

A BILL

ENTITLED

AN ACT Further to Amend the General Consumption Tax Act.

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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:—

PART I—*Preliminary*

1. This Act may be cited as the General Consumption Tax (Amendment) (No. 2) Act, 2014, and shall be read and construed as one with the General Consumption Tax Act (hereinafter referred to as the “principal Act”) and all amendments thereto.

Short title and
construction.

Insertion of
new Part VIA
in principal
Act.

2. The principal Act is amended by inserting next after section 32A the following—

PART VIA
GCT GROUPS

Interpre-
tation.

32B.—(1) In this Part—

“affiliated” has the same meaning as in section 2(1) of the *Companies Act*;

“associate” has the same meaning as in section 2(1) of the *Companies Act*;

“company” means a company incorporated under the *Companies Act* or registered under Part X of that Act;

“connected” has the meaning assigned to it by section 2(2) of the *Income Tax Act*;

“entity” means—

- (a) a company; or
- (b) any other body corporate, that is regulated under any one or more of the following Acts—
 - (i) the *Bank of Jamaica Act*;
 - (ii) the *Banking Act*;
 - (iii) the *Building Societies Act*;
 - (iv) the *Financial Institutions Act*;

(v) the *Insurance Act*;

(vi) the *Securities Act*;

“GCT group” means two or more affiliated entities that have been approved under section 32C(1) to be treated as a single taxpayer;

“permanent establishment” shall be construed in accordance with subsections (4), (5), (6) and (7);

“representative entity”, in relation to a GCT group, means an entity within a GCT group, designated by the Commissioner General under section 32C(2) to be the representative entity of the GCT group.

(2) The Minister may by order published in the *Gazette* amend the definition of “entity” in subsection (1) to add thereto, remove therefrom or modify any reference therein to, any category of business organization.

(3) Upon the coming into operation of the *Banking Services Act, 2014*, the references in the definition of “entity” in subsection (1) to the *Banking Act*, *Building Societies Act* and the *Financial Institutions Act*, shall be treated as referring to the *Banking Services Act, 2014*.

(4) For the purposes of this section, “permanent establishment” means, subject to subsections (5), (6) and (7), a fixed place of business through which the business of an entity is wholly or partly carried on, and includes—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;

- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources,

but does not include—

- (a) a building site or construction or installation project that does not last for more than twelve months;
- (b) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the entity;
- (c) the maintenance of a stock of goods or merchandise belonging to the entity solely for the purpose of storage, display or delivery;
- (d) the maintenance of a stock of goods or merchandise belonging to the entity solely for the purpose of processing by another entity;
- (e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the entity;
- (f) the maintenance of a fixed place of business solely for the purpose of carrying on, for the entity, any other activity of a preparatory or auxiliary character;
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (h) to (l), if the overall activity of the fixed place of business resulting from that combination is of a preparatory or auxiliary character.

(5) Where a person, other than an agent of an independent status referred to in subsection (6), is acting on behalf of an entity and has, and habitually exercises, in Jamaica an authority to conclude contracts in the name of the entity, that entity shall be deemed to have a permanent establishment in Jamaica in respect of any activities which that person undertakes for the entity, unless the activities of that person are limited to those mentioned in paragraphs (h) to (m) of subsection (4) which, if exercised through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of those paragraphs.

(6) An entity shall not be deemed to have a permanent establishment in Jamaica merely because it carries on business in Jamaica through a broker or any agent of an independent status, if any such broker or agent is acting in the ordinary course of the business of that broker or agent.

(7) The fact that an entity that is resident in Jamaica controls or is controlled by an entity that is resident outside Jamaica, or carries on business outside Jamaica (whether through a permanent establishment or otherwise), shall not of itself constitute either entity a permanent establishment of the other.

Approval of
GCT group.

32C.—(1) Subject to the provisions of this Part, the Commissioner General may grant an application to approve, as a GCT group, two or more affiliated entities being treated as a single taxpayer for the purposes of this Act if the Commissioner General is satisfied that—

- (a) such treatment is not likely to prejudice the collection of tax, result in a significant loss of revenue or facilitate the obtaining of a tax advantage;

- (b) each entity meets the requirements to be an entity within a GCT group that are set out in section 32D; and
- (c) the application for approval has met the requirements of section 32E.

(2) Where the Commissioner General approves a GCT group, the Commissioner General shall designate, as the representative entity of the GCT group, a company within the GCT group that is a registered taxpayer.

Requirements
for entities
within a GCT
group.

32D.—(1) Each entity within a GCT group or proposed GCT group in an application under section 32E shall—

- (a) be affiliated with every other entity within the GCT group;
- (b) have a permanent establishment in Jamaica;
- (c) have the same accounting basis (such as cash basis or accrual basis) as all the other entities within the GCT group or proposed GCT group;
- (d) not be an entity within any other GCT group or proposed GCT group; and
- (e) not have any outstanding liability for revenue payable under this Act or under any other law relating to revenue.

(2) Notwithstanding section 34, an entity within a GCT group is not permitted to file a separate return under that section.

(3) In this section, “revenue” includes any tax duty or other impost, and any fee, levy, fine, interest, penalty, surcharge or other charge relating to any tax, duty or other impost.

32E.—(1) All of the entities that are desirous of being treated as a GCT group for the purposes of this Act shall make a joint application to the Commissioner General in the prescribed form and manner for approval as a GCT Group.

Application for approval as a GCT group.

(2) The application under subsection (1) shall propose that one of the applicant entities be designated as the representative entity of the GCT group.

32F.—(1) Where the Commissioner General decides to grant an application made under section 32E, the Commissioner General shall notify in writing the representative entity designated under section 32C(2) of the decision, and of the date when the approval of the GCT group under section 32C shall come into effect.

Decision by Commissioner General on application.

(2) The Commissioner General may require any of the entities making the application under subsection (1) to furnish such additional information or documents as he may specify.

(3) Where the Commissioner General refuses an application under section 32E, he shall notify in writing the proposed representative entity of the decision, stating the reasons for the refusal.

32G.—(1) Subject to subsection (2)—

- (a) any taxable activity carried on by an entity within a GCT group shall be deemed to be a taxable activity carried on by the representative entity of the GCT group and not to be carried on by any other entity within the GCT group;
- (b) any supply of goods and services made to an entity within a GCT group shall be deemed to be a supply made to the representative entity of the GCT group;

Treatment of entities within GCT group for tax purposes.

- (c) any supply of goods and services, other than a taxable supply, made by an entity within a GCT group shall be deemed to be made by the representative entity of the GCT group;
- (d) any taxable supply of goods and services made by an entity within a GCT group (other than a taxable supply of goods and services referred to in paragraph (e)) shall be deemed to be a supply made by the representative entity of the GCT group; and
- (e) any taxable supply of goods and services made by an entity within a GCT group to another entity within the GCT group shall be disregarded for the purposes of this Act.

(2) The provisions of subsection (1) shall only apply to an entity within a GCT group in respect of a supply of goods and services made by or to that entity during the period when that entity is within the GCT group.

(3) A representative entity may claim as a tax credit such input tax paid or payable that the entities within the GCT group would, were they not within a GCT group, be entitled to claim.

(4) Any credit or refund of tax that is due to an entity within a GCT group, in respect of the period during which the entity is within the GCT group, shall instead be due to the representative entity of the GCT group.

(5) Each entity within a GCT group is liable severally and jointly with the other entities within the GCT group for tax payable by the representative entity of the GCT group, and the liability incurred while the entity was within the GCT group shall continue notwithstanding that the entity has ceased to be within the GCT group.

Responsibility
of
representative
entity of GCT
group.

32H.—(1) The representative entity of a GCT group shall be responsible for complying with this Act on behalf of all of the entities within the GCT group, whether or not the other entities within the GCT group are registered taxpayers.

(2) Notwithstanding subsection (1), all entities within the GCT group shall be deemed to be registered taxpayers for the purpose of the exercise of the powers and duties of the Commissioner General under this Act.

(3) The provisions of this Act that apply to registered taxpayers shall apply to the representative entity of a GCT group—

- (a) as a registered taxpayer in its own right; and
- (b) in its capacity as the representative entity of the GCT group.

(4) Without prejudice to the generality of subsections (1), (2) and (3), the representative entity of a GCT group shall—

- (a) ensure that proper records of all transactions of entities within the GCT group are kept in accordance with this Act;
- (b) file returns required under this Act on behalf of all entities within the GCT group;
- (c) pay any tax or other amount under this Act that the GCT group or any entity within the GCT group is liable to pay;
- (d) where applicable, act as a tax withholding entity for the purposes of this Act; and
- (e) make records, in respect of the GCT group and entities therein, available for inspection by the Commissioner General for the purposes of this Act.

(5) The representative entity of a GCT group shall notify the Commissioner General—

- (a) of any circumstances that would require the Commissioner General, under section 32J, to revoke the approval of the GCT group under this Part;
- (b) if any entity within the GCT group ceases to meet the requirements of section 32D;
- (c) of any other circumstance that would require any entity within the GCT group, as a registered taxpayer (which shall include any entity that is deemed to be registered taxpayer under subsection (2)), to notify the Commissioner General thereof.

(6) A representative entity shall give notification of any circumstance under subsection (5), within thirty days after the representative entity becomes aware of that circumstance.

(7) The provisions of this section apply to a representative entity of a GCT group in respect of the period during which the representative entity is the representative entity of the GCT group, notwithstanding that it has ceased to be the representative entity.

Application by representative entity to make changes to a GCT group.

32I.—(1) The Commissioner General may, upon application by the representative entity of a GCT group, in such form and manner as may be prescribed, approve any one or more of the following—

- (a) the addition to the GCT group of an entity that meets the requirements of section 32D;
- (b) the addition to the GCT group of an entity that—
 - (i) is affiliated with the entities within the GCT group, but

- (ii) does not meet one or more of the requirements of section 32D;
- (c) the removal of an entity from the GCT group;
- (d) the designation of another entity within the GCT group to be the representative entity of the GCT group;
- (e) the revocation of the approval of the GCT group.

(2) The Commissioner General shall notify in writing the representative entity of the relevant GCT group of the decision of the Commissioner General in respect of an application under subsection (1), within sixty days of the receipt by the Commissioner General of the application and of any additional information or documents required by the Commissioner General in connection therewith.

Revocation of approval or removal from GCT group by Commissioner General.

32J.—(1) The Commissioner General may revoke the approval of a GCT group if the Commissioner General is satisfied that—

- (a) the main purpose or effect of the arrangements entered into pursuant to the approval has been to obtain a tax advantage; or
- (b) the representative entity has not complied with its obligations under this Part or has ceased to meet the requirements under section 32D.

(2) The Commissioner General may remove any entity from the GCT group if that entity ceases to meet the requirements of section 32D.

(3) The Commissioner General shall determine the effective date of—

- (a) any revocation of approval of a GCT group under subsection (1);
- (b) any removal of an entity from a GCT group under subsection (2).

(4) The Commissioner General shall notify in writing the representative entity of the relevant GCT group of a decision under subsection (1) or (2), and the decision shall take effect from the first day of the month next following the date of such notification.

Provision to
combat tax
evasion.

32K.—(1) If the Commissioner General is of the opinion that an arrangement of a type referred to in section 61, or a transaction of a type referred to in section 61A, has been entered into by any entity, or between any entities within a GCT group, the Commissioner General may do any one or more of the following—

- (a) revoke the approval of the GCT group;
- (b) treat supplies of goods and services by and to any entity within the GCT group as supplies by that entity and not as supplies by the representative entity of the GCT group, notwithstanding section 32G;
- (c) direct that an entity that is affiliated with, connected to, or an associate of any entity within the GCT group, be treated as part of the GCT group.

(2) The Commissioner General shall notify in writing the representative entity of the relevant GCT group of a decision under subsection (1), and the decision takes effect from the first day of the month next following the date of the particular notification.

(3) Without limiting the effect of section 32M, where the Commissioner General makes a decision under subsection (1), the Commissioner General may also notify in writing any entity to which the decision relates.

(4) For greater certainty it is declared that—

- (a) section 61 applies in respect of any arrangement that is entered into by a GCT group or any of the entities within the GCT group; and
- (b) section 61A applies in respect of any transaction that is entered into by a GCT group or any of the entities within the GCT group.

Appeals.

32L.—(1) Any person who is dissatisfied with a decision of the Commissioner General under this Part may appeal to the Commissioner of Taxpayer Appeals within thirty days after receiving notification of the decision of the Commissioner General.

(2) Upon an appeal under subsection (1), the Commissioner of Taxpayer Appeals may confirm, vary or vacate the decision that is the subject of the appeal.

(3) A person who is dissatisfied with a decision of the Commissioner of Taxpayer Appeals may appeal to the Revenue Court within thirty days after receiving notification of that decision, and the Revenue Court may make such order as it sees fit.

Service on
representative
entity deemed
service on
each of
group's
entities.

32M. For the purposes of this Part, any notice delivered to a representative entity of a GCT group shall be deemed to have been delivered to each of the entities within the GCT group.”

MEMORANDUM OF OBJECTS AND REASONS

General Consumption Tax ("GCT") is a value added tax on consumption, imposed under the General Consumption Tax Act, which is applied on the value added to goods and services at each stage in the production and distribution chain. It is included in the final price the consumer pays for goods and services whether imported or bought locally.

This Bill seeks to amend the General Consumption Tax Act in order to introduce a GCT group accounting regime which would provide for a group of entities, with the approval of the Commissioner General, being treated as a single taxpayer for the purposes of the Act.

This new regime would achieve cost and resource efficiencies through—

- (a) the optimization of the business structure of a group of entities, and cost cutting, by the use of shared service centres, also known as "Centres of Excellence";
- (b) the elimination of the risk of incorrect GCT treatment of intra-group transactions, as no GCT will be applicable to intra-group transactions;
- (c) the creation of positive cash flow, especially in situations where one entity within the group may have GCT refunds pending, while other entities within the GCT group may have liabilities, as set-off between the two positions will be accommodated.

PETER D. PHILLIPS, Ph.D., M.P.
Minister of Finance and Planning

ABILL

ENTITLED

**AN ACT Further to Amend the General
Consumption Tax Act.**

**As introduced by the Honourable Minister of Finance and
Planning.**

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