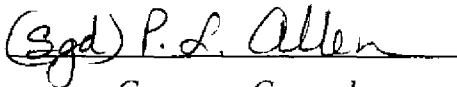


JAMAICA

No. 6 – 2012

I assent,

[L.S.]


Governor-General.

6th November, 2012

AN ACT to Amend the Income Tax Act.

[7th November, 2012]

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 Income Tax (Amendment) Act, 2012, and shall be read and construed as one with the Income Tax Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title and
construction.

Amendment
of section 2
of principal
Act.

2. Subsection (1) of section 2 of the principal Act is amended by inserting in the appropriate alphabetical sequence the following definitions—

“ “approved group head office company” means a company or other body corporate to whom a certificate has been issued pursuant to section 36F designating it as an approved group head office company;

“group head office activities” means the following activities carried out by an approved group head office company—

- (a) the supervision, management and monitoring of the operations of the approved group head office company;
- (b) the provision of accounting, data processing, engineering and other technical support;
- (c) centralized treasury management and other similar funding activities;
- (d) business planning and coordination;
- (e) the making of loans and the provision of corporate finance advisory services;
- (f) the holding of shares and the receipt of dividends and management fees;
- (g) the holding and grant of rights over trademarks, patents and other intellectual property;
- (h) the provision of staff; and
- (i) such other activities as may be specified by the Minister by order published in the *Gazette*.”.

Amendment of
section 12 of
principal Act.

3. Section 12 of the principal Act is amended by—

- (a) deleting the full stop appearing at the end of paragraph (ak) and substituting therefor a semi-colon; and

(b) inserting next after paragraph (ak) the following as paragraph (al)—

“(al) subject to such conditions as may be prescribed and such conditions as may be specified in the certificate designating the company as an approved group head office company, the emoluments of a person who is not a citizen of Jamaica and which arise or accrue in respect of the person’s holding of an office or employment of profit with an approved group head office company, and which are in respect of the performance by the person of one or more of the company’s activities during the period when the certificate is in force.”.

4. The principal Act is amended by inserting next after section 20, the following as sections 20A and 20B—

Insertion of new sections 20A and 20B in principal Act

Notification of commencement and cessation of employment of employee of group head office company who is not resident in the Island

20A. An approved group head office company shall notify the Commissioner General of Tax Administration Jamaica, in writing—

- (a) within thirty days of the commencement of employment of any employee to whom section 12(al) applies;
- (b) at least ninety days before the cessation of employment, of any employee to whom section 12(al) applies.

Repayment of tax relieved by employee of an approved group head office company

20B. Where the Commissioner General of Tax Administration Jamaica—

- (a) is satisfied that the emoluments arising or accruing from the employment activities of any employee of an approved group headquarters company have been treated as emoluments to which section 12(al) applies; and

- (b) determines that the emoluments ought not to have been so treated,

then, the amount of any relief granted under section 12(a) may be assessed against the employee and treated as if it was unpaid tax.”.

Insertion of new sections 36E, 36F, 36G, 36H and 36I in principal Act

5. The principal Act is amended by inserting next after section 36D, the following as sections 36E, 36F, 36G, 36H and 36I—

“ *Approved Group Head Office Company*

Application for designation as an approved group head office company 36E.—(1) A company or other body corporate may apply to the Minister, in the prescribed form and manner, for a certificate designating the company or other body corporate as an approved group head office company for the purposes of this Act.

(2) An application under subsection (1) shall be accompanied by the prescribed application fee, which shall not be refundable.

(3) Where the Minister thinks necessary he may require an applicant for a certificate under subsection (1) to furnish such additional information or document as he may specify in writing.

Grant or refusal of certificate

36F.—(1) Upon receipt of an application under section 36E(1), the Minister may, subject to subsection (2)—

- (a) grant a certificate designating the body corporate or company as an approved group head office company authorized to perform the group head office company activities specified in the certificate; or
- (b) refuse to grant a certificate.

(2) Subject to subsection (5), the Minister shall not grant a certificate under this section unless, he is satisfied that the applicant—

- (a) is incorporated or registered under any enactment in force in Jamaica;
- (b) is engaged in, or proposes to engage in, group head office activities;
- (c) proposes to employ or has already employed thirty *per cent* or more of its employees to perform group head office activities from among citizens of Jamaica who are resident in Jamaica.

(3) A certificate granted under this section shall—

- (a) be subject to such terms and conditions as may be specified in the certificate;
- (b) not be transferable; and
- (c) be valid for such period as is specified therein,

and may take effect from the date stated therein which may be a date earlier than the date on which the certificate was issued.

(4) For the avoidance of doubt, it is hereby declared that a person referred to in subsection (2)(c) shall not be entitled to any relief under section 12(a).

(5) The Minister may, where he is satisfied that in the circumstances of the case it is appropriate to do so, exempt from or vary any or all of the requirements of subsection (2)(a) or (c) relating to an application under section 36E(1).

Variation, etc
of certificate

36G.—(1) The holder of a certificate granted under section 36F may apply, in writing, to the Minister for the variation, modification or surrender of the certificate, stating clearly the reasons therefor.

(2) The Minister may grant any such application in whole or in part subject to such conditions as he may impose.

Cancellation
of certificate

36H.—(1) The Minister may, by instrument in writing addressed to the holder of a certificate granted under section 36F, cancel the certificate with effect from such date thereafter, as he may determine, if he is satisfied that—

- (a) the holder has failed to comply with the provisions of this Act or any regulations made under this Act or any term or condition specified in the certificate; or
- (b) any information provided in relation to the application for the certificate that was false or misleading in any material particular.

(2) Before cancelling a certificate, the Minister shall—

- (a) notify the holder of the certificate, in writing, of the proposed cancellation stating the reasons therefor; and
- (b) give the holder of the certificate an opportunity to explain the circumstances of—
 - (i) the failure to comply with the provisions of this Act or any regulations made under this

Act or any term or condition specified in the certificate; or

- (ii) information that is alleged to be false or misleading in any material particulars.

(3) The cancellation of a certificate pursuant to subsection (1) shall not affect any entitlement to relief from income tax which may have accrued prior to the cancellation, in relation to any employee to whom section 12(a) applies.

36I. Every holder of a certificate granted under section 36F shall keep such books, documents or records in such manner and for such period as may be prescribed.”.

Records.

6. The principal Act is amended by inserting next after section 92, the following as section 92A—

Insertion of new section 92A in principal Act

“ Regulations relating to approved group head office company.

92A.—(1) The Minister may make regulations generally in relation to approved group head office companies and, in particular, but without prejudice to the generality of the foregoing, the regulations may contain provisions in relation to the following matters—

- (a) the procedures for the designation of companies or other bodies corporate as approved group head office companies;
- (b) the terms and conditions under which certificates under section 36F designating companies or other bodies corporate as approved group head office companies are issued;
- (c) any application fees or other charges payable in respect of any certificate

under section 36F or for any service provided;

- (d) the keeping of records;
- (e) the making of reports by holders of certificates granted under section 36F; and
- (f) any other matter required to be prescribed in relation to an approved group head office company under this Act.

(2) Regulations made under subsection (1) shall be subject to negative resolution of the House of Representatives.”.

Amendment of
section 99 of
principal Act.

7. Section 99 of the principal Act is amended—

- (a) in subsection (1), by inserting immediately before the words “or particulars” the word “form”; and
- (b) in subsection 2(a), by inserting immediately before the words “or particulars” the word “form”.

Passed in the House of Representatives this 25th day of September, 2012.

MICHAEL PEART
Speaker.

Passed in the Senate this 5th day of October, 2012.

ANGELA BROWN BURKE
Deputy President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.