

# TECHNICAL ADVISORY

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**Issued By:** Tax Administration Jamaica (TAJ)  
**Date:** October 2012  
**Advisory #:** 2012/04/IT & GCT  
**Technical Paper:** *“INCOME TAX AND GCT TREATMENT FOR REAL ESTATE AGENTS”*

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## Issue

The relationship between a real estate agent and his principal can be either a contract of service or a contract for services. These give rise to different treatments for both Income Tax and General Consumption Tax (GCT). The following are guidelines for the tax treatment under both forms of contract.

## Legislative framework

### *Income Tax Act*

Section 5(1)(c)

### *General Consumption Tax Act*

Sections 2 and 18

## General Treatment of Contract for and of Service Income Tax Purposes

### *Contract of Service*

1. A Contract of Service indicates an employment, and amounts paid under this contract are emoluments. Therefore all statutory deductions are to be made e.g. PAYE (tax); Education Tax (both employees' and employers' contributions), etc.

Under such a contract or arrangement, a person (the 'employee') is under an obligation to render personal services to another person (the 'employer') and:

1. The employee is subject to the supervision, direction and control of the employer.
2. The employee holds an integral position within the organization e.g. Accountant/Managing Director
3. The employee does not conduct business on his account
4. There is a legally binding exclusive service agreement between the employee and the employer

5. Tools, materials and work place are provided by the employer
6. The arrangement involves payment of a fixed salary and reimbursement of the employee's expenses by the employer.
7. The employee receives vacation leave and any other staff related benefits
8. The employee is required to file regular, oral or written status reports with the employer.

### **CONTRACT FOR SERVICES**

2. Under this type of contract, the service is provided by an independent businessman, who is therefore responsible for his returns and payments under the self-assessment system. The independent businessman (the 'performer') agrees to provide services to another person (the 'payer') under the following terms:

1. The performer is not subject to the supervision, direction and control of the payer.
2. The performer does not hold an integral position within the organization
3. The performer conducts business on his own account.
4. The performer is entitled to provide services to more than one person at a time with a separate contract between the performer and each payer.
5. The performer provides his own equipment
6. The payer pays the performer a fixed amount or commission for the complete job rather than making periodic payments
7. The performer assumes his/her own financial risk and has responsibilities for his/her investment and management.

### **PERSONAL SERVICES**

Notwithstanding the normal treatment outlined above for contracts for services, section 5(1)(c)(ix) of the Income Tax Act requires the income arising from certain contracts for services to be treated, for income tax purposes, as though they were emoluments of an employment. These are contracts for services in which the performer (in these cases also referred to as 'the employee') is under an obligation to render personal services to the payer (also in these cases, referred to as 'the employer') whether on the performer's own behalf or on behalf of a company, and the performer is subject to, or to the right of, supervision, direction or control by the payer as to the manner in which he renders those services.

The definition of “personal services” includes services of a professional, clerical, technical, administrative or managerial nature”.

Section 5(1)(c)(ix) mandates the withholding of income tax only; other amounts normally treated as statutory deductions in an employment would still be paid under the self-employed system.

For example the definition of employment under the First Schedule of the Education Tax Act is as follows: -

“Employment in Jamaica under any contract of Service or apprenticeship written or oral and whether express or implied”.

Based on this provision, neither employees’ nor employers’ contributions for education tax should be withheld under Section 5(1)(c)(ix) of the Income Tax Act. The performer (i.e. the person who receives the contract) must make his return and payment to Tax Administration Jamaica. Please note therefore that there is no contribution due from the payer (i.e. the person giving the contract).

### **Income Tax Treatment**

#### **Real Estate Agent under a contract of Service**

Where a contract of service exists between a real estate agent and his principal, the principal, as employer, is required to withhold all income tax under the PAYE rules and regulations under the Income Tax Act. He is also required to withhold and pay from the emoluments of each agent all other statutory deductions, and to make employers’ contributions in respect of Education Tax, National Housing Trust (NHT) and National Insurance, as well as contributions required under the Human Employment and Resource Training (HEART) Act.

Employees who are paid a commission as part of their remuneration are eligible for a determined rate/code. A determined rate/code is based on the estimated income and expenses for the year.

Qualified individuals should submit a Form PO1 (attached) and an Expense Claim Form (Schedule 3) with their last pay slip showing clearly; basic pay and commission received, to Tax Administration Jamaica, Refunds Unit, 116 East Street, Kingston for processing.

A determined rate/code will be received which is based on the estimated income and expenses for the year. The employer will treat this amount as a tax-free allowance and it will be deducted from the emoluments before calculating the taxes.

This determined rate is applicable only for one calendar year and will not be renewed until the Sales Representatives file their Income Tax Returns substantiating the expenses that were allowed.

#### **Real Estate Agent under a contract for Services**

(i) Where a contract for services exists between a real estate agent and his principal and it can be established that the agent is deemed to be an employee under Section 5(1)(c)(ix) of the Income Tax Act, the principal is required to withhold all income tax under the PAYE rules and regulations. In these cases,

the agent, as an independent contractor, is required, on his own account, to make payments and contributions as a self-employed person under the Education Tax Act, the NHT Act and the National Insurance Act. The principal is not, in these cases, liable for employers' contributions for Education Tax, NHT, NIS or HEART.

(ii) Where it is determined that a contract for services exists between a real estate agent and his principal, and that the contract does not meet the conditions under section 5(1)(c)(ix) of the Income Tax Act, the principal has no withholding obligations in respect of income tax, education tax, national insurance, NHT or HEART. The agent is responsible to account for taxes and contributions required under these acts on his own behalf.

Where there is doubt as to whether a particular contract between agent and principal falls under (i) or (ii) above, it is highly recommended that the guidance or the concurrence of Tax Administration Jamaica is sought.

### **General Consumption Tax Treatment**

#### **Real Estate Agent under a contract of Service**

A real estate agent is required to account for general consumption tax (GCT) if his services qualify as a taxable activity under the GCT Act. Section 2 of the Act provides that **'any engagement, occupation or employment under any contract of service or as a director of a company'** is not a taxable activity. Accordingly, no liability for GCT arises where the agent is employed to the principal under a contract of service.

#### **Real Estate Agent under a contract for Services**

Where a contract for services exists between a real estate agent and his principal, the services offered by the agent to the principal qualify to be treated as a taxable activity. The agent is required, in respect of these services,

- (i) to apply for registration under section 26 of the GCT Act, using the prescribed form *'Application for General Consumption Tax Registration'* (Form 1).
- (ii) upon being registered as a registered taxpayer, to issue tax invoices to his principal and to collect GCT from his principal in respect of these services,
- (iii) to account for GCT to the Commissioner General, as required under the GCT Act.

GCT is chargeable on the agent's services even where these services involve the sale of real property, notwithstanding that the sale of real property lies outside the scope of GCT. It is important to recognize that the service of the agent in these cases is distinct from the actual sale of the property.

For GCT purposes, it is irrelevant whether the payments under the contract for services between the agent and the principal qualify to be treated as emoluments under section 5(1)(c)(ix) of the Income Tax Act.