TECHNICAL ADVISORY

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This Advisory relates to:

Amendments to the First & Third Schedule of GCT Act
In relation to persons who are entitled to purchase taxable goods free of GCT

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TAXPAYER AUDIT & ASSESSMENT

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Introduction

The Act, specifically the First Schedule Part 2 and the Third Schedule Part 1 were amended, whereby certain persons who were entitled to purchase taxable supplies, which attract a positive rate of tax, at 0%. If these persons purchase taxable goods, the tax status will now change from taxable to exempt. ***It should be noted that this does not apply to services, on which tax must be paid.***

Imposition of GCT

GCT, an indirect tax, is imposed at the rate of 16.5 % (standard rate) on most goods and services supplied in Jamaica by a registered taxpayer in the course or furtherance of a taxable activity. It is also imposed on goods and services imported into Jamaica.

Some taxable supplies attract a different rate from the standard rate:

- Motor vehicles – 17% to 137%;
- Some supplies at 0%;
- Telephone services at 20%
- Tourism revenue, although not specifically stated in the Act, 6.25%. This rate will be increased to 8.25% in July 2005.

Supplies are either taxable, specifically exempt or outside the scope of the Act.

A taxable supply is any supply of goods and services which is charged with GCT under section 3, including zero rated supplies. An exempt supply is not charged with GCT and is therefore not a taxable supply.

Exempt supplies

Supplies of goods and services which are exempt are not charged with GCT. Exempt supplies are of a type that would ordinarily be taxable if they were not specifically exempt. To the extent that a registered taxpayer carries on any activity which is exempt, the taxpayer is not required to account for tax on any supplies made and is unable to claim input tax deductions for supplies received.
The tax paid forms part of the cost and is passed on to the purchaser. The taxpayer is not required to be registered if he is engaged exclusively in an exempt activity. Exempt products are not free of tax, only that suppliers will not charge tax when a sale is made. Theoretically, tax is imposed indirectly on exempt items, therefore not free of tax and with a lower effective rate.

Zero rated supplies

Zero-rated supplies are supplies which are taxable but which are charged at the rate of 0%. They are different from exempt supplies, in that persons making zero-rated supplies can register for GCT and claim tax credit for tax paid for the purpose of making zero-rated supplies.
These supplies are free of tax, ***thus are truly exempt from tax as there is no tax on the business's inputs and outputs.*** The purchaser buys these products free of tax.

Persons who eligible to purchased goods zero-rated

Some persons will continue to purchase goods and services zero-rated.

The following persons are entitled to purchased goods and services, which attract a positive rate of tax, at zero percent, pursuant section 24, First Schedule Part 2 and Regulation 23:

1. Ministries of Government;
2. A statutory body or authority other than those listed in paragraph 2 of the Group 6 Part of the First Schedule;
3. Any Parish Council;
4. The Kingston and St. Andrew Corporation;
5. Diplomats and International organization;
6. University of the West Indies and public hospitals;
7. Persons who are entitle to purchase motor vehicles pursuant to Group 11 of the First Schedule, Part 2;
8. Persons listed in Group 15 of the said schedule

Taxable items made exempt if purchased by certain persons or for certain use

The amendments to the GCT Act bring about some changes in the administration of the Act and for certain persons who were entitled to purchase goods and services zero-rated.

The amendment in question indicated that these persons will continue to purchase taxable supplies free of tax. However, the tax status of these items will change from taxable to exempt.

These provisions, which were previously listed in Part 2 of the First Schedule, are now placed in the Third Schedule Part 1, being goods exempt from the payment of GCT.

It should be noted that a similar mechanism to that of getting supplies zero-rated, will be in force for getting taxable items exempted.

There will be input tax implications for the supplier if the tax status is change from taxable to exempt.
Here the taxpayer may not be allowed to claim a tax credit on goods purchased which are used in making an exempt supply or may have his input tax, previously claimed, being disallowed.

Analysis of the amendment

1. The items are subject to tax at the standard rate (16.5%).
2. However, if these items are purchased by the listed prescribed persons the status of the items will be change from being taxable to exempt
3. Any tax paid by the supplier in connection with the specified items is not allowable.
4. If, at the time of purchasing these supplies by the taxpayer, the intention is for the purpose of making a taxable supply, the tax paid was claimed as a credit, then the item subsequently sold as exempt, the supplier will have to add the tax previously claimed to the cost of the product as he will have to refund the said amount to the GOJ. This is known as *claw back*. This means that the price of the specified goods will increase by the amount of input tax not able to be claimed by the supplier.
5. If the supplier is allowed to claim the input tax as a credit and not pass it on to the purchaser, then it means that the specified items could be regarded as zero-rated on one hand and exempt on the other. It could be exempt for the purpose of computing residual input tax but the initial input tax paid by the supplier is allowable as a tax credit.

Persons who are eligible to purchase taxable goods exempt from tax

The following people are no longer entitled to purchase goods zero-rated, the tax status of the listed items have change from taxable to exempt:

1. persons who purchased certain farming tools and other goods for agricultural purposes;
2. persons who purchased certain fishing equipments and other goods for that purpose;
3. some educational institutions approved by the Ministry of Education;
4. certain goods purchased by or on behalf of Cambridge Local examination Council;
5. sporting goods purchased by sporting organization;

Example indicating implication of the amendment

- A registered taxpayer is involved in the supply of Tables.
- The cost of a table is $100 + GCT @ 16.5% ($16.50)
- The taxpayer mark-up is 50%.
- At the time of purchase, the supplier does not know who may be the purchaser, thus claim an input tax credit of $16.50.
- The selling price of the chair is $150.00 without tax.
- If the chair is sold to persons other than the specified group the tax inclusive cost would be $174.75 of which tax is $24.75.
- If the chair is sold to a zero-rated customer, the selling price will be $150.00.
- If it is sold to an exempt customer the price will be either $166.50, $174.75 or another value, depending on how much of the additional cost the taxpayer may able to absorb .
- It should be noted that the cost to the supplier in providing the specified exempt goods may increase as GCT paid on general business expenses may have to be apportioned as per Regulation 14(4) and included in the cost of the goods.

Tax Credit in relation to Clawback & Payback

This applies when the purpose of a supply has been changed. Taxpayers who have purchased items for making taxable supplies may find that the purpose/use has changed. The tax paid on these items by the taxpayer, may be allowable or not allowable.

Change of intention in use of goods or services

There may be occasions where the intended use of goods or services on which the registrant based his claim to input tax changes. Where the registrant changes his intention before he uses the goods or services, or, where he actually uses the goods or services for a different purpose, the "**Clawback**" or "**Payback**" mechanism applies.

"**Clawback**" applies where:

(a) The registrant had claimed input tax on goods or services because he intended to use them in making taxable supplies but in the event he used them, or formed an intention to use them, in making either exempt supplies or both taxable and exempt supplies; **or**

(b) He had claimed input tax on goods or services because he intended to use them in making both taxable and exempt supplies but in the event he use them, or form an intention to use them in making only exempt supplies.

If "clawback" applies, he will be required to recalculate the input tax he had claimed in past taxable periods and to repay an amount equal to any over claimed input tax to the Inland Revenue Department. He must do this on the return for the taxable period in which the use occurs or the revised intention is formed. The recalculation must be carried out using the method he used when making his original claim to input tax.

"**Payback**" applies where:

(a) The registrant did **not** claim input tax on goods and services because he intended to use them in making exempt supplies but in the event he use them, or form an intention to use them in making taxable supplies or both taxable and exempt supplies; **or**

(b) He did **not** claim input tax on goods or services because he intended to use them in making both taxable and exempt supplies but in the event he uses them, or form an intention to use them, in making only taxable supplies.

If the registrant is making an adjustment under either "clawback" or "payback" provision because he made an interim use of the good or services which is different to that which he originally intended, **and he** retain an intention to make that ‘original’ supply, all such supplies may be taken into account. Any resulting input tax apportionment must be made on a fair and reasonable basis.

- The "clawback" and "payback" mechanism does not apply to any input tax on goods and services incurred in a taxable period which began more than 6 years before the date he used them, or formed an intention to use them, in a different way to that originally intended;
- *The "clawback" and "payback" mechanism does not apply where the liability of your intended supply has altered because of a change in the law*.