



Technical Advisory  
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## **Re: Am I in a Taxable Activity?**

### **1. ISSUE**

This Advisory applies to the definition of a Taxable Activity. The Advisory is to be used as a guide in identifying whether or not a taxable activity exists.

### **2. Legislation**

All legislative references are to the General Consumption Tax Act 1991, unless otherwise stated.

### **3. Am I in a taxable activity?**

A person who operates a business or is engaged in any activity, which is not exempt from tax, is engaged in a taxable activity.

The GCT Act imposed a tax on any taxable supply made in Jamaica by a registered taxpayer in the course or furtherance of a taxable activity.

The tax is imposed on the value of the supply and not on income.  
A supply includes the provision of goods or services.

Only persons carrying on a taxable activity may register for GCT, and only supplies made in the course or furtherance of a taxable activity (taxable supplies) have GCT charged on them. The meaning of "taxable activity" is therefore crucial for registration and in determining whether a person must charge tax on supplies made and account for GCT on supplies received. Because of its importance, the issue of whether a taxable activity is being carried on has been at the centre of many court cases.



To ascertain if a person is engaged in a taxable activity all of the following should exist:

- a. There must be an activity;
- b. The activity must be carried on continuously or regularly;
- c. The activity must involve or is intend to involve *supplies made to another person for a consideration*.
- d. The supply must be made in Jamaica
- e. The activity must not be exempt from tax or outside the scope of the Act.

#### 4. Is there an activity?

The first hurdle one has to cross is to determine if there is an activity, as this is the corner stone of a taxable activity. If there is no activity, a taxable activity cannot exist.

**"Activity"** is not defined in the Act, but is given a wide interpretation by the courts. In *Newman v C of IR (1994) 16 NZTC 11,229 at page 11,233 Fraser J said:*

*[Activity] is a word of considerable breadth. The new Shorter Oxford English Dictionary 1993 ascribes a number of varying meanings or shades of meanings, none of which is exactly apposite to the word in s 6. The nearest thing, I think, is 'an occupation, a pursuit' and (in plural) 'things that a person animal or group chooses to do'.*

*The leasing of land is an "activity" for the purposes of the GST Act.*

Comment [NM1]: Relevant, pertinent

#### 5. Is the activity carried on "continuously or regularly"?

An activity is a taxable activity if, among other things, it is carried on continuously or regularly. To be taxable, the activity does not have to be carried on both continuously and regularly — an activity is a taxable activity if it is carried on continuously, or if it is carried on regularly. The terms "continuously" and "regularly" are not defined in the legislation, however their meaning has been clarified to some extent by a series of Court cases, the most



important of which was the Court of Appeal decision in *Newman v CIR* (1995) [17 NZTC 12,097](#).

As a general rule, when determining whether a taxable activity exists, the words "continuously" and "regularly" can be regarded as having their ordinary meaning. For example, an activity is continuous if there is no permanent cessation or significant interruption of the activity. A brief interruption, such as the business closing down for the weekend or for the Christmas break, would not mean that the activity is not carried on continuously. An activity is regular if it is repeated at fixed intervals. For example, if a person sells one car, the activity is not regular, but if the individual sells 12 cars each year this is fairly indicative of a regular activity.

The courts have considered the phrase "continuously or regularly" in a number of cases. In *Case N27* (1991) 13 NZTC 3,229 at page 3,238 Bathgate DJ stated that:

*"Continuously" means that the activity has not ceased in the permanent sense or has not been interrupted in a significant way ... The object and purposes of any physical break in the activity, whether it be for rest, recreation, health and such like may be of importance in determining whether the activity is being carried on continuously...*

*"Regularly" embodies a steadiness or uniform action, or occurrence of action, so that it recurs or is repeated at fairly fixed times, or at generally uniform intervals, to be of a habitual nature and character.*

In *Allen Yacht Charters Limited v C of IR* (1994) 16 NZTC 11,270 Tompkins J stated:

*"The activity must be carried on "continuously or regularly". This indicates that the activity must either be carried on all the time, i.e., continuously, or it must be carried on at reasonably short intervals, i.e., regularly. An activity that is intermittent or occasional does not qualify".*

It is the *activity*, which must be carried on continuously, or regularly, not the supply of goods and services. The supply of goods and services itself may be intermittent or irregular, but so long as the activity which generates or results in the supply being made is carried on continuously or regularly, it will still be a taxable activity (assuming the other necessary conditions are met).



## 6. Is there a Consideration?

An activity is a taxable activity only if it involves the supply of goods and services to another person for a consideration. Section 2 states

*"consideration" in relation to the supply of goods and services to any person, includes any payment made or any act or forbearance in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person;*

The main requirement for a *consideration* is that there must be a direct or substantial nexus between the payments and the supply of goods or services.

The key elements of this definition are:

- (a) Consideration can be either a payment or an act of forbearance. The Courts have indicated that "payment" has a very wide meaning and can include payment in non-monetary form or by offset of debts. For example, in *The Trustee, Executors & Agency Co NZ Ltd v CIR (1997) 18 NZTC 13,076* the High Court held that the payment of rates and accounting fees by the lessee on behalf of the lessor was part of the consideration for the supply of land. An example of an act of forbearance would be a mortgagee surrendering the right to take possession of a property following default in payment by the mortgagor; or the forgiveness of a debt.
- (b) A payment does not have to be voluntary in order for it to constitute consideration.
- (c) The payment must be made in respect of, in response to or for the inducement of a supply. In other words, there must be a connection between the making of the payment and the supply of goods and services. The payment must be made for the supply.
- (d) The consideration does not have to be provided by the person receiving the supply. If goods and services are supplied to one person, but payment for them is made by another person, the payment still amounts to a consideration.
- (e) A payment made to a non-profit organisation as an unconditional gift is not consideration for a supply. The donor must receive nothing in return for the donation, and there must be no conditions attached to the making of the gift.



## 7. Is the taxable activity carried on by a "person"?

Section 2(1) further requires that the taxable activity have to be carried on by a "person".

"Person" is not defined in the Act, but it includes a company, an individual, a club, partnership, society, association or a public entity.

## 8. Supply made to another person

The concept of "*supply*" is one of the fundamentals upon which GCT is built. It is essential that any activity should involve, or intend to involve, the supply of goods and services before it can be considered a taxable activity (Section 2). It is useful to note at this stage that sections 2 & 3 make reference to goods **and** services. It can be **inferred** to mean goods **or** services. Therefore, it is not necessary for a person to supply both goods and services before being considered to be carrying on a taxable activity it is sufficient that either goods or services are supplied.

The legislation indicated a number of progressive hurdles must be surmounted before a charge to tax arises.

- (a) It is necessary to establish that a transaction amounts to a supply;
- (b) The supply must be made for a consideration;
- (c) It must amount to either a supply of goods or a supply of services;
- (d) It must amount to a taxable supply.

The word '*supply*' in its ordinary sense means to furnish or provide. This indicates that there are at least two parties to a supply: the person who "furnishes or provides" goods or services, and the person who receives them. Thus, in the normal sense, a person makes a supply to the customer. The legislation refers to a "supplier" of goods and services and a "recipient" of such goods and services. "Supplier", in relation to any supply of goods and services, means the person making the supply. "Recipient" in relation to any supply of goods and services, means the person receiving the supply. Under normal usage, it would appear that persons could not supply themselves, however, the law deemed goods used for own use as a supply (self supply).



## 9. The Jamaican Picture:

The basic rule is that a supply is made in Jamaica for GCT purposes if the supplier is resident in Jamaica. The residence rules applicable are those as per the Income Tax Act.

The question of whether a supply is made in, or outside, Jamaica is not governed by the place where the supply is physically made but is governed primarily by the place where the supplier is resident (**s19**), and in some cases, by the place where the service is physically supplied.

## 10. Is the Activity Exempt from tax?

Activities listed in the Third Schedule to the Act are exempt from tax. (Appendix 3).

The activities of making exempt supplies are excluded from the term "*taxable activity*".

No GCT (output tax) is chargeable on the making of "exempt supplies" as it is not done "in the course of furtherance of a taxable activity".

Persons making only exempt supplies are not required to register (s29) for the purposes of the General Consumption Tax Act and are not entitled to claim an input tax credit for the GCT paid on purchases.

Activities, which are outside the scope of the Act, are treated similar to exempt activity. These include:

- ⌚ the supply of real property;
- ⌚ recreational pursuit or hobby;
- ⌚ any contract of service

## 11. Process for identifying if the activity is exempt or outside the scope of the Act.

A process of elimination determines the tax status of an activity.

1. Look to see if the activity falls within the definition of goods or services; if no, the activity is outside the scope of the act;
2. Look at the exclusionary clause in the definition of taxable activity;



3. If falls within the definition of goods or services, look within the Third Schedule to the Act, to ascertain if the activity is listed. If yes the activity is exempt from tax. If the activity is not included, it is a taxable activity.

## 12. Department's Position

1. For an activity to be regarded as taxable, all conditions listed in point 3 should exist.
2. If all the conditions are not met a taxable activity does not exist.
3. If you are engaged in taxable activity, you are liable for registration.

## 13. Example & analysis:

Mr. T Pet operates a pet shop, supplying ornamental fish and pet feeds.

Analysis

- ⌄ Mr. T Pet is engaged in an activity, operating a pet shop.
- ⌄ The supplies of the products are carried on continuously and regularly.
- ⌄ The product is being supplied to some other person for a consideration
- ⌄ The supply takes place in Jamaica
- ⌄ The product is not exempt from tax



## Appendices:

*Extract from GCT Act 1991*

### 1. Section 3 – imposition of Tax

#### **Imposition of General Consumption Tax.**

3. (1) Subject to the provisions of this Act, there shall be imposed, from and after the 22nd day of October, 1991, a tax to be known as general consumption tax-

(a) on the supply in Jamaica of goods and services by a registered taxpayer in the course or furtherance of a taxable activity carried on by that taxpayer; and

(b) on the importation into Jamaica of goods and services,  
by reference to the value of those goods and services.

### 2. Section 2 - Definition

"goods" means all kinds of property other than real property, money, securities or choses in action;

"services" means the supply, other than the sale of real property, of anything for a consideration which is not a supply of goods;

"taxable activity" means any activity, being an activity carried on in the form of a business, trade, profession, vocation, association or club, which is carried on continuously or regularly by any person whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services (including services imported into Jamaica) to any other person for a consideration; but does not include :

(a) any activity carried on essentially as a private recreational pursuit or hobby;

(b) any engagement, occupation or employment under any contract of service or as a director of a company; or

(c) any activity specified in the Third Schedule;



### 3. THIRD SCHEDULE (Sections 2, 25 and 29)

#### GOODS AND SERVICES EXEMPT FROM TAX

##### PART I Goods

1. Travel tickets for international travel

6. 6A. Raw foodstuff as follows -

(a) fresh fruit and vegetables, excluding imported apples, pears, quinces, apricots, cherries, peaches, nectarines, plums, sloes, berries, grapes and kiwis;

(b) ground provisions;

(c) legumes;

(d) onions and garlic;

(e) meat;

(f) poultry;

(g) fish, crustacean or mollusc,

which contain no additive and which is not subject to any process other than -

(i) freezing, chilling, salting or packaging,

(ii) slicing, mincing, grinding, dicing or chopping; or

(iii) natural drying.

*(This does not include the juicing of fruits)*

7. Milk (including condensed and powdered skimmed) but excluding flavoured milk, milk-based products and milk substitutes.

8. Cornmeal and cereal flour which is known as counter flour and which is made from cereal containing thiamine, riboflavin, niacin and iron but no other additives.



- 8A. Corn
- 8B. Soyameal
- 8C. Wheat
9. Corned beef.
10. Pickled mackerel, herring, shad and dried salted fish.
11. Canned sardines, herrings and mackerel.
12. Infant formulae.
13. (1) Bread, buns, buns, biscuits and crackers.  
  
(2) In paragraph (1) "crackers" means small dry bakery products made only of bleached flour and water, with or without leavening or shortening and salted, the total weight of which contains not more than ten per cent of sugar and without flavouring, coating or topping and verified to be such by the Bureau of Standards.
14. Rice.
15. Sugar (brown).
17. Salt.
18. Eggs.
19. Patties that is to say beef or vegetable pies of the description popularly known by that name in Jamaica.
20. Rolled oats.
19. Baking flour packaged in quantities of not less than 45.359 kilograms.
22. Any live bird, fish, crustacean, mollusc or any other animal of a kind generally used as or yielding or producing food for human consumption and draught animals.
23. Unprocessed agricultural produce, including produce from stock farming, fresh water fish farming, forestry cultivation and horticulture supplied directly at the farm gate.
24. Motor spirit, which before being sold is coloured to the satisfaction of the Commissioner of Inland Revenue, and lubricating oil which are sold to fishermen for use in commercial fishing and which are so certified by the Director, Fisheries Division, Ministry of Agriculture:



Provided that with respect to motor spirit the extent of the exemption granted under this Item shall apply only in respect of fifty per cent of the tax payable.

26. Cooking oil.

31. Syrup as specified under Tariff Heading No. 21.06 of the First Schedule to the Customs Tariff (Revision) Resolution, 1972.

32. Fish, cock and noodle soups in aluminium sachets.

42. School uniforms and school bags.

45. Sanitary towels and tampons specified under Tariff Heading No. 4818.401 of the First Schedule to the Customs Tariff (Revision) Resolution, 1972.

46. Food produced exclusively for the feeding programme of a school approved by the Minister of Education which is not for resale to the general public.

## **PART II-Services**

1. The following operations -

(a) the construction, alteration, repair, extension, demolition or dismantling of any building or structure, including offshore installations, that is to say, installations which are maintained or are intended to be established for underwater exploitation;

(b) the construction, alteration, repair, extension or demolition of any works forming or intended to form, part of the land, including (without prejudice to the generality of the foregoing) walls, roads works, powerlines, telegraphic lines, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water-mains, wells, irrigation works, sewers, industrial plant and installation for purposes of land drainage, coast protection or defence;

(c) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are described in paragraphs (a) and (b), including site clearance, earth moving, excavation, tunnelling or boring laying of foundations, erections of scaffolding, site restoration, land-scaping and the provision of roadways and other access works;



2. Transportation of people within Jamaica.
  
4. The rental of residential property for residential purposes.
  
5. Public postal and telegraph services.
  
11. Medical, dental, nursing and optical services and services provided pursuant to the Professions Supplementary to Medicine Act.
  
12. The provision of education or training in an educational institution approved by the Minister of Education.
  
14. Services performed under a contract the payment for which is by a foreign government or a multilateral lending agency.
  
15. Services rendered by Legal Aid Clinics and under the Poor Prisoners' Defence Act.
  
17. The supply of water (excluding bottled water) to the public.
  
18. The supply of electricity to or for the public.
  
19. The supply of sewerage disposal services.
  
  
23. (1) The following financial services -
  - (a) the exchange of money;
  - (b) the payment or collection of a cheque;
  - (c) the issue of a letter of credit, traveller's cheque, bank cheque, postal note, cash card, credit card or money order;
  - (d) the issue, allotment, drawing, acceptance, endorsement, transfer of ownership, or payment of a debt security;
  - (e) the issue, allotment, or transfer of ownership of an equity security or a participatory security;
  - (f) underwriting or sub underwriting the issue of an equity security, debt security, or participatory security;
  - (g) the provision of credit under a credit contract;



- (h) the assignment of any hire purchase agreement;
- (i) the provision of a guarantee, indemnity, security, or bond in respect of the performance of obligations under a cheque, credit contract, equity security, debt security, or participatory security, or in respect of the activities specified in paragraphs (b) to (h);
- (j) the provision or transfer of ownership, of a life assurance contract or the provision of re-insurance in respect of any such contract;
- (k) the provision or transfer of ownership of an interest in a superannuation scheme.
- (l) the provision or assignment of a futures contract through a futures exchange;
- (m) the agreeing to do or arranging of any of the activities specified in paragraphs (a) to (l);
- (n) the payment of dividends and interest.

(1A) The exemption shall not apply to -

(a) any commission earned by a salesman in the life insurance industry who is self-employed or is employed as an independent contractor; or

(b) the following -

(i) services rendered by an accountant or attorney-at-law; or

(ii) fees or commission charged in respect of the services specified in subparagraphs (a) to (n) of that paragraph.

(2) In paragraph (1)

"equity security" means an interest in or right to share in the capital of a body corporate;

"participatory security" means an interest or right to participate in any capital assets, earnings, or other property of any person, including an interest in a unit trust but not in an equity security.

24. Services rendered by the Jamaican Branch of the Red Cross Society.

25. Services rendered by the St. John's Ambulance Brigade.

26. Services rendered by the Boy Scouts and Girl Guides Association of Jamaica and any other youth organization or association approved by the Minister.

27. Services (excluding catering services) rendered at a port or international airport in Jamaica in connection with the importation or exportation of goods or the transportation of people into or out of Jamaica.



29. The rearing of animals or the growing of crops under a contract for reward. (*Inserted 22/10/02*)