

Minimum Business Tax – a new tax Regime

Introduction:

The Provisional Collection of Tax (Minimum Business Tax) Order, 2014 came into effect on 1 April 2014. The Order imposes a Minimum Business Tax (MBT) on specified taxpayers (including certain individuals) at the rate of \$60,000 per annum.

While MBT is effective from 1 April 2014, it is our understanding that the amount due in respect of the year of assessment 2014 is not to be apportioned. The MBT is not an income tax, however certain provisions of the Income Tax Act are deemed to apply in respect of the MBT.

MBT at a glance...

MBT is imposed on:

- companies and bodies corporate registered under the Companies Act, the Building Societies Act, the Friendly Societies Act or the Industrial & Provident Societies Act including:
 - dormant and loss making companies
 - companies that are relieved or exempted from income tax by specific legislation
- individuals who operate a trade, profession, vocation or business that has gross revenue of at least \$3 million in a year of assessment.

MBT is charged at an annual rate of \$60,000, payable in two tranches as follows:

- \$30,000 on or before 15 June each year
- \$30,000 on or before 15 September each year

Which taxpayers are liable to MBT?

MBT is imposed on the following two categories of taxpayers (specified taxpayers):

- (1) A company or body corporate registered under any of the following enactments (other than where the company or body corporate is a charitable organization registered under the Charities Act):
 - (a) the Companies Act (including branches of foreign companies);
 - (b) the Building Societies Act;
 - (c) the Friendly Societies Act; and
 - (d) the Industrial and Provident Societies Act
- (2) An individual who operates a *trade, profession, vocation or business* that has *gross revenue* of at least \$3 million in a year of assessment.

The Order defines “gross revenue” in relation to an individual as the individual’s statutory income (taxable income) for a year of assessment less:

- (i) the amount of the tax-free threshold; and
- (ii) any income he earns from emoluments.

The MBT applies to all companies or bodies corporate that meet the above criteria, regardless of whether the entity is exempt from income tax, is loss-making or has a nil income tax liability for any other reason.

Can MBT paid in respect of a year of assessment be applied against a taxpayer’s income tax liability in respect of that year?

MBT paid by a specified taxpayer in respect of a year of assessment may generally be credited against the taxpayer’s income tax liability for that year of assessment. There are certain rules (explained below) that apply in instances where MBT that is paid in respect of a year of assessment exceeds a taxpayer’s income tax liability in respect of that year.

Where MBT paid by a taxpayer in respect of a year of assessment exceeds his income tax liability for that year, could this excess be refunded or carried forward to reduce tax liabilities arising in future years?

Where MBT paid exceeds a specified taxpayer’s income tax liability for a year of assessment, then:

- (i) In respect of a company or body corporate, the excess is not refundable and may not be carried forward or credited against minimum business tax or income tax payable in a subsequent year of assessment; and
- (ii) In respect of an individual, the individual (upon filing his income tax return for the year of assessment) is entitled to a refund of the excess, or, where the excess is not refunded, may apply the excess as a credit against income tax (but not minimum business tax) in a future year of assessment.

What is the penalty for non-payment?

If the MBT is not paid by the end of the month in which it is due, a penalty of 1.5% per month (or part thereof) is leviable on the outstanding amount.

Would a taxpayer be liable to MBT where he makes estimated income tax payments that exceed the amounts due under the MBT regime?

Under the regime, MBT is payable by specified taxpayers regardless of any provisions in the Income Tax Act or any other enactment. This implies, *prima facie*, that the MBT is payable in addition to any income tax due (that exceeds the minimum tax) in respect of the Declaration of Estimated Income and Tax for the year of assessment.

Although most taxpayers would have already filed their Declarations of Estimated and Income and Tax for 2014, it may be prudent, in circumstances where the credit is less than or equal to the estimated income tax liability, to revise the Declaration in order to take account of the MBT that is to be paid for 2014. This action should eliminate the possibility of an overpayment of income tax which may result from the payment of the MBT.

We caution, however, that the submission of a revised Declaration is subject to review and acceptance by the Commissioner General, Tax Administration Jamaica.

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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