

TECHNICAL ADVISORY

Issued By: Tax Administration Jamaica (TAJ)
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Technical Paper: **“Withholding Tax on Specified Services”**

PURPOSE

The purpose of this Technical Note is to provide guidance and information on the imposition of the 3 % withholding tax on specified services.

OBJECTIVE

The withholding tax on specified services is aimed at capturing persons liable to income tax but who are non-compliant and may not be in the tax base. It is expected that this tax measure will result in the broadening of the tax base, increased compliance, improved revenue collection and ultimately lower income tax rates.

EFFECTIVE DATE:

September 1, 2015

LEGISLATIVE REFERENCES

- i. Income Tax Act: (hereinafter referred to as The Act)
Sections 5(1)(c), 31A, 40, and 56
- ii. The Income Tax Employment Regulations
- iii. The Tax Penalties (Harmonization) Act
- iv. The Tax Collection Act
- v. The Revenue Administration Act

LEGISLATIVE AMENDMENT

The Income Tax Act Section 31

BACKGROUND

For some time now the Government of Jamaica has been concerned about the rate of compliance and collections from income tax when compared with other tax types. In an effort to address the above concerns the government is expanding its withholding tax regime.

The withholding tax mechanism is an efficient way of tax collection which lends itself to best practices in the implementation of good tax policy, the key pillars of which are equity, efficiency and simplicity.

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Jamaica's tax system has been utilizing the withholding mechanism in the following acts:

- i. The Act in relation to PAYE, the act also places an obligation on persons who contract the services of non-residents to withhold in accordance with section 40.
 - ii. The Contractor's Levy Act - Section 3
 - iii. The General Consumption Tax Act and The General Consumption Tax Act Regulations
- Over the years withholding tax has proven to be an efficient mode of tax collection when compared to the self-assessment system. It also comports well with international trends.

DEFINITIONS

Tourism Operations has the same meaning as tourism enterprise in section 2 of the Tourist Board Act in addition to hotels and resort cottages.

"tourism enterprise" means, subject to section 23a of the Tourist Board Act provision in Jamaica of :-

- (a) any car rental or U-drive services or any service of rental of motor vehicles as defined in section 11 of the Road Traffic Act;
- (b) sites and other facilities for camping;
- (c) water sports services;
- (d) any other service,

Utilized by or offered to tourists and declared by the Minister, by order, to be a tourism enterprise;

Utility has the same meaning prescribed utility services in the Office of Utilities Regulations Act *Prescribed Utility Services*

1. The provision of telecommunication services.
2. The provision of public passenger transportation by road rail or ferry
3. The provision of sewerage services.
4. The generation, transmission, distribution and supply of electricity.
5. The supply or distribution of water.

OPERATION

Imposition of the tax

The tax will be imposed on specified services at a rate of 3%.

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Who is liable to withhold?

- I. a Ministry, an Executive Agency, an agency or a department of Government;
- II. a statutory body or authority;
- III. Financial institutions regulated by the Bank of Jamaica (BOJ) and the Financial Services Commission (FSC), tourism operators, utility and cable companies with annual gross revenue exceeding five hundred million dollars(\$500,000,000), including any entity with such revenue that is exempt from the payment of income tax.

ADMINISTRATION OF THE TAX

Registration

The prescribed entities will be registered as Tax Withholding Agents (TWAs) to withhold income tax at 3% from specified services with invoice value of \$50,000.00 or more. **The invoice value is the price for services rendered before the application of General Consumption Tax.**

Registration of the TWAs will be done by TAJ and does not require an application from the TWAs.

The withholding tax process

Withholding will be done at the time of payment by the prescribed entity to the service provider.

Where there is a series of payments in respect of the same invoice of \$50,000.00 or more, the 3% tax is to be withheld from each payment (**see example 1**).

Where there is a series of individual invoices each less than \$ 50,000 in respect of services provided by the same person, but aggregating to \$100,000 or more within a 30 day period, tax is to be withheld as if it were a single invoice (**see example 2**).

TWAs will collect and remit the tax withheld to Tax Administration Jamaica (TAJ) within fourteen (14) days after the month in which the tax was withheld.

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Example: 1

ANNOD Ltd is provided with janitorial service by Michael Michaels who presented an invoice valued at \$50,000.00. Payments were made in three instalments of \$20,000.00, \$20,000.00 and \$10,000.00, respectively.

The 3% income tax will be withheld from each payment i.e. \$600.00, \$600.00 and \$300.00, respectively.

Example: 2

NOMAD Ltd is provided with janitorial service by Clara Cleans under a contract that is renewed bi-annually, three invoices valued at \$49,000 each were presented within a 30 day period.

Since the three invoices aggregate to more than \$100,000 for the 30 day period, the individual invoices will be deemed to be a single invoice for the purpose of the withholding tax and the 3% is to be withheld from the aggregate amount of \$147, 000.

Example: 3

WAVY Ltd is provided with accounting service by PNS Ltd, the contract sum is \$720,000.00 and invoices of \$30,000.00 are presented fortnightly.

Invoices from PNS Ltd. will not be subject to the withholding tax of 3% because the invoices do not aggregate to more than \$100,000 within a 30 day period.

Filing and payment of the tax

The TWA will file an Income Tax Withholding Form (IT10) monthly giving the following details:

- TRN of the TWA,
- TRN of service providers,
- Name and address of service provider,
- Service Received/Provided,
- Period in which service was rendered,
- Invoice value of service and
- The Amount of tax withheld for the previous month.

The TWA will collect and remit the tax withheld to Tax Administration Jamaica (TAJ) within fourteen (14) days after the month in which the tax was withheld.

The TWA will issue a Tax Withholding Certificate - ITC01 (TWC) to the service provider at the time of payment.

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Tax Credit

The service provider is eligible for a credit or refund in respect of the tax withheld. The service provider will use the WTC to claim a credit or refund against their quarterly estimated obligations or annual return as is applicable. The service provider can make a claim in a manner prescribed by the Commissioner General.

The taxpayer will be entitled to claim in any year of assessment to which it relates a tax credit for the amount withheld. However, any excess credit for that year of assessment may be claimed as a refund or be carried forward to be utilized in a future year of assessment.

Non-compliant persons (taxpayers) who do not account for their quarterly obligations, or file their annual income tax return will not be able to claim as a credit the 3% tax that was withheld.

Notwithstanding the withholding of the 3% income tax the service provider is still obligated to meet his tax obligations in accordance with the income tax act.

Partnerships

Partnerships pay no income tax, their profits/surplus is shared by credit the partners in their profit sharing ratio and then subject to income tax. Any tax credit resulting from WTSS is to be divided among the partners in their profit sharing ratio.

SPECIFIED SERVICE

Defined to include;

- Accounting
- Auditing
- Catering
- Consultancy - professional service by persons who are not acting in the capacity of an employee
- Decorating
- Engineering architectural, electrical, mechanical and structural)
- Entertainment
- Information technology

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- Janitorial
- Laundry
- Landscaping
- Legal
- Management -
- Repairs and maintenance (e.g. to buildings and motor vehicles)
- The rental or leasing of motor vehicles or equipment
- Transportation of people and goods, haulage of goods or tours
- Any other service specified by the Minister by order published in the Gazette.

EXEMPTIONS

TWAs will not be required to withhold from suppliers of services in respect of income which is exempt from the payment of income tax under section 12 of the Income Tax Act (see appendices for complete listing).

The 3% withholding tax on specified service will not be applicable to suppliers of service who are subject to withholding tax under other sections of the Act namely (including);

- Emoluments subject to deduction at source in accordance with Section 5(1)(c) of The Act, and the Income Tax (Employments) Regulations including deemed employees.
- Deductions from payments to non-residents - section 40
- Representative may retain the amount payable for income tax - section 56

Compliant taxpayers will not be subject to the WTSS; they will be issued with an EXEMPTION CERTIFICATE (EC) as verification of their status.

- The exemption certificate is valid for one year and expires on March 31 of the year following the year in which it was issued. Therefore ECs issued in 2015 expires on March 31st 2016.
- Taxpayers with Gold TCC will automatically qualify for an EC.
- Taxpayers without a Gold TCC who file their 2014 return by August 31, 2015 will receive an EC.
- Taxpayers who file their 2014 return by October 1, 2015 will not be charged any penalty. However, return after this date will result in the imposition of the penalty commencing April 1, 2015.

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- Taxpayers with returns outstanding for Years of Assessment 2012 and 2013 are to be filed by March 31, 2016. An Exemption Certificate will not be issued until these are filed. The penalty for late filing will be effected from the respective due dates.

TAX WITHHOLDING CERTIFICATE (TWC)

- The TWC will be prepared on TAJ's tax portal and given to suppliers of service whose invoices qualify for the 3% tax withholding.
- The TWC must be given to the supplier within 30 days of the date of withholding the tax
- The supplier will use the TWC to claim a credit against their quarterly estimated income tax obligations or their annual income tax liability.

RESPONSIBILITIES OF THE TAX WITHHOLDING AGENTS (TWAs)

- Withhold 3% income tax from the suppliers of specified services on invoice of \$50,000.00 or more or a series of invoices aggregating to more than \$100,000 within a 30 day period.
- Issue a TWC for the amounts withheld to the suppliers
- Pay to TAJ the amounts withheld within fourteen (14) days after the month in which it was withheld. That is amounts withheld in May will be paid over to TAJ on or before June 14th.
- File a monthly ITWR form; the return for May is due on or before June 14th. The ITWR will give the TRN, Name, Address, Service Received/Provided, Value and the Amount Withheld from the supplier of specified services to the TWAs.
- Section 78A of the Act (relating to the designation of a responsible officer) shall apply in a similar manner to a tax TWA as it is applied to an employer under that section, and the responsible officer of a TWA shall be responsible for carrying out the functions of the TWA relating to the deduction and payment to the Commissioner General of the monies withheld from the supplier of the specified service.

PENALTIES

Where the TWA fails to;

- a) Deduct,
- b) Make payment of the income tax withheld or
- c) File

Penalties will be applied in accordance with the Act.

Recommended penalty for failure to withhold up to a maximum of 50% of the amount that ought to have been withheld.