

**A BILL
ENTITLED**

AN ACT to Amend the Revenue Administration Act.

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:-

**Short title
and con-
struction.**

1. This Act may be cited as the Revenue Administration (Amendment) Act, 2015, and shall be read and construed as one with the Revenue Administration Act (hereinafter referred to as the "principal Act") and all amendments thereto.

**Amendment
of section
17H of
principal
Act.**

2. Section 17H of the principal Act is amended -

(a) in subsection (1) -

(i) by deleting the words "Every person" and substituting therefor the words "Subject to subsections (3A) and (3B), every person"; and

(ii) by inserting in paragraph (a) immediately after the words "section 17F or 17G" the words ", or regulations made under section 17NB";

(b) by inserting next after subsection (3) the following as subsection (3A) -

" (3A) The obligation as to secrecy and confidentiality imposed by this section, in relation to documents, records or information obtained pursuant to regulations made under section 17NB, continues to apply to a person despite the person having ceased to be appointed under or employed in carrying out the provisions of this Act.

(3B) Nothing in this Act or in any other enactment prevents the disclosure to any person in accordance with the

requirements of regulations made under section 17NB of information, which, by law is to be regarded and dealt with as secret and confidential.”;

- (c) by renumbering subsection (4) as subsection (5) and inserting the following as subsection (4) –

" (4) Information, the disclosure of which is permitted or required by this Act or regulations made under this Act, shall be treated as information to which paragraph (1) of the Ninth Schedule to the *Banking Services Act* applies.” .

Insertion of new Part VID in principal Act.

3. The principal Act is amended by renumbering Part VID as Part VIE and inserting the following next after section 17N as Part VID –

“ PART VID. *International Tax Compliance*

Interpretation of Part.

17NA. In this Part, “Competent Authority” means the Minister responsible for finance or such other person as the Minister may, in writing, designate.

Regulations to give effect to agreements, etc. listed in Schedule.

17NB. – (1) The Minister may make regulations for, or in connection with, giving effect to, or enabling effect to be given to, any international agreement, convention or arrangement entered into by the Government of Jamaica and listed in the First Schedule, as amended from time to time, for the exchange of financial or other information which will be used for tax purposes.

(2) Regulations made under this section may in particular –

- (a) authorize the Competent Authority to require persons specified therein to provide the Competent Authority with

- information specified therein;
 - (b) require that information to be provided at such times and in such form as may be specified;
 - (c) impose obligations on persons relating to the exchange of financial or other information which will be used for tax purposes (including obligations to obtain from third parties details of their place of residence for tax purposes); and
 - (d) impose pecuniary penalties for failure to comply with obligations thereunder.
- (3) A penalty imposed under these

Regulations –

- (a) may be enforced as if it were income tax charged in an assessment and due and payable by the person on whom the penalty is imposed; and
- (b) shall, for the purposes of appeals, be treated as being imposed by a Revenue Commissioner and comprising a revenue liability.

(4) Regulations made under this section

may –

- (a) make different provisions in relation to different periods of time;
- (b) make different provisions for different cases or circumstances;

(c) contain incidental, supplemental, transitional, transitory or saving provisions.

(5) Regulations made under this section are subject to affirmative resolution.

(6) The power conferred by this section is without prejudice to any other powers conferred by or under this or any other enactment.

Power of Minister to amend Schedule by order. 17NC. The Minister may, by order subject to affirmative resolution, amend the Schedule.”.

Amendment of section 19 of principal Act.

4. Section 19 of the principal Act is amended –
- (a) in subsection (2), by deleting the words “subsection (1)” and substituting therefor the words “this Act”; and
- (b) by inserting next after subsection (2) the following as subsection (3) –

“ (3) Until amended or replaced by regulations made under section 17NB, the regulations specified in the Second Schedule shall have effect as being made under that section.”.

Insertion of new First Schedule and Second Schedule into principal Act.

6. The principal Act is amended by inserting next after section 19 the following as the First Schedule and the Second Schedule –

“ **FIRST SCHEDULE** (Section 17NB)

List of International Agreements, Conventions and Arrangements

1. Agreement between the Government of Jamaica and the Government of the United States of America to Improve

International Tax Compliance and to Implement FATCA, signed on May 1, 2014 and published in the *Jamaica Gazette Extraordinary* as General Notice No. on the day of 2015.

SECOND SCHEDULE

(Section 19)

The Revenue Administration (International Tax Compliance Agreement (Jamaica and the United States of America)) Regulations, 2015

- Citation.** 1. These Regulations may be cited as the Revenue Administration (International Tax Compliance Agreement (Jamaica and the United States of America)) Regulations, 2015.
- Interpretation.** 2. – (1) In these Regulations, unless the context otherwise requires –
- “Agreement” means the Agreement between the Government of Jamaica and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA, signed on May 1, 2014, as amended from time to time, and listed as item 1 of the First Schedule to the Act;
- “Competent Authority” means the Minister responsible for finance or such other person as the Minister may, in writing, designate;
- “controlling person” means an individual who is one of the controlling persons (as defined in subparagraph 1 (mm) of Article 1 of the Agreement) over an entity;
- “new entity account” means a reportable account held by an entity and opened on or after July 1, 2014;
- “new individual account” means a reportable account held by an individual and opened on or after July 1, 2014;

“preexisting entity account” means a reportable account held by an entity that has been open as of June 30, 2014;

“preexisting individual account” means a reportable account held by an individual that has been open as of June 30, 2014;

“reportable account” means a U.S. Reportable Account (as defined in subparagraph 1 (cc) of Article 1 of the Agreement) that is maintained by a reporting financial institution;

“reporting financial institution” means a Jamaican Financial Institution (as defined in subparagraph 1 (l) of Article 1 of the Agreement), and which is not a Non-Reporting Jamaican Financial Institution (as defined in subparagraph 1 (q) of Article 1 of the Agreement);

“U.S. TIN” means a U.S. federal taxpayer identifying number.

(2) In these Regulations, references to a person’s U.S. status are to whether or not the person is a “Specified U.S. Person” as defined in subparagraph 1 (ff) of Article 1 of the Agreement.

(3) Any expression that is defined in the Agreement but not in these Regulations has, with such modifications as the circumstances may require, the same meaning in these Regulations as in the Agreement.

Obligations in relation to Financial Accounts

Obligation to identify reportable accounts.

3. – (1) A reporting financial institution shall establish and maintain arrangements, that are to be documented in writing, that are designed to identify reportable accounts.

(2) Such arrangements shall –

(a) identify the holder of a reportable account or

- a controlling person, as the case may be;
- (b) meet the due diligence procedures set out in this regulation; and
- (c) ensure that the evidence obtained in accordance with this regulation, or a record of the steps taken to comply with this regulation in relation to any financial account, is kept for a period of seven years [after the evidence is obtained or the record is made.

(3) The due diligence procedures for a calendar year are set out in the following table –

Case	Type of Account	Balance or Value U.S. Dollars	Procedures in Annex I of Agreement to be applied
Case 1	Preexisting individual account	Not exceeding \$1,000,000 as of June 30, 2014	Section II, paragraphs B and C
Case 2	Preexisting individual account	Exceeding \$1,000,000 as of June 30, 2014, or December 31, 2015 or December 31 in any subsequent year	Section II, paragraphs D and E
Case 3	New individual account	Any	Section III, paragraph B
Case 4	Preexisting entity account	Not exceeding \$250,000 as of June 30, 2014, but exceeding \$1,000,000 as of December 31, 2015 or December 31 in any subsequent year	Section IV, paragraphs D and E 2 and 3
Case 5	Preexisting entity account not within Case 4	Any	Section IV, paragraphs D and E 1 and 3
Case 6	New entity account opened after July 1, 2014 and before January 1, 2015	Any	Section IV, paragraphs D and E 1 and 3
Case 7	New entity account not within Case 6	Any	Section V, paragraph B

(4) If, as a result of this regulation, a person's U.S. status is required to be certified, a reporting financial institution may require the person to supply to the institution such documentary evidence mentioned in section VI, paragraph D of Annex I of the Agreement, as the institution considers appropriate in support of the certification.

(5) The due diligence procedures set out in this regulation shall be applied by reference to the special rules and definitions at section I, paragraph B, 1 to 3 and section VI of Annex I of the Agreement.

(6) In applying the relevant due diligence procedures, a reporting financial institution may rely on evidence of a person's U.S. status obtained in relation to another financial account if the due diligence procedures referred to in section VI, paragraph F of Annex I of the Agreement would allow such reliance.

Obligation to prepare and send return regarding reportable accounts.

4. – (1) A reporting financial institution shall, in respect of the calendar year 2014 and every calendar year thereafter, prepare a return for each such year (hereinafter called "the calendar year in question") setting out –

- (a) subject to paragraph (6), the required information, as set out in paragraph (4), in relation to every reportable account that is maintained by the institution at any time during the calendar year in question ;
- (b) the institution's Global Intermediary Identification Number; and
- (c) a statement of whether paragraph 5 of Article 4 of the Agreement applies to the institution and, if it does, whether the requirements in sub-paragraphs (a) to (c) of that paragraph have been met.

(2) If during the calendar year in question the reporting financial institution maintains no reportable accounts, the return shall state that fact.

(3) The institution shall send a return under this regulation to the Competent Authority on or before May 31 of the year following the calendar year in question; however, in relation to the calendar year 2015, this paragraph shall

apply as if the word and numerals “August 17 ” were substituted for the word and numerals “May 31”.

(4) The required information is –

- (a) the name and address of the account holder;
- (b) the account holder’s U.S. TIN;
- (c) if an account is identifiable by an account number, that number or, if not, its functional equivalent;
- (d) the balance or value of the account (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) as of the end of the calendar year in question or, if the account was closed during the year, the balance or value on the date that the reporting financial institution closed the account;
- (e) the relevant total gross credits, or if there are none, a statement of that fact; and
- (f) if the account holder is a Non-US entity that has a controlling person who is a specified US person, that person’s name, address and US TIN.

(5) For the purposes of paragraph (4)(e), “relevant total gross credits” means –

- (a) in the case of a custodial account –
 - (i) the total gross amount of interest, the total gross amount of dividends and the total gross amount of other income generated with respect to assets held in the account which is paid into, or with respect to, the account during the calendar year in question, and
 - (ii) the total gross proceeds from the sale or redemption of property, paid into the account during the calendar year in question if the institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder;
- (b) in the case of a depository account, the total gross amount of interest paid into the account during the

calendar year; and

- (c) in the case of any other account, the total gross amount of sums paid by the institution under a legal obligation to the account holder with respect to the account, during the calendar year.

(6) For the purposes of this regulation –

- (a) references to the balance or value of an account include a nil balance or value; and
- (b) references to paying an amount include crediting an amount.

(7) If a reporting financial institution has an established practice for the periodic valuation of accounts of a particular description otherwise than at the end of a calendar year, the institution may report amounts referred to in paragraph (5)(a) or (c) by reference to a period of 12 months ending with the date (or, if more than one, the latest date) in the calendar year on which the institution values accounts of that description (instead of by reference to the calendar year).

(8) For pre-existing accounts, in relation to returns for the calendar year 2017 and subsequent calendar years, if a reporting financial institution does not hold a U.S. TIN that it is required to report under paragraph (4)(b) or (f), the institution shall obtain that number from the account holder.

Obligation to obtain taxpayer identification number of specified US persons.

5. – (1) A reporting financial institution shall establish and maintain arrangements, to be documented in writing, to obtain the U.S. TIN of every specified U.S. person who is the account holder of a reportable account.

(2) Paragraph (1) has effect –

- (a) from January 1, 2017, in the case of pre-existing individual and pre-existing entity accounts; and
- (b) with immediate effect, in the case of new individual accounts opened on or after July 1, 2014, and new entity accounts opened on or after July 1, 2014.

Modifications for 2014 to 2016.

6. – (1) In the case of custodial accounts –

(a) there is no requirement to include in the return for the calendar year 2014 information about relevant total gross credits under regulation 4(4)(e); and

(b) there is no requirement to include in the return for the calendar year 2015 any information set out in regulation 4(5)(a)(ii).

(2) In the case of pre-existing accounts –

(a) there is no requirement to include in the return for calendar years before 2017 a U.S. TIN if the reporting financial institution does not hold that number; but

(b) if the account holder is an individual whose date of birth the institution does hold, the institution shall include the account holder's date of birth instead.

Obligations in relation to Payments to Nonparticipating Financial Institutions

Obligation to identify and disclose payments to non-participating financial institutions.

7. – (1) A reporting financial institution shall establish and maintain arrangements, that are to be documented in writing, that are designed to identify payments made by the institution to a nonparticipating financial institution in each of the calendar years 2015 and 2016.

(2) If a reporting financial institution has, in respect of a payment to a financial institution, taken the steps referred to in section IV, paragraphs D(3)(a) or D(3)(c) of Annex I of the Agreement, that reporting financial institution is entitled to regard the payment as having been made by it to someone who is not a non-participating financial institution.

(3) In respect of any case in the calendar years 2015 and 2016 when a reporting financial institution is within the terms of sub-paragraph 1(e) of Article 4 of the Agreement, the institution shall make a disclosure of such information as is necessary to comply with that sub-paragraph.

(4) For the purposes of this regulation –

(a) “nonparticipating financial institution” includes any person who is required to be treated as a nonparticipating financial institution as a result of sub-paragraph 5(a) of Article 4 of the Agreement; and

(b) “payment” includes amounts credited by a reporting financial institution to a nonparticipating financial institution but does not include consideration given

by the reporting financial institution, for the provision of goods or services to it.

Obligation to prepare and send return regarding payments to non-participating financial institutions.

8. – (1) A reporting financial institution shall in respect of each of the calendar years 2015 and 2016 prepare a return setting out –
- (a) the names of the nonparticipating financial institutions to whom payments identified in accordance with regulation 7(1) have been made in the calendar year in question; and
 - (b) the total amount of those payments made to each of the non-participating financial institutions in question.
- (2) In determining the total amount of the payments referred to in paragraph (1)(b), the special rules and definitions at section I, paragraph B(1) and section VI, paragraph C of Annex I of the Agreement shall be applied.
- (3) If for a calendar year no payments are identified as referred to in paragraph (1), the reporting financial institution shall prepare a return for the calendar year stating that fact.
- (4) The reporting financial institution shall send a return under this regulation to the Competent Authority on or before May 31 of the calendar year following the calendar year to which the return relates.

Obligation to Notify Competent Authority

Notification by financial institution to Competent Authority.

9. – (1) A financial institution that has obligations under these Regulations shall notify the Competent Authority of that fact and shall provide to the Competent Authority –
- (a) the name of the financial institution;
 - (b) the categorization or categorizations of the financial institution as determined in accordance with subparagraph 1 (g) of Article 1the Agreement; and
 - (c) where the financial institution has registered with the Internal Revenue Service of the United States of America for the purposes of the Agreement, the Global Intermediary Identification Number allocated

to that financial institution by the Internal Revenue Service of the United States of America.

(2) The notification, and the information specified in paragraph (1)(a) to (c), shall be submitted to the Competent Authority in the manner and form that the Competent Authority may require.

(3) A financial institution shall provide the notification and the information specified in paragraph (1)(a) to (c) to the Competent Authority no later than March 31 in the first calendar year in which the financial institution is required to comply with reporting obligations to the Competent Authority under these Regulations; however, in relation to the calendar year 2015, this paragraph shall apply as if the word and numerals “August 17 ” were substituted for the word and numerals “March 31”.

(4) A financial institution that is required to notify the Competent Authority pursuant to this regulation shall, at the time of notification, provide to the Competent Authority the full name, address, designation and contact details of an individual identified and authorized by the financial institution to be the principal point of contact for the financial institution for all purposes of compliance with these Regulations.

(5) A financial institution shall notify the Competent Authority immediately of any changes to the information provided to the Competent Authority under paragraph (1)(a) to (c) and of any changes in respect of the principal point of contact referred to in paragraph(4).

(6) Where a financial institution ceases to be registered with the Internal Revenue Service of the United States of America for whatever reason, it shall notify the Competent Authority.

Powers of Competent Authority

Powers of Competent Authority to obtain information and carry out

10. – (1) For the purposes of verifying compliance with these Regulations,-the Competent Authority may require a reporting financial institution to do either or both of the following –

inspection.

- (a) to provide to the Competent Authority, within such reasonable time as the Competent Authority may in writing specify, the information, including copies of any relevant books, records or other documents, or any electronically stored information, that the Competent Authority may reasonably require;
- (b) to make available to the competent Authority for inspection, at the time specified by the Competent Authority, all copies of books, documents or other records, or any electronically stored information, in the possession or under the control of the reporting financial institution, that the Competent Authority may reasonably require .

(2) A reporting financial institution shall retain for a period of seven years all books, records and other documents, including those stored by electronic means, which relate to the information required to be reported to the Competent Authority for the purposes of these Regulations.

*Penalties for Breach of Obligations***Penalties for failure to report payments to nonparticipating financial institution.**

11. A person is liable to a penalty of ten thousand dollars for –
- (a) each failure to set out a payment in a return under regulation 8; and
 - (b) each failure to set out a payment accurately in a return under regulation 8.

Penalty for providing inaccurate information.

12. – (1) A person is liable to a penalty not exceeding five hundred thousand dollars if –
- (a) in complying with an obligation under regulation 4, the person provides inaccurate information; and
 - (b) Condition A, B or C, as specified in paragraphs (2), (3) or (4), respectively, is met.
- (2) Condition A is that the inaccuracy is deliberate on the part of the person.
- (3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform the Competent Authority at that time.
- (4) Condition C is that the person –

- (a) discovers the inaccuracy some time later, and
- (b) fails to take reasonable steps to inform the
Competent Authority.

(5) A person is liable to a penalty of five hundred thousand dollars if, in complying with an obligation under regulation 4, the person provides inaccurate information, and the inaccuracy is due to an inadvertent failure to comply with regulation 3.

**Reasonable
excuse in
relation to
liability.**

13. – (1) Liability to a penalty under regulation 11(a) does not arise if the person concerned satisfies the Competent Authority, or the Revenue Appeals Division or the Revenue Court in the case of an appeal to that Division or Court, that there is a reasonable excuse for a failure to comply with obligations referred to in the applicable regulation.

(2) For the purposes of this regulation, neither of the following is a reasonable excuse –

- (a) that there is an insufficiency of funds to do something; or
- (b) that a person relies upon another person to do something.

(3) If a person had a reasonable excuse for a failure but the excuse has ceased to apply, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased to apply.

**Assessment
of penalties.**

14. – (1) If a person becomes liable to a penalty under regulation 11 or 12, the Commissioner General shall, in writing, notify the person concerned of the penalty.

(2) The determination of liability to a penalty under regulation 11(a) shall be made within the period of twelve months beginning with the date on which the person became liable to the penalty.

(3) The determination of liability to a penalty under regulation 11(b) or 12 shall be made –

- (a) within the period of twelve months beginning with the date on which the inaccuracy first came

to the attention of the Competent Authority; and

- (b) within the period of six years beginning with the date on which the person became liable to the penalty.

Enforcement of penalties.

15. – (1) A penalty under these Regulations shall be paid to the Commissioner General before the end of the period of thirty days beginning with the date mentioned in paragraph (2).

(2) The date referred to in paragraph (1) is –

- (a) the date on which notification under regulation 14(1) was given in respect of the penalty; or
- (b) if a notice of an appeal is lodged with the Revenue Appeals Division or the Revenue Court, the date on which the appeal is finally determined or withdrawn.

Miscellaneous

Accounts with a negative value.

16. For the purpose of applying section VI, paragraph C of Annex I to the Agreement as required by these Regulations, an account balance that has a negative value is treated as having a nil value.

Anti-avoidance.

17. If –

- (a) a person enters into any arrangements; and
- (b) the purpose, or one of the purposes, of the person entering into the arrangements is to avoid or circumvent any obligation or requirement under these Regulations,

these Regulations shall have effect as if the arrangements had not been entered into.

Secrecy.

18. – (1) Subject to this regulation, any person employed in carrying out the provisions of, or having any official duty under, these Regulations shall regard and deal with as secret and confidential all information, records and other documents that –

- (a) come into the possession or control of, or to the knowledge of, the person in the course of

performing any duties under these Regulations;

and

(b) relate to the administration of these Regulations.

(2) Every person referred to in paragraph (1) who, having possession or control of any information, records and other documents, communicates or attempts to communicate such information or anything contained in such records or documents to any person otherwise than for the purposes of this Act, commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding nine months, or to both such fine and imprisonment.

**Immunity
from civil
action.**

19. Any person who discloses confidential information that is subject to an obligation of secrecy or confidentiality and that is required to be disclosed for the purposes of these Regulations shall be immune from any civil action in respect of that disclosure.

**Guidance
and forms.**

20. – (1) The Competent Authority may issue guidance from time to time, in such manner and form as determined by it, for the purposes of facilitating compliance with these Regulations.

(2) The Competent Authority may specify the manner and form for the provision of information, records and other documents under these Regulations.

**Publication
in *Gazette* of
amendment
to Agreement
and notifica-
tion of more
favourable
terms.**

21. The Competent Authority shall cause to be published in the *Gazette* –

- (a) any amendment to the Agreement under paragraph 2 of Article 8 of the Agreement; and
- (b) any notification under paragraph 2 of Article 7 of the Agreement of more favourable terms that apply under the Agreement.”.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the *Revenue Administration Act* (the “Act”) by adding provisions to the Act regarding the exchange of financial or other information which is to be used for tax purposes, in order to improve international tax compliance.

The Bill seeks to list, in a Schedule to the Act, the international agreements, conventions and arrangements that Jamaica has entered into for the exchange of financial or other information which is to be used for tax purposes.

The Bill seeks to authorize the Minister to make regulations, subject to affirmative resolution, for the purposes of implementing such agreements, conventions and arrangements, and incorporates in a Schedule the initial regulations, subject to any amendment thereto or replacement thereof by the Minister.

The Bill further seeks to empower the Minister to amend the Schedule by order, subject to affirmative resolution.

Peter D. Phillips, M.P.
Minister of Finance and Planning