

Volume 1: Issued July 3, 2009

## TECHNICAL ADVISORY

### Re: Amendment to the Income Tax Act- Taxation on Dividend Income.

This Advisory outlines the new dividend taxation rules and the withholding tax requirements.

#### Legislative Reference:

All reference is to the Income Tax Act ("the Act").

#### Double Taxation Agreements (DTA).

The Income Tax Act was amended by The Provisional Collection of Tax (Income Tax) Order, 2009 dated June 19, 2009.

The effect of the amendment is to remove the incident of income tax from dividends paid to Jamaican residents by Jamaican resident companies with effect from the **1st January, 2009**.

The legislation provides that the income tax payable "shall be nil".

This applies whether or not the resident company paying the dividend is listed on the Jamaica Stock Exchange (JSE).

Note however, that the provision makes exception to the above rules in relation to preference dividends which qualifies for income tax relief under section 13 (1) (a) (3) of the Act.

Section 13 states-

- (1) for the purpose of ascertaining the chargeable income or statutory income, as the case may require, of any person, there shall be deducted all disbursement and expenses wholly and exclusively incurred by such person in acquiring the income-
  - (i).....
  - (ii).....
- (a) any sum paid by such person by way of **interest** upon any money borrowed by him, where the Commissioner is satisfied that the interest was on capital employed in acquiring the income:  
Provided that-
  - (A).....
  - (B).....

(3) (a) subsection (1) (a) shall apply to the payment of **preference dividends** by a body corporate subject to income tax as **it applies to the payment of interest:**

The above provision means that a company may claim as an income tax deduction preference dividends paid in certain conditions.

The amendment to section 30 of the Act also introduce a new sub-section as (4) which excludes tax deductible preference dividends from the nil rate applicable to dividends received by Jamaican resident shareholders from Jamaican resident companies.

This means that tax deductible preference dividends paid by companies to their shareholders are fully taxable in the hands of the shareholders, whether resident or non-resident.

If the preference dividends do not qualify for an income tax deduction, then they will be treated in like manner to the ordinary dividends and will be subject to a nil rate of tax when received by a Jamaican resident shareholder.

The nil rate of tax applicable to resident shareholders in receipts of dividends from resident companies **has not been extended to non-resident corporate shareholders.**

The provision of section 31 of the act has been amended to make assessable to income tax **all dividends** paid by a resident company to a non-resident shareholder at the rate of twenty five cents in the dollar in the case of an individual and thirty three and one third cents in the dollar in the case of all other non-resident person, effective July 1, 2009;

This is whether are not, the company paying the dividend is listed on the JSE, but would be subject to any DTA that Jamaica has concluded with the country of resident, of the non-resident.

### **History:**

Prior to January 1, 2009:

Dividends (including preference dividends), paid to shareholders of companies listed on the JSE was subject to a zero-percent rate of tax.

Dividends paid to shareholders of companies **not listed** on the JSE, was assessable to income tax.

Dividends paid by resident companies to non-resident shareholders were treated as distribution and was assessable to tax at source, subject to DTA.

There was no requirement for withholding income tax from the payment of tax deductible preference dividend.

## **Obligation to withhold tax on Dividends**

Section 40(1) of the Act was amended to include the word ‘dividend’.

The section imposes an obligation on Jamaican residents who makes certain payments to non-resident persons, to deduct tax from such payments if chargeable to tax at 25% in the case of an individual and 33 1/3% in any other case (e.g. Corporations).

This means (and in reference to the foregoing paragraphs), that Jamaican resident companies whether or not listed on the JSE are required to account for withholding tax on payments of dividends made to non-resident shareholders, subject to DTA. This is in respect of both ordinary and preference dividends.

Analysis of the Amendments/Provisions:

- Dividend paid by a Jamaican resident company to a Jamaican resident shareholder, is not subject to tax.
- Dividend paid by a Jamaican resident company to a non-resident person is subject to tax; the applicable rate of tax. (Domestic/Treaty).
- There is no distinction as to companies listed on the JSE and Companies not so listed.
- The Jamaican resident company making the payment of the dividend to the non-resident must withhold the tax at the applicable rate. (Domestic/Treaty)
- The withholding requirement applies to the payment of ordinary and preference dividend paid to a non-resident.
- There is no withholding requirement on preference dividends paid to a Jamaican resident that qualify for income tax deduction.
- The preference dividend so paid is subject to tax in the hands of the Jamaican resident recipient.
- Preference dividend not qualified for income tax deduction is to be treated as ordinary dividend (i.e. tax at nil).

***Disclaimer: This Advisory should be used as a guide and not a substitute for the Income Tax Act.***