

CERTIFICATE

In accordance with section 56(2) of the Jamaica (Constitution) Order in Council 1962, I hereby certify that this Bill shortly entitled “The Telephone Calls Tax Act, 2017” is a Money Bill.

PEARNEL CHARLES
Speaker

ABILL

ENTITLED

AN ACT to Impose a tax on certain telephone calls to be known as the telephone calls tax; and for connected purposes.

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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:—

1. This Act may be cited as the Telephone Calls Tax Act, 2017. Short title.
2. In this Act, unless the context otherwise requires— Interpreta-
tion.
 - “applicable taxpayer” means an originating or terminating carrier or service provider who—
 - (a) provides a telephone service in Jamaica; and

- (b) is registered under section 27 of the *General Consumption Tax Act*;

“authorized person” means—

- (a) an officer of a revenue department within the meaning of section 2 of the *Revenue Administration Act*;
- (b) a member of the Jamaica Constabulary Force;
- (c) any other person authorized by the Commissioner General; and
- (d) any person acting in aid of the persons referred to in paragraphs (a), (b) and (c);

“carrier” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“Commissioner General” has the meaning assigned to it by section 2 of the *Tax Administration Jamaica Act*;

“Commissioner of Revenue Appeals” has the meaning assigned to it by section 2 of the *Revenue Appeals Division Act*;

“customer” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“documents” means, in addition to a document in writing, any thing or manner in which information of any description is recorded or stored;

“emergency services” means police, fire or medical response services;

“fixed network” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“mobile network” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“point” means the telecommunications transmission points to or from which telecommunications are transmitted over a telecommunications network between persons, things or persons and things;

“public network” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“service provider” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“taxable period”, in relation to an applicable taxpayer, means the period of one calendar month or such other period as the Commissioner General may specify, in writing, as the period in respect of which a return of telephone calls tax is to be made;

“telecommunications” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“telephone calls tax” means the tax on telephone calls imposed by section 3;

“telephone service” means the provision of telecommunications comprising wholly or partly of real time or near real time audio communication utilizing a telephone;

“transit service” has the meaning assigned to it by section 2 of the *Telecommunications Act*;

“transmission” has the meaning assigned to it by section 2 of the *Telecommunications Act*.

3. Subject to the provisions of this Act, every applicable taxpayer shall pay to the Commissioner General, a tax on telephone calls provided—

Tax on
telephone
calls.

- (a) between points originating and terminating in Jamaica on a public network, whether a fixed network or a mobile network (other than a transit service);
- (b) from a point originating in Jamaica from a public network, whether a fixed network or a mobile network, and a point terminating outside of Jamaica; or
- (c) from a point originating outside of Jamaica and terminating on a mobile network in Jamaica that is a public network.

Rate of tax. 4.—(1) The telephone calls tax payable under section 3 is the amount calculated based on the duration of the telephone calls, measured in the total number of minutes, during the taxable period at the rates specified in the First Schedule.

First Schedule.

(2) In respect of the rate of tax on telephone calls specified in United States dollars in the First Schedule, payment may be made in Jamaican dollars in the equivalent amount at the applicable Bank of Jamaica weighted average foreign exchange selling rate on the day of payment.

(3) Where a carrier fails to identify the point of origin of a telephone call terminating in Jamaica on a domestic fixed or mobile network, the telephone call shall be deemed to have been provided from a point originating outside of Jamaica and the applicable telephone calls tax rate determined accordingly.

Exemptions. 5.—(1) Notwithstanding section 3, no telephone calls tax shall be payable by an applicable taxpayer in respect of telephone calls—

- (a) originating and terminating from points on the network of that carrier or service provider to—
 - (i) access the customer and technical product support services provided by that carrier or service provider to customers;
 - (ii) facilitate the payment by customers of the telephone products and services contracted between that carrier or service provider and customers thereof;
 - (iii) facilitate communication of customer product and transaction queries, activation or de-activation of services with the carrier or service provider and its customers,

whether these telephone calls are provided in or outside of Jamaica;

- (b) for any portion of the duration thereof, offered without charge to a customer not exceeding thirty *per cent* of the total number of minutes comprising the duration of the telephone calls;

- (c) to access emergency services by calling telephone numbers specified under the *Telecommunications Act* for such use; or
- (d) exempt from the payment of telephone calls tax under subsection (2).

(2) The Minister may, by order, exempt any type of telephone call from the payment of telephone calls tax, subject to such terms and conditions, if any.

6.—(1) An applicable taxpayer shall, within the calendar month next following the preceding taxable period—

- (a) furnish to the Commissioner General a return in the form set out in the Second Schedule; and
- (b) pay to the Commissioner General the amount of telephone calls tax, if any, payable by that applicable taxpayer in respect of the taxable period to which the return relates.

Returns required from applicable taxpayer.

Second Schedule.

(2) The Commissioner General may, in writing, require an applicable taxpayer to furnish to the Commissioner General, within the time specified by the Commissioner General, such information relating to the return as the Commissioner General considers necessary.

(3) Every applicable taxpayer who fails to make a return under subsection (1) or to furnish the information required under subsection (2) shall be liable to a penalty of five thousand dollars per day during which the default continues to a maximum of one hundred thousand dollars.

(4) Every applicable taxpayer who fails to pay the full amount of telephone calls tax due and payable under subsection (1) in respect of a taxable period shall be liable to a penalty of fifteen per cent of the amount unpaid.

7.—(1) Every applicable taxpayer shall—

- (a) keep documents relating to the telephone service provided;
- (b) if required by an authorized person, produce at such time and place as the authorized person may specify any documents relating to a telephone service.

Applicable taxpayer to keep proper records.

(2) An applicable taxpayer who contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding six months.

(3) A person shall not—

- (a) knowingly give to an authorized person any false information relating to the provision of a telephone service by an applicable taxpayer; or
- (b) falsify any document relating to such telephone service.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding six months.

Demand
notice and
assessment.

8.—(1) Where an applicable taxpayer—

- (a) fails to furnish a return as required by this Act; or
- (b) furnishes a return which appears to the Commissioner General to be incomplete or incorrect,

the Commissioner General shall make an assessment in writing of the telephone calls tax payable by that applicable taxpayer.

(2) Where no payment of telephone calls tax is made on the date on which telephone calls tax is due and payable, the Commissioner General may, if satisfied that the delay in payment is not due to any wilful neglect or default on the part of the applicable taxpayer, specify a time within which the telephone calls tax is to be paid.

(3) The Commissioner General may, to the best of his judgment, make an assessment of the telephone calls tax chargeable on any telephone service of an applicable taxpayer and for which no satisfactory account can be given by that taxpayer.

(4) Where the Commissioner General is not satisfied with the calculations on any return furnished by an applicable taxpayer on the basis on which the return is prepaid, the Commissioner General—

- (a) may make an assessment of the amount that he thinks the applicable taxpayer ought to have stated on the return; and
- (b) shall in any assessment, state the general basis on which it is made.

(5) Where an amount which is payable by an applicable taxpayer has been assessed and notified to that taxpayer, the amount shall, subject to section 9, be deemed to be the amount of telephone calls tax due from that taxpayer and may be recovered accordingly, unless the assessment has been withdrawn or reduced.

(6) Subject to subsection (6), it shall not be lawful for the Commissioner General, after the expiration of six years from the end of a taxable period, to make an assessment so as to increase the amount of telephone calls tax payable.

(7) Where an applicable taxpayer with intent to defraud fails to make full disclosure of all material facts necessary to determine the amount of telephone calls tax payable for any taxable period, the Commissioner General may, at any time, make or alter an assessment.

(8) Notice in writing of any assessment made or altered under this section shall be served on the applicable taxpayer concerned.

(9) An assessment shall, subject to any amendment made on objection or determined on appeal, be deemed to be valid and binding notwithstanding any error, defect or omission therein.

(10) An applicable taxpayer who does not pay the telephone calls tax within the time specified under subsection (2) shall be liable to a penalty of fifteen per cent of the amount unpaid.

9.—(1) Subject to subsection (2), if any applicable taxpayer disputes an assessment made upon him, the applicable taxpayer may, within thirty days of the date of service of the notice of the assessment or other decision, as the case may be, apply to the Commissioner General by notice of the objection in writing to review the assessment, stating precisely the grounds of the objection.

Objection to
assessment
of tax.

(2) The Commissioner General may, on receipt of a notice of objection under subsection (1), require the applicable taxpayer giving such notice—

- (a) within such period (not being less than thirty days) as the Commissioner General may specify, to make any return or produce such documents relating to the telephone service as, in the opinion of the Commissioner General, are affected by the notice of the objection; and
- (b) to appear before him to answer any lawful questions relevant to the matters under consideration.

(3) Where an applicable taxpayer fails to comply with any requirement under subsection (2), the notice of objection served by that applicable taxpayer shall cease to have effect and the assessment as made shall be final and conclusive.

(4) Where an applicable taxpayer has objected to an assessment made under subsection (1)—

- (a) in the event of his agreeing with the Commissioner General as to the amount at which he is liable to be assessed, the assessment shall be confirmed or amended accordingly; or
- (b) in any other event, the Commissioner General shall give notice, in writing, to that applicable taxpayer of his decision in respect of the objection, so, however, that where the Commissioner General fails to deliver his decision within six months of the receipt by him of the objection and the delay is not attributable to the applicable taxpayer's omission or default, the assessment shall be null and void.

(5) Where no valid objection has been lodged within the time specified for such objection, or where the amount assessed has been agreed to under subsection (4), the assessment as made, agreed to or determined, as the case may be, shall be final and conclusive.

(6) Where the Commissioner General is satisfied that owing to absence from Jamaica, sickness or other reasonable cause, an applicable taxpayer was unable to make an application under subsection (1) within

the period specified for an objection to be made, the Commissioner General shall extend the period for such time as may be reasonable in the circumstances.

(7) Where any applicable taxpayer is dissatisfied with a decision of the Commissioner General that applicable taxpayer may appeal to the Commissioner of Revenue Appeals in accordance with the *Revenue Appeals Division Act*.

10. Where an offence against this Act is committed by a body corporate, the director, general manager, secretary or other similar officer concerned in the management of that body corporate shall, without prejudice to the liability of the body corporate, be deemed to have committed the offence unless at trial he proves that the offence was committed without his knowledge, consent or connivance or that he exercised all due diligence to prevent the commission thereof as he ought to have exercised having regard to the nature of his functions in the body corporate and the circumstances of the case.

Offence
by body
corporate.

FIRST SCHEDULE

(Section 4)

Telephone Calls Tax

Types of Telephone Calls	Rate of Telephone Calls Tax Payable
1. Other than a transit service, telephone calls provided between points originating and terminating in Jamaica on a public network, that is a fixed network	JA\$ 0.05 <i>per</i> minute
2. Other than a transit service, telephone calls provided between points originating and terminating in Jamaica on a public network from— (a) a fixed network to a mobile network; (b) a mobile network to a fixed network; and (c) a mobile network to a mobile network	JA\$ 0.40 <i>per</i> minute
3. Telephone calls provided from a point originating in Jamaica from a public network, whether a fixed network or a mobile network and a point terminating outside of Jamaica	JA\$ 0.40 <i>per</i> minute
4. Telephone calls provided from a point originating outside of Jamaica and terminating on a mobile network in Jamaica that is a public network	US\$0.075 <i>per</i> minute

SECOND SCHEDULE


(Section 6)



THE TELEPHONE CALLS TAX ACT
TELEPHONE CALLS TAX RETURN

TCT01

Section A: GENERAL INFORMATION					
1. Name of Business	2. Taxpayer Registration Number (TRN)				
3. Return Period Year Month Day to Year Month Day					
4. Business Address (Street No. & Name, Postal Zone, Parish)	5. Mailing Address (If different from 4)				
6. Telephone Numbers: Landline: Mobile:	7. Email Address				
8. Tick appropriate box <input type="checkbox"/> New Address <input type="checkbox"/> Revised Return					
Section B: CALCULATION OF TAXABLE MINUTES					
Total call minutes, including free minutes for period (Transfer Line 9g from Schedule A, overleaf)	9				
Total exempt call minutes for period (Transfer Line 10e from Schedule B, overleaf)	10				
Total taxable call minutes for period (Subtract Line 10 from Line 9)	11				
Section C: CALCULATION OF TELEPHONE CALLS TAX (TCT) PAYABLE ON CALLS (MINUTES)					
MINUTES (Transfer from Schedule C, overleaf)					
Domestic public fixed network to domestic public fixed network by the originating carrier.	12a	X	12b	=	12
Domestic public fixed network to public mobile network by the originating carrier.	13a	X	13b	=	13
Domestic public mobile network to public fixed network by the originating carrier.	14a	X	14b	=	14
Domestic public mobile network to public mobile network by the originating carrier.	15a	X	15b	=	15
International calls originating on a domestic public network by the originating carrier.	16a	X	16b	=	16
International calls that terminate on a domestic public mobile network by the terminating carrier.	17a	X	17b	=	17
Total TCT on domestic and international call minutes due and payable for period. (Add Lines 12 to 17)					18
Section D: TCT PAYABLE/CREDITABLE					
Total TCT Payable for Period (Transfer Line 18)					19
TCT Credit on account if applicable					20
TCT Balance payable on account if applicable (Including all charges)					21
Current Interest Charge if applicable					22
Current Total TCT Payable/Creditable on Account (Add Lines 19 to 22)					23
Amount being paid					24

Schedule A - TOTAL MINUTES (CHARGEABLE MINUTES PLUS FREE MINUTES)	
Total domestic public fixed network minutes (including free minutes) to domestic public fixed networks	9a
Total domestic public fixed network call minutes (including free minutes) to public mobile networks	9b
Total domestic public mobile network call minutes (including free minutes) to public fixed networks	9c
Total domestic public mobile network call minutes (including free minutes) to public mobile network	9d
Total international call minutes originating from domestic public network	9e
Total international call minutes terminating on domestic public mobile network	9f
Total call minutes for Period (Transfer to Section B, Line 9 overleaf)	9g
Schedule B - TOTAL EXEMPT MINUTES	
Call minutes to non-chargeable customer services or authorized emergency number from:	
Domestic public fixed network to domestic public fixed networks (Limit to 30% of Line 9a above)	10a
Domestic public fixed network to public mobile networks (Limit to 30% of Line 9b above)	10b
Domestic public mobile network to public fixed networks (Limit to 30% of Line 9c above)	10c
Domestic public mobile network to public mobile network (Limit to 30% of Line 9d above)	10d
Total allowable exempt call minutes for Period (Transfer to Section B, Line 10 overleaf)	10e
Schedule C - TOTAL CHARGEABLE MINUTES (TOTAL MINUTES LESS TOTAL EXEMPT MINUTES)	
Domestic public fixed network to domestic public fixed network by the originating carrier (Subtract Line 10a from Line 9a; Transfer to Section C, Line 12a)	12a
Domestic public fixed network to public mobile network (Subtract Line 10b from Line 9b; Transfer to Section C, Line 13a)	13a
Domestic public mobile network to public fixed network (Subtract Line 10c from Line 9c; Transfer to Section C, Line 14a)	14a
Domestic public mobile network to public mobile network (Subtract Line 10d from Line 9d; Transfer to Section C, Line 15a)	15a
International calls originating on a domestic public network by the originating carrier (Transfer to Section C, Line 16a)	16a
International calls that terminate on a domestic public mobile network by the terminating carrier (Transfer to Section C, Line 17a)	17a
Section E: DECLARATION	OFFICIAL USE
I declare that to the best of my knowledge and belief this is a true and correct statement of the information and particulars given on this form.	
Name of Responsible Officer _____	Title _____
Signature _____	Date _____
	OFFICIAL CODE: [] [] [] [] [] [] [] [] [] []

Passed in the House of Representatives this 15th day of March, 2017.

PEARNEL CHARLES
Speaker.

Passed in the Senate this 31st day of March, 2017 with eight (8) amendments.

AUBYN HILL
Deputy President

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to impose a telephone calls tax to be known as the Telephone Calls Tax on all domestic calls originating in Jamaica whether fixed line or mobile and on all international calls terminating on a mobile network in Jamaica.

This telephone calls tax is to be paid by a domestic terminating carrier in the case of incoming international calls and the domestic originating carrier or service provider in the case of calls originating in Jamaica.

This Bill seeks to make permanent the tax previously imposed on telephone calls by the Provisional Collection of Tax (Telephone Calls Tax) Order, 2012.

AUDLEY SHAW
Minister of Finance and the Public Service.

A BILL

ENTITLED

AN ACT to Impose a tax on certain telephone calls to be known as the telephone calls tax; and for connected purposes.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

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