TAXPAYER AUDIT & ASSESSMENT DEPARTMENT
Interpretations, Rulings & Opinions Committee Paper
(I.R.O.C Issued 2004, January.)

Re: Franked Income

Issue:

The Committee was asked to clarify the application of Section 38(4) of the Income Tax Act on dividend income received from Companies listed on the Jamaica Stock Exchange since April 2002.

Ruling:

The Committee has ruled as follows and staff members are to be guided by the following:

"Section 38(4) of the Income Tax Act provides as follows;

> Where, on distribution of income by a body corporate to another body corporate subject to income tax which is resident in the Island, tax is deducted at source from that income (hereinafter referred to as *"franked income")*, the deduction shall be treated,as regards the franked income, as discharging the liability of tax of –
>
> a) The body corporate which received the franked income;

b) any other body corporate to which the body corporate referred to in paragraph(a) may distribute the franked income;
c) any other body corporate to which the body corporate referred to in paragraph (b) may distribute the franked income and so on from body corporate to body corporate; and
d) any individual to whom the franked income may be distributed by any of such bodies corporate, and any distribution by a body corporate referred to in paragraph (a),(b) or (c) shall be deemed to have been paid first out of franked income."

Particular attention was paid to the words in lines 4 to 6 of the above mentioned Section which state *"the deduction shall be treated …as discharging the liability to tax"*. This has been interpreted to mean that **the tax liability** of the recipient of the franked income identified in sub-paragraphs (a) – (d) is to be treated as **settled** regardless of the quantum. In other words the initial deduction settles the liability of all persons (body corporate or individual).

The practical viewpoint is that the *"franked income"* should be treated in like manner as *"exempt income"*.

The amendment to Section 30(3) which resulted in distributions being taxed at zero-rate (0%) when distributed by a company listed on the Jamaican Stock Exchange (Company A) brings to the fore, the treatment of franked income. This gives rise to two considerations:

1) The income is not *franked income* since the amount taxed is at 0% and therefore the tax liability of Company B is not discharged.

2) The rate of 0% is in fact a rate of tax and hence the income is not exempt from tax.

Notwithstanding that the rate of tax is zero-percent (0%) and the income is not exempt, the Department, by consensus, is of the opinion that the tax liability of Company B is deemed to be discharged.

Please note the following:

a) **Franked Income is to be treated as if it were exempt.**
b) The position expressed in item #2 above to treat the distribution as taxed and that the liability of Company B is discharged **will be adopted**.