

Attorneys-at-law

FILING OF GENERAL CONSUMPTION TAX RETURNS AND STEPS TO BE TAKEN IN ORDER TO CALCULATE GCT PAYABLE FOR A TAXABLE PERIOD

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Introduction

In general GCT applies to the supply in Jamaica of goods or services (together with anything which is treated as being a supply under the legislation) by a registered taxpayer in the course or furtherance of a taxable activity carried on by him. It also applies to the importation of any goods and services by any person (see 7.03 and 10.03) into Jamaica.

There are six tests of taxability inherent in GCTA, s 3. Before GCT can apply, all the following questions must be answered affirmatively:-

As regards –

1. Supply - As a matter of fact has a supply taken place?
2. - Did it take place in Jamaica?
3. Goods or Services - Is the item either a good or a service?
4. The Supplier - Is that person a registered tax payer?
5. Taxable Activity - Did the supply take place in the course or furtherance of a businesslike activity and for a consideration?
6. Exemption - Is the item included in the schedule of exemptions?

Supply Of Goods And Services

“Goods”, for purposes of GCT, means all kinds of property other than real property, money, securities or choses in action.* (GCTA, s 2(1)).

*(A chose in action is a thing which is not in possession, and therefore rights of property are enforceable only by legal action. Examples are debts and shares in a company; and the granting, assignment or surrender of rights (such as copyrights).)

“Supply” (as defined in GCTA, s 18.1) includes the following:

- “(a) the sale, transfer or other disposition of goods by a registered taxpayer so that the goods sold, transferred or otherwise disposed of no longer form part of the assets of a taxable activity;
- (b) the exercise of a power of sale by a person other than a registered taxpayer in satisfaction of a debt owed by a registered taxpayer;
- (c) the provision of services.”

“Services” means anything which is not goods but does not include real property, money, securities, or choses in action.

Supplies of services are by their nature less easily identified; the GCTA, s 18.6 states that anything which is not a supply of goods but which is done for a consideration is a supply of services but does not include real property, money, securities, or choses in action.

‘Services’ include legal work.

Registration

General principles

In principle, every person who carries on a taxable activity is required to apply to the Commissioner to be registered as a registered person or taxpayer. This is done by submitting an application form to the GCT office. This is quite separate from any notification required for income or corporation tax purposes.

Three aspects should be emphasized here:-

1. It is person, not the taxable activity, which is required to register. Thus if a person (e.g., an individual or a company) is carrying on several taxable activities, only a single registration would be applicable.

On the other hand, a company is a separate entity from the individuals who own it; thus where an individual is carrying on a taxable activity and a company which he controls is carrying on a separate taxable activity, each may be required to register.

For these purposes, a partnership is separate from the persons who are partners in it.

2. The onus to register is on the person carrying on the taxable activity who is required to apply for registration on a timely basis.
3. Regulation 4 requires every registered taxpayer to display his Certificate of Registration in a conspicuous place in his business premises. If he has more than one business premises, he must display a copy of the Certificate, supplied by the Commissioner, in each premises.

The Commissioner registers the applicant either as a “registered person” or as a “registered taxpayer”. See 2.01.

There are certain minimum limits defined in the legislation, and relating to the turnover of a business, below which the applicant is registered as a “registered person”.

A registered person qualifies for registration as a registered taxpayer whenever the gross value of his taxable supplies is not less than \$144,000 in the preceding 12 months or an average of \$12,000 per month – (both amounts being exclusive of GCT). These are known as the “threshold”. The registered person must notify the Commissioner within 21 days after he becomes so qualified GCTA, s 27.3.

A registered person may voluntarily apply for registration as a registered taxpayer and be so registered. GCTA, s 27.4.

All practising attorneys-at-law are registered as either sole practitioners or partnerships. Supplies of legal services are generally chargeable to GCT at the standard rate. However, GCTA, Third Schedule, Part II, Item 15 exempts services by Attorneys-at-Law in relation to criminal matters and litigation concerning the liberty of persons.

Accounting Basis

The taxpayer should normally account for the tax on every invoice he receives or issues. This may be done when the goods are delivered, when the invoice is issued or when payment is received, whichever occurs first. This is the accrual basis.

However, if the taxpayer is a professional (including attorneys-at-law), his sales do not exceed \$1million at the end of any twelve-month period or if the taxpayer supplies general insurance or telephone services, then he may account for tax on the cash basis. The registered taxpayer/attorney-at-law is not accountable to the Commissioner for the tax until it has been paid by the client/received by the registered taxpayer. He must however, make a special application to the Commissioner to amount for GCT on the cash basis. If approved, then the Returns for each month must be filed on or before the 15th day of the following month.

Fees which are subject to review

Non-contentious business (non-legal aid)

If a bill of fees is referred for taxation to a taxing officer of the Court, the position would be that tax remains due under the rules stated in 32.02; but if the fee is reduced the attorney-at-law can issue a credit note for the difference and set off the GCT element in that credit note against his output tax for the month.

Contentious business (non-legal aid)

The services of an attorney-at-law to his client include the settling of costs by the appointed procedure. Thus the basic tax point does not arise until the bill is agreed with the opposing attorney-at-law or, in cases referred to the court for taxation, the taxation is complete. Note that a bill of costs prepared for taxation may itself be a tax invoice, as it would not have been "issued".

Credit notes

Where a GCT credit note is issued in accordance with the procedure recognised by the Commissioner (see 4.04), the attorney-at-law issuing the credit note should adjust his GCT account to reflect the reduction in tax due. The issue of GCT credit notes can, however, only take place consistently with normal commercial practice. In the context of the practice of an attorney-at-law this includes the issue of a GCT credit note following a compulsory reduction in fees (see 32.03.01) and it would also include cases in which fees are reduced voluntarily by agreement with the client in lieu of the latter seeking taxation by the court.

Disbursement & Expenses

An attorney-at-law often makes, on behalf of his client, payments which are the contractual responsibility of that client, (e.g., stamp duty, land registry fees, etc.); and these may not be subject to GCT. The attorney-at-law should indicate clearly on the tax invoice that such payments are disbursements in order to avoid having to include the value of such payments in the value of the invoice on which GCT is to be added.

Expenses which an attorney-at-law incurs in order to provide his services to his client, e.g., air fares, train fares, stationery, postage, etc., cannot be treated as disbursements and must be included in the value of the invoice on which GCT is to be added.

Input Tax

There are no special rules for attorneys-at-law concerning the deduction of input tax. An attorney-at-law will be able to claim full recovery of GCT incurred on all goods and services received for the purposes of his business in accordance with the rules relating to appointment (see below). Although an attorney-at-law may receive certain income which is exempt from GCT, notably interest, such sums can be ignored for input tax deduction purposes, if within the de minimis limit. The matter of appointment of input tax is however important and is dealt with below.

Set out below the steps to be taken by you in order to correctly calculate GCT on a bi-monthly basis and the filing of Returns on time.

- Step 1**
- (a) Record all fees collected during a taxable period in one column of the Cash Book.
 - (b) Record all GCT charged on fees in a separate column of the Cash Book.

- (c) GCT is charged on legal services provided that are not of a criminal nature. However, you must also record all fees received i.e. for criminal work and civil work done as this is required for the apportionment of input tax.
- (d) Keep copies of all receipts for the taxable periods. All receipts issued should bear the GCT Registration Number.

Step 2

- (a) Record all payments on which GCT has also been paid for the taxable period.
- (b) Record the GCT paid in respect of each purchase of services on goods in a separate column.

Step 3

At the end of each taxable period –

- (a) Add up all GCT received from clients in respect of non-criminal matters;
- (b) Add up all GCT paid in respect of the invoices received;
- (c) Add up all fees received and then take a ratio of fees on taxable activities i.e. for civil work to total work.

e.g.

	<u>Fees</u> <u>£</u>		<u>GCT</u> <u>£</u>
Fees received for criminal work (no GCT chargeable)	200,000		-
Fees received for civil work	<u>250,000</u>		<u>37,500</u>
Total fees for taxable period	<u>450,000</u>	Total GCT	<u>37,500</u>
Percentage of fees received for civil work (a taxable supply) to total fees	$\frac{250,000}{450,000} \times 100$		
	= 55.56%		

- (d) This means that in respect of the input tax i.e. GCT paid by you during the taxable period. E.g. \$20,000 only 55.56% of it can be deducted as input tax from the GCT payable i.e. output tax

Therefore - Input tax recoverable = \$20,000 x 55.56%
= \$11,112.00

Step 4

If any capital purchases i.e. desks, chairs, computers, adding machines were made by you in a taxable period then the GCT paid in respect of these items would also be deductible. However, if the cost of each item is \$20,000 or less the GCT paid is recoverable in the taxable period in which it was purchased, but if the item costs \$20,001 or more, the GCT paid is recoverable in equal portions over 24 month based on your taxable periods:-

e.g. Computer purchased for \$60,000 - GCT thereon \$9,000.

As the cost was in excess of \$20,000, then the \$9,000 of GCT is recoverable over 2 years; but remember, you must apportion this input tax based on fees for taxable civil work collected as a proportion of total fees collected. Using the example at 3(c) above, the percentage would be 55.56% of \$9,000 - i.e. \$5,000.40 which would be deductible over 2 years but subject to the relevant proportion for the taxable period.

e.g. \$5,000.40 - 24 = \$208.35 monthly or bi-monthly \$208.35 x 2 = \$416.70.

Step 5

Calculation of Tax

	<u>\$</u>
- Total fees collected for taxable period	450,000
- <u>Less:</u> Exempt supplies - fees for criminal work	<u>200,000</u>
Taxable supplies	<u>250,000</u>
- GCT on taxable supplies - \$250,000 x 15% i.e.	37,500
<u>Less:</u> Allowable input tax 55.56% x \$20,000	(11,112)
(being <u>\$250,000</u> x 100 x \$20,000)	
\$450,000	

Less: Input tax on capital purchases being

\$416.70 x 55.56% = (231.51)

Net GCT payable

26,156.49

Steps 6

Complete the GCT Return form on a bi-monthly basis based on the period commencing January and February 1996 onwards.

Each Return is due for filing and the GCT in respect thereof payable on or before the end of the month following the taxable period.

Tips on GCT

- (1) GCT paid in respect of repairs to a building owned or rented by you are not allowable expenses as input tax credits for GCT purposes.
- (2) If you rent your business accommodation, the GCT on maintenance fees is allowable subject to the apportionment of fees collected from taxable activities to total fees collected.
- (3) You must keep proper records of the following:-
 - (a) Total fees collected;
 - (b) Amounts collected for criminal work;
 - (c) Amounts collected for civil work;
 - (d) Copies of all receipts issued;
 - (e) All invoices received and receipts issued to you in respect of payments made for the purchase of goods and services.
- (4) It is best to keep a separate bank account for General Consumption Tax. By so doing, you can invest it on a short term basis before it is due to be paid over to the Commissioner and in addition, it will always be available at the time when payment is due.

- (5) Each time that you are accounting for the GCT/making a Return, a check should be made with the GCT Commissioner's office to ensure that the balance on the Commissioner's computer system accords with the balance in your books. Failure to do so often results in credits being claimed by you that have already been utilized by the Commissioner without you being aware of it. You want no surprises!
- (6) Any error made in a Return should be corrected in a subsequent Return as soon thereafter as possible and a letter to the Commissioner should accompany the Return particularly if the circumstances are unusual and not in keeping with the general pattern of your Returns. Unusual Returns arouse the GCT auditors.
- (7) All payments not made with Returns should be accompanied by a 'Payment Advice Form' (see Appendix I) and the particulars of the payment indicated thereon.
- (8) Ensure that all Returns and Payment Advices are copied and the copy sent to the Collector of Taxes in order that the date of receipt can be stamped thereon. These stamped copies should be retained as part of your permanent records.
- (9) Whenever you call the GCT Department for advice, always obtain the name of the person who is giving the advice and make a note of the name for future reference.

GENERAL CONSUMPTION TAX DEPARTMENT PAYMENT ADVICE

(Transaction Type 51)
(FOR PAYMENT MADE WITHOUT RETURN)

TAX TYPE (Tick as appropriate) ▶ GCT SCT

REGISTRATION NO.

BUSINESS NAME & ADDRESS _____

RETURN PERIOD ▶	03	DAY/MTH/YEAR	DAY/MTH/YEAR
		TO	
AMOUNT PAID ▶	\$		
PAID BY ▶			

OFFICIAL USE ONLY	
	PAYMENT DETAILS
	04 Amount Received \$
Receipt Number ▶	
Date Received ▶	
Cashier ID ▶	
OFFICE CODE ▶	1 R 0