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Technical Paper: “**Amendment to the Transfer Tax Act**”

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Abbreviations and Glossary of terms

CG	Commissioner General, Tax Administration Jamaica
Effective date	The date the Act becomes law, unless otherwise designated.
Estate	All the property (covered by Section 3 (4) of the Transfer Tax Act) owned by a particular person at the date of his death.
House	House of Parliament
Inter vivos	Between living people
MoFP	Minister of Finance and the Public Service
Property	Interests in land, shares and similar securities as provided in Section 3 (4) of the Transfer Tax Act
TAJ	Tax Administration Jamaica
Threshold	The term is not used in the Transfer Tax Act; however, it is used by the MoFPS in reference to the value of an estate to which the nil rate of tax is applied
TT	Transfer Tax
Transfer Tax	The tax imposed by section 3(1) of the Transfer Tax Act on the market value of property mentioned in Section 3 (4) of the said Act.

Purpose

The purpose of this Technical Advisory is to provide guidance on the application of the amendment to the Transfer Tax Act to effect:

1. the increase in the Transfer Tax threshold applicable to the estate of deceased persons and
2. the reduction of Transfer Tax payable on the transfer of real property and securities from 5% to 2%,

as announced in the 2019/2020 Revenue Measures tabled in the House by the MOFP, Dr. The Honourable Nigel Clarke.

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Objective

The Honourable Minister, in his budget presentation on Thursday, March 7, 2019, announced the following measures which changed the manner in which the Transfer Tax is imposed on estates and instruments affected by the Transfer Tax Act:

- A reduction (from 5% to 2%) of the Transfer Tax payable on the inter vivos transfer of real property and financial instruments.
- An increase in the Transfer Tax threshold applicable to the estate of deceased persons.

This document is presented:

- To provide guidance on the legislative and administrative impact of the increase in the Transfer Tax Threshold.
- To provide guidance on the legislative and administrative impact of the decrease in Transfer Tax rate for inter vivos transactions.

Legislation

- The Transfer Tax Act

Implementation Date

The effective date of the legislation is **April 1, 2019**.

Amendments to the Act

- Section 3 (1) of the TT Act
- Section 12(2)(a) of the TT Act
- Section 19 (1) & (2) of the TT Act
- Section 44 (1) (e) of the TT Act

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Background

The Transfer Tax Act imposes a rate of tax on the market value of certain property transferred after the 3rd day of April 1984. The Transfer Tax charged is the rate in existence at the date of the document for inter vivos transactions and the date of death for transfers under an estate.

The Transfer Tax threshold was last increased on June 1, 2005 from \$10,000.00 to \$100,000.00. The current amendment will effect an increase in the threshold from \$100,000.00 to \$10,000,000.00 (\$10M). The increase in the threshold is aimed at enabling beneficiaries to utilize the equity in inherited properties to leverage economic opportunities.

The rate of tax on inter vivos transactions was last increased from 4% to 5% on April 1, 2013.

The decrease in rate under the 2019/2020 Revenue Measures is aimed at stimulating:

- (i) greater competition and activity in, and access to credit markets,
- (ii) greater business and economic activity and
- (iii) property development, real estate activities and
- (iv) economic growth and job creation.

Inter vivos Transfers

Implications of the decrease in TT rate

Cabinet approved the proposal made by the MoFPS, Dr. the Honourable Nigel Clarke, in the 2019/2020 Budget Debate, to reduce the Transfer Tax payable on the transfer of property from 5% to 2%. This took effect on April 1, 2019.

As a result of Cabinet's approval and The Provisional Collection of Tax (Transfer Tax) Order 2019; documents dated April 1, 2019 and later, will benefit from the reduced rate and will be assessed at two percent (2%) of the market value of the property.

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Documents dated April 1, 2013 through to March 31, 2019 will continue to be assessed to Transfer Tax at a rate of five percent (5%) of the market value of the property being transferred. Documents dated prior to April 1 2013 will be assessed at the rate which existed as at the date of the document.

Important Facts

- A. As Transfer Tax is charged on the transfer of property, the rate of tax applicable is the rate in existence at the execution date of the instrument.
- B. The 2% rate of tax will be applied to all affected instruments submitted for assessment on or after April 1 2019 with an execution date of April 1, 2019 or later.
- C. In accordance with Section 3 of the TT Act, the affected instruments include all of those for the sale or transfer of interests in land, lease of land, shares and some securities such as debentures.

Effects of the change to documents already submitted to TAJ

Since the tax is imposed on occasion of a transfer:

- Persons can chose to cancel the instrument before or after assessment of the tax and before or after the Notice of Assessment has been issued.
- Persons can also choose to cancel instruments on which the tax has been paid as long as the property has not yet been transferred. Refunds will be granted for these instruments once the usual required conditions have been met.

Administration of Exchange of Stamps

Where an exchange of stamps is being done to facilitate correction of an error, TAJ's general position is that the tax on the transaction represented in the instrument has already been paid and no refund should be granted unless the transaction/ instrument has been cancelled; in

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which case, a refund should be sought. Therefore, documents for which the tax has already been paid and for which an exchange of stamps is requested under Section 68 of the Stamp Duty Act will (if the request is granted) be exchanged without a refund of any nature being allowed.

Notwithstanding the foregoing statement, each request for exchange of stamps will be considered on its own merit.

Consequential Amendments to the TT Act

- Prior to April 1 2019, Section 19 of the Transfer Tax Act gave the authority for TT to be collected and impressed, in accordance with the Stamp Duty Act and subject to the penalty provisions in Section 32 (3) of the Stamp Duty Act. However, portions of Section 32 (3) of the Stamp Duty Act were deleted as a consequence of the revenue measures. As a result of the deletions, Section 19 of the Transfer Tax Act was amended to include a penalty provision. The penalty now applicable for late submission/late payment is a sum equivalent to the duty on the instrument and not \$10.00 plus a sum equivalent to the duty on the instrument as previously existed. However the submission time remains at thirty days after execution of the Instrument and the payment time remains at 14 days after delivery of the Notice of Assessment.
- Section 44 (1) (e) of the TT Act previously provided the Minister the authority to make regulations in regards to the methods and procedure to be followed for securing and notifying assessments under subsection (3) of section 32 of the Stamp Duty Act, and denoting documents, for the purposes of section 19 of the TT Act. The section was amended to exclude reference to Section 32 (3) of the Stamp Duty Act and include a reference to Section 19 of the Transfer Tax Act. This amendment does not impact the assessment or the administration of the Transfer Tax Act.

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Estate (Transfer Tax on Death)

Implications of the increase in threshold

Cabinet has also approved the proposal to increase the Transfer Tax threshold from \$100,000.00 to \$10M where the estate of a deceased person is to be transferred. This means a nil rate for every dollar of the first \$10M and at a rate of 1.5% on the remaining value of the Estate subject to deductible allowances.

Under the new Revenue Measures, estates with a gross property value:

1. equal to or less than \$10M, will be subjected to a nil rate of tax and as such, will not be assessed for Transfer Tax and
2. greater than \$10M will benefit from the nil rate for the first \$10M and be charged Transfer Tax at the current rate of 1.5% on the balance of the estate.

Important Facts

- A. The Transfer Tax Act provides for a rate of tax to be charged on the market value of certain property which forms part of an estate. The TT Act deems the date of transfer to be the date of death and provides for the market value (taxable value) of the property to be determined as at the date of death.
- B. As a result of The Provisional Collection of Tax (Transfer Tax) Order 2019 and Cabinet's approval, all Estate cases not paid in full before April 1, 2019, will benefit from the new Transfer Tax threshold of Ten Million dollars (\$10M). However, where payment was made (in whole or in part) before April 1, 2019, no refund will be granted.

Effects of the change to documents already submitted to TAJ

- Estates for which the documents were submitted to TAJ but the matter has not yet been closed will all have to be re-worked so that these estates benefit from the increase in the threshold.

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- Estates which have been closed will not be able to benefit from the new threshold unless a Supplemental Revenue Affidavit is submitted.

Illustrations explaining the application of the amendment to the threshold

Scenario 1:

Estate John Earle consists of properties, which have a total market value of \$22,000,000. The taxpayer made no payment before April 1, 2019.

- Threshold of \$100,000 applied on first assessment caused the document to be assessed at a value of \$21,900,000 (\$22,000,000 - \$100,000), to which the TT rate of 1.5% was calculated yielding a tax payable of \$328,500.
- The increase in threshold to \$10M will cause the document to be re-assessed at a value of \$12,000,000 (\$22,000,000 - \$10,000,000), which will reduce the TT payable to \$180,000.

Resulting Impact: The case would be reworked to generate a new Notice of Assessment.
The taxpayer would be required to pay TT of \$180,000.

Scenario 2:

Using information from Scenario 1, the taxpayer made a part payment of \$120,000 before April 1, 2019.

Resulting Impact: The case would be reworked to generate a new Notice of Assessment.
The taxpayer would be required to pay \$60,000, which is the difference between the total TT assessed and the part payment made, i.e.
(\$180,000 - \$120,000)

Scenario 3:

Using information from Scenario 1, the taxpayer made full payment of \$328,500 before April 1, 2019.

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Resulting Impact: There would be no rework of the case. The case would be closed and the taxpayer would not be entitled to a refund.

Scenario 4:

Using information from Scenario 1, the taxpayer had paid in full before April 1, 2019 and files a Supplemental Revenue Affidavit declaring additional property valued at \$9,000,000 after April 1, 2019.

Resulting Impact: The taxpayer would now benefit from a threshold of \$9,900,000 (\$10,000,000 - \$100,000), to be applied to the value of the new property (\$9,000,000). TT would be assessed at nil.

Scenario 5:

Using information from Scenario 1, the taxpayer had paid in full prior to April 1, 2019 and files a Supplemental Revenue Affidavit declaring additional property valued at \$18,000,000 after April 1, 2019.

Resulting Impact: The taxpayer would now benefit from a threshold of \$9,900,000 (\$10,000,000 - \$100,000), to be applied to the value of the new property, causing the TT payable to be calculated at 1.5% of \$8,100,000 (\$18,000,000 - \$9,900,000), resulting in a TT payable of \$121,500.