



Interpretations, Rulings & Opinions Committee Paper  
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**RE: TREATMENT OF THE LEASING OF HOTELS (GCT)**

**What is Taxed in Jamaica?**

All goods and services consumed in Jamaica are deemed as taxable under the GCT Act (1991).

**Imposition of Tax:**

GCT is imposed: -

- 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

**DEFINITIONS:**

**GCT Act (1991) Section 2:**

**"Goods"**

means all kinds of property other than real property, money securities or choses in action.

**GCT Regulations Fourth Schedule:**

**"Services" -**

- (c) hiring (other than under a hire-purchase agreement), leasing or renting of goods;
- (d) the supply, other than the sale of real property, of anything for a consideration which is not supply of goods;

## **GCT Act (1991) Third Schedule Part 11 item 4 -(exempt)**

The rental or lease of residential property, including hotel, inn, guest house or similar accommodation to the same person as from the thirty-first consecutive day of occupancy.

### **GCT ACT PART I:**

#### **"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 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 -

- (b) any engagement, occupancy or employment under any contract of service or as a director of a Company; or
- (c) any activity specified in the Third Schedule;"

Section 2 (b) further amplifies the meaning of the phrase 'taxable activity' with the following provision: -

"(b) a taxable activity includes anything done in commencement or termination of that activity".

### **THE CASE (in brief):**

In the case of *Real Resorts Limited vs. The Commissioner of General Consumption Tax No. 2 1997*, Real Resorts claims input tax credit for GCT paid by them on fees for professional services rendered to it. By a memorandum of understanding dated June 5, 1996, made between Real Resorts and Beaches Management Limited, Real Resorts agreed inter alia, to construct and lease to Beaches Management Limited, a hotel of the type and size agreed on by both parties. Real Resorts submitted returns for the period December 1994 to May 1995 and

sought a refund of input tax paid on purchases and expenses incurred in respect of the above mentioned hotel, which had been approved under the Hotel Incentive Act. The GCT Department refused the claim.

## THE JUDGMENT:

Rendered by the late Justice Courtenay Orr, the judgment covers several issues.

1. Both parties (Commissioner GCT and Real Resorts Limited) are agreed that **the taxable activity of the Real Resorts is the leasing/rental of commercial premises, a hotel.**
2. The construction of the hotel had not been completed during the relevant period (i.e. the period of December 1994 to May 1995).
3. When did Real Resorts commence its taxable activity? Section 2 (1) of the GCT Act provides in part as follows:
  - a. "Input Tax in relation to a registered taxpayer means: - tax charged under Section 3(1) on the supply of goods and services **made to that taxpayer**.... .being goods and services required wholly or mainly for the purpose of making taxable supplies" (emphasis supplied).
  - b. Taxable supply in the above mentioned Section 2 (1) is defined in these terms:
    1. " 'taxable supply' means any supply of goods and services on which tax is imposed pursuant to this Act. As noted above, services which are applied to a particular taxpayer and which have attracted tax under Section 3 (1), must relate to, indeed be required **wholly** or

mainly for the purpose of making taxable supplies by the claimant taxpayer, (in this case Real Resorts), if he is to benefit from an input tax credit. So then such supply must be for the purposes of his taxable activity.

5. Section 2(1) of the GCT Act clearly defines a "taxable activity".
6. Professional fees for the services of architects etc. rendered in connection with the construction of a hotel, albeit a hotel that one intends to lease or rent when completed, cannot ...be said to be fees paid in connection with the commencement of leasing or renting of the hotel. There is no direct or immediate link between such fees and the commencement of the leasing or rental of the hotel.

#### APPLICATION OF THE LAW:

The leasing of a hotel is regarded as the provision of services, pursuant to the 4th Schedule of the GCT Act. **The provision of this service is taxable at the standard rate of tax.** In the case of Real Resorts vs. The Commissioner of General Consumption Tax No. 2 1997, the Judge indicated that the leasing or rental of a hotel, not for residential purposes, is a taxable activity, a point which was agreed on by both parties.

However, if the property, or room is rented for residential purposes then the provision of such service is exempt from tax.

#### RESIDENTIAL ACCOMODATION:

To define the term, "residential accommodation" applies to the rental of units used for dwelling purposes, not of a transient (hotel, motel) nature. The supply of residential accommodation in a dwelling is an exempt supply as per *Third Schedule, Part 2 Item 4, GCT Act*. It should

be noted that, at the time of leasing or renting of the property, the principal purpose should be for residential accommodation

**EXAMPLES:**

- A. A & Co. leases a hotel to B. Management Limited (BML). BML will operate the Hotel as a taxable activity. A & Co. should be registered for the GCT as the Company is making a taxable supply - the leasing of a hotel. BML is also expected to register for tax purposes.
- B. BML rented a room to Guest A for 28 days. The supply is applicable for tax..
- C. BML rented a room to Guest B for forty (40) days. Tax is applicable only on the first (30) thirty days.
- D. Home Owner (HO) Bee rented his premises for residential purposes. He is not required to be registered as he is not engaged in a taxable activity.
- E. HO Bee rents his room for residential purposes, but the tenant stayed only 20 days. As the initial purpose was for residential use, the supply is not taxable.
- F. HO Bee rents his residential property for periods not more than 30 days. The substance of the supply is one which similar to that of a motel/hotel. HO Bee is deemed to be engaged in a taxable activity.
- G. HO Bee rented his premise for residential purposes. The tenant used a small portion for commercial activity. This will not affect the purpose for which the property was rented.

**EFFECTIVE DATE OF RULING:**

Given the Court's Ruling - effective **August 1, 2001**, the leasing or rental of hotel properties is subjected to GCT at the standard rate of tax.