

Advancing Tax Reform*

2009/10 Tax Measures - Implementation Update

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Foreward

In our Client Newsletter dated 23 April 2009 we outlined new revenue measures announced at that time by the Honorable Audley Shaw, Minister of Finance and the Public Service for implementation in the 2009/10 fiscal year.

Legislation has since been promulgated to give effect to a number of these measures including the Provisional Collection of Tax (Income Tax) Order, 2009 (“the Order”) which was signed by the Honorable Minister on 19 June 2009 and which has just come to hand.

This Newsletter highlights the legislative changes implemented by the Order and comments on the likely impact these changes will have on taxpayers.

In addition we also briefly comment on the remaining 2009/10 tax measures in respect of which we await enabling legislation.

PricewaterhouseCoopers Jamaica
26 June 2009

Dividends paid to Jamaican residents are tax-free from 1 January 2009

Tax-free status is not extended tax-deductible preference dividends

Dividends paid by JSE-listed companies to all non-resident shareholders now taxable

Dividends Paid To Resident Shareholders:

In keeping with the announcement by the Prime Minister in December 2008, Section 30 of the Income Tax Act (“the Act”) has been amended so that dividends derived by Jamaican tax residents from resident companies will not suffer income tax with effect from 1 January 2009 (the legislation provides that the income tax payable “shall be nil”). This applies whether or not the resident company is listed on the Jamaica Stock Exchange (JSE).

This amendment has been much anticipated and effectively extends the tax-free treatment previously confined to shareholders of JSE-listed companies to all Jamaican resident shareholders.

It is important to note however that this treatment does not extend to preference dividends which qualify for tax relief under Section 13(3) of the Act. This is addressed in further detail herein.

Major Reform of Dividend Taxation Rules

Dividends Paid To Non-Resident Shareholders:

The tax-free treatment now being afforded to resident shareholders in receipt of dividends from resident companies will no longer (as a result of an amendment to Section 31 of the Act) be extended to non-resident corporate shareholders of JSE-listed companies.

On this basis, all dividends paid by a company (irrespective of whether it is listed on the JSE or not) to non-resident shareholders are now fully liable to income tax thereon (subject to any treaty protection or incentive relief available).

Although the Minister announced in his 2009/10 Budget Presentation that this change would become effective on 1 July 2009 (see Ministry Paper # 26 dated 23 April 2009), no specific mention of this date was made in the Order. As a result, this amendment apparently became effective on the date of the Order, viz. 19 June 2009.

This will be of concern to JSE-listed companies intending to make dividend payments to non-resident shareholders between this date and the end of June since they would have expected such dividends to be tax-free as long as they were paid before 1 July 2009. We anticipate that the legislative drafters will revisit this issue given the discrepancy with the Minister's announcement which we have brought to their attention.

Major Reform of Dividend Taxation Rules

Treatment of Preference Dividends:

Section 13(3) of the Act provides that a company may claim an income tax deduction in respect of preference dividends paid subject to meeting certain conditions. Historically there was no requirement to withhold income tax upon making tax-deductible preference dividend payments to shareholders.

Through the addition of Section 30(4) to the Act, the Order excludes tax-deductible preference dividends from benefiting from the tax-free status now afforded to dividends received by Jamaican resident shareholders from resident companies. On this basis, tax-deductible preference dividends paid by a company are now fully taxable in the hands of its shareholders (whether resident or non-resident).

This amendment is of particular importance to companies which have listed preference shares on the JSE as dividends paid in respect of such shares will no longer enjoy the zero rate of income tax previously enjoyed. Shareholders in receipt of such dividends will now be fully liable to income tax thereon subject to any treaty protection or incentive relief they may be entitled to.

To the extent that preference dividends do not qualify for an income tax deduction, then they will be treated in a similar manner to ordinary dividends (i.e. they will be tax-free in the hands of Jamaican resident shareholders).

New Dividend Withholding Tax Obligations:

Section 40 of the Act imposes a requirement on Jamaican residents (as well as local branches of overseas companies) to withhold income tax upon making certain payments to non-residents. The applicable rate of withholding is 25% in respect of chargeable payments made to non-resident individuals and 33⅓% in any other case (e.g. companies).

The Order now extends the application of Section 40 to “dividends” and this is apparently effective from 19 June 2009. On this basis, a company (whether listed on the JSE or not) must now account for withholding tax at the above rates in respect of any dividend paid to non-resident shareholders. As the term “dividends” is not defined by the Order, we would anticipate that it has its ordinary meaning which would include both ordinary and preference dividends).

Persons primarily impacted by this amendment are:

Withholding tax regime extended to all dividends paid to non-resident shareholders

Extends to the payment of tax-deductible preference dividends.

Subject to tax treaty protection or local incentive relief available

New Withholding Tax Obligations on Dividends —continued:

1. Companies whose shares are listed on the JSE (as they will now be liable to withhold tax on all dividends paid in respect of these shares to non-resident shareholders); and
2. Companies which have issued preference shares to non-resident shareholders. Prior to this amendment, there was no requirement to withhold tax upon paying tax-deductible preference dividends (as previously noted). Withholding tax must now be accounted for on such dividends paid to non-residents pursuant to Section 40(1) of the Act.

To the extent that the non-resident shareholder qualifies for protection under a tax treaty concluded between Jamaica and his country of residence (or he otherwise qualifies for some domestic incentive or exemption), then Section 40 provides a mechanism for the company to secure approval from the Commissioner of Taxpayer Audit & Assessment Department (TAAD) in order to make the payment on a gross basis (or under a reduced rate of withholding tax as the case may be).

Although most dividends paid to residents are now tax-free, the Act still requires companies to obtain the permission from the Commissioner of TAAD in order to pay dividends without deduction of withholding tax. Based on our discussions with the tax authorities we anticipate that the Commissioner could seek to enforce this requirement with a view to ensuring that non-residents do not benefit from the relief that is intended only for residents.

New withholding tax rules imposed on the sports, entertainment and music industries

Payments in respect of Artistes, Athletes & Entertainers:

The Order implements a further amendment to Section 40 of the Act (again effective 19 June 2009) whereby a Jamaican resident (as well as a local branch of an overseas company) is now required to withhold income tax upon making a payment to a non-resident person in respect of the provision of “*personal activities exercised by an athlete, entertainer (such as a theatre, motion picture, radio or television artiste) or musician or services in promoting such activities*”...

The applicable rate of withholding tax is 25% in respect of payments made to a non-resident individual and 33⅓% where made to a non-resident company (subject to any treaty protection which may be available).

This amendment has far-reaching implications for promoters and organisers of sporting, cultural, entertainment and media events.

Extension of withholding tax regime to payments made in respect of athletes, entertainers or musicians.

Applies to payments made to non-residents

Significant implications for organisers of sporting, entertainment and cultural events

New withholding tax rules imposed on the sports, entertainment and music industries

Based on the wording of the amendment, it is worth noting that the withholding tax obligation applies once a chargeable payment is made to a non-resident person irrespective of whether:

1. the payment is made directly to the athlete, musician or entertainer or made to some other person or entity;
2. the athlete, musician or entertainer is resident or non-resident;
3. the personal activities exercised by the athlete, musician or entertainer (or the marketing or promotion thereof) takes place within Jamaica.

Tax liable to be deducted from a chargeable payment under the withholding tax regime must be remitted by the payer to the Inland Revenue within fourteen (14) days of the end of the month in which the payment is made. In the event that the withholding tax due is not remitted by the due date, then the payer will be liable to interest at the rate of 40% per annum and penalties of up to 50% per annum.

Failure to comply with this regime constitutes an offence and renders the payer liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or treble the amount of the tax which is unpaid (whichever is the greater), and in default of payment to imprisonment with or without hard labour for a term not exceeding twelve months.

Consolidation of Statutory Deductions:

In his 2009/10 Budget Presentation on 23 April 2009, the Minister indicated that payroll taxes would be consolidated with effect from 1 July 2009. No further details were provided at that time as to how this would be achieved.

In a recent press release, the Minister announced a postponement of this consolidation exercise until all the necessary consultation and legislative changes have been made. A new implementation date is expected to be announced in due course.

At this point, it is our understanding that any proposal to abolish (or increase) the NIS income cap will be evaluated as part of this process although no official announcement has been made on this point. As detailed in our earlier Newsletter, a number of issues will need to be clarified prior to implementation of any consolidated payroll tax regime.

The payroll tax consolidation exercise (scheduled for 1 July) has been deferred.

Increase in tax-free threshold still scheduled for 1 July 2009.

Awaiting implementation of GCT on imported services and the removal of certain tax preferences on emoluments.

Status update on 2009/10 tax measures yet to be implemented

Increase in Tax-Free Threshold:

The Minister had also indicated in his Budget Presentation that the tax-free threshold for income tax purposes would be increased from its current level of \$220,272 per annum to \$320,736 per annum with effect from 1 July 2009 with a further increase to \$441,168 per annum with effect from 1 January 2010. Income earned in excess of this revised threshold remains subject to income tax at 25%.

The enabling legislation has not yet come into force. The proposed increase in tax threshold from 1 July 2009 is of most immediate concern as this legislation must be in place before employers adjust their payroll systems. Until this is in place, employers will be unable to give effect to the increases noted in the opposite table through their payroll system. It is critical therefore that this legislation be implemented by 1 July 2009 so that employers can process their payroll accordingly.

Tax-Free Threshold	To 30 June 2009	From 1 July 2009	From 1 Jan 2010
Weekly	\$4,236	\$6,168	\$8,484
Fortnightly	\$8,472	\$12,336	\$16,968
Monthly	\$18,356	\$26,728	\$36,764

Based on our ongoing discussions with the Ministry of Finance we anticipate that the necessary Order will be signed shortly by the Minister to give effect to the above by 1 July 2009.

We also expect that this Order should give effect to the previously announced increase in the various categories of tax-free allowances (from \$45,000 per annum to \$80,000 per annum) given to pensioners and the elderly which are also scheduled to take effect from 1 July 2009.

Status update on 2009/10 tax measures yet to be implemented

Removal of Preferential Taxation of Certain Emoluments

As noted in our 23 April Newsletter, certain employee perquisites were targeted by the Minister for removal (with effect from 1 July 2009) of the preferential tax treatment that they enjoyed for many years. Principal employee benefits expected to be impacted by this change include the provision of living accommodation to employees as well as allowances which can currently be paid on a tax-free basis (e.g. certain uniform, laundry and meal allowances).

To date, the necessary legislation to give effect to these proposed amendments has not been passed and we await an official announcement on the matter.

Until this enabling legislation comes into force, the existing tax rules will continue to apply as employers will not have any legal basis to amend their payroll system and deduct payroll taxes based on pronouncements made to date.

GCT on Imported Services:

While the GCT Act imposes GCT on the importation of both goods and services, it historically lacked an effective mechanism to assess and collect GCT on services provided by non-resident service providers. In 2003 a legislative mechanism was introduced to remedy this but it was not enforced at the time.

Subsequent to the Minister's initial Budget Presentation, the Ministry of Finance indicated that this mechanism (Section 23B of the GCT Act) would be enforced with effect from 1 July 2009.

Section 23B provides that a recipient of imported services will be deemed to be a GCT registered taxpayer who has supplied the imported services thereby making him liable to account for GCT thereon.

It is important to note that GCT on imported services is separate and apart from any withholding tax obligations which one may have to comply with when making the payments overseas.

Status update on 2009/10 tax measures yet to be implemented

GCT on Imported Services—continued:

Withholding tax represents the collection of income tax – it is unconnected to GCT.

Once enforced, the provisions would apply to all services supplied by non-resident service providers (unless the services are specifically exempt from GCT). This includes services supplied by both CARICOM and non-CARICOM service providers. The term “services” is broadly defined for GCT purposes and would include many payments made overseas including service fees, lease rentals, royalties, license fees, insurance etc.

There are however a number of matters which need to be clarified before such a regime can be properly implemented including:

1. Who shall be subject to the regime? (e.g. all recipients of imported services (which would be impractical) or only business recipients).
2. Confirmation that input tax credits will be claimable (including any legislative amendment to support this) where imported

services are used in connection with the making of supplies subject to GCT.

3. When is a service regarded as being “imported”?
4. How will imported services be valued for GCT purposes?
5. Will any services be excluded from the application of the rules (e.g. specific services not generally available in Jamaica)?
6. How and when will this be reported? (e.g. will existing GCT Returns need to be re-designed to accommodate same).

We have been in regular discussions with the Ministry of Finance on these matters and await an official announcement on the likely implementation time-frame of the GCT regime on imported services.

In general terms, we are aware that intense efforts are being made to bring outstanding legislation into effect at an early date and that collaboration with the private sector has been ongoing.

Contacts

If you require specific advice on the implications of the **Provisional Collection of Tax (Income Tax) Order, 2009** 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 opposite or your usual PricewaterhouseCoopers Jamaica contact.

Important Notice:

PricewaterhouseCoopers has prepared this Client Newsletter to alert clients on the implementation status of certain tax measures announced in the 2009/10 Budget. The changes 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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