</sup> **(See Appendix 2 for list of suggested approved items)**

### **3.3 Spas/Wellness Services Sector**

**3.3.1** The spas/wellness services sector in Saint Lucia consists mainly of full spa service facilities and special focus on health and wellness tourism spas provided by large internationally run resorts, small high-end niche resorts and small business owners at various premises, including hospital premises. **(See Appendix 1 for list of suggested approved spas/wellness services for the provision of incentives)**

**3.3.2** However spa development is also an area in which investor incentives are offered by the Government. But incentives in that service sector are available primarily for the benefit of tourists under the *Tourism Incentives Act*.<sup>119</sup> It has been noted that these incentives are difficult to obtain by the small business owners and that inputs to this service sector should be duty free and that the concessions granted to resort spas e. g duty-free equipment, should be granted to other spas and gym operators<sup>120</sup> that are providing spa and wellness services to the tourists and the general public. **(See Appendix 2 for list of suggested approved items in the provision of spas/wellness services)**

**3.3.3** There appears to be no strategic plan for the development of the spa/wellness service sector. It has been recommended that the health and wellness policy of Saint Lucia should be further developed to address the development of the spa/wellness services sector. It has also been suggested that there should be greater coordination among the various Government Ministries and agencies that are responsible for health/wellness and tourism so that a tourism project, can be broadened to include spa services provided to the tourists, as a tourism product.<sup>121</sup> **The policy in this regard needs to be confirmed to remove the spas/wellness sector under the proposed law.**

### **3.4 Information and Communication Technology Services (ICT)**

**3.4.1** The ICT services sector is a high-value industry and functions as a key enabler for virtually all other sectors of the economy.<sup>122</sup> Saint Lucia has developed a five-year National ICT policy and strategy, which was approved by the Cabinet of Ministers in 2013. The strategy outlines many initiatives across several sectors but it focuses

<sup>118</sup> see Professional Services Strategies and Action Plan, Saint Lucia, page 12

<sup>119</sup> Cap 15:30

<sup>120</sup> see The Spa and Wellness Strategy and Action Plan, Saint Lucia)

<sup>121</sup> The Spa and Wellness Strategy and Action Plan, Saint Lucia)

<sup>122</sup> see The Information and Communication Technology Strategy and Action Plan, Saint Lucia page 3)

mainly on the enabling environment – e.g. providing for connectivity, computers in schools, etc. but not on business or commercialization of ICT.<sup>123</sup> The ICT services sector receives positive attention from the Government but duties on ICT equipment, devices and taxes on the ICT services sector appear to be impedimenta to the sustainable development of the ICT services sector. **(See Appendix 1 for list of suggested approved ICT services for the provision of incentives)**

**3.4.2** It has been noted that an attractive incentives package including a tax holiday of up to 15 years and duty-free concessions on imports are incentives that should be provided to the ICT services sector.<sup>124</sup> However, it has also been noted that import duties on computer parts, hardware, mobile phones and tablets negatively affect businesses across sectors by raising costs and impeding ICT-driven innovation and efficiency and duties on mobile phones and tablets impede rural integration and negatively affect businesses (e.g. social media updating, online bill payment, 24/7 work culture required for services exporters).<sup>125</sup> **The draft proposed law suggests that incentives be provided for 5 years. Policy to be confirmed.**

**3.4.3** It has been suggested that duties on computer parts, mobile phones and tablets should be removed, since these duties impede productivity and innovation across all sectors;<sup>126</sup> and that work should be undertaken with stakeholders to develop standards for the ICT services sector. **See Appendix 2 for list of suggested approved items in the provision of ICT services)**

There is need to confirm the tariff numbers for the items listed in Appendix 2 for incorporation in the proposed draft law and to confirm whether or not some of these items are subject to customs duties and taxes. The assistance of the office of the Comptroller of Customs may be sought in this regard for the appropriate description of the listed items.

It is anticipated that due consideration could be given to the comments and recommendations so the appropriate policy could be articulated by the appropriate authority or Ministry to inform the required changes to existing laws and the preparation or finalisation of appropriate law to grant the required incentives to the services sector in Saint Lucia.

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<sup>123</sup> The Information and Communication Technology Strategy and Action Plan, Saint Lucia page 9)

<sup>124</sup> Invest Saint Lucia website: see The Information and Communication Technology Strategy and Action Plan, Saint Lucia page 9

<sup>125</sup> see The Information and Communication Technology Strategy and Action Plan, Saint Lucia page 9

<sup>126</sup> see The Information and Communication Technology Strategy and Action Plan, Saint Lucia page 9

## General observations

*The draft policy document suggests the provision of fiscal as well as non-fiscal incentives to the services sector.<sup>127</sup> The fiscal incentives would include income tax holiday; whereby every investor would be required to pay a minimum tax rate of 8% on taxable income over a period of 5 years and be provided with 100% import duty exemptions on plant, equipment, for a period of 18 months.*

The proposed non-fiscal incentives include —

- (a) The operation of a bonded warehouse by an approved enterprise subject to customs rules and regulations.

*(The service providers to whom this privilege is to be extended to be identified/confirmed and criteria established).*

- (b) The right of abode for investors, their spouses and dependent children under 21 years of age, provided they have continuing investments equivalent to ten million EC dollars (10 Million).

*(This is subject to obligations under the Revised Treaty of Chagauramas, the Revised Treaty of Basseterre regarding the free movement and right of establishment of nationals, and the EPA which may also be implemented on the basis of reciprocity and should be considered against the requirements for Economic Citizenship).*

- (c) Assistance in securing permits and licenses- this covers processing of local permits and facilitation of national government requirements which includes registration.

*(How such assistance would be provided to be confirmed i.e. by a special entity? relevant authority issuing permits should have guidelines for grant of permits).*

- (d) Facilitating service connections with local utilities.

*(How such facilitation would be done to be confirmed i.e. by a special entity? nature of assistance to be confirmed i.e. local utilities should have guidelines for such connections).*

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<sup>127</sup> An Investment Incentives Regime for Saint Lucia (Manufacturing and Services Sectors) Revised October 13, 2014

- (e) Facilitating access to technical assistance programmes of the Government of Saint Lucia and other agencies.

*(How such facilitation would be done to be confirmed i.e. by a special entity? Perhaps the representatives of the various services providers should form an association/ redefined role and membership Chamber of Commerce, to address the non-fiscal areas of support).*

### **Way Forward**

It is anticipated that the stakeholders, appropriate authority and Ministry would confirm the policy and provide the required feedback on the recommended changes to the law, as drafting instructions, to facilitate the preparation of final draft legal instruments.

The Consultant would, in completing this Assignment —

- (1) Meet with the Project Coordinator —
  - (a) to discuss and clarify key issues and policy directives;
  - (b) following validation workshop, to confirm relevant policy issues or suggested changes, if required, to be incorporated in the draft legislation.
- (2) Present the first draft business incentives legislation with supporting Explanatory Notes to the Project Coordinator for scrutiny, discussion and initial feedback.
- (3) Prepare a revised draft business incentives legislation incorporating the suggested changes and other inputs to the revised draft Business Incentives legislation as agreed by the stakeholders and confirmed by the Project Coordinator.
- (4) Prepare the final draft business incentives legislation for review and subsequent approval by the Project Coordinator.

## Appendix 1

### PROPOSED APPROVED SERVICES

#### Category 1: Creative Industries Services —

1. Amusement park and similar attraction services
2. Ancillary theatrical services
3. Band and orchestra entertainment services
4. Circus
5. Crafts and festivals
6. Discotheque and dance instructor services
7. Entertainers and other individual artists
8. Entertainment and audio-visual services
9. Fashion design
10. Interior design services
11. Live and recorded music
12. Music composing
13. Music publishing
14. Musical groups
15. Painting
16. Professional dancing
17. Sculpting
18. Services provided by authors
19. Song writing, writing (literature and poetry)
20. Theatrical producer

#### Category 2: Professional Services —

1. Accounting
2. Advertising services
3. Architectural
4. Auditing
5. Bookkeeping and taxation services
6. Dental
7. Engineering
8. Legal
9. Management consulting and related services
10. Market research
11. Medical
12. Midwifery
13. Nursing
14. Paramedical
15. Physiotherapy

16. Public opinion polling services
17. Urban planning and landscape
18. Veterinary services

**Category 3: Spa and Wellness Services —**

1. Dietician
2. Herbalists
3. Homeopaths
4. Massage therapists, Masseuse
5. Naturopaths
6. Reflexologists
7. Registered acupuncturists

**Category 4: Information and Communications Technology (ICT) Services —**

1. Computer maintenance and repair
2. Data management
3. Hardware and software procurement and installation
4. ICT consulting (e.g. policy and strategy development, research, security)
5. ICT project management
6. ICT support and outsourcing
7. ICT training
8. IT hardware and software procurement and sales
9. Networking
10. Software development
11. Website development

## Appendix 2

### PROPOSED APPROVED ITEMS

#### 1. Audio, Visual and Entertainment Items —

1. Audio-visual software
2. Camera and photography software
3. Cameras and camera accessories
4. Décor items
5. Editing suites, editing equipment
6. Electrical equipment
7. Generators
8. Glue and other adhesives
9. Grip equipment
10. Hand Tools
11. Hydraulic lifts
12. Instrument amplifiers
13. Intercom systems or walkie-talkies
14. Ladders
15. Lighting consoles
16. Lighting dimmers
17. Lighting equipment
18. Lighting gels and gel frames
19. Make up and make up tools
20. National event planning software
21. National event themed items
22. Plastic chairs
23. Production office equipment
24. Production vehicles: grip truck, generator truck, wardrobe truck, and trailers
25. Rope
26. Set pieces and props
27. Sound engineering equipment
28. Sound recording and mixing equipment
29. Speaker labels
30. Speaker management systems
31. Specialised mirrors
32. Stage lighting units
33. Stage trussing
34. Stages
35. Stunt and special effects equipment
36. Tapes, discs recording material
37. Tarpaulin
38. Ticket counters

39. Ticket production systems
40. Trestle tables
41. Vehicles (vans and trucks)

## **2. Creative Art Items —**

1. Anvils
2. Beads
3. Casting machines and accessories
4. Computer and software
5. Credit card machines
6. Drilling machines
7. Electrical & manual potters' wheel
8. Extruders
9. Fabric
10. Fasteners
11. Filing tools
12. Flexible shafts
13. Glazes
14. Glue
15. Hooks
16. Jewellery display cases
17. Jewellery supplies
18. Jewellery tools
19. Kilns (electric or gas)
20. Leather
21. Linoleum
22. Mannequins
23. Metal dyes
24. Metal rolling mills
25. Paper
26. Pug mill
27. Sewing machines
28. Slab rollers
29. Soldering irons
30. Stains
31. Steamers
32. Storage containers
33. Tape measures
34. Torches and accessories
35. Turntables
36. Wire (gold, copper, silver)
37. Wire cutters

## **3. Fashion Items —**

1. Thread machine
2. Button tacking machine
3. Buttonhole machine
4. Clothes racks

5. Display racks
6. Dress forms
7. Dyes of all types and kinds
8. Fabrics
9. Gloves
10. Hillman machine
11. Industrial Irons
12. Labels
13. Mannequins
14. Needles
15. Nippers
16. Notions
17. Overlock (serger) machine
18. Pattern paper
19. Rotary machine
20. Scissors
21. Steamers
22. Straight stitch machine
23. Tape measures
24. Threads
25. Wall fixtures for displaying garments
26. Yarns

**4. Musical Items —**

1. Acoustic drum-kits and accessories
2. Active and passive monitors
3. Active or powered and passive unpowered
4. AD/DA converters
5. All types of acoustic guitars
6. All types of electric guitars
7. All types of strings
8. All-in-one Public address systems and accessories
9. Amplifiers
10. Amplifiers for all instruments
11. Benches
12. Blank CDs
13. Cabasa
14. Cables and snakes
15. Carpeting
16. CD burners
17. CD/DVD flash recorders
18. Channel strips
19. Cleaning agents
20. Compressors
21. Compressors or limiters
22. Computers & music production software
23. Condenser
24. Cowbells

25. Digital and analogue mixers
26. Digital multi-track recorders and accessories
27. Direct boxes
28. Drum sets
29. Drums
30. Duplicating systems
31. Dynamic
32. Electric and battery powered tuners
33. Electronic drum machines or modules
34. Equipment cases
35. Equipment side racks
36. Exciters or enhancers
37. Expander gates
38. Flash drives
39. Graphic equalizers
40. Guiros
41. Guitar accessories
42. Guitar stands
43. Guitars (rhythm and bass) percussion instruments
44. Hand drums: Djembe, congas, maracas
45. Headphone Amplifiers
46. Headphones
47. Key Authorities
48. KeyAuthority amplifiers
49. KeyAuthority controllers
50. KeyAuthority stands
51. Microphones and stands
52. Microphones:
53. Mixers (analogue and digital)
54. Mixing consoles
55. Monitor stands
56. Music stands
57. Pick and pick guards
58. Portable recorders
59. Power amps
60. Professional key Authority
61. Public address speakers
62. Ribbon
63. Signal processing equipment:
64. Single- dual- and multi-channel preamplifiers and accessories
65. Slides, capos
66. Snare-Bass-drums
67. Sound Authorities
68. Sound modules
69. Sound proofing material
70. Speakers
71. Straps and belts for carrying drums

72. Straps, bags and cases
73. Studio desks
74. Synchronizers
75. USB microphones
76. Vibra slaps
77. Wind instruments
78. Wired and wireless
79. Wooden and plastic jam blocks
80. Wooden and plastic tambourines
81. Wooden bongos

**5. Theatrical Items —**

1. Books on theatre
2. Computers laptop or desktop
3. Lighting equipment
4. Recording equipment
5. Theatrical make-up

**6. Visual Arts Items —**

1. Acid free papers for drawing
2. Acid free watercolour papers (packages and
3. Acrylics
4. Animation camera & lenses
5. Animation layout sheets
6. Animation layout table
7. Animation paper
8. Art books and teaching aids
9. Artist portfolios
10. Artist presentation blocks
11. Artist's brushes of all kinds
12. Artists' turpentine and solvents
13. Blungers, jiggers, jolleyers
14. Camera equipment
15. Canvas
16. Canvas (Primed and unprimed) in rolls or ready stretched
17. Canvas Authorities
18. Carving tools
19. Ceramic pencils and crayons
20. Charcoal and graphite sticks
21. Coloured pencils, drawing pencils
22. Containers or tubes for canvases
23. Design Software
24. Digital memory cards
25. Drawing books
26. Drawing pens and ink
27. Dyes
28. Easels (wooden and metal)
29. Encaustic
30. Fabrics

31. Fibre reactive dyes
32. Field guides
33. Filters
34. Fixatives
35. Flashes
36. Flat drawers for storing papers
37. Glazes and stains
38. Gouache
39. Hand tools
40. Illustration Authorities
41. Large format photo printers
42. Layout pads
43. Light boxes and camp stands
44. Linseed oils, gels and varnishes
45. Matt Authorities
46. Matt cutter and blades
47. Oil Paints
48. Palette and painting knives
49. Pastels
50. Peg bars
51. Photo exposure unit
52. Photo printing papers
53. Photo processing software
54. Pottery wheels
55. Printing presses
56. Printmaking
57. Pug mills and related products
58. Raw artist's pigments
59. Screen printing inks and equipment
60. Slab rollers
61. Software for graphic arts
62. Specialists paper
63. StoryAuthority pads
64. Stylus
65. Technical pens
66. Tjanting tools
67. Tripods
68. Various texturing gels and pastes for artists
69. Watercolours
70. Wax

**7. ICT Items —**

1. Cellular telephones
2. Computer hardware and software
3. Fibre optic cable
4. Tablets

**8. Spa and Wellness Items —**

1. Acupuncture needles

2. Body pillows or cushions
3. Diet testing equipment
4. Homeopathy equipment
5. Massage accessory carts
6. Massagers
7. Naturopathy equipment
8. Portable or stationary massage tables and chairs
9. Reflexology equipment
10. Skeletons
11. Thumpers
12. Towels
13. Warmers

**9. Miscellaneous Items —**

1. Batteries of all types
2. Blocks, cleats
3. CD replicating machinery
4. Counterweight systems: pipe and drape infrastructure (plastic and metallic), pulleys, roping systems, weights, shackles
5. Digital snakes
6. Fasteners
7. Flagpoles
8. Flutter flags
9. Inflatables
10. Modular exhibition frameworks
11. Modular signage
12. Plasma screens
13. Power tools
14. Projectors and screens
15. Repeaters
16. Rigging tools
17. Speaker enclosures
18. Staples
19. Tapes, screws, nails
20. Transponders
21. Woods, metals and paints

### ***Appendix 3***

#### **PROPOSED MEMBER STATES**

1. Antigua and Barbuda
2. Barbados
3. Belize
4. Commonwealth of Dominica
5. Grenada
6. Guyana
7. Jamaica
8. Montserrat
9. Saint Lucia
10. Saint Christopher and Nevis
11. Saint Vincent and the Grenadines
12. Suriname
13. Republic of Trinidad and Tobago

## ***Appendix 4***

### **LAWS AND DOCUMENTS EXAMINED**

#### **A. Incentives and Tax Obligations**

Agricultural Credit Act, Chapter 7:02 (Act 19 of 2001)  
(Provides for the facilitation of credit for farmers).

Agriculture and Fisheries Incentives Act, 2014 (No.13 of 2014)

CARICOM (Double Taxation Agreement) Act, Chapter 19:05 (Act 28 of 2001)  
(Gives effect to and provides for the implementation of the CARICOM Double Taxation Agreement in the Caribbean Community).

Customs (Control and Management) Act, Chapter 15:05 (Acts 23 of 1990 and 25 of 2005, S.I. 65/1994, 18/1995, 94/1998, 35/1999, 125/1999, 46/2000, 170/2000, 67/2001, 53/2002 and 172/2005)  
(Consolidates the law relating to customs).

Customs Duties Act, Chapter 15:04 (Acts 24 of 1990, 3 of 1993, 2 of 1994, 23 of 1999, S.I. 30/1993, 51/1993, 2/1996 and 2/2004)  
(Consolidates the Law Relating to Customs Duties)

Customs (Service Charge) Act, Chapter 15:06 (Act 10 of 1989 and S.I. 38/1994, 42/1999, 25/1995 and 41/2003)  
(Imposes a service charge on goods imported under any customs law).

Development Agencies (Tax Concessions) Act, Chapter 15:34  
(Provides tax concessions to certain development agencies)

Development Incentives Act, Chapter 15:14 (Acts 4 of 1963, 39 of 1965 and 15 of 1966)

An Act to encourage the establishment, conduct and expansion of development enterprises in Saint Lucia, and to make provision for the granting of certain relief from customs duties and income tax to companies engaging in such enterprises and for purposes incidental to and connected with any of the foregoing purposes.

Excise Tax Act, Chapter 15:13

External Trade Act, Chapter 13:11 (Acts 5 of 1968 and 5 of 1997)  
(Contains provision in relation to the importation and exportation of goods).

Fiscal Incentives Act, Chapter 15:16 (Act 15 of 1974)  
(Gives effect to the agreement on harmonisation of fiscal incentives to industry).

Free Zone Act, Chapter 15:17 (Act 10 of 1999 and 3 of 2004)  
(Provides for the establishment and operation of free zones in Saint Lucia to foster commerce, trade and investment with other countries; to promote economic growth and development).

Income Tax Act, Chapter 15:02

Invest Saint Lucia Act 2014 (Act 14 of 2014)  
(Provides concessions to stimulate, facilitate and develop investment).

Land and House Tax Act, Chapter 15:13

Micro and Small Scale Business Enterprises Act, Chapter 13:19 (Acts 19 of 1998 and 21 of 2006)  
(Provides a legislative base for micro and small scale business enterprises, to make provision for developmental support and financial relief with respect to micro and small scale business enterprises).

Tourism Incentives Act, Chapter 15:30 (Act 7 of 1996)  
(Provides customs duty and income tax exemption for tourism projects and products).

Tourism Stimulus and Incentives Act 2014 (No.12 of 2014)

Value Added Tax Act, 2012 (No.7 of 2012), Chapter 15:42

## **B. Professional Services Sector**

Architects Registration Act, 2005 (No 11 of 2005)

Architects Registration (Amendment) Act, 2014 (Act 1 of 2014)

Customs Brokers and Customs Clerks Act, Chapter 15:38 (Act 3 of 2001)  
(Regulates the licensing and operations of customs brokers, customs clerks, and apprentices).

Engineers (Registration) Act, Chapter 13:10 (Act 4 of 1985)  
(Provides for the registration of engineers).

Health Practitioners Act, 2006 (No 33 of 2006)

Institute of Chartered Accountants of the Eastern Caribbean (Agreement) Act, Chapter 19:18 (Act 17 of 2003)  
(Gives legal effect to and provides for the implementation of the Institute of Chartered Accountants of the Eastern Caribbean (Agreement)).

Legal Profession Act, Chapter 2:04 (Acts 31 of 2000, 18 of 2001 and 24 of 2006)

(Provides for the reorganisation and regulation of the legal profession, for the qualification, enrolment and discipline of its members).

Registration of Nurses and Midwives Act, Chapter 11:08 (Acts 12 of 1966, 16 of 1967 and 1 of 1993)

(Provides for the Registration of Nurses and Midwives and for the enrolment of Nursing Assistants).

Veterinary Surgeons Act, Chapter 11:09 (Acts 10 of 1957 and 21 of 2006)

An Act relating to the practice of veterinary surgery

### **C Other Legislation**

Draft Creative Industries (Incentives) Bill (St Lucia)

Antigua and Barbuda Hotels Aid Act, Chapter 204

(Provides incentives for hotels).

Jamaica Caribbean Community (Free Movement of Skilled Persons) Act, 1997 (Act 18 of 1997)

(Provides for the entry of skilled and qualified persons).

Jamaica Hotel (Incentives) Act, No. 16 of 1968

(Provides concessions to hotels).

Trinidad and Tobago Fiscal Incentives Act, Chapter 85:01 (Act 22 of 1979)

(Provides fiscal incentives to specific industries).

Trinidad and Tobago Immigration (Caribbean Community Skilled Nationals), Chapter 18:03 Act (Act 26 of 1996)

(Provides for the entry of skilled nationals of qualifying Caribbean countries).

### **D Other Documents**

An Investment Incentives Regime for Saint Lucia (Manufacturing and Services Sectors), Revised October 13, 2014

Creative Industries Strategy and Action Plan – Saint Lucia, Creative Industries Strategy and Action Plan for Saint Lucia, Draft

Information and Communication Technology (ICT) Strategy and Action Plan – Saint Lucia, ICT Sector Strategy and Action Plan, Draft

Professional Services Strategy and Action Plan – Saint Lucia, Professional Services Strategy and Action Plan, Draft

Ramesh Chaitoo, Caroline Allen, Michelle Hustler, Consultants, Situational Analysis of Gender Issues Affecting the Services Sector in Saint Lucia, November 2015

Spa and Wellness Sector Strategy and Action Plan – Saint Lucia, Spa and Wellness Sector Strategy and Action Plan, Draft

An Investment Incentives Regime for Saint Lucia (Manufacturing and Services Sectors) Revised October 2014

CARICOM Draft Model Professional Bills

The Saint Lucia Code of Practice for Beauty and Wellness SLCP 13:2012

Policy and Strategic Framework for the Creative Sector, 2013.

Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Caribbean Single Market and Economy.

Economic Partnership Agreement between the CARIFORUM STATES and the European Community, 30.10.2008, Official Journal of the European Union 1.289/1/3, Title 11 Investment, Trade in Services and Commerce.

The EPA at a Glance... An Overview of the CARIFORUM-EC Economic Partnership Agreement Prepared by the CRNM Information Unit Revised April 2009 Copyright © CRNM 2008.

*Australia Fit and Proper Person Requirements, 2011*

Standards under subsection 186(1) of the National Vocational Education and Training Regulator Act 2011.

OECS Model Banking Act 2015