

Taxation Services

Client Newsletter

New Tax Measures - An Update

Commentary Based on Promulgated Legislation



January 2010

PRICEWATERHOUSECOOPERS 

New Tax Measures — An Update

Introduction

We have now seen the Orders (issued under the Provisional Collection of Tax Act) dated 30 December 2009 implementing the revenue raising measures that were announced by the Honourable Prime Minister on 23 December 2009 and most of which came into effect on 1 January 2010. We had commented on these previously in our Newsletter circulated on 24 December 2009.

The tax changes have evoked a number of concerns by taxpayers as they seek to ensure that they comply with their obligations under the law. A number of matters which gave cause for uncertainty have been clarified by the legislation, but there are still certain implementation issues which will need clarification in due course.

We now outline in this Newsletter, our understanding of the effect (as well as some challenges) of the legislation as promulgated and highlight some of the issues that will arise on implementation. We also identify issues which we believe require clarification and will advise further as our consultations with the Revenue in this regard proceed.

Income Tax for Individuals

Progressive Tax Rates

The Provisional Collection of Tax (Income Tax) (No. 4) Order, 2009, which was promulgated in the Jamaica Gazette Supplement No.111 of December 30, 2009, sets out the tax rates applicable to individuals as of January 1, 2010. The Order provides that the tax rates are applicable to the **statutory income** of an individual, on a graduated scale, as follows:

<u>For income arising on or after 1 January 2010:</u>	<u>Tax Rate</u>
On the first \$441,168	NIL
For every dollar of income exceeding \$441,168 but not exceeding \$5,000,000	25 cents
For every dollar of income exceeding \$5,000,000 but not exceeding \$10,000,000	27.5 cents
For every dollar of income exceeding \$10,000,000	35 cents

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The following points are worthy of note, based on the provisions of the Order.

There was widespread concern that individuals earning above \$10 million per annum would pay tax at the rate of 35% on their entire income (and that those earning between \$5 million and \$10 million would pay at 27½%). It is clear that this is not so. The higher tax rates will only apply to that portion of the income that exceeds these levels. Hence, the effective rate of tax will be as follows:

	\$	Effective Rate %
Tax on the first \$5 million	1,139,708	22.79
Next \$5 million	1,375,000	25.15
Income in excess of \$10 million	Taxed at 35%	

The foregoing does not take account of tax-deductible National Insurance (NIS) and pension contributions or exemptions available to pensioners in receipt of approved pensions and those aged 65 years and older.

It is also interesting that as no adjustments were made to the rates applicable to non-resident individuals, they will continue to be taxed at a flat rate of 25% on income arising in Jamaica. Although non-resident individuals are not eligible for the tax free threshold available to residents, this rate differential would give them an advantage over residents to the extent that their earnings exceed the levels indicated for the higher rates. Note however, that non-residents do not benefit from the zero-rate of tax applicable to dividends.

The adoption of progressive tax rates presents a few challenges for employers that are yet to be addressed by the Revenue. For example, under the previous flat rate regime, tax deductions were calculated on an even basis so that tax-payers get the benefit of the tax-free threshold on a prorated basis over the number of pay periods. Hence, employees were not exposed to significant variations in tax from one pay period to another, (i.e. monthly or weekly) over the tax year.

Given the new graduated rates of tax, situations such as the following will need to be addressed on an urgent basis:

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- Where an employee commences the year at earnings that fall into one of the three bands of income, but gets an increase that takes him into another band during the year, will the higher rate be applied to all payments made from the point when he surpasses the threshold or should tax be deducted in anticipation of this event, e.g. by using monthly bands?

For example, at what point during the year would an employee earning \$400,000 per month start to suffer tax at the rate of 27½% if he got an increase of \$80,000 per month in March? At his new rate of pay his earnings will not exceed \$5 million until November so would this be when part of his emoluments will be taxed at 27½% per month or will it commence in March? If this results in the over deduction of tax at the year end, how will refunds be dealt with? This will be of particular concern to employers who pay commissions, which cause the employees' earnings to vary dramatically from pay period to pay period.

- What rate of tax will an employer be expected to apply in respect of payments to persons, such as non executive directors and consultants whose income derived from a particular employer represents only a portion of their overall income. Will the TAAD provide rate certification for these persons or should the lower rate be applied? Will a rate schedule also apply to these persons?

It appears that the authorities will need to revert to the procedure of issuing tax tables (or some similar mechanism) to achieve these objectives which will complicate the payroll preparation process for large payrolls.

Other Implications for Individuals

Prior to these amendments a significant number of employed persons were not required to file income tax returns as their income, whether arising from employments or investment income, was already taxed at source. Hence, in accordance with the Income Tax Act, there was no obligation to file an Income Tax Return as there was no liability.

The introduction of a tiered tax system now requires an individual to aggregate his income from all sources in order to determine (given that the withholding tax on investment income is 25%) whether there has been an under payment of tax for the year of assessment and account for same to the Commissioner by way of an Income Tax Return.

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Additionally, as the rate of tax is determined by reference to the statutory income of an individual, a resident individual who earns dividend income from a Jamaican company would be expected to include such income in arriving at his statutory income for this purpose, notwithstanding that such income is taxable at zero percent (0%). This means that although no tax will be due in respect of the dividend income, the inclusion of that income could result in a liability to tax at the higher level in respect of other sources of income earned by the individual. We do not know if this was the intention of the policymakers, but have requested clarification in this regard.

Sole Traders and Professionals

Persons operating businesses or who provide services in an individual capacity have requested our guidance as to whether it would be advantageous for them to provide such services through a company. The appropriate answer will vary from individual to individual and the type of business being conducted. However, from a taxation perspective, the following may be useful in considering this issue:

1. An individual must aggregate all his income in determining the tax band in which his income falls, not just his employment income. Hence, he will need to include his investment income and income from all other sources in arriving at his appropriate rate of tax (see effect of dividend income above).
2. A company will pay income tax at the rate of $33\frac{1}{3}\%$ on **ALL** of its taxable income, whereas an individual will pay tax at a similar effective rate only when his aggregate taxable income exceeds \$59 million. This will need to be contemplated in the context that there are statutory and other costs involved in administering a company.
3. There are anti-avoidance issues to be contemplated, depending on the specific circumstances of an individual who works under a contract of service (as against a contract for services).
4. As you may be aware, the Income Tax Act deems payments for the provision of “personal services” of an individual through a service company, in certain circumstances, to be “emoluments” which must be subject to income tax under the Pay As You Earn (P.A.Y.E) system. In those cases,

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other payroll taxes should also be deducted.

We are not able to provide more detailed advice on this issue on a general basis, since the individual's specific circumstances will dictate the arrangement that is most suitable so we invite you to discuss this in greater detail with us.

General Consumption Tax

Advanced GCT Payment

The Provisional Collection of Tax (General Consumption Tax) (No. 23) Order, 2009, which was promulgated in the Jamaica Gazette Supplement on 30 December 2009, indicates certain GCT measures that will take effect in 2010. Amongst them is the Advanced GCT Payment that came into effect from 1 January 2010.

The Advanced GCT Payment (AGP) is payable by “commercial importers” and represents an additional 5% on the import value of the goods. A “commercial importer” is defined in the Order as *“..a registered taxpayer who, in relation to a taxable supply, imports into Jamaica any goods that the Commissioner of Customs is satisfied is (sic) imported for resale or use in carrying out a taxable activity.”*

The AGP is available as a credit in accordance with Regulation 14 to the GCT Act, which deals with input tax credits. Therefore, to the extent that there are restrictions in the claiming of an input tax credit, we would expect that these would also apply to the AGP.

The AGP does not apply to the importation of the following goods:

1. petroleum products specified in the Second Schedule to the GCT Act,
2. capital goods within the meaning of the Customs Act,
3. goods imported under the GCT deferment scheme, for example as raw materials for the purpose of manufacturing,
4. goods that are zero rated or exempt from GCT,
5. telephone instruments, and

6. goods imported for which an uplift fee is chargeable under the GCT Act.

Whereas the Order identifies those goods that will not be subject to the AGP, we foresee some difficulty in applying the provision at the port of entry.

The definition of “commercial importer” would suggest that persons who import goods for use in a GCT-exempt business (which is not a taxable activity) should not be regarded as commercial importers (since they are not importing goods for resale or use in carrying out a taxable activity) and therefore not subject to the AGP on such imports. For example, when a taxpayer, whose activities consist primarily of the making of exempt supplies, imports goods subject to GCT, those goods will also be liable to AGP unless the importer is certified that he is not a “commercial importer”. The Revenue will need to clarify how such importers should be treated.

In the event that the tax is collected at the port in error, what provisions will be put in place for refunds to be made promptly? Such taxpayers are not generally eligible for input tax credits as their activities are exempt from GCT.

Insurance Premiums

General insurance companies are required to account for GCT at the point of payment by the customer even if the invoice was issued earlier. Therefore, the increase in the rate of GCT to 17.5% will affect customers who are paying general insurance premiums from 1 January, even if they relate to a contract that was made earlier.

GCT on the Payments Basis

The GCT Act permits certain registered taxpayers, such as those providing telephone services and professional services to account for the tax on the payments basis; i.e. on the Return related to the period in which the tax is collected. As far as we are aware, the increase in the rate of tax as of January 1 should not, in most cases, affect invoices issued or services rendered by those persons prior to January 1. However, as there are some exceptions, if you are uncertain of your position in this regard please contact us for advice on the specific transaction.

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Imported Services

Although the Minister had announced the enforcement of the existing provisions for GCT on imported services from last year, we understand that a mechanism for collection and reporting of the tax is still to be decided. We have not received any further word with respect to the implementation of this measure though we understand that the intention was that this regime should have been implemented as of 1 July 2009.

GCT on the Acquisition of Motor Vehicles

There are special rates for claiming input tax credit by a registered taxpayer in relation to the acquisition of motor vehicles, depending on whether the vehicles are classified as private or commercial. The claim is further modified for a taxpayer involved in the business of leasing of motor vehicles or U-drive services (car rentals). The increase in the general rate of GCT to 17½% has therefore resulted in changes in the available input tax credit to these persons as outlined below:

Registered taxpayer – general taxable activities

- Where a private motor vehicle, (see further explanation below) is acquired, the GCT input credit has increased to 7.45% (up from 7%) of the cost inclusive of GCT providing this cost does not exceed a limit of the J\$ equivalent of US\$35,000.
- In the case of commercial vehicles (this generally includes trucks and pickups) an input credit is available as follows:
 - ◆ Where the rate of GCT suffered on acquisition does not exceed 17.5%, (up from 16.5%) the full amount of the GCT may be claimed by way of input credit.
 - ◆ Where the rate of GCT suffered on acquisition exceeds 17.5%, a credit of 14.9% (up from 14%) of the cost inclusive of GCT will be available.

Please bear in mind that if the taxpayer uses the motor vehicle partly for ex-

empt activities then the input credit must be further restricted in accordance with the proportionate use.

Motor Vehicle Lessors & U-Drive Businesses

These taxpayers may claim input tax credits in respect of motor vehicles as follows:

- Where the rate of GCT suffered on acquisition does not exceed 17.5% (this normally applies on the acquisition of second-hand vehicles), the full amount of the GCT may be claimed by way of input credit. This is subject to a limitation that the cost inclusive of GCT, in respect of private vehicles, does not exceed the Jamaican dollar equivalent of US\$35,000.
- Where the rate of GCT suffered on acquisition exceeds 17.5%, a GCT input credit will be available of 14.9% of the cost inclusive of GCT, up to a limit of the J\$ equivalent of US\$35,000, if classified as a private vehicle.

Private Motor Vehicles to which the US\$35,000 restriction applies:

A motor vehicle to which this restriction applies is one described in Section (11)(1)(c) of the Road Traffic Act: i.e.

“11(1)(c) - motor cars: that is to say, motor vehicles (not being classified under this section as motor cycles or invalid carriages which are:

- a. constructed solely for the carriage of passengers exclusive of the driver;*
- b. adapted to carry not more than seven passengers exclusive of the driver;”*

and this definition shall include for the purposes of paragraph 14(5)(b)(i) GCT Regulations 1991;

“...any motor vehicle of the type sold under the brand name or description of Station Waggon, Estate Car, Range Rover, Jeep or Pathfinder or any other vehicle which in the opinion of the Commissioner, is of a construction similar to such type, and buses which have less than ten (10) seats including the driver’s seat.”

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If you require specific advice on the implications of these new tax measures for your business operations or further assistance in connection with any matters outlined herein, please feel free to contact any member of our specialist tax team listed below or your usual PricewaterhouseCoopers Jamaica contact.

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Important Notice: PricewaterhouseCoopers has prepared this Client Newsletter to alert clients on new tax measures as promulgated by Orders signed by the Minister of Finance & the Public Service on 30 December 2009. The consequences of these Orders are outlined in general terms and for information purposes only and therefore should not be acted upon without securing professional advice

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