Information for Attorneys-at-Law: General information regarding the filing of Tax Returns, taxation of employees, sole practitioners, partners, and penalties under the Income Tax Act. [1]

Authored By: The Revenue Sub-Committee - The Jamaican Bar Association.

In tabling the 2013/2014 Revenue Measures, the Minister of Finance avowed "GOJ's commitment to broadening the tax base, as well as increasing the efficiency of tax" collection. In January 2013, Tax Administration Jamaica (TAJ) issued a notice to the General Legal Council advising inter alia, that as part of a National Compliance Plan, mandatory tax filing for all taxpayers would be phased in, 2012-2015 and therefore, Attorneys-at-Law are being invited to file their Income Tax Returns on or before 15 March of each year (emphasis ours).

While the laws have not yet been amended to provide for "mandatory filing for all taxpayers", in that section 68 of the Income Tax Act still provides that notice of Return need not be given by an individual who has been in employment and a Return made by his employer, enhanced Revenue collection efforts are evident and new anti-evasion laws have been introduced and are being enforced by the Revenue, with a view to strengthening compliance.

[1] **Disclaimer and Limitations of Liability:-**

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This Bulletin is intended to serve as a reminder, that under the Income Tax Act (the Act), Annual Tax Returns are due to be filed on or before March 15 in respect of the prior Year of Assessment. We also outline below, general information regarding the filing of Tax Returns, taxation of employees, sole practitioners, partners, and penalties under the Act.

1. Filing of Income Tax Returns

The Jamaican Income Tax system is based on a process of self-assessment. Self employed persons and individuals who are "liable to tax" in a fiscal year are required to file a Return of Income and Tax Payable. Additionally, the TAJ may serve a notice on any person requiring a Return to be filed, and this must be done whether or not he/she has income subject to income tax. In special circumstances, a taxpayer may, however, apply to the Commissioner General, TAJ to obtain an extension of the filing date. This does not preclude the payment of interest on outstanding tax from the due date.

2. Taxation of Employees

Income from Employment

An Employee's income will include salaries, fees, wages, bonuses, commissions and any benefits, whether in cash or kind, payable in respect of services rendered. For every employee, with taxable income exceeding a tax-free threshold of **$507, 312** for the Year of Assessment, income tax will be deducted by the employer under the Pay as You Earn (PAYE) system at a rate of 25% and paid monthly to the TAJ. Employees whose incomes consist solely of employment earnings and whose employers properly account for their taxes under the PAYE system are not normally required to file annual Income Tax. However, this is likely to change in the near future as the Minister has indicated his intention to require mandatory filing of Returns by "professionals".

Statutory Deductions

In addition, to PAYE, the employee is liable for certain statutory deductions as follows:

National Insurance Contributions -Employees are required to be insured under a state-administered programme of social security insurance. The contributions are remitted on a monthly basis to the Collector of Taxes at a rate of 2.5% of emoluments up to $1.5m. Employers' contribution is a matching amount.

National Housing Trust Contributions

Contributions are made by employees at a rate of 2% on all taxable emoluments and 3% for employers. An employer's contribution is tax deductible but that of an employee is not.

Education Tax

Education tax is charged on the same basis as the contributions to the National Housing Trust hence employees pay 2.25% of taxable emoluments and employers 3.5%. The employer's contributions only are tax deductible; the amounts paid are not refundable to either employer or employee.

Human Employment and Resource Training Contributions

The Human Employment and Resource Training (HEART) contributions are payable monthly by employers only, at the rate of 3% of emoluments. The contributions are tax deductible.

Accordingly, in total Employees suffer PAYE and statutory deductions of 31.5% of their emoluments monthly.

3. **Taxation of Self Employed Persons and Partners**

Residents of Jamaica including Self Employed Persons are taxed on their worldwide income. However, relief from double taxation may be available. The relief usually takes the form of reduced taxes and or the availability of tax credits. The Income Tax Act also provides for commonwealth relief where the tax arises in a country which is a member of the Commonwealth.

A Partnership is treated as a conduit, and as such, is not subject to income tax. Partners, corporate or individual, are taxed on their own share of the partnership income. The profits of the partnership, as shown in the partnership accounts, are adjusted to accord with differences in the methodology for arriving at accounting profits and those applicable to arriving at "statutory income", on which tax is imposed on. The adjusted profit is then apportioned among the partners, and reported on a prescribed Return to the Commissioner.

Self Employed Persons (sole practitioners and partners in a partnership) suffer tax at the same rate of 25% and are also liable to pay Statutory Deductions, save for HEART.
In computing taxable income of a Self Employed Person, this is done by aggregating income from all sources for the year of assessment and reducing this figure by the deductible business expenses and non-taxable income. Deductible business expenses are those wholly and exclusively incurred for purposes of the trade or business, such as travelling, motor vehicle expenses and entertainment. There are rules for deductibility of expenses and capital allowances for persons carrying on a trade, business, profession or vocation. Personal expenses are not deductible.

Age Allowance

For any person who has attained the age of 65 years, $80,000 of his/her income is treated as a tax free allowance and an additional sum of $80,000 *is also exempt*, if an individual is over the age of 55 and is the recipient of a pension from an approved superannuation fund.

4. Tax Audit

The Commissioner conducts audits of tax returns on a selective basis or where material irregularities are suspected. The information required by the tax officials during an audit will depend, generally, on the objective of the audit. The Tax Acts provide the Commissioner with extensive rights to access books, records and other documents of the taxpayer and of third parties in the course of administering and enforcing the Acts.

5. Penalties

The following are the penalties and interest, which are likely to be imposed on a taxpayer: -

- Late filing or non-filing of returns or under-reporting of tax due

  Surcharge may be applied not exceeding 50% per annum of tax under-assessed, plus interest at 20% per annum is applied from the due date for payment of any unpaid tax where an assessment is raised.

- Late payment or non-payment of tax

  Interest is payable at 20% per annum from the due date. If tax was not deducted where there is a requirement to withhold, the penalty may be charged at a rate that the Commissioner directs, but, in any case, not exceeding the rate of 50% indicated above per annum. If the tax was deducted but not paid over, the penalty is at the rate of 50% per annum.

- Filing incorrect returns (non-disclosure), fraud, evasion

  On conviction, the taxpayer is liable for a fine not exceeding $100,000 **and** treble the amount of tax with which the taxpayer ought to have been charged, or for imprisonment with or without hard labour for a term not exceeding five years.

- Taxes may also be recovered by way of court action or levy on goods of the taxpayer, amongst other remedies.

6. Statute of Limitations

Assessments are not final until six years after the end of the year of assessment. In cases of misrepresentation, wilful default, or fraud, an assessment can be made at any time.

7. Record Keeping

As of 2013, taxpayers are required under the Revenue Administration Act to retain all documents relevant to their tax liability for a period of not less than seven years. Contravention of this provision attracts a fine on conviction of a sum not exceeding two million dollars or imprisonment in default.

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