

Enhanced Framework for Imposing GCT on Imported Services

Recall:

In 2003, the General Consumption Tax (GCT) Act was amended to require the local recipients of “imported services” to account for GCT on the value of such services, since the Jamaican Revenue is unable to collect GCT from the foreign supplier of those services. However, the legislative provisions to codify the administrative procedures to support the implementation of this measure were never developed. Additionally, there was no elaboration as to the circumstances in which a service would be deemed to be “imported”.

In his budget presentation of 30 April 2014, the Honourable Dr. Peter Phillips, Minister of Finance and Planning, stated that, as a revenue raising measure, the regulations surrounding the imposition of GCT on imported services would be enhanced.

The Minister indicated further that the GCT Act would also be amended to prohibit a taxpayer’s claim to input tax credits in respect of GCT incurred on imported services.

These proposals resulted in significant disquiet amongst a wide cross-section of the society and there has been great anticipation as to what the enhanced framework along with the specific rules would require, particularly with respect to the claiming of input tax credits that will guide the implementation.

The enhanced framework:

The Provisional Collection of Tax (General Consumption Tax) (No. 5) Order, 2014 dated 28 June 2014 introduced certain amendments to the GCT Act and Regulations which are aimed at clarifying the operation of the regime relating to GCT on imported services and imposing certain preconditions governing a taxpayer’s ability to claim input tax credits in respect of GCT incurred on imported services.

In summary, the amendments provide for:

- **A new definition of what constitutes “imported services”;**
- **Specific requirements regarding the accounting for GCT on imported services; and**
- **Specific rules and restrictions regarding the claiming of input tax credits.**

The amendments also impose an obligation on certain recipients of imported services who are not registered taxpayers to account for GCT on imported services.

Imported services – defined

Prior to this update, the absence of a clear explanation of the circumstances in which a service was deemed to be imported was a major shortfall in the legislation. This has now been addressed in the amendments.

“Imported service”:

A supply of services (other than services that are exempt from GCT under the Act) to a person who is resident in Jamaica by a person who –

- (a) is not resident in Jamaica; or
- (b) is resident in Jamaica, where the services are supplied by a business carried on by that resident outside Jamaica,

to the extent that the services are utilized in Jamaica and to the extent that the supply of the services would be a taxable supply (i.e. subject to GCT) if they were performed in Jamaica by a registered taxpayer.

Revised section 23B – Payment of tax in respect of imported services

GCT is imposed on imported services pursuant to section 23B of the Act. The amendments revise section 23B to provide greater clarity on the imposition of GCT on imported services as described above.

The amendments clarify that the recipient of imported services (referred to as a “service importer”) shall be:

- (i) deemed to be the supplier of the services;
- (ii) liable for the GCT payable in respect of the services; and
- (iii) required to file a return and to pay the GCT in accordance with the Act.

Except in the circumstances outlined below, where the service importer is not a registered taxpayer, he shall be deemed to be a registered taxpayer for this purpose and is subject to the above requirements.

The requirement to account for GCT in respect of imported services does not extend to:

- (a) a service importer who, in the 12-month period immediately preceding the date he receives imported services, makes supplies (other than any imported services he received during that 12-month period) that have an aggregate value of less than J\$3 million; or
- (b) a service importer who is an individual and the imported services received by him are for his private use.

Regulations governing the claim of an input tax credit

As previously noted, the Minister had proposed that most taxpayers would not be able to claim input tax credits in respect of GCT incurred on imported services. This restriction has been applied only in some circumstances where the services are supplied by *connected* persons.

Taxpayers may claim input tax credits in respect of GCT incurred on imported services (in accordance with the GCT Regulations) as follows:

- (a) Where a service importer receives imported services from an *unconnected* person and is liable to GCT in respect of the imported services, he is entitled to claim as a credit any input tax payable in respect of those services.
- (b) Where a service importer receives imported services from a *connected* person, he may only claim a credit if he can prove to the satisfaction of the Commissioner General, Tax Administration Jamaica that the following two conditions are met:
 - (i) the consideration payable by the service importer to the *connected* person for the imported services does not exceed the market value for those services; and
 - (ii) the *connected* person has the capacity to supply the imported services to the service importer.

The term “connected person” is defined in the Income Tax Act and covers a wide array of relationships. As a general rule, companies that are ultimately beneficially owned by the same shareholders in whole or in part would fall within the definition.

Calculation and filing of GCT on imported services

Form 4A - General Consumption Tax Standard Return available on the Tax Administration Jamaica website (a copy of which has been included below) has been expanded to include sections 15a, 15b and 23b to facilitate the reporting of GCT on imported services. The following outlines our understanding of how this form is to be completed in respect of GCT on imported services:

Output tax

A service importer (who is not exempt from accounting for GCT in respect of imported services) receives imported services to the value of, say, J\$100,000 in a taxable period.

In respect of that taxable period, he is required to include in his GCT Return the value of imported services he receives and to reflect the GCT thereon as a component of output tax.

Using an extract of the revised Form 4A for illustration, the service importer would include the J\$100,000 as imported services in box 15a, indicate that the applicable GCT rate is 16.5% in the adjoining box, and include J\$16,500 as a component of output tax in box 15b, as follows:

Supplies of certain categories							
Imported Services (Exclude from Line 6 above)	15a	100,000.00	x	16.50 %	=	15b	16,500.00

Note that line 6 is used to indicate the total value of supplies made in a taxable period. The value of imported services is not to be included in line 6.

Input tax

To the extent that the imported services were acquired for the purpose of making taxable supplies and to the extent that the conditions above relating to imported services received from connected persons (where applicable) are met, the service importer would then claim input tax credits in respect of these imported services (in accordance with the GCT Regulations).

For example, where the imported services are considered to be general overhead expenses (and do not specifically relate to particular supplies) and the service importer makes both taxable and exempt supplies during the taxable period, he would be entitled to a claim for input tax credit in respect of the services in the proportion of taxable to total supplies. If this proportion is, say, 60%, this claim for input tax credit would be J\$9,900 (60% of J\$16,500, subject to the GCT Regulations) in respect of the services imported during the period.

Again, using an extract of the revised Form 4A for illustration he would include this claim in box 23b as a component of input tax credits as follows:

GCT on Imported Services	23b	9,900.00
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In this example, the service importer would have a net payable of J\$6,600 (J\$16,500 less J\$9,900) in respect of imported services for the taxable period.

Note that the service importer could recover the entire amount of GCT on imported services as an input tax credit where those services relate entirely to the making of taxable supplies. In contrast, where the services relate to the making of exempt supplies, or where the services do not relate to particular supplies but the service importer has a low proportion of taxable to total supplies, he would be able to claim little or no input tax credit in respect of the services.

Those most affected

The effect of this regime is that taxpayers who acquire imported services and whose supplies are wholly or partially exempt from GCT (for example those in the financial and construction sectors and certain manufacturers) will incur additional GCT costs arising from the tax that they pay on those services even in circumstances where the services may not be available locally.

Where the payment for the imported service requires income tax to be withheld at source, it is usual that the service importer has to gross-up the payment to compensate the supplier for the tax suffered. In those cases, the service importer bears at least two instances of tax on the same supply.

To be complete, we mention too that, in some circumstances, service payments are included in valuing goods for Customs purposes, effectively resulting in further taxes on the service.

See below a copy of the expanded Form 4A - General Consumption Tax Standard Return available on the Tax Administration Jamaica website (www.jamaicatax.gov.jm/forms/gct/4a.pdf) for reference. Note the new sections 15a, 15b and 23b for reporting information regarding imported services.

THE GENERAL CONSUMPTION TAX ACT		RESET	PRINT
GENERAL CONSUMPTION TAX RETURN		SAVE	
<i>Please Read Instructions Overleaf before completing this Return</i>			
Section A: GENERAL INFORMATION		2. Taxpayer Registration Number (TRN)	
1. Name of Business		3. Return Period <i>Enter year and select month from drop-down list</i>	
4. Address of Business		5. Tick if applicable. <input type="checkbox"/> New Address <input type="checkbox"/> Revised Return	
Section B: SUPPLIES (Goods & Services)			
Total Supplies made during the Period		6	
Exempt Supplies		7	
Export Supplies		8	
Zero-Rated Supplies		9	
Taxable Supplies <i>(Subtract Line 10 from Line 6)</i>		10	0.00
		11	0.00
Section C: OUTPUT TAX			
Supplies at Standard Rate	12	X	% = 13 0.00
Supplies at Other Rate(s)	14	X	% = 15 0.00
Imported Services <i>(Exclude from Line 6 above)</i>	15a	X	% = 15b 0.00
GCT Due on Goods Used for Exempt Activities, Personal Use and other Adjustments		16	
Total Output Tax <i>(Add Lines 13, 15, 15b and 16)</i>		17	0.00
Section D: INPUT TAX/TAX CREDIT			
Total Local Purchases & Expenses that Qualify for Credit	18		
GCT on Local Purchases & Expenses that Qualify for Credit			19
GCT Paid on Imports			22
GCT on Capital Goods that Qualify for Credit			23
GCT withheld by Tax Withholding Entities <i>(To claim, return must be e-filed with details as per Table 1 overleaf)</i>			23a 0.00
GCT on Imported Services			23b
Adjustments - Specify:			24
Total Input Tax <i>(Add Lines 19, 22, 23, 23a, 23b and 24)</i>			25 0.00
Section E: GCT PAYABLE / CREDITABLE			
GCT Payable/Creditable <i>(Subtract Line 25 from Line 17)</i>	26	0.00	OFFICIAL USE
Balance Brought Forward: Payable/Creditable	27		
Total <i>(Add Lines 26 and 27)</i>	28	0.00	
GCT Being Paid this Period	29		
If amount at Line 26 is negative, tick appropriate box at Line 30	30	<input type="checkbox"/> Refund <input type="checkbox"/> Credit	
Section F: DECLARATION: (To be signed by Taxpayer only)			
I declare that to the best of my knowledge and belief this is a true and correct statement of the information and particulars given on this form.			
Name of Responsible Officer		Title	
Signature		Date	
Representative's Details - (To be completed if prepared by person other than Taxpayer)			
Preparer's Name (Individual/Firm)		Address	
TRN	Contact Number	Signature	Date

If you have any further questions in connection with the above or would like to explore further how the above proposed tax measures may impact your business or personal arrangements, please feel free to contact any member of our specialist tax team listed below or your usual PricewaterhouseCoopers Jamaica contact.

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