

JAMAICA

No. 16 – 2013

I assent,

[L.S.]

*Egd. P.L. Allen*

*Governor-General*

*10<sup>th</sup> day of July 2013*

AN ACT to Amend the Revenue Administration Act.

*[ 11<sup>th</sup> day of July 2013 ]*

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Revenue Administration (Amendment) Act, 2013, and shall be read and construed as one with the Revenue Administration Act (hereinafter referred to as the “principal Act”) and all amendments thereto.

Short title  
and  
construction.

Amendment  
of section 2  
of principal  
Act.

**2. Section 2 of the principal Act is amended—**

- (a) by inserting in the appropriate alphabetical sequence the following definitions—

““international tax agreement” means a Treaty, Convention or other international agreement that is in force and to which Jamaica is a party, the purpose of which is to provide for the exchange of information for tax purposes and to afford relief from double taxation;

““treaty partner” means a jurisdiction that is a party to an international tax agreement;”;

- (b) by deleting the definition of “taxpayer” and substituting therefor the following—

““taxpayer” includes a person who—

- (a) is liable to pay a tax pursuant to a revenue law of Jamaica whether or not—

- (i) the person is resident in Jamaica;
- (ii) the tax liability is in question; or
- (iii) in the event, any payment is waived or remitted or no amount is found to be payable;

- (b) is of relevance to a treaty partner in respect of an international tax agreement.”.

Amendment  
of section  
17D of  
principal  
Act.

**3. Subsection (8) of section 17D of the principal Act is amended by deleting the words “one thousand” and “five thousand” and substituting therefor respectively the words “ten thousand” and “fifty thousand”.**

4. Section 17E is amended by—

Amendment  
of section  
17E of  
principal  
Act.

- (a) inserting in paragraph (a) immediately after the words “Deputy Commissioner General” the words “an officer of the Financial Investigations Division”;
- (b) renumbering paragraph (b) as paragraph (c) and inserting next after paragraph (a) the following as paragraph (b)—
  - “(b) “Financial Investigations Division” means the body of that name established by the Financial Investigations Division Act;”.

5. Section 17F of the principal Act is amended by deleting subsection (2).

Amendment  
of section  
17F of  
principal  
Act.

6. Section 17G of the principal Act is amended—

Amendment  
of section  
17G of  
principal  
Act.

- (a) in subsection (1), by—
  - (i) deleting from paragraph (c) the word “or”;
  - (ii) deleting the comma at the end of paragraph (d) and substituting therefor a semicolon and the word “or”; and
  - (iii) inserting next after paragraph (d) the following as paragraph (e)—
    - “(e) an international tax agreement”;
- (b) in subsection (3), by deleting paragraph (f);
- (c) in subsection (4), by deleting the words “Where an” and substituting therefor the words “Subject to subsection (4A), where an”;
- (d) by inserting next after subsection (4) the following as subsection (4A)—
  - “(4A) For the purposes of an application under subsection (1), the Commissioner is not required to

make any prior request of the taxpayer in any of the following circumstances—

- (a) where any revenue department is satisfied that documents or other evidence will be destroyed or concealed or treated in a manner which would inhibit the work of that or any other revenue department; or
- (b) where the information relates to an international tax agreement.”; and
- (e) by inserting next after subsection (7) the following as subsection (7A)—
  - “ (7A) Notwithstanding any duty of confidentiality or secrecy under any relevant law or any law of a treaty partner to the contrary, the provisions of this section shall prevail in relation to the disclosure of information or the production of any document or record pursuant to a requirement under this section.”;
- (f) in subsection (8), by deleting the words “two hundred thousand” and substituting therefor the words “two million”.

Insertion of  
new section  
17GA and  
17GB in  
principal Act.

7. The principal Act is amended by inserting next after section 17G the following as sections 17GA and 17GB—

“Duty of public officer to supply information.  
17GA.—(1) Subject to subsection (4) every public officer shall furnish information or produce documents required by the Commissioner General for the purposes of this Act, and which may be in his possession or which he may be able to lawfully procure.

(2) Information or documents referred to in subsection (1) shall be in such form and shall be supplied at such times or frequency and in such manner as the Commissioner General may direct or prescribe.

(3) Subject to subsection (4), no obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise shall prevent a public officer from disclosing information or producing documents to the Commissioner General in accordance with this section.

(4) Nothing in this section requires a public officer to furnish information or produce documents which a person would be entitled to refuse to furnish or produce on the grounds of legal professional privilege.

(5) In this section—

“Government company” means a company registered under the *Companies Act*, being a company wholly owned by the Government or an agency of Government or in which the Government or an agency of Government holds more than fifty per cent of the shares;

“local authority” means—

- (a) in relation to the parishes of Kingston and St. Andrew, the Council of the Kingston and St. Andrew Corporation as constituted under the *Kingston and St. Andrew Corporation Act*;
- (b) in relation to any other parish, the Parish Council of that Parish as constituted under the *Parish Councils Act*; or
- (c) in relation to a municipality, a Municipal Council established under the *Municipalities Act*;

“public body” means—

- (a) a Ministry, Department, Executive Agency or other agency of Government;
- (b) a local authority;
- (c) a statutory body or authority; or
- (d) a Government company;

“public officer” means a person employed in the service of a public body.

Power of  
Commissioner  
General to  
require  
returns.

17GB.—(1) Notwithstanding the provisions of any other law, the Commissioner General may, subject to subsections (2) and (3), require any person (whether in his own behalf or as agent or trustee of another person and whether he is or is not liable to pay tax or is the subject of, audit or other tax related action) to furnish the Commissioner General with such return whether on a periodic basis or not, as the Commissioner General considers necessary.

(2) A return under subsection (1) shall be in such form and may be supplied in such manner as the Commissioner General may direct or prescribe, and without limiting the scope of information required under subsection (1), may—

- (a) include information in respect of—
  - (i) any payment, credit, accrual or accretion, for the benefit of any person of any sum of money, interest, units in any fund, assets or other form of value;
  - (ii) any receipt, debit, accrual or other liability; or

(iii) any other transactions performed in connection with matters specified in subparagraph (i) or (ii); or

(b) relate to the person on whom the notice is served or any other person (whether identified or not) and may be in respect of the administration or enforcement of any relevant law; or

(c) relate to any other person (whether identified or not) who may be of interest to the Commissioner General in connection with the administration or enforcement of any relevant law.

(3) Subsection (1)—

(a) does not require a person referred to in that subsection to furnish information which a person would be entitled to refuse to produce on the grounds of legal professional privilege; and

(b) shall, subject to paragraph (a), prevail notwithstanding any restriction from disclosure under any other law.

(4) A person who fails to comply with a requirement of the Commissioner General under subsection (1), whether the non-compliance involves—

(a) the submission of returns that are incomplete, incorrect or submitted after the time required; or

(b) other failure,

commits an offence and is liable to the penalty specified in subsection (5).

(5) The specified penalty is—

- (a) on summary conviction in a Resident Magistrate’s Court—
  - (i) for a first offence, a fine not exceeding two million dollars or imprisonment for a term not exceeding one year or both such fine and imprisonment; or
  - (ii) for a second or subsequent offence, a fine not exceeding five million dollars or imprisonment for a term not exceeding five years or both such fine and imprisonment; or
- (b) on conviction on indictment in a Circuit Court, a fine or imprisonment for a term not exceeding ten years or both such fine and imprisonment.”.

Amendment  
of section  
17H of  
principal  
Act.

**8.** Section 17H of the principal Act is amended—

- (a) in subsection (2)(b), by deleting the words “one hundred thousand” and substituting therefor the words “one million”; and
- (b) in subsection (4), by deleting the words “one hundred thousand” and substituting therefor the words “one million”.

Amendment  
of section  
17I of  
principal  
Act.

**9.** Section 17I of the principal Act is amended—

- (a) in subsection (1), by deleting paragraph (a) and substituting therefore the following—

“(a) carry out, on his own or jointly with another Commissioner or the Financial Investigations



Division, an audit or examination of any accounts, books, records, invoices, contracts or any other documents relating to the business or other activities of the taxpayer;”;

(b) by inserting next after subsection (1) the following as subsection (1A)—

“ (1A) Information received by the Financial Investigations Division pursuant to an audit or examination under subsection (1) may for the purposes of that subsection be disclosed by the Division to any Commissioner.”; and

(c) in subsection (4), by deleting the words “one hundred thousand” and substituting therefor the words “one million”.

**10.** The principal Act is amended by inserting next after section 171 the following as sections 171A and 171B—

Insertion of  
new sections  
171A and  
171B in  
principal  
Act.

“Power to require information and to require attendance. 171A.—(1) Every person, whether that person is or is not liable to pay any particular tax or is the subject of an audit or other tax related action, upon whom the Commissioner General may cause a notice to be served requiring that person to supply in writing any information and, as the case may require, produce for inspection any documents specified in subsection (2), shall, within thirty days after the date of the service of the notice, provide the information or documents requested.

(2) The information and documents referred to in subsection (1)—

(a) may relate to the person on whom the notice is served or any other person and

may be in respect of the administration or enforcement of any relevant law;

- (b) may relate to a person (whether identified or not) who may be of interest to the Commissioner General in connection with the administration or enforcement of any relevant law; and
- (c) shall be in such form and may be supplied in such manner as the Commissioner General may direct or prescribe.

(3) The Commissioner General may—

- (a) by not less than fourteen days' notice in writing, require any person to attend before him and give evidence with respect to that person or any other person in respect of the administration or enforcement of any relevant law; and
- (b) examine the person on the evidence, on oath or otherwise.

(4) A person who fails to comply with a requirement under—

- (a) subsection (1), whether the non-compliance involves—
  - (i) the furnishing of information or the production of documents that is incomplete, incorrect or done after the time required; or
  - (ii) other failure;
- (b) subsection (3),

commits an offence and is liable to the penalty specified in subsection (5).

(5) The specified penalty is—

- (a) on summary conviction in a Resident Magistrate's Court—
  - (i) for a first offence, a fine not exceeding two million dollars or imprisonment for a term not exceeding one year or both such fine and imprisonment; or
  - (ii) for a second or subsequent offence, a fine not exceeding five million dollars or imprisonment for a term not exceeding five years or both such fine and imprisonment; or
- (b) on conviction on indictment in a Circuit Court, a fine or imprisonment for a term not exceeding ten years or both such fine and imprisonment.

Arrange-  
ments for  
the supply  
of  
information.

171B—(1). The Commissioner General may enter into a contract, memorandum of understanding or other agreement or arrangement with any public body for the supplying to the Commissioner General of information or the production of documents in connection with the administration or enforcement of any relevant law, at such intervals and in such manner as the Commissioner General may determine.”.

171B—(2) In this section public body has the meaning assigned to it under section 17GA(5).

**11.** The principal Act is amended by inserting next after section 17K the following as section 17KA—

“Notification  
of particular  
taxpayers.

17KA.—(1) Notwithstanding any other provision of law, the Commissioner General may, in addition to any publication that may be required in the

Insertion of  
new section  
17KA in  
principal  
Act.

*Gazette*, issue to any particular group of persons, notices required for the purposes of this Act, other than notices of assessment or any communication containing information on the income of any person, by any one or more of the following means, namely publication—

- (a) in a daily newspaper in nationwide circulation in Jamaica;
- (b) by announcement on national radio or television in Jamaica; or
- (c) by electronic mail distribution to addressees provided by a body recognized by the Commissioner General as representing or regulating the relevant group of persons.

(2) Publication of a notice specified in subsection (1) by any means specified in that subsection shall be deemed to be service of the notice on the particular group of taxpayers on the date of such publication.”.

Insertion of  
new section  
17LA in  
principal  
Act.

**12.** The principal Act is amended by inserting next after section 17L the following as section 17LA—

Retention  
Period.

17LA.—(1) Every person in lawful possession of any book, record or other document that is relevant to the tax liability of any person shall keep that book, record or document for a period of not less than seven years.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two million dollars and in default of payment thereof to imprisonment for a term not exceeding one year.

(3) It is a defence to a prosecution for an offence under subsection (2) if the accused proves that he took reasonable steps to preserve any book, record or document in relation to which the prosecution has been instituted.”

13. Section 17M of the principal Act is amended by deleting the words “two hundred thousand” and substituting therefor the words “two million”.

Amendment of section 17M of principal Act.

14. The principal Act is amended by inserting next after section 18 the following as sections 18A and 18B—

Insertion of new section 18A and 18B in principal Act.

“Power of Commissioner General to prescribe forms. 18A. Without limiting the powers of the Minister under section 19, the Commissioner General may, by order published in the *Gazette* prescribe forms of returns and other forms that the Commissioner General considers to be necessary for the various purposes of this Act, whether for general use or use in any particular case or for the use of any particular person or group of persons.

Power of Minister to amend monetary penalties. 18B. The Minister may, by order, subject to affirmative resolution, amend or vary any monetary penalties prescribed in this Act.”

15. Section 19 of the principal Act is amended by renumbering the section as subsection (1) of the section and inserting next after subsection (1) as so numbered the following as subsection (2)—

Amendment of section 19 of principal Act.

“ (2) Notwithstanding section 29(b) of the *Interpretation Act*, regulations made under section (1) may provide in respect of a breach of any provision thereof for the imposition of penalties on summary conviction in a Resident Magistrate’s court of a fine not exceeding two million dollars or imprisonment for a term not exceeding twelve months or of both such fine and imprisonment.”

Passed in the Honourable House of Representatives this 19th day of June, 2013, with six (6) amendments.

LLOYD B. SMITH  
*Deputy Speaker*

Passed in the Senate this 28th day of June 2013.

FLOYD E. MORRIS  
*President.*

*This printed impression has been carefully compared by me with the Act which has passed the House of Representatives and Senate, and has been found by me to be a true and correct printed copy of the said Act.*

*Clerk to the Houses of Parliament.*