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TAX NEWS

The Finance Minister, Dr Peter Phillips opened the debate on the budget on Thursday 18 April 2013 where he announced that a fully financed budget was presented and there were "no new taxes". This Tax Newsletter is concerned with the tax measures that were previously announced- to finance the Estimates of Expenditure, of J$521-billion, tabled on April 4, 2013.

The Budget Debates /Tax Measures

The major source of government's revenue comes from taxes. The projected revenue from all taxes for the fiscal year 2013/2014 is over $360 billion i.e. 69% of total revenue. The breakdown of the revenues expected from taxes in this fiscal year is as follows:

	$ Billion	%
Corporate & Personal Income Tax	42.097	12
PAYE & Education Tax	85.316	24
GCT & SCT	156.656	43
Customs & Other Border Taxes	39.925	11
Telephone, Levy, Betting & Duties etc	25.510	7
Tax on Dividends & Interest	11.013	3
Total	**360.518**	100

On Budget day, only two new tax measures were announced, these are:

(i) Zero-rating electricity to residential customer,

(ii) Changes in the, recently announced, Customs Administration Fees (CAF).

We will look at these two measures along with some of the measures announced on February 12, 2013 most of which took effect in March and on April 1, 2013 and which were implemented by enabling legislation.

1. GENERAL CONSUMPTION TAX

Electricity Supplied to Residential Customer now Zero-rated

Effective July 1, 2013 electricity supplied by the Jamaica Public Service Company Limited (JPSCo), to residential customers, will no longer be an exempt supply but a zero-rated supply. The measure is a restructuring of JPSCo's taxable activities aimed at affecting JPSCo's ability to recover input tax. This will not only ease its cash flows, but will ultimately reduce the cost associated with exempt supply which JPSCo can ultimately pass on to the consumer.

2. CUSTOMS

2.1 Customs Administration Fee (CAF)

Effective June 1, 2013 there will be changes to the CAF.

The CAF was announced in February 2013 and this was to have been implemented on April 1, 2013 to replace the Customs User Fee (CUF). However in its present form, there is perceived inequality in the fee structure. This is where CAF imposition on raw material and on finished goods is effectively the same. The new fee structure will address any anomaly to take into consideration factors relevant to raw material used by the manufacturing sector.

2.2 Customs -Executive Agency Status

As of April 1, 2013, the Jamaica Customs Department has been established as an executive Agency.

As Executive Agency it will have autonomy for the overall management of its operations in regard to human resource issues and financial management which should ultimately enable greater efficiency.

3. Income Tax

3.1 Corporate Income Tax Rates

According to the provisional amendment to the Income Tax Act, effective April 1, 2013 the corporate income tax rates are as follows:

	Basis Period	Tax Rates
Regulated Companies ***Definition*** Companies regulated by the: ***(i)*** *Financial Services Commission (FSC)* *(ii) Office of Utility Regulation (OUR)* *(iii) Bank of Jamaica (BPJ)* *(iv) Ministry of Finance (MOF)*	January- December 2013	331/3%
Unregulated Companies ***Definition*** Companies that are not regulated	January -December 2013	25%
Large Unregulated Companies ***Definition*** Companies that are not regulated but whose taxable income for the year is $500Million or more.	1January - 31 March 2013 1 April- 31 December 2013	25% 30%
Any other body corporate **Corporate body** companies that are not regulated	January -December 2013	25%

(a) Please note that the categories of companies that will come under the above circumstances will not include building societies or life assurance companies.

(b) The additional [5%] tax for large unregulated companies bringing about the 30% rate is not surtax, as surtax is a tax upon a tax. It is but a rate of tax which applies to the whole of the chargeable income once that income equates to or exceeds $500Million.

(c) In contrast to that contemplated in the Ministry Paper, it is clearly the chargeable income of an unregulated company that determines if it is a “large unregulated company”.

(d) Based on the amendment, there is no retroactive taxation; the concept of a large unregulated company would not have commenced until April 1, 2013 and therefore, the two rates would become applicable in the same tax year. One must be careful in the application as this can pose a challenge.

(e) Given what is indicated in (d) above, it is important that the entity be proved to be a large unregulated company by reference to the basis period [12 months] for the tax year. It is the profits for that basis period that are taxed; in this case, the chargeable income is time-apportioned as required in the year of assessment.

To demonstrate these points, please note the illustrations below a hypothetical Tax Computation for a company’s year ended 31 December 2013.

		$	$
Profit per the accounts Year ended 31 December, 2013			675,500,000
Add –	Depreciation	1,235,000	
	Loss on sale of fixed assets	442,470	
	Donations	27,900	
	Asset Tax	100,000	
	Balancing charge	655,000	
	Other items not allowed	2,100,039	
			4,560,409
			680,060,409
Deduct -	Unrealised gains – 31/12/13	271,573	
	Profit on sale of fixed assets	323,679	
	Other items allowable	3,196,513	
			3,791,765
			676,268,644
	Capital allowances:		
	Initial	2,250,000	
	Annual	4,120,000	
			6,370,000
Total Chargeable Income			669,898,644

Basis Periods	1 January - 31 March 2013 (3 months)	1 April - 31 Dec. 2013 (9 months)	Year ended 31/12/13 (12 months)
Chargeable Income	167,474,661	502,423,983	669,898,644
Tax rate thereon	25%	30%	29%
Tax Liability	41,868,665.25	150,727,194.90	192,595,860.15

If in the example, the company's financial year end, was September 30, 2013 the calculations would be as follows:

Basis Periods	1 October 2012 - 31 March 2013 (6 months)	1 April - 30 September 2013 (6 months)	Year ended 30/09/13 (12 months)
Chargeable Income	**334,949,322**	**334,949,322**	**669,898,644**
Effective tax rates	25%	30%	27.5
Tax Liability	83,737,330.50	100,484,796.60	184,222,127.10

3.2 Increase Tax on Dividends Paid to Resident Persons

Effective June 1, 2012- tax on dividend income derived from resident companies is at a rate of 5%. It was announced in February 2013 that the tax on divided will increase to 15% but this may not yet have been implemented. According to the amendment, except for dividend earned by an approved superannuation or retirement scheme, the Act makes it clear that:

(i) Dividend is not exempt from tax. Therefore, dividend should not be removed from the tax computation.

(ii) The shareholder will receive the dividend [net of withholding] but no further liability arises, even if the shareholder has a tax liability at a higher rate (i.e. 25%, 30% and 33.33%).

(iii) If the company did not deduct the tax, it is the shareholder that should pay over the tax to the Commissioner.

(iv) Except in certain circumstances, no credit for refund of the tax withheld is applicable.

(v) The Amendment makes it clear that no expenses may be deducted from dividend income.

(vi) The Act has been amended to provide that: the Commissioner may authorize payment of a money distribution `without the withholding of the tax':

  (a) If he is satisfied that the recipient will not pay tax,

  (b) If made to a company which holds 25% or more shareholding in the company that is making the distribution,

(vii) Dividends received by resident shareholders from non-resident companies should account for tax at 33⅓% for regulated companies, 30% for "large" unregulated companies and 25% unregulated companies and all other persons.

(viii) All non-resident shareholders receiving dividends from resident companies in Jamaica will continue to pay tax on dividends at 33⅓% for corporations and 25% for individuals.

The above is subject to the relevant Double Taxation Treaty rates. Tax on dividend does not affect preference dividends (under certain conditions).

4. Education Tax

4.1 Increases in the Rates Payable by Employer & Employees

The Education Tax Act has been amended to make rate changes effective April 1, 2013. The rates of Education Tax have been increased for: employer, employee, and self-employed persons, as well as expatriates domestic workers and self-employed persons earning under the minimum age (these rates are set out in the Appendix).

5. Provisions in the Budget Relating to Legacy Payments

The Minister announced that there were obligations remaining on the books but which needed to be settled. These include over $900Million for payment to Carreras Ltd arising from a Privy Council Decision in the case of ***Commission of TAAD v Cigarette Company of Jamaica***.

In March 2012 the Privy Council in England, ruled in favour of Cigarette Company of Jamaica (CCJ) against assessments of about $1.17billion in income tax. This related to loans made to Carreras Group Ltd (CCJ was a subsidiary of Carreras), and the Commissioner of TAAD maintained that these loans in both entities books, were artificial and fictitious and were indeed distributions subject to tax under the Income Tax Act.

The Court of Appeal had allowed CCJ's appeal and the Commissioner of TAAD appealed to the Privy Council.

6. Asset Tax

The Asset Tax Act has been amended to introduce new rates on specified companies:

6.1 Entities Affected

These are:

(i) Entities other than regulated entities,

(ii) Specified Regulated Entities i.e. regulated by the BOJ and the FSC), such as :

- Deposit-Taking Institutions,

- Insurance Companies (General & Life Insurance)
- Securities Dealers,

Asset Tax also affects the following:

- Unit Trusts and Mutual Funds,
- Industrial and Provident Societies,
- Remittance Companies & Cambios,
- Insurance Brokers.

6.2 Exemption

a. Charitable organizations,
b. Credit Unions (remain exempt).
c. Not for profit organizations
d. The tax does not affect Superannuation Funds and Approved Retirement Schemes.

6.3 Asset Base/ Filing & Payment Due date

The definition of asset and valuation thereof has been modified along with the tax rates (see the Appendix for the details).

Returns filing s due date has been changed from 1st September to March 15 of the same year based on the financial statements for the previous accounting period.

Example:

Y/A 2010	to be filed by 1st September 2011
Y/A 2011	to be filed by 1st September 2012
Y/A 2012	to be filed by 15th March 2013

6.4 Income Tax

Effective from the Year of Assessment 2013, Asset Tax is not an allowable deduction under the Income Tax Act.

7. Other Measures

7.1 Increases in Property Tax

Effective April 1, 2013 the Property Tax Act has been amended to change the rates applicable on properties in all parishes. The new rates will be charged on valuations issued on April 1, 2002 under the Land Valuation Act. The unimproved value and rates applicable are as follows:

	Rates
On property the unimproved value of which is $100,000 or less	$1,000
On property the unimproved value of which exceeds $100,000 but does not exceed $1,000,000 (a) For the first 100,000 .... (b) For every dollar thereafter...	$1,000 1.5%
On property the unimproved value of which exceeds $1,000,000 (a) For the first $100,000 .... (b) For the next $900,000 .... (c) For every dollar thereafter	2% $1,000 1.5% 2%

7.2 Increases in Stamp Duty and Transfer Tax Rates

Effective April 1, 2013, the Stamp Duty Act has been amended to take into account changes in the stamp duty rates under the heading Conveyances by deleting the existing rates and replacing it with one rate as follows:

$40 for every $1,000 dollars of the purchase or consideration money and for any remaining fractional part of $1,000 dollars.

7.3 Effective April 1, 2013, the Transfer Tax Act was also amended to take into account changes in the rate to 5% on the consideration of any transfer.

We want to hear from you

Your feedback is important to us; if there are any topics that you would like addressed in this Tax Newsletter, please send your suggestions to any member of the team:

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APPENDIX

Amendments to the Education Tax Act

During the continuance in force in this Order, the Education Tax Regulations, 1987, contained in the second schedule to the Act are amended by deleting the Appendix thereto and substituting therefore the following -

APPENDIX

	Provision		Regulation (2) Amendment
1	Specified Taxpayers	Rate of education Tax payable by employee or by self-employed persons.	Rate of education tax payable by employer
	(a) an employed person over the age of 18 years and under retirement age Employed as a domestic worker;	20 cents per week	20 cents per week
	(b) a citizen of Jamaica over the age of 18 years and under retirement age Employed by an Embassy, a High Commission, Consulate or United Nations Agency situated in Jamaica	2.25% of his emoluments	3.5 % of the emoluments of that person
	(c) a person who is not a citizen of Jamaica, over the age of 18 years and under retirement age resident in Jamaica and employed therein other	2.25 % of his emoluments	3.5 % of the emoluments of that person

	Than by an Embassy, a High Commission, Consulate or United Nations Agency;		
	(d) Any employed person over the age of 18 years and under retirement age Than one specified at sub-paragraph (a) , (b) or (c)	2.25 % of his emoluments	3.5 % of the emoluments of that person
	(e) a citizen of Jamaica, over the age of 18 years and under retirement age Employed by a Jamaican Embassy, Jamaican High Commission, Jamaican Consulate or a Jamaican Company resident abroad;	2.25 % of his emoluments	3.5 % of the emoluments of that person
2	Self-Employed Persons – (a) earning in any week less than the National minimum wage; (b) other than those specified under Sub-paragraph (a).	 Nil 2.25 % of his emoluments.	

Amendments to the Asset Tax (Specified Bodies) Act

Rates of Asset Tax

Rates of tax for “Regulated Companies” are confirmed at 0.14% of the
Value of the assets as determined in accordance with the Second Schedule.

For other entities, tax is payable in accordance with the schedule set out in table below:

Value of the Asset -	**New Rates Annual Tax (J$)**
Less than $50,000 -	5,000
At least $50,000 but less than $0.5M	25,000
At least $0.5M but less than $5M	50,000
At least $5M but less than $50M	75,000
At least $50M	100,000

Asset *Values Defined*

Taxable Value of Assets for Specified Regulated Entities:

For the BOJ regulated entities *(the assumed asset tax base is):*

(i) The taxable value of the assets is the Aggregate Value of Assets minus [IFRS and Prudential

Loan Loss Provisions] minus Withholding Tax Receivables owed by GOJ minus Required Capital.

“Required Capital” as defined in the *Second Schedule*
“IFRS and Prudential Loan Loss Provisions” means to “Loan Loss Reserves”

(ii) For the FSC regulated entities:

(a) Security Dealers:

The taxable value of the assets is the Aggregate Value of Assets minus Regulatory Capital minus Withholding Tax Receivables owed by GOJ.
“Regulatory Capital” as defined in the *Second Schedule*
“Withholding Tax Receivables” refers to the gross carrying value at the balance sheet date of tax withheld at source on interest and owed by the Government of Jamaica (*Commissioner General Tax administration*).

(b) Life Insurance Companies:

The taxable value of the assets is Aggregate Value of Assets minus Withholding Taxes Receivables owned by GOJ minus Required Capital minus Assets Supporting Annuity Liabilities.
"Required Capital" as defined in the *Second Schedule*
"Withholding Tax Receivables" refers to the gross carrying value at the balance sheet date of tax withheld at source on interest and owed by the Government of Jamaica (*Commissioner General Tax administration*).

(c) General Insurance Companies:

The taxable value of the assets is Aggregate value of Assets minus Withholding Tax Receivables owed by GOJ minus Required Capital minus Reinsurance Recoverables.
"Required Capital" as defined in the *Second Schedule*.

"Withholding Tax Receivables" refers to the gross carrying value at the balance sheet date of tax withheld at source on interest and owed by the Government of Jamaica.

Value of Asset for Other Specified Bodies:

For other specified bodies, the value of asset shall be as defined in Section 3 (9) of the ATA1
According to the ATA, the value of the asset shall be aggregate of the following:

(a) Any estate or interest in land,

(b) Equipment, furniture, machinery, plant and other movable property,

(c) Any other interest, right or benefit ,

(d) Outstanding balances on loans and advances made by the specified body .

(e) The specified body's cash in hand and in bank deposit.

(f) Outstanding balances due to the specified body by sundry debtors other than those specified in sub-paragraph (d).