1. **What is the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), its purpose and why does the Federation of St. Kitts and Nevis need to comply with this initiative?**

On November 14th 2017, the Government was required to join the Base Erosion Profit Shifting (BEPS) Inclusive framework as a requirement under the European Union and Organization for Economic Corporation and Development(OECD)'s good governance standards to reduce the likelihood of being blacklisted in the future. St Kitts and Nevis joined in collaboration with over 125 countries with an aim to put an end to tax avoidance strategies that exploits gaps and mismatches in tax rules to avoid paying taxes by shifting profits to low or no tax jurisdictions. This framework includes 15 Actions of which four (4) represents the agreed minimum all members must implement. These minimum standards allow members to review their own tax systems to identify and remove elements raising BEPS risks or issues.

2. **What are the four (4) Minimum Standards the Federation must implement?**

Action 5 - *Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance*

There are two aspects to the ***Action 5 minimum standard****. There is a process for reviewing preferential tax regimes to ensure they are not harmful, and a transparency framework that applies to tax rulings. Clauses in the laws; Nevis Business Corporation Ordinance, (NBCO), Nevis limited liability Companies Ordinance (NLLCO) and the Companies Act Cap 21.03 that were deemed to be providing preferential treatment to International Business Companies (IBCs) or off shore companies was amended in December of 2018 with grandfathering provisions provided until June 2021.*

Action 6 - *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*

This Action requires the inclusion of an express statement that the common intention of the parties to the treaties is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements.

Action 13 - *Transfer Pricing Documentation and Country by Country Reporting*

The objective of Country-By-Country reporting is to provide Tax Administrations with a high level
overview of the operations and tax risk profile of the largest multinational enterprise groups ("MNE"
Groups).

Action 14 *- Making Dispute Resolutions more effective*

This action ensures that treaty related disputes, mainly of double taxation, imposed on a taxpayer would be resolved in line with international standards. See our established Mutual

Agreement Procedures(MAP)Guidelines and forms used to facilitate the process of a taxpayer filing for the resolution of treaty issues.

3. What are the roles of the Forum on Harmful Tax Practices (FHTP) and the European Union Code of Conduct Group (EU CoCG)?

The FHTP has been conducting reviews of preferential regimes since its creation in 1998 in order to determine if the regimes could be harmful to the tax base of other jurisdictions. The current work of the FHTP comprises three key areas, assessment of preferential tax regimes, monitoring of the transparency framework and the review of substantial activities requirement.

The Code of Conduct is not a legally binding instrument but is a ***political commitment by member states*** *to:*

- *re-examine, amend or abolish their existing tax measures that constitute harmful tax competition (**rollback process**); and*
- *refrain from introducing new ones in the future (**standstill process**).*

Whilst the original focus of the Code of Conduct was on EU member states, member states also committed to promote the adoption of its principles by ***third countries*** *and in territories to which EU treaties don't apply.*

4. What are the Enhanced Transparency requirements?

Closing off a regime is intended to not just prevent new entrants from accessing the regime, but to preclude new activities from benefitting from the regime. Grandfathering rules are, therefore, required to ensure that entities grandfathered under the prior regimes are not permitted to introduce new assets and activities that could benefit from the tax exemptions. Specific to this, Annex B of the OECD 2017 Progress Report on Preferential Regimes specifies: "Closing off an existing regime means that no new entrants are permitted to enter the regime, and that the scope of benefits in the existing regime cannot be substantially expanded for existing beneficiaries (such as making sure that existing beneficiaries are not able to bring new activities or assets under the regime)." The Enhanced Transparency Requirements relate only to the IP aspects of the grandfathered regimes. A taxpayer would not be subject to these requirements if not a new entrant into the IP regime nor benefitted from IP Income during the period August 31, 2018 to December 31, 2018.

5. Who is responsible for completing the CIT-101 Return?

The obligation to provide the information to complete the CIT-101 Return is ultimately the responsibility of the IBCs, LLCs or Exempt Companies registered as at ***December 31, 2019****. The submission of the information to the SKNIRD can be facilitated through a Service Provider or Registered Agent. Information for companies incorporated under the relevant laws after* ***December 31, 2019*** *would not be required as this filing is applicable to the 2019 calendar year.*

6. **What is an Active IBC, LLC or Exempt Company?**

An active IBC, LLC or Exempt Company is a company listed on the Registrar of Companies prepared by the Regulator of the Financial Services Regulatory Commission during the period January 1, 2019 to December 31, 2019.

7. **What if the company is an active company but not in good standing with the Registered Agent/Service Provider?**

The Registered Agent or Service Provider would still be required to exhaust all measures to obtain the information for submission to the Inland Revenue Department or encourage the entities to file on their own behalf. The obligation would cease once the entity becomes inactive.

8. **Who would be liable for the non-compliance penalties?**

Penalties are levied on a registered entity, such as a registered IBC, LLC or Exempt Company for any non-compliance and not the Registered Agent who may be acting on their behalf.

9. **What happens if I am unable to meet the required deadline of August 26, 2020?**

The deadline has been extended to December 31, 2020. If you are unable to meet the extended deadline, you may request an extension to file in writing to the Comptroller of Inland Revenue, indicating your reasons for such failure. The extension is subject to the approval of the Comptroller.

The address is cited below:

Mr. Edward Gift
Comptroller
St. Kitts and Nevis Inland Revenue Department
P.O Box 54
Bay Road
Basseterre, St. Kitts
Email:aeoi.skn@sknird.com

***10.* What are the addresses on the first page of the return related to?**

Each address is specific to its own category. The first relates to the Headquarters of the Registered Entity. The second address relates to the address of the representative entity, which is the Registered Agent/ Service Provider.

***11.* What is the status of the grandfathered regimes?**

St. Kitts and Nevis' grandfathered regimes were reviewed under written procedure on October 14, 2020 and the status of the regimes were updated from "Under Review" to "Abolished". This therefore means, that we are now in scope for the annual monitoring exercises with respect to all our grandfathered Non-IP Regimes. Pursuant to Annex B, paragraphs 3-7 of the 2018 BEPS Action 5 Progress Report, the jurisdiction now has the obligation to provide data annually to the FHTP on the number of taxpayers and on the amount of income benefiting from the grandfathering.

***12.* When does the monitoring process commence and cease?**

The monitoring process commences from the time at which the grandfathering period commences. With reference to the 2018 and 2019 amendments made to the Companies Act, the Nevis Business Corporation Ordinance and the Nevis Limited Liability Ordinance, the grandfathering period commences January 1 2019. The monitoring requirements will cease after the data with respect to the end of the grandfathering period is reported. This is in accordance with Annex B, paragraph 27 (page 32) of the 2017 BEPS Action 5 Progress Report and Annex B, paragraphs 5-7 (pages 59-60) of the 2018 BEPS Action 5 Progress Report.

***13.* What is the prescribed format for submitting the CIT-101 Return?**

The Comptroller has prescribed that the return be filed via the online portal found on the SKNIRD's website. The option to upload the CIT-101 form is not available. Registered Agents, Service Providers and Registered Entities are required to utilize the portal as this is the only mode of submission.

***14.* What if the entity is not Tax Resident in any jurisdiction?**

*If the entity is not a tax resident anywhere, then the "**No Country**" option should be selected.*

Useful Links

FSRC April 2019 Newsletter
https://www.nevisfsrc.com/april-2019-newsletter-beps-and-its-impact-on-the-financial-services-industry/

News and Press Releases on St. Kitts and Nevis' removal from EU's list of non-cooperative jurisdictions and publication of OECD FHTP Progress Reports
https://www.consilium.europa.eu/en/press/press-releases/2020/02/18/taxation-council-revises-its-eu-list-of-non-cooperative-jurisdictions/?utm_source=POLITICO.EU&utm_campaign=c54d59d548-EMAIL_CAMPAIGN_2020_02_18_09_55&utm_medium=email&utm_term=0_10959edeb5-c54d59d548-190444085

Annex B of the OECD 2017 Progress Report
https://read.oecd-ilibrary.org/taxation/harmful-tax-practices-2017-progress-report-on-preferential-regimes_9789264283954-en#page28

BEPS Action 5 on Harmful Tax Practices
https://www.oecd-ilibrary.org/search?value1=action+5&option1=quicksearch&facetOptions=51&facetNames=pub_igoId_facet&operator51=AND&option51=pub_igoId_facet&value51=%27igo%2Foecd%27&publisherId=%2Fcontent%2Figo%2Foecd&searchType=quick

http://www.oecd.org/tax/beps/beps-actions/action5/

Companies Act 21.03 and Companies (Amendment) Acts
https://www.fsrc.kn/law-library/companies

Nevis Business Corporation Ordinance 2017 and Amendments
https://www.nevisfsrc.com/services/ibcs/

Nevis Limited Liability Company Ordinance
https://www.nevisfsrc.com/services/llcs/

Income Tax Act Cap 20.22
https://www.sknird.com/UserFiles/TaxLib/190426075803.pdf

Code of Conduct Group
https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/