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Technical Paper: **“Amendment to the General Consumption Tax (GCT) Threshold”**

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Revenue Measure 2019/2020**

Abbreviations and Glossary of terms

CG	Commissioner General, Tax Administration Jamaica
Effective date	The date the amendment to the Act becomes law unless otherwise stated.
GCT	General Consumption Tax
House	House of Parliament
Input Tax	Input tax is tax charged to a registered taxpayer on the supply of goods and services made to him or on the importation of goods and services by him for the purpose of making taxable supplies.
ITA	Income Tax Act
MoFPS	Minister of Finance and the Public Service
MSME	Micro Small & Medium Enterprises
Prescribed Goods	In Section 2 of the GCT Act it is defined as goods specified in the Second Schedule, specifically, goods subject to Special Consumption Tax.
TAJ	Tax Administration Jamaica
Transitional Period	Period during which the registered taxpayer will continue to collect and pay over GCT until deregistration takes effect.
Threshold	Although the GCT Act does not specifically define “threshold” it is the minimum gross sales that any person engaged in a taxable activity (including exempt goods and services) should make, to qualify to be registered as a registered taxpayer.
Y/A	Section 2 of the ITA defines “year of assessment” as the period of twelve months commencing on the first day of January in each year.

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Purpose

The purpose of this Advisory is to provide guidance on how the deregistration and voluntary registration of taxpayers will be impacted by:

1. the amendment to The General Consumption Tax (GCT) Regulations, 1991 for an increase in the GCT threshold; and
2. the sanctioned amendment for voluntary registration in the GCT Act.

Objective

On March 7, 2019, the MoFPS, Dr. The Honourable Nigel Clarke asked the Honourable House, as part of the 2019-2020 Revenue Measures (see Ministry Paper #13/19), to support an increase in the GCT Threshold from \$3,000,000 to \$10,000,000. A subsequent announcement was also made in his final budget presentation sanctioning a further amendment to the GCT legislation to facilitate the voluntary registration of persons who would otherwise lose their status as registered taxpayers.

These measures will achieve the following objectives:

- a. Further support the reform of the tax system in order to stimulate
 - (i) greater competition,
 - (ii) greater business and economic activity; and
 - (iii) economic growth;
- b. Incentivize formalisation and reduce the costs of micro and small businesses;
- c. Increase risk-taking business activities by micro and small businesses; and
- d. Savings to the Government from reduced administrative cost as well as savings to some small business operators by removing the requirement to register and file GCT returns where it is not advantageous for them to do so.

Legislation

- The GCT Act
- The GCT Regulations, 1991
- The Income Tax Act

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Implementation Date

The effective date of this amendment to the legislation is **April 1, 2019**. However, the execution date for deregistration of the affected registered taxpayers will be **May 1, 2019**. It should be noted, that where an objection is filed against the Commissioner General's Notice of Intention to Cancel GCT Registration, the effective date of deregistration may be later. The execution date of May 1, 2019 will facilitate the protocol which the law mandates and the administrative procedures required for the deregistration process to be completed.

Amendments to the Act and Regulations

The implementation of the increase in the threshold and the voluntary registration of taxpayers will be in accordance with the following amendments to the GCT Act and Regulations.

- Sections 26 & 27 of the GCT Act (pending); and
- Paragraphs 2 (3) & (4) of the GCT Regulations, 1991

Background

The annual GCT threshold was last increased in 2009 from \$1,000,000 to \$3,000,000. Effective April 1, 2019, the GCT threshold was further increased from \$3,000,000 to \$10,000,000 per annum, or to an average of \$833,333.33 per month.

The GCT Act previously made provision for persons to voluntarily register for GCT. However, this provision was deleted from the Act in 2009. Having reviewed the potential implications of the increased threshold on small business persons that are engaged in a taxable activity, the Honourable Minister has subsequently sanctioned legislation to facilitate voluntary registration for these taxpayers whose annual supplies fall below the threshold of \$10,000,000 (\$10M).

This measure is intended to stimulate economic activity: particularly, in the micro and small business sectors; foster economic growth and enhance the competitiveness of MSMEs. In addition, it will realize some key objectives of any good tax reform such as equity, efficiency and simplicity.

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Threshold

The threshold is the financial criterion that most persons engaged in a taxable activity must meet in order to qualify for registration as a registered taxpayer.

The financial criterion used is the gross sales or revenue made per annum or on average each month and with effect from April 1, 2019 it is \$10,000,000 per annum or on average \$833,333.33 per month.

What Is A Taxable Activity?

A taxable activity is any 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, the sale/supply of goods and services in Jamaica to any other person for a consideration and **does not exclusively involve** the supply of goods and/or services exempt from General Consumption Tax.

Who is a Registered Taxpayer?

A person engaged in a taxable activity, registered pursuant to section 27 of the GCT Act and is liable to charge, collect and remit tax under the GCT Act by filing a GCT Return. The standard criteria is that in the month of application and the eleven months immediately preceding it, the applicant's total supplies should be at least equivalent to the annual GCT Threshold or where the period under consideration is less than 12 months; the average monthly GCT Threshold.

Persons affected by the increase in threshold

- I. The relevant amendments have been made to paragraphs 2 (3) & (4) of the GCT Regulations, 1991 so that persons whose annual gross supplies are less than \$10M are no longer required to be a registered taxpayer.
- II. However, the increase in GCT threshold will not apply to the following categories of business persons since the threshold does not determine their registration status for GCT purposes:
 - a) Taxpayers who are involved in the manufacturing of prescribed goods.
 - b) Taxpayers who are engaged in the growing of agricultural produce who

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- (i) export that produce either directly or through an organization established for the purpose of exporting that produce; or
 - (ii) sell that produce to a registered taxpayer for use in the production of finished goods; and
- c) Taxpayers who are provisionally registered under Section 26A of the GCT Act.

Obligations of persons in a taxable activity with gross annual supplies <\$10M but ≥ \$3M as at April 1, 2019

- (a) If the person is currently a registered taxpayer there will no longer be an obligation to charge the tax, collect the tax and file a monthly GCT Return; and
- (b) If the person is not yet a registered taxpayer, there will not be an obligation to apply for GCT registration.

Despite the above, if for sound economic and business reasons these persons wish to apply to the CG to either remain or become a registered taxpayer; they may do so. Consideration will be given to these requests when voluntary registration as a registered taxpayer is permitted.(see *'Procedure for Voluntary Registration'*).

Procedure for Deregistration:

For the purpose of effecting the change from registered taxpayer status; the CG will be exercising his powers under Section 31 of the GCT Act to cancel the registration of registered taxpayers whose gross annual supplies is less than \$10M as at April 1,2019.

- (a) The deregistration process for all registered taxpayers falling below \$10M per annum will take effect on **May 1, 2019** (*see "Objection Procedure" below*)
- (b) Taxpayers who are affected by the increase in the threshold will be notified of the CG's intent to deregister them. This notification (*'Notice of Intention to Cancel GCT Registration'*) will be sent by registered mail and a copy of it will be sent to their eservices account.
- (c) Prior to the completion of the deregistration process (when the *'Notice of Cancellation of GCT Registration'* is issued), taxpayers whose annual value of

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supplies fall below \$10M will still be required to continue charging and collecting the GCT and filing the GCT return by the required due date.

- (d) During this transitional period, the rights and obligations of the CG and the registered taxpayer will continue and the administrative procedures required to update the taxpayers' GCT Accounts will be carried out.
- (i) When the taxpayer is informed about the effective date of his deregistration, a final GCT return must be filed.

In this regard, section 23 (1) of the GCT Act states that "where a registered taxpayer ceases to be a registered taxpayer, tax shall be payable on any taxable supply forming part of the assets of his taxable activity immediately before he so ceases". Therefore, the following action must be taken:

- Any goods forming part of the assets on hand at the time of the change of status are deemed to be supplied.
 - GCT is also due and payable on the value of these goods held at the time immediately before the change of status.
 - The taxable value that should be applied is the cost that was incurred to purchase the inventory and other assets on hand that are subject to GCT.
- (e) On the completion of the change of status/deregistration process, a '**Notice of Cancellation of GCT Registration**' will be issued by TAJ.
- (f) The Certificate of Registration must also be returned to the CG immediately when the taxpayer is notified of the decision to cancel the registration. Failure to do so can result in a fine of up to \$100,000, if convicted in a Resident Magistrates Court or to imprisonment if the fine is not paid.

Effect of Deregistration as a Registered Taxpayer

- (i) The term "**Deregistration**" is not mentioned in the GCT Act; however, the CG has deemed this terminology to mean, a change of status from registered taxpayer. When the deregistration process is completed, the **former** registered taxpayer will no longer:
- (a) Issue a Tax Invoice;
 - (b) Charge and collect tax;
 - (c) File GCT returns;
 - (d) Display a GCT Certificate of Registration

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- (ii) The change of status will not prevent TAJ from collecting tax which was owed by the deregistrant when he was a registered taxpayer; neither does it mean that audits will not be conducted for prior periods; i.e. periods before deregistration as a registered taxpayer.
- (iii) The taxpayer will be notified whether or not a final audit will be conducted prior to the completion of the deregistration process. However, if one is not done before deregistration, the records of the business activity should still be kept for seven (7) years.
- (iv) Section 46 (5) of the Act provides for a refund of any excess tax after a taxpayer ceases to be registered taxpayer. The application for such refund must be made within two years after the date the applicant ceased to be a registered taxpayer.
- (v) Once the taxpayer is deregistered he will not be able to claim a tax credit or refund of GCT paid on goods and services purchased for his business. The tax paid will have to be treated as part of the cost of the goods or services acquired.
- (vi) If the deregistrant subsequently qualifies to be re-registered as a registered taxpayer; that is, the value of his gross annual supplies reaches or exceeds \$10M per annum; he should notify the CG by re-applying for GCT registration within twenty one (21) days of the date on which he becomes so qualified.

Objection Procedure

- (i) Any person, whose gross supplies falls below the threshold amount of \$10M per annum, and who is notified of a proposed deregistration, may object within thirty (30) days of the date of service of the ***'Notice of Intention to Cancel GCT Registration'***. The notice of objection must be in writing and it must state the precise reasons why the objector should remain a registered taxpayer.
- (ii) The GCT Act makes provision for submission of a late objection. Therefore, the CG may consider extending the period indicated in note (i) above, by accepting a late objection under particular circumstances.
- (iii) Where a registered taxpayer has filed an objection and the CG has acknowledged and accepted the grounds of the objection to deregistration, such a person will be required to continue to:

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- (a) Issue a Tax Invoice;
- (b) Charge and collect tax;
- (c) File GCT returns; and
- (d) Display a GCT Certificate of Registration

until the objection is heard and settled.

- (iv) The CG, upon receipt of a notice of objection, may require the registered taxpayer to furnish such particulars or produce such books of account or documents relevant to the matter before him. The registered taxpayer may also be asked to appear before the CG to answer any lawful questions relevant to the matters under consideration. (see ***'Grounds CG will consider under an objection to deregistration'***)
- (v) The CG will issue a notice of decision advising the taxpayer in writing of the outcome of his objection.
 - (a) If the CG, after careful consideration of an objection, decides to cancel the GCT registration, the CG must inform the taxpayer in writing of the decision and of the taxpayer's right to appeal to the Revenue Court and the Revenue Court may make such order as it thinks fit.
 - (b) If the CG is satisfied that the taxpayer qualifies, or if the Revenue Court so directs, the taxpayer/appellant will be allowed to retain its status as a registered taxpayer or will be voluntarily registered as such. (see ***'Reinstatement of Registration Status'*** & ***'Procedure for Voluntary Registration as a Registered Taxpayer'*** below)
- (vi) Where the CG has accepted a late objection the registered taxpayer may have already been deregistered with effect from May 1, 2019 and the GCT account closed. Such a taxpayer will not be required to charge and collect GCT during the period of deregistration. Consequently, there will be no output tax for this period. Where the outcome of the taxpayer's objection is reinstatement; the effective date will be **May 1, 2019**. The taxpayer will then be required to file all returns from the period of reinstatement up to the settlement date of the objection. The CG will reverse all the relevant charges incurred after deregistration.
- (vii) Where the outcome of the objection is to deregister the registered taxpayer, the CG will notify the taxpayer of the cancellation in a ***'Notice of Cancellation of GCT Registration'*** indicating the effective date of deregistration and in the rare cases where this Notice was already issued, the effective date of deregistration will be confirmed.

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- (viii) Where no valid objection has been lodged within the time specified the registered taxpayer will be deregistered and the procedures as shown above will be carried out.

Grounds CG will consider under an objection to deregistration

In the event that a taxpayer objects to being deregistered, the grounds to be considered will include, but not limited to:

- Taxpayer's gross total supplies is above \$10M.
- Failure of CG to follow due process as laid out in Section 31 of the GCT.
- Taxpayer is involved in manufacturing of prescribed goods.
- Taxpayer is engaged in the growing of agricultural produce specifically for export or for use in making a finished good.
- Taxpayer was provisionally registered.

Procedure for Voluntary Registration as a Registered Taxpayer

- (i) Despite the requirement that a registered taxpayer should either attain the average monthly threshold or the annual gross threshold, as the case may be; the Honourable Minister sanctioned legislation to facilitate voluntary registration as a registered taxpayer for those persons that are engaged in a taxable activity and are below the aforementioned threshold.
- (ii) This applies to:
- (a) Taxpayers who are below the threshold of \$10M who view the benefits of registration as outweighing their compliance costs.
 - (b) Taxpayers who as a result of the increased threshold have been issued a '**Notice of Intention to Cancel GCT Registration**' and have successfully objected to it; and
 - (c) Persons who have made successful appeals to the Revenue Court against their '**Notice of Cancellation of GCT Registration**' and have been reinstated by an Order from the Court
- (iii) Depending on their situation, persons impacted by the measures will be required to write the CG and state the reasons why their status as a registered taxpayer should not be changed or where they are not currently registered, why they should be granted permission to be a registered taxpayer.

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- (iv) It should be noted that where the taxpayer was previously registered and has successfully objected to the '*Notice of Cancellation of GCT Registration*', a new Application for GCT Registration (Form 1) will not be required for reinstatement as a registered taxpayer.
- (v) However, where the person requesting voluntary registration is new, the standard registration procedures will apply.

N.B. TAJ is awaiting the legislative amendment for voluntary registration under the GCT Act. Stakeholders will be notified when this proposed amendment for voluntary registration takes effect.

Reinstatement of Registration Status as a Registered Taxpayer

- (i) Taxpayers who object to the Notice of Intention to Cancel GCT Registration within the stipulated time and are successful; will remain registered taxpayers. Those who do not object within the stipulated time will be deregistered with effect from May 1, 2019 and should appeal to the Revenue Court if they are not satisfied with the Commissioner General's decision to deregister them.
- (ii) Where an affected registered taxpayer has been deregistered and subsequently reinstated, he shall not be required to charge, collect nor file GCT returns for the period when he was deregistered. The CG will also reverse any charges incurred after deregistration but before re-registration.
- (iii) However, if it is proven that tax was charged during this period he shall in accordance with section 49 of the GCT Act be liable to remit such tax.

Income Tax Implications

The provisions of Section 13 (1) (h) (ii) (c) of the ITA is impacted by the increase in the GCT threshold as persons falling below the prescribed amount will be able to recover more losses thereby reducing their statutory income.