

Tax Administration Jamaica



Practice Note Minimum Business Tax

This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate Legislation. It contains the Department's interpretation and practices in relation to the law as it stood at the date of this publication. Under Section 12 (2) of the Tax Administration Jamaica Act, 2013 a Practice Note is binding on the Commissioner General and officers of the Authority until it is revoked. However, taxpayers are reminded that it does not affect a person's right of objection, appeal or their right to the Revenue Court on points concerning their own liability to Income Tax.

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April 1, 2017

Ainsley Powell
Commissioner General

MINIMUM BUSINESS TAX

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This practice note provides guidance and clarity with respect to the application of the Minimum Business Tax which was first introduced by way of Provisional Order dated March 31, 2014, Provisional Order dated November 28, 2014 and enacted by the Minimum Business Tax Act 2015 on June 11, 2015.

The examples in this practice note are strictly for purposes of illustrating the application of the provisions of the Act.

All references herein are to the Minimum Business Tax Act and the Income Tax Act unless otherwise indicated.

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Glossary of Terms and Abbreviations

1. The following list defines various terms and abbreviations used in this practice note.

Assessment Period	In relation to any specified taxpayer, this is the 12 month period commencing on 1 st January in each year or, as applicable, the permitted accounting period within the meaning of Section 6(7) of the ITA
CG	Commissioner General
ED/TAX	Education Tax
Effective date	The date the Act becomes a law, unless otherwise designated.
ETC	The Employment Tax Credit (ETC) is a tax credit that is allowed against income tax liability only
ITA	Income Tax Act
MBT	Minimum Business Tax
NHT	National Housing Trust
NIS	National Insurance Scheme
Provisional Order	A Provisional Order is an order which is made by the Minister of Finance as authorized by the Provisional Collection of Taxes Act.
TAJ	Tax Administration Jamaica
TCA	Tax Collection Act
Y/A	Year of Assessment

Purpose

2. The purpose of this document is to provide guidance to the public in general on the interpretation of the provisions of the Minimum Business Tax Act, 2015 for companies, other bodies corporate and individuals.

Objective

This Practice Note is:

3. To provide guidance to persons affected by the law and to the officers of TAJ. In accordance with Section 12 of the Tax Administration Jamaica Act, 2013 the CG may issue practice notes setting out the interpretation and procedures for the application of the Law.
4. To promote and achieve consistency in the administration of the Laws relating to domestic tax.
5. To provide taxpayers with a degree of certainty regarding the operation of the Minimum Business Tax and its relation to their businesses.

Scope

6. In administering the Law relating to the MBT this Practice Note provides the interpretation of the CG in reference to the MBT Act.
7. Section 3 of the MBT Act alludes that the provisions of the ITA, with the exception of Section 79 which speaks to enforcement of tax, apply, with such modifications as is necessary, to the MBT as they relate to income tax.

Background

8. This MBT was introduced vide The Provisional Collection of Tax (Minimum Business Tax) Order 2014 dated March 31, 2014 and The Provisional Collection of Tax (Minimum Business Tax) Order 2014 dated November 28, 2014. These Provisional Orders were given permanent effect by the Minimum Business Tax Act 2015, enacted on June 11, 2015.
9. The MBT is an amount of \$60,000 to be paid by specified taxpayers who are registered to operate a business for year of assessment 2014 and onwards. The MBT is aimed at broadening the tax base and includes persons who carry out business activities, but who may not be formally in the tax system or may not be honoring tax obligations under other tax types.
10. The MBT does not replace any other tax obligations that business owners would normally have been subjected to.
11. Effective date of implementation is April 1, 2014

Are the Provisional Orders 2014 still enforceable?

12. The general rule is that the Act will take precedence over the Provisional Orders which were introduced in order to legally impose and collect the taxes. The Orders are only temporary and are replaced once the Law is enacted. Taxpayers are bound by the Provisional Orders until the Law is passed and any actions of the taxpayer or the CG under the Provisional Orders have been validated by the Act which is now passed. Section 9 of the MBT Act 2015 validated the Provisional Orders.
13. Section 9 : ***“.....hereby declared to have been validly, properly and lawfully done to all intents and purposes which with effect as if duly authorised by law”***, the two Provisional Orders published in the Jamaica Gazette, Supplement, Proclamations, Rules and Regulations issued on March 31, 2014 and November 28, 2014 respectively.

Who is liable to pay the MBT?

14. A specified taxpayer

Who is a “Specified Taxpayer?”

15. Individual, other than one engaged in a partnership:

- who exercises a trade, profession, vocation or business
- who has gross revenue (in the most recent assessment period prior to the June 15 MBT due date) of not less than the “Prescribed Amount”. This applies whether the assessment period ends within the current Y/A or a previous Y/A.

16. Individual engaged in a partnership:

- who exercises a trade, profession, vocation or business;
- who has gross revenue (in the most recent assessment period prior to the June 15 MBT due date) of not less than the “Prescribed Amount”. This applies whether the assessment period ends within the current Y/A or a previous Y/A.
- whose total income of the partnership is to be allocated to each partner:
 - by the established share of profit or loss ratio or any ratio so determined by the CG
 - any other source of income of the partner.

17. Company or Body corporate

- i. Incorporated or registered under any of the following enactments, namely the:
 - Companies Act (including companies incorporated outside of Jamaica and registered under Part X of the Act);
 - Building Societies Act;
 - Co-operatives Societies Act (including Credit Unions);
 - Friendly Societies Act;
 - Industrial and Provident Societies Act.
- ii. Companies operating under an income tax incentive regime are also liable to pay MBT. In addition, companies making a loss, as well as companies that are dormant are also liable to pay the MBT.

NB. It applies to all companies or other corporate bodies incorporated or registered in Jamaica, including overseas companies conducting business in Jamaica.

Who are exempted from MBT?

18. Exemptions: Company or Body corporate:

- Company incorporated for not more than 24 months. The exemption is **not** extended to companies incorporated outside of Jamaica and carrying on business within the island, to which Part X of the Companies Act makes reference.
- Entity which is a charitable organization registered under the Charities Act
- Organization subject to declaration under Section 6 of Diplomatic Immunities and Privileges Act
- Foreign Organization subject to declaration under Section 3 of the Technical Assistance (Immunities and Privileges Act)
- Companies fully funded by a multilateral agency prior to 2015
- Any other entity or category of entities that the Minister may by order prescribe.

What is the “Gross Revenue?”

19. For individuals, this is the aggregate amount of income from all sources, whether accruing in or derived from the Island or elsewhere, before any deductions under the ITA.

20. Gross revenue should exclude:

- emoluments described in ITA Section 5 (1)(c) (employment Income) which is taxed at source;
- any other source of employment income referred to in Section 5(1)(c)(i)-(viii) which is not subject to tax;
- any other income which is subject to a deduction of tax at source as described in the ITA but is not income from the exercise of a trade, profession, vocation or business.

Preference dividend paid in accordance with section 13(3a) of the ITA, although not subject to a deduction of tax at source should not be included as gross revenue of individuals.

The nil rate or income tax threshold also should not be applied in determining gross revenue.

What is the “Prescribed Amount?”

21. Understanding the term “prescribed amount” is crucial when determining if an individual is liable to pay MBT. Section 2 of the MBT Act 2015 gave direction to the meaning of “prescribed amount” which identified the gross revenue earned for the periods described below.

- For the period, April 1, 2014 to June 10, 2015 - \$3 million
- For the period, June 11, 2015 onwards - \$5 million or
- Such amount as the Minister may, by order prescribe.

Features of the MBT

22. The general features of the MBT outlines that it:

<ul style="list-style-type: none"> • Is separate from income tax. Persons are still obligated to file and pay all associated taxes related to income. 	<ul style="list-style-type: none"> • Does not replace the quarterly estimated or the annual income tax payable
<ul style="list-style-type: none"> • Is a business tax which requires individuals and companies incorporated or registered to operate in Jamaica, to pay a Minimum Business Tax of \$60,000 for the year in two instalments. 	<ul style="list-style-type: none"> • Is not to be used as an allowable deduction for the purposes of arriving at chargeable income; it is a final tax.
<ul style="list-style-type: none"> • Is a final tax. 	<ul style="list-style-type: none"> • Cannot be used as a credit against employment income tax liability included in the return
<ul style="list-style-type: none"> • Is allowed as a credit towards income tax for the specified taxpayer for that year of assessment to discharge a corresponding liability. 	<ul style="list-style-type: none"> • Cannot be credited against the MBT or any other income tax payable in any future Y/A where the amount paid exceeds the income tax liability in that current Y/A.
<ul style="list-style-type: none"> • Is paid in an assessment period, for that assessment period, may be credited against income tax payable for the corresponding year of assessment 	<ul style="list-style-type: none"> • Cannot be refunded
<ul style="list-style-type: none"> • Is to be applied as a tax credit after all other credits have been taken. 	<ul style="list-style-type: none"> • Is not to be used in the determination of estimated tax payable.
<ul style="list-style-type: none"> • Is paid at any Tax Offices island wide using the Payment Advice Voucher or via our on-line tax portal. 	<ul style="list-style-type: none"> • Cannot be off-set by the ETC.
	<ul style="list-style-type: none"> • Does not require a separate return form.

How much and when Payable?

23. The MBT is to be paid in two instalments as follows:

- i. \$30,000 on or before June 15
- ii. \$30,000 on or before September 15

MBT & Losses

24. Where a specified taxpayer makes a loss, the MBT:

- i. will not be refunded;
- ii. will not be carried forwarded;
- iii. will not be credited against future or prior MBT liabilities; or
- iv. Will not be credited against any other income tax liability for prior or future periods.

Recovery of Tax

25. The provisions of the TCA relating to the payment, collection and recovery of tax and offences and penalties will apply with the necessary changes.

The tax may be sued for in the Revenue Court or in a Parish Court, formerly referred to as Resident Magistrate's Court, by a Collector of Taxes as a debt due to the Government.

Penalties

26. Where the amounts are not paid on time, penalty will accrue on all unpaid amounts at the rate of 1½% (of the MBT) per month or part thereof until the liability is cleared.

The MBT is regarded as being outstanding if it is unpaid as at the **first day of the calendar month following the due date for payment.**

Illustrations

COMPANIES

I. Taxpayer **A** is a body corporate operating at a profit of \$9,000,000 per annum with accounting year end **December 2014**.

- i. Is Taxpayer **A** required to pay the MBT?
- ii. Will the MBT be applied as a tax credit against its income tax liability?

Answer

- i. Yes. Taxpayer **A** will be required to pay MBT on June 15, and September 15
- ii. The MBT will be used as a tax credit against outstanding corporate income tax liability at the end of the year.

II. Taxpayer **B** is a body corporate operating at a profit of \$9,000,000 per annum with accounting year end of **March 2014**.

- i. Is Taxpayer **B** required to pay the MBT?
- ii. Will the MBT be applied as a tax credit against its income tax liability?
- iii. If yes, for which year of assessment.

Answer

- i. Yes. While MBT is effective from 1 April 2014, the amount due in respect of the year of assessment 2014 is not to be apportioned. Taxpayer **B** will be required to pay MBT on June 15, and September 15
- ii. The MBT will be used as a tax credit against outstanding corporate income tax liability at the end of the year.
- iii. This credit would be applicable to year of assessment 2014 (accounting period April 2013 to March 2014)

III. Taxpayer **C** is a body corporate operating at a profit of \$9,000,000 per annum with accounting year end **December 2015**.

- i. Is Taxpayer **C** required to pay the MBT?
- ii. Will the MBT be applied as a tax credit against its income tax liability?

Answer

- i. Yes. Taxpayer **C** will be required to pay MBT on June 15, and September 15
- ii. The MBT will be used as a tax credit against outstanding corporate income tax liability at the end of the year.

IV. Taxpayer **D** is a body corporate operating at a profit of \$9,000,000 per annum with accounting year of **March 2015**.

- i. Is Taxpayer **D** required to pay the MBT?
- ii. Will the MBT be applied as a tax credit against its income tax liability?
- iii. If yes for which year of assessment.

Answer

- i. Yes. Taxpayer **D** will be required to pay MBT on June 15, and September 15
- ii. The MBT will be used as a tax credit against outstanding corporate income tax liability at the end of the year.
- iii. This credit would be applicable to year of assessment 2015 (accounting period April 2014 to March 2015)

V. If my Company was incorporated in December of 2014, am I required to pay the MBT for 2014?

Answer

No. A company, in respect of any assessment period thereof during any part of which it has been incorporated under the Companies Act for not more than 24 month is exempted from paying MBT during this period.

That is to say, the company incorporated in December 2014 would not have been incorporated for more than 24 months so no MBT.

- In 2015 incorporated for 13 months. **(Not Liable)**
- By November 30, 2016 incorporated for 24 months. **(Liable** in any assessment period thereafter)

Therefore assuming a December year end MBT due for year of assessment 2017 in accordance with the MBT Act 2015. Payments June 15, 2017 and September 15, 2017.

VI. My company was incorporated in January 2014 and I paid the MBT of \$60,000. My corporate income tax liability for the year was \$20,000 which I paid in full. Will I be due a refund of the MBT paid?

Answer

No refund of the MBT. The MBT Act of 2015 validates all prior provisional orders where there was no 24 months exemption clause for newly incorporated Companies. The imposition of MBT on companies regardless of the time of incorporation in 2014 would have been lawful "at the time of collection". The satisfaction of the 2014 obligation by the company was validated by the MBT Act of 2015 and therefore the MBT paid would not be refundable. The company has incurred income tax liability and therefore the MBT paid will be credited against that tax liability. However the amount which can be refunded is the estimated tax

paid and not the MBT. An application can be made for the income tax paid to be refunded or credited to another period.

VII. Is a company operating under the Jamaica Export Free Zones Act required to pay the MBT?

Answer

Yes they are liable to MBT. The Jamaica Export Free Zones Act was enacted before the MBT Act of 2015 and therefore no exemption to this tax would have been included. The MBT Act of 2015 did not extend an exempt status to any entity operating in the Free Zone. Therefore, unless there is an amendment to any or both Acts, entities operating within the Free Zone would be liable to pay MBT.

INDIVIDUALS

VIII. Are individuals in their first year of business required to pay MBT?

Answer

No, because the individuals gross revenue in the preceding assessment period should be equal to \$3,000,000 for 2014 or \$5,000,000 for 2015 in order to be liable for MBT. (Revenue preceding year of assessment for a new trade in its first year is nil)

IX. An individual's gross revenue for year of accounting period ended June 31, 2015 is \$5,100,000. In all accounting periods prior to June 2015 Gross Revenue was on average \$2,800,000.

- i. Is he liable for MBT for year of assessment 2014?
- ii. Is he liable for MBT for year of assessment 2015

Answer

- i. No. The gross revenue for prior year is less than the prescribed amount of \$3M in 2014
- ii. No. The gross revenue for prior year (2014) is less than the prescribed amount of \$5M.

Note however that for the year of assessment 2016 he would become liable as the prior year (2015) gross revenue exceeded \$5M.

X. Taxpayer John Doe is an individual with gross income of \$6,000,000 and a tax liability of \$100,000, estimated tax of \$80,000 was paid and MBT of \$60,000. Is John Doe entitled to a refund?

Answer

Yes. Taxpayer C would be entitled to a refund of \$40,000. Note that the amount to be refunded is the excess of the estimated tax paid and **not the MBT.**

XI. *Scenario A:* Year of assessment is 2014 year ended December 31.

Income for year in respect of 2013 is as follows:

Emoluments (from Employment)	\$1,000,000
Gross Revenue from Trade	\$2,500,000
Interest Income	\$ 500,000
Dividend Income (not Preference Dividend)	<u>\$ 500,000</u>
Total Income	\$4,500,000

Am I liable for MBT for year of assessment 2014?

Answer

You are not liable for MBT for year of assessment 2014, as total income net of Emoluments and other incomes taxed at source is less than \$3M in the most recent year prior to the year of assessment for which the MBT would be due.

Note that if the income received which is taxed at source can be deemed as being attributable to a trade business profession or vocation (Badges of Trade) then the income should be included in Gross Revenue.

XII. *Scenario B:* Year of assessment is 2014 year ended December 31.

Income for year in respect of 2013 is as follows:

Emoluments (from Employment)	\$2,000,000
Gross Revenue from Trade	\$3,500,000
Interest Income	\$ 500,000
Preference Dividend Income	<u>\$1,500,000</u>
Total Income	\$8,000,000

Is the individual liable for MBT for Y/A 2014?

Answer

Yes. This individual is liable for MBT as his gross revenue is greater than \$3M (i.e. \$3,500,000). Gross Revenue includes income from Trade but excludes emoluments, income subject to a deduction of tax at source (Interest) and income not subject to a deduction of tax at source (Preference dividend). The gross revenue is more than \$3M in the most recent year prior to the year of assessment for which the MBT would be due.

XIII. **Scenario C:** Year of assessment is 2014 ended December 31. Income for year in respect of 2014 (and Prior years) is as follows:

Emoluments (from Employment)	\$2,000,000
Gross Revenue from Trade	<u>\$3,000,000</u>
Total Income	\$5,000,000

Answer

This individual is liable for MBT as total income net of Emoluments is \$3M

XIV. **Additional information:** Painting business with 2 employees.

Profit from business	\$ 300,000
Statutory payments for employees:	
Education Tax 5.75%	\$ 112,125
NIS 5%	\$ 100,000
NHT 5%	\$ 97,500
Amount paid on-time qualifying for ETC	\$ 309,625
Computed ETC	\$ 22,500
Tax as per PAYE (Employment)	\$ 363,797
MBT paid	\$ 60,000

Answer

Tax computation is as follows:

INCOME	\$
EMOLUMENTS	2,000,000.00
PROFITS FROM TRADE	300,000.00
TOTAL CHARGEABLE INCOME	2,300,000.00
LESS: NIS PAID (\$1.5M × 2.5%)	37,500.00
INCOME TAX THRESHOLD	507,312.00
STATUTORY INCOME	1,755,188.00
TAX AT 25%	438,797.00
LESS: TAX CREDIT: ETC	22,500.00
TAX CREDIT: PAYE	363,797.00
TAX CREDIT: MBT	52,500.00
NET TAX PAYABLE /REFUNDABLE	0.00

NB. MBT is the last credit to be applied the amount of \$7,500 (**MBT paid net of MBT credited**) is not refundable

PARTNERSHIP

XV. I am self-employed but I am also in receipt of income from a partnership trade. Based on the income below am I a “Specified Taxpayer” and liable for MBT for year 2014?

Year of assessment 2013 details:

Gross Revenue Trading Activities	\$2,500,000
Gross Revenue Partnership	\$5,200,000
Share of Profit Partnership 30%	\$1,560,000

Answer

Yes. Gross Partnership Revenue @ 30% is \$1,560,000 which when added to Trading revenue exceeds the prescribed amount of \$3,000,000.

XVI. I am self-employed but I am also in receipt of income from a partnership trade. The partnership has a permitted accounting period of August to July while I make up accounts for January to December. Based on the income below am I a “Specified Taxpayer” and liable for MBT for year 2014 and 2015?

Gross Revenue Trading Activities 2013 & 2014	\$1,600,000
Gross Revenue Partnership August 2012 – July 2013	\$7,000,000
Gross Revenue Partnership August 2013 – July 2014	\$6,600,000
Share of Profit Partnership 50%	

Answer

Yes. You are liable for 2014

The year of assessment is 2014 therefore the most recent assessment period for the partnership prior to June 15 2014 is the August 2012 to July 2013 period.

That is, 50% of Partnership’s gross revenue of \$3,500,000 plus other income of \$1,600,000 making aggregate income for the individual partner (for the immediate prior year) in excess of \$3,000,000 (\$5,100,000).

No. You are NOT liable for 2015:

You would not be liable for MBT for year of assessment 2015 as 50% partnership’s revenue for year ended July 2014 is \$3,300,000 which when added to your other income is less than \$5M (\$4,900,000)

GENERAL

XVII. My tax liability for 2014 was \$100,000 which was paid in full, I was liable for MBT but did not make any payments in 2014. What are my obligations now in respect of MBT?

Answer

You are still liable for the MBT payment. The penalty will be applied to the outstanding MBT of \$60,000 until the MBT and penalties are paid in full. An application can be made for excess income tax paid to be refunded or credited to another period.

XVIII. Will I be charged interest in addition to the penalties imposed on my outstanding balance?

Answer

No, only the penalty of 1.5% per month will be applied.

XIX. Would a taxpayer be liable to MBT where he makes estimated income tax payments that exceed the amounts due under the MBT regime?

Answer

Yes. The MBT is separate from Income Tax and must be paid on or before the respective due dates.