

# Removal of Preferential Tax Rules\*

## 2009/10 Tax Measures - Implementation Update #2

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- Special rules to continue to apply to certain employees
- All non-cash benefits now subject to a prescribed valuation methodology thereby rendering them assessable
- Phase-out of Tax Exemption for Gratuities paid under Approved Gratuity Schemes
- Imposition of GCT on imported services not yet enforced.



## Taxation of Accommodation Benefit

### Introduction:

In our Client Newsletter dated 23 April 2009 we outlined new revenue measures announced by the Honorable Audley Shaw, Minister of Finance and the Public Service that were to be implemented in this fiscal year.

Legislation has since been promulgated to give effect to a number of these measures (as outlined in our Newsletter dated 26 June 2009). A further Order, the Provisional Collection of Tax (Income Tax) No. 3 Order, 2009 ("the Order") was signed by the Honorable Minister on 21 July 2009 and has now been Gazetted.

This Order seeks to give effect to the removal of the preferential income tax treatment of certain employee benefits. This Newsletter outlines our understanding of the effects of the changes promulgated.

### The Taxation of Accommodation Benefit:

Employees who are provided with accommodation as part of their emoluments have historically been subject to income tax on the annual value of accommodation provided. Subject to the Income Tax (Valuation of Housing Accommodation) Regulations 1964, the

taxable value was limited to 15% of the employee's other emoluments relating to the employment (i.e. salaries, bonuses, allowances and other benefits etc.). The Minister had indicated in his Budget Presentation that this preferential tax treatment would be withdrawn with effect from 1 July 2009..

Although the Order was signed by the Minister on 21 July 2009, it is our understanding from the Ministry that the amendments outlined herein shall be implemented with effect from 1 August 2009.

The Order (as signed by the Minister) provides for the following:

1. The charge to income tax in respect of employment income has been amended to place particular emphasis on the imposition of tax on benefits or kind (including "*rent, uniform or laundry allowances*") by reference to "*the full cost of providing the benefit or kind*". This buttresses the definition of "*emoluments*" in Section 2 of the Income Tax Act, which already includes benefits within the meaning of the term.
2. For all employees in receipt of an accommodation benefit (other than those mentioned in 3. and 4. below) "*the full amount of the rent paid*" by the employer will be regarded as emoluments and therefore will be subject to payroll taxes.

## Taxation of the Accommodation Benefit

3. Where accommodation owned by the employer is provided for use by the employee (i.e. where the employer is the landlord), then the market value of the accommodation will be regarded as emoluments and will be subject to payroll taxes.

The Commissioner of Taxpayer Audit and Assessment (TAAD) is empowered to determine the value of the accommodation pursuant to the Income Tax (Valuation of Housing Accommodation) Regulations, 1964.

4. Notwithstanding the above, the Order provides that the taxable value of accommodation provided to certain employees shall be deemed to be a maximum of 30% of their other emoluments (i.e. salary, bonus and other allowances/benefits etc.) instead of the full value of the rent paid or market value of the accommodation as noted in 1. and 2. above. In practice, this means that the taxable benefit should normally be calculated in this instance along similar lines to the prevailing regime except that a rate of 30% will be used (instead of 15%) provided of course that this does not exceed the actual value of the benefit provided.

The following employees qualify for this preferential treatment:

- ♦ Employees who are “*required to live on the premises or elsewhere and it can be established that it is necessary for the employee to have that accommodation in order to exercise his employment...*”.
- ♦ Employees who “*occupy premises owned or operated by a corporation or association which is organised and operated exclusively for religious, charitable, scientific, or educational purposes...*”

We sought some clarity from the Ministry in relation to these amendments and raised concern at the imposition of taxation on an employee where it is necessary to live in specified accommodation in order to properly execute employment duties pursuant to his or her employment contract. We have suggested that this issue be re-examined urgently as a matter of equity.

We also note that the amendment do not require individuals to be employed by charitable organisations etc. in order to qualify for the preferential tax treatment offered but only that such an organisation own or operate the residential property involved.

## Taxation of Benefits in Kind Generally

### *Connected Lettings:*

We also note that the Order amends Section 40A of the Income Tax Act which contain special rules in relation to the computation of taxable accommodation benefit in circumstances where the employer, the employee or persons connected to either are party to the tenancy agreement.

The effect of these rules is that tax must be computed (and PAYE deducted) without reference to the preferential tax treatment otherwise afforded to accommodation benefit. When the employee (in his capacity as landlord) reports the rental income received on his Tax Return, the rules permit a tax credit to be claimed in order to preserve enjoyment of the preferential tax treatment.

The Order now provides that the full value of the accommodation shall be taxed in these circumstances and abolishes the entitlement to the tax credit noted above.

The Order also states in relation to such accommodation that “*no deduction shall be allowable in respect thereof*”. This would suggest that an employer may not claim an income tax deduction for expenses incurred in respect of accommodation owned by the employer (or a person connected with him).

We are unclear as to the intent of this amendment as we are of the view that these expenses should normally be regarded as wholly and exclusively incurred for the purpose of the employer’s business. We have raised this issue with the Ministry with a view to securing clarity on the matter.

### **Taxation of Benefits in Kind Generally:**

As previously noted, the charge to income tax in respect of employment income has been amended to place particular emphasis on the imposition of tax on benefits or kind by reference to “*the full cost of providing the benefit or kind*”.

While the definition of “*emoluments*” in Section 2 of the Income Tax Act already includes benefits within the meaning of the term, the Act historically has not prescribed a basis for the valuation of non-cash benefits derived by employees with certain exceptions (e.g. the provision of accommodation benefit, company cars or preferential loans by specified financial institutions etc.).

The effect of the above amendment is that all non-cash benefits (other than those listed above) now have a basis of valuation for income tax purposes. As a result of this amendment it will be critical for employers to review all allowances and non-cash bene-

## Taxation of Gratuities

fits provided to staff in order to assess whether payroll taxes are being properly accounted for. In addition employers will also need to determine the value of taxable benefits which must be accounted for through the payroll tax system as a result of this important amendment.

### Adjustment to Income Tax Exemption afforded to Gratuities paid under Approved Gratuity Schemes:

Historically certain employees (who earned emoluments not exceeding J\$500,000 per annum) could receive gratuities on a tax-free basis under an Approved Gratuity Scheme up to a maximum of J\$250,000 per annum. To date the Minister has approved such schemes for workers in the hotel industry.

The Ministry Paper which accompanied the Minister's Budget Presentation in April indicated that this tax exemption would be phased out in line with increases in the general tax-free threshold. This threshold was increased on 1 July 2009 to J\$320,736 per annum and which will be further increased to J\$441,168 with effect from 1 January 2010.

On this basis, the quantum of gratuities which may enjoy a tax exemption under an approved gratuity scheme has been adjusted by the Order as follows:

Period	Maximum Exemption		
1 Jan 2009 - 30 June 2009	J\$125,000		
1 July 2009 - 31 Dec 2009	J\$74,768		
1 January 2010 and thereafter	J\$29,104		

An employee who benefits from payments under a tax-free gratuity scheme will now be to earn the following aggregate amounts in each year of assessment on a tax-free basis:

Period	General Tax-Free Threshold	Tax-Free Gratuity (max.)	Total Tax-Free Income
<b>Year of Assessment 2008</b>	J\$196,872	J\$250,000	J\$446,872
1 January 2009 to 30 June 2009	J\$110,136	J\$125,000	J\$235,136
1 July 2009 to 31 December 2009	J\$160,368	J\$74,768	J\$235,136
<b>Year of Assessment 2009</b>	J\$270,504	J\$199,768	J\$470,272
<b>Year of Assessment 2010 etc.</b>	J\$441,168	J\$29,104	J\$470,272

## GCT on Imported Services

Based on the foregoing, such workers may continue to enjoy tax-free income of up to J\$470,272 per annum.

### GCT on Imported Services:

Further to our Newsletter dated 26 June 2009, we understand from the Ministry that the legislation to give effect to the proposed changes is incomplete and that TAAD has not begun to enforce the provisions. We understand from TAAD that an advisory will be issued once the regime is in fully place and ready to be enforced.

If you require specific advice on the implications of the **Provisional Collection of Tax (Income Tax) No.3 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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