KEEPING UP WITH THE COMMISSIONER OF INCOME TAX

The topic which I have been asked to consider is "Keeping up with the Commissioner of Income Tax". In approaching the topic, it will not be my intention to look at specific problems, or controversial areas such as the application of the rules for withholding taxes or whether there is double taxation when a company pays a dividend and both the corporation and the recipient are subject to tax. Rather, I have decided that I will approach it by looking at the following elements of the Income Tax Act ("The Act").

1. The liability of the Individual Taxpayer under the Act - Self employed and employed.

2. The liability of the Corporation for its Income Tax.

3. The liability of an Employer for Income Taxes deducted from an employee's wages.

1. LIABILITY FOR PERSONAL INCOME TAX

a) The Employed Person

It is perhaps necessary to begin with the section of the Income Tax Act which imposes the charge to tax. This section is Section 5 and because it is a very long section, I have attached a copy of that section as an Appendix to this paper. That section imposes income tax in relation to all categories of taxpayers. In this first part of the paper however, I will deal with the employed person. Section 5(1)(c) brings into charge "all emoluments arising or accruing to any person (or any member of his family or household) by reason of his office or employment of profit". The Section then proceeds to exempt certain types of payment to an employee, for example an allowance in respect of the provision of uniform in a sum of up to $5,739 or laundry allowance of $3,395.00 per annum. The statute also restricts the application of the Income Tax Act in relation to the provision of accommodation by an employer to his employee, as well as provision of a motor car, by limiting the taxable value of these benefits on kind.

The persons to whom reference is being made in this Section of the paper are the P.A.Y.E. taxpayers from whom deductions of income tax and other statutory deductions are made on the payment of emoluments. Emoluments are defined in the Act as including, in relation to any office or employment of profit-

"(a) all salaries, fees, wages, all provision or payment, as the case may be, in respect of living or other accommodation, entertainment, utilities, domestic or other services and other benefits, perquisites and facilities whatsoever (whether or not similar to any of the foregoing and whether in money or otherwise); and

(b) without prejudice to the provisions of section 13, all sums paid to any person by an employer in respect of expenses whether reimbursable or not;

(c) all annuities, pensions, superannuation or other allowances payable in respect of past services in any office or employment of profit, whether legally due or voluntary, and including lump sums paid in commutation or in lieu of a pension..........."

Section 67 of the Act provides in sub-section 1 that "Subject to the provisions of Part 1 of the Second Schedule, every person liable to pay income tax in respect of any year of assessment shall deliver or cause to be delivered by his agent to the Commissioner or to the Collector or Assistant Collector of Taxes for the parish in which he resides, a true and correct return of the whole of his income from every source whatsoever for that year of assessment and shall if absent from the island give the name and address of an agent residing in the island". Section 68 (1) states that "it shall be the duty of every individual residing in the island whose total income from every source whatsoever for any year of assessment exceeds $100,464.00 to give notice of that fact to the Commissioner or to a Collector of Taxes before the 15th February in the year next following such year, provided that such notice need not be given by any individual as respects any year for which he has delivered a return in accordance with sub-section 1 of Section 67, or where an individual has been in employment as respects any year in relation to which his name should be included in a return by his employer pursuant to sub-section 7 of section 67 aforesaid".

It will be seen that the effect of the above is that any individual who earns over $100,464.00 has an obligation to file a return. However by virtue of Section 67 (7) where that person is in employment and his name appears on a list submitted by his employer in relation to income tax deducted as an employee, that individual does not have to submit an income tax return. The net effect of ss 67-68 is that if either the individual has total income of

$100,464.00 or less and or his income consists entirely of employment income subject to PAYE deductions, there is no obligation to submit a return. If however the income of the individual exceeds this amount, there is a statutory obligation on the individual to file a return. In addition, it should be noted that even where the individual has income below this sum, he may still be required to file a return; for example, where the individual is in receipt of dividend or interest income from which tax has been withheld on the payment of such dividend or interest income. The taxpayer, in order to recover the tax which has been paid on the sums received must file a return and claim repayment of the tax from the Commissioner of Income Tax. Similarly, if the taxpayer has trading income, by definition, not subject to PAYE, he should submit a return.

The extent of the obligations to the Commissioner of Income (or to the Collector of Taxes) owed by an individual employee therefore will be ~~fulfilled once taxes are withheld from his wages or salary by his employer~~ and in the normal case once the appropriate deductions for taxes have been made from emoluments, there will be no further obligation on the part of the employee to do anything. As will be apparent below, however, while failure to make the statutory deductions of tax from emoluments carries no penalty for the employee, the employer on whom the obligation to make the deduction rests, may face costly sanctions for such a failure.

b) **<u>Liabilities of the Self Employed Person</u>**

As is mentioned above, there is an obligation on the part of each tax payer to file a return subject to the reservations set out above. In the case of a self-employed person who is required to make a return because his income is in excess of the threshold figure, $100,464.00, that return must be submitted to the Commissioner by the 15th day of March in the year next following the end of the year of assessment for which the income has been received. This requirement is set out in Section 67, sub-section 2. However, it would appear that if a self employed person earns income in excess of $100,464.00 then he must **<u>give notice</u>** of having earned that sum by the 15th day of February in the next year, **<u>unless</u>** he intends to file a return pursuant to Section 67(1).
As noted above, Section 68. (1) imposes a duty on every individual residing in the Island whose total income from every source whatsoever for any year of assessment exceeds <u>$100,464.</u> to give notice of that fact to the Commissioner or to a Collector of Taxes before the 15th day of February in the year next following such year subject to the proviso that such notice need not be given where the taxpayer has delivered a return, or he is included on

the list of employees from whom tax has been deducted under the PAYE Rules.

Section 68(2) provides that "if any individual without reasonable excuse fails to **give such notice** as aforesaid, he shall forfeit the sum of treble the tax which he ought to be charged under this Act and a penalty of $40". It seems that the effect of this sub-section is that in the case of an individual who has earned more than the threshold amount, if he fails to give notice by the 15th of February to the Commissioner of his having earned that sum, then he is subject to the penalty set out in sub-section 2. However, sub-section (1) and (2) of Section 67 require the filing of return by the 15th of March and the filing of a return is one of the exemptions which is given in relation to this requirement to give notice. It is not clear why Section 68 (2) provides for the imposition of the penalty, presumably by the 15th of February when the individual will have until the 15th of March to file his income tax return.

Liabilities of Partnerships

In the case where a trade is carried on by two or more persons jointly, the income of any particular partner from the partnership shall be deemed to be the share to which he is entitled for the year of assessment in the income of the partnership and shall be included in the return of income to be made by such partner under the provisions of this Act. The precedent partner, (who is usually the partner whose name is the first in the name of the partnership), but may be otherwise, is obliged to file the return on behalf of the partnership indicating the partnership income and the share of each individual partner. It is trite law, however, that under the Act, the partnership is not a taxable entity and therefore the Commissioner looks to the individual partners who must declare their income individually. The obligation to file the partnership return, however, rests with the precedent partner and failure to deliver a return under the provisions of the Section, is an offence against the Act, for which such partner is liable.

In addition to the obligation to deliver an income tax return by the 15th of March in the year following the year of assessment, every tax payer other than those whose only income derives from emoluments are required to file on or before the 15th of March a declaration of estimated income and tax for that year. Thus a non-PAYE taxpayer has two filing obligations which must be fulfilled by the 15th of March. Firstly he must file his return for the previous year and secondly he must file a Declaration of Estimated Income and Tax. These obligations are set out in Section 65 and 66 of the present Act.

The duty to file a Declaration of Estimated Income and Tax for any year is imposed upon every taxpayer, other than one who reasonably expects that "no income tax will be payable by him for the year" or income tax is only payable by him in relation to emoluments accruing in the year. There is an one other exception to this requirement to file a Declaration of Estimated Tax by the 15th of March. This occurs where in the year in which the trade or business is commenced, the requirement to file the Declaration of Estimated does not arise until the 31st of December in that year. (This exemption is set out in the proviso to Section 65 (1) of the Act). The declaration is based on the "chargeable" or "statutory income" of the preceding year.

It might be useful to define here, what is meant by "statutory income". By section 6(1), statutory income of any person for any year of assessment, is stated to be "the income of that person for such year". Although this usually means the income for the calendar year, it is provided in section 6(2) that: -" (2) Notwithstanding the provisions of subsection (1), where the Commissioner is satisfied that any person usually makes up the accounts of his trade, profession or business to some date other than the 31st day of December in the year of assessment the Commissioner may permit the gains or profits of that trade, profession or business to be computed for the purposes of this Act upon the income for the period of twelve months terminating on that date in the year of assessment to which the accounts of that trade, profession or business are usually made up". Moreover, Subsection (3) of the same section also allows a person commencing a new trade or business to select a date other than the 31st of December, as his accounting date for tax purposes. It is provided in that subsection that:- "(3) Where a person commencing to carry on a trade, profession or business satisfies the Commissioner that he intends to make up the accounts thereof to a date other than the 31st day of December, the Commissioner may grant permission under subsection (2) notwithstanding that the first accounts of the trade, profession or business have not yet been drawn up; and where the first accounts of a trade, profession or business cover a period which exceeds twelve months the income of the period shall be treated for the purposes of this section as apportioned at an even rate between the twelve months terminating on the date to which the accounts are made up and the remainder of the period".

The requirement that the taxpayer, in the appropriate cases, file a Declaration of Estimated Tax has certain important practical implications for the start up of a business and the tax planning which needs to be considered in relation thereto. For example, let us assume that a business commences operation in

March of 1999 and that it is involved in tourism where the bulk of the income will be generated between November to April. Given the need to file a return for the Year of Assessment, and to file the declaration based upon the statutory income for that year, the taxpayer would be well advised to consider using an accounting date of say October 31, well before his major inflows start. Assuming he generates no profit for the period to October 31, 1999, he will have no statutory income for Year of Assessment 1999, and his liability pursuant to the declaration for Year of Assessment 2000 will be also "Nil". The taxpayer's first liability to make a payment of taxes could be delayed to March 2001 by choosing an appropriate accounting date. Effectively, the taxpayer would have delayed the payment of taxes by a judicious choice of accounting date.

This is not to say however that the Commissioner is obliged to accept any Declaration of Income and Tax which is submitted to him. Both Sections 65 and 66 make it quite clear that the Commissioner may revise the Declaration in line with what statutory income he believes, the trade or business is likely to generate so as to provide for the payment of some taxes. However it does leave in the hands of taxpayer the ability to manipulate to some extent the outgoings of taxes in the first few years of operation. This also has implications for the ability of the taxpayer to change his accounting period later on. In such cases pursuant to Section 6(4)(a) and (b), the Commissioner may require the taxpayer to use as the relevant accounting period for the year in which the change is made, and the following year, such periods as the Commissioner may determine. Section 6(4)(a) and (b) are set out below.

(4) If a person departs from his permitted accounting terminal date then-

> (a) in respect of the year of assessment in which the departure occurred and the next succeeding year of assessment, the permitted accounting period of that person shall be such period as the Commissioner may determine, and (without prejudice to the generality of the foregoing) the period so determined by the Commissioner in respect of the year of assessment in which the departure occurred may include any interval between the permitted accounting terminal date of the old permitted accounting period and the commencement of the new permitted accounting period; and

(b) in respect of the years of assessment after the year next succeeding the year in which the departure occurred, the terminal date of the new permitted accounting period shall be regarded as that person's permitted accounting terminal date, unless and until a different accounting period is adopted in accordance with the provisions of this section.

2. THE LIABILITY FOR CORPORATE TAXES

You will be aware that pursuant to the Act, there is a difference in the rate of tax payable to individuals and corporations. Generally speaking the rate of tax applicable to chargeable income of corporate bodies is presently 33⅓%. In arriving at the tax liability or the taxable income of either the individual or the company, essentially one still has to look at those deductions which have made wholly and exclusively in earning the income. Nothing turns particularly on the distinction between the corporate and the individual taxpayer. Section 30(1)(d) imposes the rate of tax of 33⅓% on all persons other than individual, however sub-section 2 of the same section restricts the rate of tax in relation to building societies to 30%. With respect to taxes on corporation, some years ago with the introduction of the contractor's levy which had to be deducted from payments made to contractors, Section 32 was amended to provide that where a body corporate suffered that levy in respect of payments it receives, it was liable to deduct that payment on a dollar for dollar basis from the tax liability for which it was responsible at the end of the year of assessment. In addition to building societies which, as noted above, are subject to tax at the value of 30%, there are special regimes for approved venture capital companies and life insurance companies; as well as agricultural enterprises. The Act imposes an obligation on the principal officer or manager for complying with the requirements of the Act including the making of returns and the payment of taxes. As will be apparent below, the obligations on the person who is the "principal officer" for these purposes, could be quite onerous.

3. LIABILITY FOR PAYE DEDUCTIONS

Section 78 of the Act provides for when income tax is payable in respect of certain emoluments. Section 78(2) states:

> "Income tax in respect of emoluments specified in paragraph (c) of

> section 5 shall, subject to and in accordance with the provisions of this Act and of the Regulations set forth in Part I of the Second Schedule be deducted or repaid by the person making the payment notwithstanding that when the payment is made no assessment has been made in respect of the emoluments:
>
> Provided that where during any year of assessment any payment of any emoluments is made, income tax for that year shall be deducted or repaid on the making of that payment notwithstanding that the emoluments are in whole or in part emoluments for some other year".

Where the employer is a body corporate, the Act seeks to fix liability upon an individual for deducting and paying over the tax so deducted in respect of each employee. That obligation is fixed on the person designated by the body corporate, and if no such person has been designated, on the managing director or the person who performs that function in the body corporate.

This is important because it is further provided that personal liability may attach for tax which has been deducted and not paid over, or for tax which should have been deducted. As provided in section 78A (5):-

> A responsible officer who fails or neglects to carry out his duties in accordance with this section shall -
>
> (a) in the event of failure or neglect to pay over to the Collector of Taxes any tax deducted or which ought to have been deducted, be jointly and severally liable together with the body corporate for such tax as aforesaid and any penalties in relation thereto;
>
> (b) in any other case, be liable (together with the body corporate) for any penalties under this Act, unless he satisfies the Collector -
>
> (i) that there were bona fide reasons for the failure or neglect and that the payment could not have been made in the circumstances; or
>
> (ii) that he was overruled by the board of directors (hereinafter referred to as the board) or was otherwise prevented by the board or by any director thereof from carrying out his duties under this section.

This provision shows that the burden of proving that one is not responsible for the failure to account for tax deducted, is a heavy one and is one reason why accepting the directorship of a company ought not to be considered lightly, especially where one is being made managing director.

Section 93 of the Act provides that the Minister may make rules in relation to the collection of tax at source from employment income. Section 94 provides that until "until varied or revoked by regulations or rules made by the Minister under the provisions of Section 92 or 93, the regulations and rules contained in part 1 and part 2 of the second schedule shall be enforced. Paragraph 7 of the Second Schedule states:-"Every employer on making any payment of emoluments during any year to any employee in respect of whom a tax deduction card has been issued to him for that year by the Commissioner shall deduct or repay tax in accordance with these regulations".

It stands to reason that in relation to any employee with income which in any year commencing after 31st December 1998 of over $100,464, the employer ought to be in possession of a tax deduction card on which he will record the salary and tax deducted from that employee. It should be borne in mind that the benefits to which an employee may be entitled may be specifically taxable under the Act. Thus for example, the provision of a motor car to the employee is subject to tax at the rate set out in the relevant regulations issued by the Commissioner and provision of free accommodation to an employee is also subject to tax. Pursuant to regulation 10 of the second schedule, the value of the residence provided by an employee is to be regarded as being 15% of the emoluments paid to that employee. Employers should therefore be careful, lest at the end of the year they find that they have under-deducted the tax from the employee if they have failed to make deductions in relation to the imputed value of accommodation and or the benefit of the provision of a motor vehicle. With respect to motor vehicle, the liability is imposed pursuant to paragraph 11 of the regulations and the appendix to the Second Schedule.

It should be noted on the other hand that there are some specific deductions which are given in relation to employment income. Thus for example where the employer is a body corporate which has in existence an Employee Stock Option Plan under the Employee Stock Option Plan Act, and the employees make contributions towards the purchase of options in that plan, the employee is entitled to deduct from his taxable income, the contributions made towards the purchase of such options. The allowable contributions however to an ESOP is limited to 10% of the employee's aggregate emoluments in the year of assessment.

4.. GENERAL LIABILITY TO DEDUCT AND PAY OVER TAX DUE

Section 41, sub-section 1 is in the following terms: "Any person required by this Act to deduct tax of the payment by him of any sum and pay or account for the same to the Commissioner of Inland Revenue or any other persons shall make the said payment of tax or render the said account or do both as his duty may require within 14 days of the end of the calendar month in which the first mention payment was made, whether or not tax was in fact deducted from that payment". There is therefore a clear obligation on the employer once he has deducted tax to pay over to the revenue within 14 days. Where the tax has in fact been deducted but is not paid over, the Commissioner may impose a penalty by increasing the tax payable by 50% of the amount of the tax deducted. Similarly, if the tax was not deducted as it should have been, the Commissioner may increase the sum by up to 50% of what the payment should have been. In one of the provisions which allows the imposition of custodial sentence, Section 41, sub-section 3 provides that where any person fails to comply with the provisions of 41 (i) and (ii), he shall be guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or treble the amount of tax which is unpaid, whichever is the greater, and in default of payment to be sentenced to imprisonment with or without hard labour for a term not exceeding 12 months. Those persons among us who are directors should therefore be aware that they face personal liability for tax deducted and not paid over. Under Section 41 of the Act, the persons who were directors at the time of the failure to deduct and account to the Commissioner for tax so deducted, may find themselves personally liable, jointly and severally, not only to pay the tax with the 50% penalty assessed, but also to a fine of up to $1,000,000.00.

5. KEEPING UP WITH THE TAX ADMINISTRATION

I shall turn now to two issues dealing with the administration of the Income Tax Act. In the first section I will deal with the mechanics of assessment and in the final section I shall look briefly at the provisional Collection of Taxes Act and its use in Jamaica.

Section 72 of the Act gives the Commissioner the power to proceed to assess every person liable to the payment of tax as soon after the expiration of the time allowed to such person for the delivery of his return. There is no need to make any assessment where the taxpayer has himself submitted a return indicating that he owes the tax but has not made the payment in respect thereof. Notwithstanding the submission of a return however, the Commissioner is not obliged to accept the return made by the taxpayer, he may still raise an assessment if he disputes the return of income which has been made by the taxpayer. The right of the Commissioner of Income Tax to raise the assessment applies not only in cases where

the taxpayer has not submitted a return but where he has submitted a return with which the Commissioner does not agree. Such an assessment however must be made, pursuant to Section 72(4), within the year of assessment or before the expiration of six years thereafter. Section 75 thereafter requires that consequent upon the preparation of the assessment, the taxpayer must be advised by a notice addressed to him at his usual place of abode or business stating the amount at which he is assessed and the amount of tax payable by him and informing him of his right to object to the assessment. This objection must be made within 30 days of receipt of the assessment. Parenthetically it should be noted that where the Commissioner is of the view that there is a fraudulent attempt to evade taxes, there is no limitation on the period within which an assessment may be raised.

If the taxpayer chooses to object to the assessment, the Commissioner may accept the objection and accept the tax as offered by the taxpayer or may reject the assessment and in either case may issue a Notice of Decision indicating the extent of the tax liability of the taxpayer. Finally, upon the making of the decision by the Commissioner of Income Tax, if the taxpayer who has objected to the assessment is dissatisfied with the decision of the Commissioner, he may appeal to the Revenue Court within 30 days of the date of receiving the Commissioner's decision. The burden of proof in this case is shifted to the taxpayer who must proof that the assessment complained of is excessive. It should also be noted that under Section 76(3), where the taxpayer makes an appeal to the Revenue Court against a decision of the Commissioner, the tax must be paid pending the hearing of that appeal. It should be borne in mind that where any taxes are due and payable by virtue of any provision of the Income Tax Act, the enforcement of payment may be effected under a separate statute, namely the Tax Collection Act.

In the case of Winston Lincoln v the Collector of Taxes for St. James, RM Civil Appeal No 2 of 1986 heard in the Court of Appeal, one of the issues urged by the Appellant was that proceeding s under the Tax Collection Act were criminal in nature. Accordingly, so it was argued, the Crown was not able to appeal a decision given in the RM Court in relation to this matter. The Court of Appeal, Mr Justice Rowe presiding held that proceedings under the Tax Collection Act are civil proceedings. In another case in the Court of Appeal, Ralph Thomas v The C.I.T., RM Miscellaneous Appeal No. 17 of 1984, the issue to be decided by the Court was whether the two sections, Section 72 dealing with the assessment and Section 75 dealing with Notice of the Assessment and the giving of objection should be read together so as to force the Commissioner to issue his Notice within the period of six years given for making the appraising of the assessment. The Court of Appeal unanimously rejected the taxpayer's contention that the Notice had to be given within six years and it is now settled law that providing the assessment is raised

within the relevant period, it is irrelevant when the notice is provided to the taxpayer.

A third case involving the question of notice arose in Cecil July v the Commissioner of Income Tax, Supreme Court Civil Appeal SCCA No. 93 of 87. In that case the Commissioner purported to issue Notices of Assessment on the taxpayer and at the same time issued restriction notices preventing him from leaving the island. It was argued that this procedure was in breach of the decision of the Court Appeal in the Winston Lincoln case, that the tax payer had a right to be served with particulars of any assessment in relation to taxes which the Commissioner alleged that he owed. The Court of Appeal upheld that submission. As the Court had stated in the Winston Lincoln case, a notice of assessment to income tax must state in substance and effect, the basis upon which the assessment was made. In other words that the taxpayer is entitled to know the source of income upon which the tax is being levied and failure so to inform him vitiates the assessment. The decision in the Winston Lincoln case was subsequently followed in the case of Lynson Charlton v the Commissioner of Income Tax in the Revenue Court, Judgement No. 3 of 1988 by Mr Justice W.D. March.

There is one final case to which I would like to advert. It is the case of Raymond Clough, (one of our colleagues), v the Commissioner of Inland Revenue heard in the Court of Appeal as Resident Magistrate Civil Appeal No. 27 of 1990. In that case a plaint had been filed in the RM Court by the Commissioner to recover the sum of $1,309,479.45 being income tax and interest due thereon to the Government as per an agreement entered into with the taxpayer in June of 1985. The issue for the Court of Appeal which was raised at a preliminary point before the Court of Appeal was that the Resident Magistrate's Court had no jurisdiction to hear the matter. It was held because the sum being claimed was in excess of the jurisdiction of the Magistrate's Court and that proceedings under the Tax Collection Act were civil in nature, although criminal in form, the amount being claimed was in excess of the jurisdiction and the RM Court therefore could not hear the matter.

6. PROVISIONAL COLLECTION OF TAX ACT (PCTA)

I turn finally to the question of the general tax system and in particular the Provisional Collection of Taxes Act. I quote a Memorandum which was prepared by the Institute of Chartered Accountants of Jamaica. "The creation of a climate of stability and predictability dictates that investors and potential investors should be assured that Government will not normally introduce taxation impulsively and without providing an opportunity for adequate debate and comment by those

affected. Hence it is undesirable for new provisions to taxing statutes to be introduced a) to take effect retrospectively b) without a specified period of notice and c) consistently through the means of orders and confirmation notices under the Provisional Collection of Tax Act. The practice of introducing taxation measures in ways that do not recognize the above principles seriously affects the business decisions to invest. More often than not, taxation measures are introduced by orders under the PCTA and the effectiveness of these measures are invariably extended. Parliament and the nation do not in these circumstances have an opportunity to examine and debate the measures imposed by the edict of the Finance Minister". The Provisional Collection of Tax Act has been used consistently in Jamaica in the last several years. It is fair to say that almost every amendment to tax legislation be it income tax, general consumption tax, stamp duty or property taxes has been introduced by way of the Provisional Collection of Taxes Act. The origin of the statute is the Provisional Collection of Taxes Act in the UK which was the consequence of a decision in Bowles v Bank of England 1913, 1Ch page 57, that deductions of tax by the Banks, paying agents, companies and so on were illegal if made before the annual Finance Act became law. Subsequently the Provisional Collection of Tax Act 1913 was passed which gave a resolution of the committee of ways and means varying or renewing any existing tax, statutory effect for a period of four months thereafter. It is to be noted that the Provisional Collection of Tax Act in Jamaica has a wider application than its counterpart in the UK which only applies to income tax, purchase tax and duties of custom and excise. The orders under the Provisional Collection of Tax Act are made by the Minister of Finance and last for a period of six months following publication in the Gazette. The House of Representatives may by Resolution extend this period for a further three months.

Although this procedure seems to be a convenient way of allowing the Minister to make changes in the rates of applicable taxes, it has become used to make significant and substantive changes in the law which in my view are quite undesirable in a statute of this nature. Thus for example the complete overhaul of the withholding tax regime on interest earned from deposits in financial institutions has been accomplished by a number of Orders published in the Gazette and in my view, insufficiently debated in Parliament. Theoretically, when the order is due to expire, there is a need for a confirming resolution and this ought to provide the opportunity for a debate. However, the fact is that by then the tax has been in place between six to nine months and it seems that at that stage there is very little stomach to rehash matters which would have been of extreme importance at the time when the order was first made.

I am strongly of the view that it was not intended when the UK first passed its Provisional Collection of Tax Act in 1913 that the Act should have the kind of wide

application that it presently has here in Jamaica. In my view it detracts from the right of the lower house to discuss and pass taxation and taxation measures. There is even the view that the Act may be bordering on unconstitutionality in so far as it may purport to introduce new taxes. While I would not be prepared to go that far, I do believe it wholly undesirable that not only rates may be changed but old regimes within the taxing statutes may be changed almost on a whim and upon publication in the Gazette, and have the effect of law without the benefit of any meaningful debate either inside Parliament or outside of it.

I would ask our association that we should look at this issue with a view to seeing whether and if so to what extent it is desirable or expedient to have the Act and if it is not then we should lobby strongly to have this Act repealed.

Those are my comments in relation to the Keeping up with the Commissioner of Income Tax. I have not as you have seen gone into detailed controversies within the Act. I have tried to give an overview of the machinery and I hope that, not only as practitioners but as employers or employees, we will be better able to assess our own positions to protect ourselves against what could be wholly, unexpected consequences.

Thank you.

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