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TAX NEWS

The Finance Minister, Dr Peter Phillips on Tuesday 12 February 2013 announced a number of revenue measures aimed at raising $15.9 billion for the fiscal year 2013/2014.

BDO- "always in the know"

The New Revenue Measures are:

BDO comment

Following the recent revenue measures announced by the Minister of Finance there has been commentaries from members of the society concerning various aspects of the measures. We would like to highlight the following:

We note the re-imposition of additional tax on corporations which is an unwelcomed development given the hope for a reduction to the 25% rate to include all corporate bodies, regulated or unregulated. The re-imposition of tax on dividend is also undesirable as the initial removal of tax on dividends was an effort to stimulate investments.

We note the compromise for the increase of the tax on lottery games is to allow for the sales of tickets and drawings to take place on Sundays and Public holidays. It will be interesting to see the reaction of the Jamaica Council of Churches and other bodies.

On the matter of the imposition of GCT on other imports at the port, there is a need to ensure that this measure will not affect our international obligations.

This has been a contentious matter with legal challenges surrounding the legitimacy of the CUF since its implementation. Two such contentions are: that it is a breach of the Revised Treaty of Chaguaramas and that it can be challenged on the grounds that it is a tax. In 2008 the suggested treatment by the then Minister for the CUF to be treated as a tax credit suggests that it was indeed a tax and not a true fee. Is it then that the proposed change from the word CUF to Customs Administration Fee (CAF) a mere change in name of what is seen as a border tax, a flat tax- as opposed to an *ad valorem*, not sanctioned by the Trade Minister Body of CARICOM (COTED)?. We now wait to see if this matter has been put to rest.

On the matter of the proposed legislation on Transfer Pricing and Thin Capitalisation Rules; currently Customs uses the Valuation Rules to capture certain transfer price mechanism. This is by using transaction value on certain transfers and price adjustments such as royalty and licence fees. We earnestly await the proposed legislation. Pending the drafting of the Legislation, BDO will be organising a Transfer Pricing and Thin Capitalisation Seminar on the various aspects and important transfer pricing issues as soon as a “Green Paper” is available.

General Consumption Tax (GCT)

1. Imposition of GCT on Telephone Services

In August 2012, a new tax called the Telephone Calls Tax (TCT) that imposed tax on phone calls originating both locally and overseas: mobile to mobile and mobile to landlines was introduced.

Effective March 1, 2013, there is a proposal to include GCT on this tax.

How GCT is currently applied on goods and services is that a discount is used to reduce the value of an item before GCT is applied- the law will be changed to make this not applicable to phone card sales. The Ministry Paper explains that this is not a new measure but is in keeping with the principle as to how a value-added-tax works.

Effective March 1, 2013 telephone service providers will have to account for GCT on the full face value of calling cards/vouchers, and no longer on the discounted value sold to the wholesalers of those cards.

2. Imposition of GCT on Fees Paid at the Ports

Effective March 1, 2013:

The cost base on which GCT will now be imposed will be expanded to include the compounded amount of: Customs Duty, Additional Stamp Duties, Special Consumption Tax, the Standard Compliance Fee, Environment Levy and the Customs Administrative Fee.

Currently, before the GCT is charged, there was a compounding of Customs Duty, Additional Stamp Duties and Special Consumption Tax.

Income Tax

3. Increase Tax on Dividends Paid to Resident Persons

Effective March 1, 2013- it is proposed that tax be imposed at:

(i) 15% on dividends payable by resident companies to resident shareholders.

(ii) 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% for all other persons.

(iii) 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.

(iv) Items (ii) and (iii) above are subject to the relevant Double Taxation Treaty rates.

(v) These taxes do not affect preference dividends (under certain conditions).

It should be noted that:

(a) *Effected July 1, 2009 withholding tax on dividends from all Jamaican companies was reduced to* Nil.

(b) *Effected June 1, 2012 a tax of 5% was imposed on dividend paid by resident companies to resident shareholders.*

4. Imposition of Surtax on Large "unregulated" companies.

Effective April 1, 2013:

There will be an additional tax of 5% imposed on large "unregulated companies."

"Large unregulated companies" are defined as companies with gross income of $500 Million or more.

Note that:

(i) Effective January 1, 2013 the corporate income tax rate was modified as follows:

(a) Tax charge on regulated companies at 33 1/3%.

(b) Tax charge for unregulated companies at 25%.

This would mean that, effective April 1 2013 the income tax rates that will become applicable on companies will be as follows on:

(i)	Regulated companies	- 331/3%;
(ii)	Un-regulated companies	- 25%;
(iii)	"Large" unregulated companies	- 30%
(iv)	Building Societies special rate	- 30% (as before);
(v)	Life assurance companies rate	- 15% (as before);

Education Tax

5. Increase in the Rates Payable by Employer & Employees

Effective April 1, 2013 the rate of Education Tax will increase as follows: -

(i) Employers will pay contributions at 3.5% (an increase from 3%).

(ii) Employees will pay contribution at 2.25% (an increase from 2%).

(iii) Self-employed persons contribution will increase to 2.25% (an increase from 2%).

Note that contribution is computed on gross salary less NIS and is an allowable deduction for employers.

Other Measures

6. Increase in Stamp Duty and Transfer Tax Rates

Effective April 1, 2013

These rates of Stamp Duty and Transfer Tax are proposed to be increased as follows:

- Transfer Tax from 4% to 5%.
- Stamp Duty from 3% to 4%

7. Increasing the Tax Rate on Gross Profit Tax on Lottery Sales

Effective April 1, 2013:

It is proposed to increase the Tax on Gross Sales on Betting Gaming and Lotteries - this tax is based on ticket sales before prizes and net sales after prizes payout.

This will be increased on specified lottery sales of between 17% and 23% to 20% and 25% and is specific to games conducted by Supreme Venture Lotteries Limited.

8. Increase in Property Tax

It is been proposed that effective April 1, 2013 the system of taxation on property be revised as follows:

Unimproved Property Value	Tax Rate
up to $100,000	flat rate of $1,000
$100,000 up to $1Million	1.5%
> $1 Million	2%

9. Imposition of Customs Administration Fee

Effective April 1, 2013 Customs User Fee (CUF) will be removed and replaced with a Customs Administrative Fee with a proposed new fee structure.

This fee is to be imposed on all imports except imports by Approved Charitable Organizations and the Bauxite Sector.

Note that:

- The Customer user fee was introduced by the "Customs Amendment Regulations 2003" by the Minister of Finance and Planning.

- In January 2009, the CUF payable on qualified plant and machinery and raw materials in the manufacturing sector was removed.

- In the 2008 "Revenue Measures", the Ministry of Finance suggested a treatment to encourage the manufacturing sector, which was that the 2% CUF on capital goods (machinery and equipment only) for production purposes be used as a corporate income "tax credit".

10. Introduction of "Transfer Pricing" and "Thin Capitalisation Rules"

Legislation is to be introduced to provide for coded guidelines in the introduction of Transfer Pricing and Thin Capitalisation Rules.

Transfer pricing is increasingly influencing significant changes in tax legislation around the world. On top of the legislative changes, many important Court cases, nowadays, deal with transfer pricing. At the moment transfer pricing rules are to be reformed in other parts of the world to align with the OECD Transfer Pricing Guidelines, which allow transfer pricing adjustments based on a profit split basis, rather than the traditional transactional basis. It will be interesting to see how our proposed legislation deals with the subject matter.

Thin capitalization rules are, as with transfer pricing, anti-avoidance measures to deal with debt to equity ratio in corporate financing and in addressing substance-over-form rules: deductibility of interest, related party restrictions, back-to-back loans through treaty country or financial institution, hybrid debt instrument etc.

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 News, please send your suggestions to any member of the team. For more information please contact any member of our team.

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