Tax Administration Jamaica

Practice Note

Contractors Levy

This Practice Note is intended only as a general guide and will support users to understand the relevant legislation using plain English, identifying the most relevant sections and using appropriate examples. This guide must be read in conjunction with the Contractors Levy Act. It contains the Authority's interpretation of the law as it stood at the date of this publication along with any associated practices, procedures and instructions.

Under Section 12 (2) of the Tax Administration Jamaica Act, 2013 a Practice Note is binding on the Commissioner General and all officers of the Authority until it is revoked. However, taxpayers are reminded that the publication of a Practice Note does not affect their right of objection and appeal or their right of access to the Revenue Court on points concerning their own tax liability.

Comments and suggestions for the improvement of issued Practice Notes and suggestions for future Practice Notes are always welcome.

Ainsley Powell

August 24, 2022 — Commissioner General

CONTRACTORS LEVY

DATE LAST MODIFIED: N/A
LEGISLATIVE REFERENCE: Contractors Levy Act 1985,
Income Tax Act, General Consumption Tax Act,
General Consumption Tax Regulations
Minimum Business Tax Act 2015
CODING SYSTEM FILE NUMBER: PN-CL-01-2022
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This Practice Note provides guidance and clarity with respect to the application of the Contractors Levy enacted by the Contactors Levy Act 1985 on December 23, 1985.

The examples in this Practice Note are strictly for purposes of illustrating the application of the provisions of the Act.

All references herein are to the Contractors Levy Act, the Income Tax Act and the General Consumption Tax Act, Minimum Business Tax Act unless otherwise indicated.

Table of Contents

List of Abbreviations

1. The following list defines the various abbreviations used in this Practice Note.

BoQ	Bill of Quantities
CG	Commissioner General of Tax Administration Jamaica
CL	Contractors Levy
CLA	The Contractors Levy Act
COT	Collector of Taxes
ETC	Employment Tax Credit
GCT	General Consumption Tax
GCTA	General Consumption Tax Act
ITA	Income Tax Act
MBT	Minimum Business Tax
PN	Practice Note
RAD	Revenue Appeals Division
TAJ	Tax Administration Jamaica
WTSS	Withholding Tax On Specified Services
Y/A	Year of Assessment

Glossary of Terms

2. The following list defines various terms used in this Practice Note.

Component	For the purposes of this PN, the use of the definition in the Cambridge dictionary best describes this. "It is a part of a whole which is so combined with other parts as to modify its distinctive character. In the construction industry it is a constituent part of a building (or other built asset) which is manufactured as an independent unit, subsystem or subassembly, that can be joined or blended with other elements to form a more complex item".
Contractee	Person that enters into a contract with a contractor or subcontractor
Contract sum	This is the price agreed with the contractor and entered into the contract. The agreed contract sum should be calculated and checked very carefully as errors are deemed to have been accepted by both parties. As a result, contracts generally allow for the contract sum to be adjusted. Therefore, it is agreed with the contractor during the tender period and adjusted during the construction period.
Employment Tax Credit	The Employment Tax Credit (ETC) is a tax credit that is allowed against income tax liability only
Fixtures	For the purpose of this document, fixture is a term used in reference to a chattel or goods which installation is firmly attached to or incorporated into real property, such as building or other structures in a permanent position. Therefore, such items as elevators, escalators, doors windows, kitchen cabinets, water heaters and built-in appliances are considered fixtures. Examples of goods that do not become fixtures are furniture, free standing appliances and air conditioning units other than central air conditioning systems.
Goods	For the purposes of this Practice Note "goods" 'refers to all personal chattels and tangible items. In the construction industry these are tangible items such as plant, cranes, raw materials, manufactured materials and other manufactured products.'
Interim Certificates	Interim certificates provide a mechanism for the client to make payments to the contractor before the construction work is complete.
Manufacturer	A manufacturer is an organization or business that produces

	goods to sell them to a customer. Manufacturers transform raw materials, components, assemblies, into finished products, often involving processes organised into a production line. In the construction industry, manufacturers are often referred to as suppliers.
Project[i]	In the construction industry, a project is the organised process of constructing, renovating, refurbishing, etc. a building, structure or infrastructure.
Qualifying Activity	Construction, Tillage and Haulage Operations, subject to CL
Retention	This is an amount withheld from a contractor to ensure that the contractor satisfactorily completes their contractual obligations. It is generally held until the contractor performs all of its obligations under the contract, and is then released either on practical completion or after the end of a defects notification period. It is usually a percentage of the amount payable of each instalment.
Taxpayer	As defined in The Revenue Administration (Amendment) Act 2013 (see "Other Key Definition")
Withholdee	A person receiving or entitled to receive a payment from which income tax is required to be withheld.
Withholder	A person who withholds payments or collects/deducts withholding tax at the source of income from an employee's salary or wages or income paid for work done. (in this instance from the contract income)

Other key definitions and terms associated with this PN are noted in paragraphs 26-29.

Purpose

3. The purpose of this document is to provide guidance to TAJ's staff members, other government departments/ministries and public bodies, tax practitioners/preparers, professional accounting bodies, and the general public on the interpretation of the provisions of the Contractors Levy Act for bodies corporate and individuals.

Objectives

[i] https://www.designingbuildings.co.uk/wiki/Construction_project

This Practice Note is:

4. To provide guidance to persons affected by the law including the officers of TAJ. In accordance with Section 12 of the Tax Administration Jamaica Act, 2013, the CG may issue Practice Notes setting out interpretation and procedures for application of the Law.
5. To promote and achieve consistency in the administration of the Laws, relating to tax types administered by TAJ; while at the same time providing contractors/taxpayers with clarity, and a degree of certainty, regarding the operation of the Contractors Levy and its relation to their businesses.
6. To improve efficiency for all stakeholders by streamlining their understanding of what exactly is subject to the Contractors Levy and when payments are due.

Scope

7. In administering the Law relating to the Contractors Levy this Practice Note provides the interpretation of the CG in reference to the Contractors Levy Act**. (Exhibit 1)**
8. The CLA effective date of implementation is December 23, 1985.

Need for Policy Guideline & Interpretation

This PN seeks to provide guidance and clarity on the interpretation of the CLA given the underlying issues currently being faced by the stakeholders.

9. Persons are uncertain as to whether or not the levy should be charged on specific costing elements of the contract or should it be charged on the full value of the contract.
10. Persons are of the opinion that not all payments relating to construction services and not all services provided by contractors are so inclined to the kind of activities to which the levy should so be charged.
11. Persons are uncertain if construction activities falling under the taxable ambit of the GCT Act should also be liable for Contractors Levy.
12. Since the introduction of Withholding Tax on Specified Services on September 1, 2015 persons were uncertain if such services as outlined in the Section 31B of the ITA, which attracts a withholding tax, should also be subject to Contractors Levy.

13. For persons who were required to file and pay MBT for Y/A prior to 2019 there was uncertainty as to whether or not the income subject to Contractors Levy should be included when determining the liability for individuals subject to that tax.

14. Therefore, the PN will seek to:

    (a) Clarify the construction activities liable for Contractors Levy.

    (b) Clarify whether construction activities falling under the taxable ambit of the GCT Act is also liable for Contractors Levy.

    (c) Clarify the CG's position on the value on which Contractors Levy should be charged under the CLA.

    (d) Clarify whether or not the income subject to Contractors Levy should have been included when determining the liability for individuals who were subject to pay MBT. (Repealed w.e.f. year of assessment 2019)

    (e) Clarify whether or not services attracting Withholding Tax on Specified Services should also be subject to Contractors Levy.

    (f) Inform taxpayers of their responsibility in ensuring that any payment made to a principal contractor or subcontractor complies with the provisions of the CLA.

    (g) Inform taxpayers as it relates to the CG's powers of raising assessment in instances where the CL was not withheld and paid over or withheld and not paid over.

15. Most importantly, taxpayers will be reminded that the CL does not replace other tax obligations that business owners are subject to, with at least one exception.

Contractor/ Contract Matrix

16. The features of various types of contractors, the type of contracts engaged in by such a contractor and how the Contractors Levy will affect them are described in the matrix below. Further along in this PN we will look in more details on the relationship of GCT and CL in respect to the different types of contractors, activities and persons exempt from CL.

TYPE OF CONTRACTOR	FEATURES	TYPES OF CONTRACT			
		COST PLUS	LUMP SUM/FIXED PRICE	UNIT PRICE	TIME & MATERIAL
PURE CONTRACTOR	• Not a retailer or manufacture of components or raw material. • Does not issue invoice in respect of material. • Is often reimbursed in respect of material costs.	Levy computed on all payments made to the contractor for actual materials or cost of the components incurred, except amounts recovered by the contractor as reimbursement.	Where there is no agreement for reimbursement in respect of cost of the components or materials, the Levy is on the payment made for the full price stated in the contract. If there is an agreement for reimbursement, the materials would be separately identified and the contractor's levy would be applied to the payments made to the	In this type of contract, the contractor is not responsible for obtaining the cost of the components or materials. The levy is calculated on the payments made for the full contract price. (The contractor is reimbursed for any materials purchased and these costs are not included in the units of work)	Levy computed on all payments made to the contractor for actual materials or cost of the components incurred, except amounts recovered by the contractor as reimbursement.

TYPE OF CONTRACTOR	FEATURES	TYPES OF CONTRACT			
		COST PLUS	LUMP SUM/FIXED PRICE	UNIT PRICE	TIME & MATERIAL
			contractor for construction works only.		
CONTRACTOR MANUFACTURER	• Manufactures components for use in performing contracts only and or	Where the Contractor-manufacturer is not in the business of selling components and is not purchasing components from a third party, the cost plus contract would NOT apply.	Where the Contractor-manufacturer is not in the business of selling the manufactured components the levy is calculated on the contract price.		Where the Contractor-manufacturer is not in the business of selling the components the levy is to be computed on all payments made to the contractor for costs incurred as the concept of reimbursement cannot apply.
	• Manufactures components for sale outside of construction contracts.	Where the Contractor-manufacturer is in the business of selling the components, a separate invoice must be issued for the sale and the transaction treated as a separate supply. The levy is to be computed on all payments made to the contractor for costs	Where the Contractor-manufacture is in the business of selling the components, a separate invoice is to be issued in respect of the sale and the levy calculated on all payments made to the contractor for costs excluding the cost of the components.	This type of contract can only apply where the Contractor-manufacturer is in the business of selling the components. A separate invoice is to be issued in respect of the components supplied and the levy charged on all units of work determined, excluding the costs of components supplied.	Where the Contractor-manufacture is in the business of selling components, the payment for the components cannot be seen as reimbursements. A separate invoice is to be issued in respect of components supplied and the levy applied to all payments made to the

TYPE OF CONTRACTOR	FEATURES	TYPES OF CONTRACT			
		COST PLUS	LUMP SUM/FIXED PRICE	UNIT PRICE	TIME & MATERIAL
		excluding the cost of the components.			contractor for other costs.
CONTRACTOR RETAILER	• Contractor buys and sells components as well as utilises them in performing contracts	The concept of reimbursement does not apply. This is so since the Contractor-retailer is in the business of selling components or materials. The payment for the components or materials cannot be seen as reimbursements. As such, a separate invoice is to be issued in respect of the cost of the component or materials supplied and the levy applied to all payments made to the contractor for costs incurred, excluding the cost of the components.	As the Contractor-retailer is in the business of selling the components a separate invoice is to be issued in respect of the components or materials supplied and the levy computed on all payments made to the contractor for costs incurred, excluding the cost of the components.	As the Contractor-retailer is in the business of selling the components a separate invoice is to be issued in respect of the components or materials supplied and the levy charged on all units of work determined excluding the costs of the components supplied.	As the Contractor-retailer is in the business of selling components or materials the payment for the components or materials cannot be seen as reimbursements. A separate invoice is to be issued in respect of cost of the components or materials supplied and the levy applied to all payments made to the contractor for the other costs.

TYPE OF CONTRACTOR	FEATURES	TYPES OF CONTRACT			
		COST PLUS	LUMP SUM/FIXED PRICE	UNIT PRICE	TIME & MATERIAL
CONTRACTOR INSTALLER	• Any purchases of components fixtures and equipment are strictly on a reimbursement basis.	Levy computed on all payments made to the contractor for the cost incurred, except reimbursement for actual materials or cost of the components.	Levy computed on all payments made to the contractor for actual materials or cost of the components incurred, except amounts recovered by the contractor as reimbursement.	Levy computed on all payments made to the contractor for actual materials or cost of the components incurred, except amounts recovered by the contractor as reimbursement.	Levy computed on all payments made to the contractor for actual materials or cost of the components incurred, except amounts recovered by the contractor as reimbursement.

Taxpayers Obligations and Responsibilities

17. Regulation 3 of the ***Contractors Levy Act (Levy, Payment & Returns) Regulations, 2016 (Exhibit 2)*** states that a levy payer must submit a return of all the amounts payable under Section 4 (1) of the CLA to the COT. Regulation 2 defines a levy payer as any person who is required to make a deduction of levy pursuant to Section 3 of the CLA.

18. The person making a payment has the responsibility to deduct the levy from such payment made to the principal contractor or subcontractor and pay over the amount to the relevant COT within the specified time. ***(Exhibit 1 – Collection of the levy (S4.1) and How to Guide)***

19. The person who is required to make a deduction of the levy and who fails to do so will be responsible to make such payment to the COT as if he had actually made the deduction from the principal contractor or subcontractor.

20. The person making the deduction of the levy is required to furnish the principal contractor or sub-contractor with a certificate setting out the gross amount of the payment and the amount of the levy which was deducted and any other particulars as may be prescribed by the CLA. This must be done within fourteen (14) days after making the payment to the contractor. ***(Exhibit 1 & 3 – Collection of the Levy (S4.4) and How to Guide)***

21. The taxpayer has the responsibility to submit within 14 days of the end of the calendar month in which the levy was withheld, a return along with the amount deducted as levy from payments made to the principal contractor or subcontractor to the relevant COT.

22. The Return must contain the following details: (Exhibit ***4)***
    - Name of the Person withholding the levy
    - TRN of the person withholding the levy
    - Return period
    - TRN of Principal Contractor/Subcontractor
    - Name of Principal Contractor/Subcontractor
    - Address of Principal Contractor/Subcontractor
    - Type of Contract
    - Period of Contract
    - Levy Rate (%)
    - Gross Amount Paid ($)
    - Levy Withheld ($)

23. In accordance with Section 10 CLA, the taxpayer has the responsibility for keeping proper books, records and accounts in relation to the contract, payment or levy.

24. The taxpayer has an obligation to permit the person authorized, to inspect the books and records and make copies of such.

25. The taxpayer has an obligation to produce, if required by the COT or any person authorized by him in writing, at such time and place as the Collector of Taxes or other person may specify, any books, records, accounts or other documents relating to the contract, payment or levy.

Other Key Definitions

26. The Revenue Administration (Amendment) Act, 2013 defines a "**taxpayer**" to include a person who
   (a) is liable to pay tax pursuant to a revenue law of Jamaica whether or not –
      (i) The person is resident of 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.

For the purpose of this Practice Note "persons liable" means any person making a payment to a principal contractor or sub-contractor in respect of construction operations, tillage operations or haulage operations performed in Jamaica.

27. **"Principal contractor"** means a person who, being a party to a contract (not being a contract of service) is responsible for the carrying out in Jamaica of construction operations or tillage operations or haulage operations under that contract, whether or not he performs all or a part of those operations;

28. ***"Sub-contractor"*** is a person who is a party to a contract (not being a contract of service) with a principal contractor relating to construction operations or tillage operations or haulage operations and under that contract-
   (a) He is under a duty to the principal contractor to carry out operations or to furnish his own labour or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the

carrying out of the operations; or

(b) He is answerable to the principal contractor for the carrying out of the operations by other persons whether under a contract or under other arrangements made or to be made by him.

29. **A Bill of Quantities (BoQ)**
The Business Dictionary defines a BoQ as a contract document produced by a quantity surveyor comprising an itemized list of materials, parts and labour (with their costs) required to construct, maintain, or repair a specific structure. Other construction experts have expressed the view that a BoQ provides a basis for the valuation of work completed for the purpose of making interim payments to the contractor and provides a basis for the valuation where there is any variation in the scope of work. It is an acceptable means of quantifying, as far as possible, every aspect of the contracted work. Interim payments are also paid out under what is termed as 'Interim certificates' in construction contracts

Interim payments can be agreed in advance by both parties and paid at particular milestones of the contract, but they are more commonly, regular payments, the value of which is based on the value of work that has been completed (this is the actual value of the work completed, taking into account variations, etc.).

What is Contractors Levy?

30. Payments made to a principal contractor or sub-contractor pursuant to a contract in respect of:
    - Construction operations (First Schedule, Part I)
    - Tillage operations (Second Schedule),
    - Haulage operations (Third Schedule);

    are subject to a deduction called the Contractors Levy which is calculated as a percentage of the gross amount of the payment.

31. The levy paid is allowable as a credit against the income tax liability of the contractor or sub-contractor in the year of assessment in which the levy is deducted. To the extent that the levy deducted is in excess of the tax liability, the excess is not refundable.

What is the prescribed rate?

32. Section 3 of the CLA imposes a two per centum (2%) levy to be deducted/withheld from gross payments made to a principal contractor or sub-contractor.

Who is liable to deduct Contractors Levy?

33. Section 3 of the CLA imposes a levy on contractors by requiring any person who makes any payment either to or on account of a principal contractor or a sub-contractor pursuant to a contract entered into in respect of construction operations, tillage operations or haulage operations performed, or required to be performed, by that principal contractor or sub-contractor to withhold the Contractors Levy.
34. Essentially, any person who has contracted the services of either a principal contractor or sub-contractor to carry out Construction, Tillage or Haulage Operations, (or the Principal Contractor" or "Sub-contractor) and who makes a payment in respect of a such a contract which is subject to Contactors Levy under the Contractors Levy Act. This includes payments made for contracts funded by Multinational Agencies.
35. In each instance the person is the consumer of the services and/or goods and as such is required to deduct/withhold the levy from each payment.

Activities subject to Contractors Levy

36. ***"Construction Operations"***

    Section 2 of the CLA states that construction operations means operations as specified in Part I of the First Schedule but does not include the operations specified in Part II of that Schedule. In accordance with section 2 of the CLA, references to construction operations shall be taken-

    (a) to include references to the work of individuals engaged in carrying out such operations, except where the context otherwise requires, and

    (b) as not including references to operations carried out or to be carried out otherwise than in Jamaica.

    Part I of The First Schedule of the CLA specifies that construction operations include:

i. *"Construction, alteration, repair, extension, demolition or dismantling of building and structures (whether permanent or not), including (without prejudice to the foregoing) offshore installations, that is to say, installations which are maintained or are intended to be established for underwater exploitation.*

ii. *Construction, alteration, repair, extension or demolition of any works forming, or intended to form, part of the land, including (without prejudice to the foregoing) walls, road works, power-lines, telegraphic-lines, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, irrigation works, sewers, industrial plant and installation for purposes of land drainage, coast protection or defence.*

iii. *Installation in any building or structure of systems of heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection.*

iv. *Internal cleaning of building and structures so far as carried out in the course of their construction, alteration, extension, repair or restoration.*

v. *Operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this Schedule including site clearance, earth-moving, excavation, tunneling or boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.*

vi. *Painting or decorating the internal or external surface of any building or structure."*

37. **Tillage Operations**

(a) Tillage Operations as defined by Section 2 of the CLA refers to *"operations of any description specified in the Second Schedule but does not include <u>operations performed manually or with non-mechanical equipment"</u>.*

(b) The Second Schedule merely states "Tillage Operations" as being "Tillage" but no further reference or clarification is made in the CLA. To get a better understanding, the literal ordinary dictionary meaning is examined.

   i. The Miriam Webster Dictionary speaks to the "operation of tilling the land" and "cultivated land". It further adds that it is the activity or process of preparing land for growing crops.

   ii. The Collins English Dictionary refers to "Tillage" as

- the act, process, or art of tilling
- tilled land

iii. Other agricultural scholars have defined "Tillage" as

· "*mechanical manipulation of soil to provide a favourable environment for good germination of seeds and crop growth to control the weeds to maintain infiltration capacity and soil aeration*."[ii]

· the agricultural preparation of soil by mechanical agitation of various types, such as digging, stirring, and overturning

(c) Given all the enunciations from the various literature the CG's view is that 'Tillage' is

- the act or operation of mechanically preparing/cultivating land to make it fit for raising crops.
- Therefore, as indicated in Section 2 of the CLA, only tillage that is done mechanically, i.e. not manually done, is subject to Contractors Levy.

38. **Haulage Operations**

Haulage Operations is defined in the Third Schedule of the CLA to include:

(a) *"Hauling goods or equipment for any construction operation, not being an operation described in Part II of the First Schedule.*

(b) *Hauling equipment for any tillage operation.*

(c) *Hauling soil, timber, shrubbery, grass or stone for any tillage operation."*

39. **Landscape & Landscaping**[iii]

In the CLA Part II "*Operations not regarded as Construction Operations*" landscape is in reference to the professional work carried out by the consultants which "involves the planning, designing and managing of open spaces to create urban and rural environments. In the construction industry landscape is separated into Soft landscape and Hard landscape and is so described below and should be read in like manner.

[ii] ***"Effect of Tillage, Residue Management and Cropping System on the Properties of Soil"***, International Journal of Applied Sciences and Bio Technology, Vol. 6 (2) pg. 164, June 2018

[iii] https://www.designingbuildings.co.uk/wiki/Landscape_design

"Softscape or soft landscape includes all types of plant life, from flowers and trees to shrubs and groundcover. It naturally changes and evolves over time, driven by the climate, time of year and other conditions.

Hard landscape or hardscape consists of the inanimate elements of landscaping. They are 'hard' and unchanging, although they may be movable and adaptable to the environment. They can also have effects on the soft environment, such as paving which increases water run-off. Hardscape might include, walkways, walls, outdoor 'rooms' and performance areas, gazebos, fences, and so on."

This should not be confused with the upkeep or beautification of premises or others of similar nature to horticulture.

Activities & Persons exempt from CL

40. Under the CLA, there are exemption provisions which prevent the imposition of the levy on specific activities and or persons.

The activities not regarded as construction operations are noted below:

FIRST SCHEDULE (Section 2) - Part II of the CLA

i. Drilling for, or extraction of, oil or natural gas.

ii. Mining or extraction (whether by underground or surface working) of minerals by any company in the ordinary course of its business.

iii. The professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape.

iv. Haulage of any item mentioned in or connected with any operation specified in paragraphs i to iii.

41. Section 11 of the CLA states that where a person listed in the Fourth Schedule is the principal contractor, sub-contractor, or a person carrying on a particular transaction then no CL is to be deducted from any payments made to that person so specified.

Fourth Schedule: Institutions or Persons Exempt from Contractors Levy

(i) A Ministry or Department of Government.

(ii) A Statutory Body or Authority.

(iii) A company registered under the Companies Act, being a company in which the Government or any agency of Government holds not less than fifty-one per centum of the ordinary shares.

(iv) A Parish Council.

(v) The Kingston and St. Andrew Corporation.

(vi) As respects any particular transaction, a person who satisfies the Collector of Taxes that –

(a) being in the business of construction operations, the transaction involved the construction of buildings for his own use or the use or occupation of that business or of persons employed by him;

(b) being in the business of tillage operations, the transaction involved the tilling of land for his own use; or

(c) being in the business of haulage operations, the transaction involved haulage for the purposes of construction or tillage operations undertaken by him for his benefit.

Filing Requirements & Documentation

42. Included in this PN is a "***How to Guide***" ***(Exhibit 3)*** which provides the taxpayer with step- by-step instructions on how to upload withholding tax certificate (including bulk uploads) and filing a CL return.

43. The CL return (CL01) ***(Exhibit 4)*** is due within fourteen (14) days after the end of any month in which the payment of the contract sum was made and must be filed online using TAJ's tax portal.

44. CL Certificates are to be issued via the taxpayer's e-services account prior to filing a CL Return.

Types of Construction Contracts

45. There are four (4) main types of construction contracts to which CL may be applicable:
    (i) **Cost Plus Contracts**
    A contract, which provides for reimbursement to the contractor of the costs incurred in completing the work plus some additional amount to allow for

profit. Types of cost plus contracts include cost-plus-fixed-fee, cost-plus award-fee, and cost plus-incentive fee.

(ii) **Lump Sum/Fixed Price Contracts**
In this type of contract, the contractor assumes more of the risk. Lump sum contracts specify a total fixed price that will be paid for all construction work. In this type of agreement, the contractor agrees to perform the required work in return for a fixed price stipulated in the contract.

(iii) **Unit Price Contracts**
In this type of contract, both parties assume little risk. Unit price contracts involve the contractor determining a specific price for a certain task. A type of construction contract, which divides the work (or project) into various elements and fixes a price per unit for each element. Thus, payments to the contractor are based on the number of units of work performed for each element. This type of contract is particularly suited to projects where the quantities of work may vary substantially. This type of contract is most commonly used on repetitive or public works projects.

(iv) **Time & Material Contracts**
In this type of contract, the contractee assumes more of the risk. A contract that generally provides for payments to the contractor based on the number of direct labour hours expended at fixed hourly rates plus the cost of materials. To cover indirect costs and profit, time (and sometimes material) is charged at marked-up rates. This type of contract is most commonly used when the project scope is small or unclear.

In all four (4) instances, as far as possible, material costs are to be separated and the applicable GCT charged, collected and paid over to the Revenue.

Types of Contractors & GCT obligation

46. Construction operations may be carried out by any of the following persons:

(a) **Pure Contractors** - engaged exclusively in the business of constructing, altering, repairing or improving real property or installing goods in real property. A pure contractor is not a retailer or manufacturer of components or raw material, does not issue invoice in respect of material and is often reimbursed in respect of material.

(b) Where a pure contractor is engaged in activities listed under paragraph 36, i, ii, v of this PN, such activities are exempt from GCT. Therefore, such a person is not required to register for GCT. Regulation 20 of the GCT Regulations would not apply as he is not supplying any materials and would not be required to separate his costs.

(c) However, where the activities include those outlined in paragraph 36, iii, iv and vi of this PN, and the taxpayer's annual revenue exceeds $10M such a person is to be registered for GCT.

Where a contractor outlines costs in relation to materials acquired and include a mark-up in that stated cost that contractor cannot be considered a pure contractor.

Where the contractee is required to reimburse the contractor in respect of materials purchased on his behalf, those costs are not to be included in the contract price.

(a) **Contractor/Manufacturers**. A manufacturing contractor is defined as a construction contractor who performs manufacturing operations such as pre assembling or producing components and fixtures that are subsequently incorporated into real property. Included in this group are persons who manufacture for their own use i.e. self-supply. Contractors who purchase ready made goods for installation are not considered manufacturing contractors.

(i) Where the manufacturer makes the component for use in his activity which results in an exempt output (e.g. completed building) Regulation 20 of the GCT Regulations would **not** apply as he is not supplying any materials.

(ii) However, where the manufacturer is also in the business of selling the manufactured components, that manufacturer must be registered for GCT and Regulation 20 of the GCT Regulations **would** apply. GCT would be chargeable on the sale of the manufactured components.

(b) **Contractor/ Installer** - is one who is contracted to install fixtures and equipment.

(i) A contractor/installer whose annual revenue exceeds $10M is to be registered for GCT.

(ii) Where a contractor/installer, whose annual revenue in the normal course of business exceeds $10M, acquires fixtures and equipment in his name and installs those fixtures and equipment, the GCT will be applicable to the contract price in respect of the supply of fixtures and equipment and their installation.

(iii) The GCT will be applicable to the contract price in respect of the installation service: installation in any building, systems of heating, lighting, ventilation, power supply, drainage, sanitation, water supply, fire protection, air-conditioning, elevators or escalators (Part II, Third Schedule GCTA Item 1, (e) (i-iv))

(iv) Therefore, in accordance with GCT Regulation 20, the contractor/installer must issue an invoice showing separately the cost of the goods supplied, the tax payable on the goods supplied and the cost of the erection or installation.

(c) **Contractor/Retailer** - these persons are involved in construction and retailing. For example, a contractor may operate (in addition to carrying out construction operations) a retail outlet from which they sell directly to consumers. A contractor who supplies the construction materials, fixtures and fittings as well as erection and installation activities whose annual revenue exceeds $10M is to be registered for GCT. The GCT will be applicable to the contract price in respect of the installation service and the construction materials, fixtures and fittings.

Where the activity involves those outlined in the paragraph 36, i, ii and v (exempt activities) the costs are to be separated in accordance with GCT Regulation 20, the GCT is to be applied to the material cost.

Pursuant to provisions of Third Schedule, Part II, Item 1 (e) of the GCT Act, charges that are an integral part of, or are preparatory to, or are for rendering complete activities outlined in paragraph 36, i and ii of this PN, are exempt from GCT even though by themselves these activities are generally taxable for GCT. This is to the extent that those activities are not expressly excluded from exemption by (i) and (ii) & (iii) of the said item 1(e), Part II of the GCTA Third Schedule.

CL & its relationship with GCT- Construction Operations

47. From the inception of the GCT Act in 1991, *the First Schedule, Part I of the Contractors Levy Act* was introduced as the *Third Schedule, Part II in the GCT Act* thus making Construction Operations exempt from GCT. The Third Schedule Part II – *Services* in the GCT Act states the following:

(a) Construction, alteration, repair, extension, demolition or dismantling of building and structures (whether permanent or not), including (without prejudice to the foregoing) offshore installations, that is to say, installations which are maintained or are intended to be established for underwater exploitation.

(b) Construction, alteration, repair, extension or demolition of any works forming, or intended to form, part of the land, including (without prejudice to the foregoing) walls, road works, power-lines, telegraphic-lines, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, irrigation works, sewers, industrial plant and installation for purposes of land drainage, coast protection or defence.

(c) *Deleted*

(d) *Deleted*

(e) Operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this Schedule including site clearance, earth-moving, excavation, tunneling or boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.

The exempt status of these activities was reinforced by an October 2014 GCT amendment.

48. The following activities were removed from the Third Schedule (Exempt Activities) of the GCT Act [Paragraph e (i - iv)] **April 30, 2003** consequently making them subject to GCT at the standard rate since that date.

(i) Installation in any building or structure of systems of heating, lighting, ventilation, power supply, drainage, sanitation, water supply or fire protection air conditioning, elevators or escalators.

(ii) Internal cleaning of building and structures so far as carried out in the course of their construction, alteration, extension, repair or restoration.

(iii) Painting or decorating the internal or external surface of any building or structure.

(iv) Tillage Operations

49. Therefore, the services referred to under the *First Schedule, Part I, paragraphs 3, 4 & 6 of the Contractors Levy Act* are subject to both CL and GCT.

50. With effect from 2003, taxpayers in the construction business (which meet the annual turnover requirement of the GCT Act), irrespective of the type of contractor as described at paragraph 46 of this PN and to the extent that their activities include services as listed at paragraph 48 of this PN, are required to register for GCT. This was further reinforced by a GCT gazetted amendment in 2014. It was made clear that the activities, though integral to the construction operations outlined in paragraph 47, are now taxable activities as set out in paragraph 48 of this PN.

When is the obligation to withhold the levy initiated?

51. The levy is to be deducted at the point where actual or constructive payment is made.
    - Actual Payment – Accepted form of currency transferred/deposited to the contracted third party.
    - Constructive Payment – Offset or other arrangements executed in lieu of payment obligation/responsibility under the contract which may not necessarily be reflected in the books of the payee.
52. Section 4 (1) of the CLA specifies that a person who deducts the levy from any payment shall be collecting the levy on behalf of the COT for the parish in which the levy is deducted. The amount deducted must be paid over to the COT within fourteen (14) days after the end of the calendar month in which the levy is deducted.

What is the Levy calculated on?

53. In determining the contract sum TAJ may take into consideration the following: -
    (a) the consideration in respect of any Construction operations, Tillage or Haulage operations contained in the letter of acceptance, letter of award or any document that constitutes same;
    (b) the consideration in respect of any Construction operations, Tillage or Haulage operations in the contract which is signed by the parties involved; or
    (c) the particulars and information in respect of the consideration relating to the execution of any contract on any Construction operations, Tillage or Haulage operations contained in any relevant document.

CL is calculated on the gross amount of the contract sum/value of the services performed under the contract and not necessarily the goods (materials). The contract sum does not constitute a 'fixed price' even if the contract is described as a fixed price contract, a lump sum contract or a guaranteed unit price contract. A truly fixed price would actually not be in the interests of the client as it would mean they could not make changes to the works, and would require that the contractor price risks over which they may have no control, and which might not arise. As a result, contracts generally allow for the contract sum to be adjusted, for variations, fluctuations, statutory fees, payments relating to opening up works for inspection and testing. When the contract sum is adjusted, this adjustment should be taken into account in the valuation of subsequent interim certificates.

54. Therefore, a liable person shall deduct from the gross amount of the payment a levy equalling two per centum of that gross amount, excluding GCT.

This is to the extent that:

(i) the cost for materials used are identified and separated as per invoice/contract or BoQ;

(ii) the contractor is a registered taxpayer for the purposes of GCT;

(iii) the GCT is charged and collected at the prescribed rate in respect of the materials as separated on the invoice/contract or Bill of Lading.

The retention amount is to be deducted from the gross payment before calculating the levy.[iv]

Pure contractor

55. Where a pure contractor is engaging in an exempt activity, i.e. paragraph 36, I, ii, v of this PN, the CL is applicable to the entire contract price of the service since he is not in the business of supplying materials and is merely being reimbursed at cost in respect of the materials purchased and utilized. Therefore, in this instance, the materials are merely acquired from a third party for the purpose of performing the contract and such purchase should be in the name of the contractee and would not be included in the contract price.

56. Where the pure contractor is registered for GCT (engaging in both exempt and taxable Construction Operations) and the contract price/value of the contract is tax inclusive, exclude from the contract price the portion representing the taxable

[iv] The value of interim certificates is the value of the work completed, less any amounts already paid, less retention. Therefore, the retention money is already adjusted for in the BoQ and must not be removed again.

materials and the GCT associated with this taxable amount and the GCT in respect of any taxable service, then withhold the CL on the amount remaining.

However, where there is an agreement for the reimbursement of material cost the levy should be applied to all costs except the material cost.

Contractor/ Manufacturer

57. Where the contractor makes the component for exclusive use in his construction activity, the CL is applicable to the entire contract price. Where the construction activities are subcontracted, the CL is to be withheld by the Contractor /Manufacturer.

    However, where the contractor/manufacturer is also in the business of selling the manufactured components, that manufacturer would be liable to CL in respect of all charges, other than the manufactured components.

Contractor/Installer

58. The levy will be applicable to the gross contract price in respect of the installation service. The consideration in respect of the fixtures and equipment supplied would not be subject to the levy.

Contractor/Retailer

59. The levy will be applicable to the gross contract price in respect of construction operations and installation services. The consideration in respect of the materials supplied would not be subject to the CL.
    (i) Where the activity involves those outlined in the paragraph 36, to the extent that the material costs are separable, the CL is to be applied to the construction operations and installation services.
    (ii) Where no separation is made the CL is calculated on the contract sum/value inclusive of material. The contract sum is the price agreed with the contractor and entered into the contract agreement.
    (iii) Where the gross contract price/value is tax inclusive, exclude the GCT component and withhold the levy on the difference.

Tax Credit for Income Tax

60. Section 5 of the CLA provides that for the purposes of the ITA the levy deducted from any payment to a principal contractor or subcontractor in any year shall not be treated as an expense under section 13 of the ITA but shall be regulated by the

provisions of section 25E or section 32 of the ITA as a tax credit against the taxpayer's income tax liability.

61. Section 25E of the ITA states that "In ascertaining the income tax payable in respect of the year 1985 or any subsequent year of assessment by an individual who satisfies the Commissioner that the levy imposed by the CLA has been deducted from a payment to him and paid in accordance with that Act to a Collector of Taxes in that year, there shall be allowed a tax credit equivalent to the amount of the levy so paid."

62. Section 32 of the ITA states that "The amount of tax payable by a body corporate in any year of assessment shall be reduced by such amount as the Commissioner is satisfied is paid to a Collector of Taxes in that year in accordance with the Contractors Levy Act, being an amount representing the levy imposed under that Act and deducted from any payment to that body corporate as a contractor or sub-contractor."

63. Where pursuant to an audit or review of the income tax return by TAJ, it is verified that the CL deducted in the year of assessment, is claimed/applied against income tax liability for that year of assessment by a contractor or subcontractor (individual or body corporate), to the extent that the amounts claimed have been verified as ***paid*** (whether or not the payment was made after the year of assessment) TAJ will allow the credit.

64. Section 65.2 (a & aa) states that a taxpayer other than an individual shall compute the amount of his estimated income tax for any year of assessment by applying the rates of tax specified in this Act to his estimated chargeable income and, if applicable, his estimated statutory income, for that year; and a taxpayer who is an individual shall compute the amount of his estimated income tax for any year of assessment by applying the rates of tax specified in this Act to his estimated statutory income for that year.

65. It is to be noted that the practice of applying a credit in lieu of anticipated contractors levy payment in arriving at estimated income tax payable, is not provided for by the legislation. With effect from year of assessment 2023 the practice will no longer be accommodated and the application of a credit in lieu of anticipated contractors levy payment on arriving at estimated income tax payable will be strictly prohibited.

CL & its relationship with Minimum Business Tax

66. Under the now repealed MBT Act, with specific reference to individuals, the tax was applied against taxpayers whose ‘gross revenue’, which was the aggregate amount of income from all sources, whether accruing in or derived from the Island or elsewhere, before any deductions under the ITA was not less than the “Prescribed Amount”. The Prescribed Amount was
    - For the period, April 1, 2014 to June 10, 2015 - $3 million
    - For the period, June 11, 2015 onwards - $5 million or
    - Such amount as the Minister may, by order prescribe.

67. For individuals, income which is subject to CL is to be included in determining Gross Revenue[v] for determining the liability for MBT for an individual up to Y/A 2018. **MBT was abolished from Y/A 2019 onwards.**

CL & its relationship with Withholding Tax on Specified Services (WTSS)

68. With effect from May 1, 2015 the provisions of Section 31B of the Income Tax Act instructed that Tax Withholding Agents should withhold tax on “specified services” at a rate of 3%. Specified service is one of the services listed in the law. When one of these specified services is provided to a client and the service has a value above a certain threshold, that client is required to withhold a part of the money that should be paid for the provision of the service. (***Exhibit 5***).

69. The law sets out a list of bodies or individuals who are given the authority to withhold the tax (i.e. Tax Withholding Agent). That list, includes various types of government bodies and entities regulated by the Bank of Jamaica and the Financial Services Commission, utility companies, tourism operators and cable operators with yearly gross revenue, from all sources, of more than Five Hundred Million Dollars ($500,000,000).

70. Provisions of Section 31B of the ITA indicates that a Tax Withholding Agent includes:
    - A Ministry, an Executive Agency, an Agency of Department of

[v] Minimum Business Tax Act, 2015

Government.
- A statutory Body or Authority
- A Parish Council or Municipal Council
- The council of the Kingston and St Andrew Corporation
- Any person with annual gross revenue exceeding five hundred million dollars, including entities exempt from Income Tax

71. Where, in accordance with the CLA, contractors levy is applicable in respect of services rendered as construction operations, tillage operations or haulage operations and such services includes those listed below then **the WTSS provisions shall not apply to the payments made in respect of those contracts.** Instead CL must be deducted before payment is made.
    - Engineering - architectural, electrical, mechanical and structural
    - Repairs or Maintenance
    - Rental of motor vehicle and equipment
    - Transportation, haulage or tour

Operational Features of the Contractors Levy

72. The general operational features of the Contractors Levy are summarized below:

➲ Is separate from income tax. Persons on whom the CL is imposed are obligated to file and pay all associated taxes related to income.	➲ Does **not** replace the quarterly estimated or the annual income tax payable
➲ Is deductible from payments to individuals and companies engaged in a qualifying activity	➲ Is **not** to be used as an allowable deduction for the purposes of arriving at chargeable income.
➲ Is a final tax.	➲ **Cannot** be used as a credit against employment income tax liability included on the return

➲ The levy paid is allowable as a credit against the income tax liability of the principal contractor or sub-contractor in the Y/A in which the levy is deducted.	➲ **Cannot** be credited against the MBT which was due (pre Y/A 2019) ; or any other income tax payable in any future Y/A where the amount paid exceeds the income tax liability in that current Y/A)
➲ Is paid in an assessment period, and credited against income tax payable for the corresponding Y/A	➲ **Cannot** be refunded, except in circumstances where the CG has determine that the CL was incorrectly applied.
➲ Is to be applied as an income tax credit before applying MBT prior to y/a 2019	➲ Is **not** to be used in the determination of estimated tax payable.
➲ Is paid at any Tax Office island wide using the Payment Advice or via our online tax portal.	➲ **Does** not replace MBT, which was in force prior to Y/A 2019.

Commissioner General's Powers to Assess

73. Under Section 7(1), CLA a COT may assess the amount payable as levy where:
   (i) There is a dispute regarding the amount of the Levy between the person liable to deduct and the person entitled to receive payment;
   (ii) The amount (if any) deducted as levy from any payment is, in his opinion, not correct;
   (iii) It appears to him to be justified under the circumstances

74. Section 7(2), CLA, a states that the COT may serve a notice of assessment, personally or by registered post, to the affected person; and
   (a) Where as a consequence a payment of the Levy is to be made, the date of receipt of the notice shall be treated as if it were the date on which Levy was deducted from a payment; and
   (b) If any refund of Levy is required, the Collector shall make the refund or adjustment accordingly.

75. Where an assessment is served on the person liable to deduct and pay over amounts deducted from payments made to a principal contractor or sub-contractor the right to object and/or appeal this assessment is preserved. The standard objection and appeal provisions outlined under the Income Tax Act[vi] are replicated in the Contractors Levy Act as laid out in Section 8 & 9.

Objections & Appeals

76. Of significant note in Section 8 (10) of the CLA is the fact that the COT after determining the assessment under objection is not prevented from making any refund of the levy which he is satisfied is due.
77. Where an assessment is raised on the person deducting and paying over the levy and such a person makes a further appeal to the Revenue Court, after exhausting the first line of Appeal to the RAD, the levy amount decided in the Revenue Court must be paid. This must be in place before the case is advanced to the Court Appeal and a judgement raised in that Court.

Imposition of Penalty

78. Section 13 (1) of the CLA refers to the failure to pay or account for the levy by the date required; that is, within 14 days after the end of the calendar month in which the Levy is deducted. After such time this shall result in a charge of 25% per annum or such other rate that the Minister may prescribe on a daily basis, from the date when the Levy became due and payable.
79. The penalty will be calculated for each day from the date the levy was due and payable, up to the date payment is finally made.

[vi] Section 75 & 76 of the Income Tax Act

APPENDICES

Illustrations

I. A contract is issued to Buildings R US Limited by Crosby Limited. Buildings R US determined that it would be cost effective to sub-contract segments of the job as follows:

Electrical Operations – Company X
Painting Operations – Company Y

i. Is Crosby Limited Liable to withhold CL on payments to Building R US Limited?
ii. Is Building R Us liable to withhold CL from payments it will be making to Companies X and Y as sub-contractors?

Answer

i. Yes

ii. Even though Building R Us has suffered CL at 2% on the full payment of the contract, they are obligated to withhold from company x and y as they are paying the subcontractors to carry out construction operations. Thus Building R Us then become the person who pays a sub-contractor as per Section 3 of the CLA.

II. LORAC Limited in 2014 engaged the services of a number of contractors to construct their new headquarters. Works done by contractors are as follows:

- Peter Construction Ltd – Demolition Service Contract cost $5.6 M
- National Building Company – Construction Costs $55 M
- Luke & Sons Haulage Limited – Cost for hauling debris from site clearing $2.5 M.
- Paul's Electrical Installation and More Limited – Electrical services $8 M

Which of these four contractors are subject to CL?

Answer
There being no other available information, all four would be subject to the levy based on the nature of the activities.

III. A closer look at the LORAC Limited's books and records revealed the following for Peter Construction Ltd; –

- Demolition contract service cost $5.6 M
- Contractors Levy deducted $112,000
- Contractors Levy paid over to TAJ $0

What are the implications?

Answer

i. An assessment would be raised for LORAC Ltd in accordance with section 7 of the CLA.

ii. If the assessment is not paid by the 14th day of the month following the month in which the notice of assessment was received, pursuant to section 13 of the CLA penalty will be applied at a rate of 25% per annum for each day outstanding.

Formula: $\{112{,}000 \text{ X } 25\% \text{ X } \frac{\text{days outstanding}}{365}\}$

IV. A closer look at LORAC's account for National Building Company (NBC) revealed the following;
Construction Costs $55 M
Contractors Levy Deducted $1,100,000
Contractors Levy Paid to TAJ $1,100,000

Note: The account review also revealed that National Building Company is a 60% owned Government Company.

Was LORAC Limited correct in deducting Contractors levy in respect of this contract? If No, is the levy refundable?

Answer

i. No because National Building Company being 60% government owned (not less than 51% Ordinary Shares held by Gov) is exempt from CL.

ii. The levy is refundable to the extent that NBC has not utilized the credit. Section 10 of the CLA provides that a Collector of Taxes, if he is satisfied that the refund is so due, may make a refund of the levy which was paid over.

V. A contract is issued to Booster Limited by Company X. There was no deduction of Contractors Levy and Company X paid Booster Limited in full for services rendered $250,000.00.

Booster Limited has not filed any Income Tax return for year of assessment 2014.

The transaction was done in October 2014 it is now January 2017.

i. Is anyone liable for Contractors Levy? If yes who?

ii. What compliance actions can TAJ take against Booster and/or Company X?

Answer

i. Company X is liable because section 3 of the Contractors Levy Act says any person who makes a payment to a contractor/sub-contractor who performs activities liable to the CLA must deduct the 2% levy. Furthermore, section 4(3) states:

"A person who is required to make a deduction of levy pursuant to this Act and fails to do so shall nevertheless be liable to make payment to the Collector of Taxes in like manner and in like amount as if he had made the deduction aforesaid."

The "person" referenced above, who is required to make the deduction, is the payer for the service subject to Contractor's Levy (section 4(3)).

ii. Booster Ltd: Issue a Failure to File Notice
Raise an Estimated Assessment for Income Tax

Company X: Raise a CL assessment.

VI. A contract is issued to TARA Company Limited by BLANCO Company Limited. There was no deduction of Contractors Levy and BLANCO Co Ltd paid TARA Co Ltd in full for services rendered $250,000.00.

- The transaction was done in October 2014 it is now January 2017.
- TARA Co Ltd has filed Income Tax return for Y/A 2014 with tax payable for that year in the sum of $150,050.00 paid in full.

i. Is anyone liable to Contractors Levy? If yes who?

ii. Can TAJ make an assessment?

Answer

i. Yes, BLANCO Limited is liable because section 3 of the CLA says any person who makes a payment to a contractor/sub-contractor who performs activities liable to the CLA must deduct the 2% levy. Section 4(3) of the CLA imposes an obligation on the person responsible for deducting the levy to make the payment whether or not it was actually deducted.

ii. Yes, TAJ may make an assessment on BLANCO Limited in accordance with Section 7 of the CLA.

VII. Fenty Limited entered into a contract with Master Construction Limited for the construction of a new warehouse for one of its subsidiaries Express Limited. The construction operations were carried out satisfactorily and the full payment for the service was made to Master Construction Limited by Fenty Limited.

Which entity is liable for the levy?

Answer

Notwithstanding the fact that the warehouse was constructed for the benefit of Express Limited and irrespective of which entity has title to the property, as the contract was signed between Fenty Limited and Master Construction Limited it is Fenty Limited that would be liable in respect of the levy.

VIII. Alpha Company Limited entered into a contract with GS Construction Limited for the construction of a new warehouse. The construction operations were carried out satisfactorily and the full payment for the service was made to GS Construction Limited by Beta Company which is the parent company for Alpha Company Limited.

Which entity is liable for the levy?

Answer

Alpha Company Limited, the contractee pursuant to the contract and being the recipient of the service for which the parent company has settled the payment obligation is liable for the levy. Alpha Company would be required to;

i. generate the tax withholding certificate
ii. issue the withholding tax certificate to GS Construction Limited within 14 days of the payment being made.
iii. File CL01 Return and make payment to the COT within 14 days after the month in which the payment was made to GS Construction Limited.

IX. Total contracts received by Company X during 2014 valued $4,250,000. Contractors Levy in the sum of $85,000 was correctly deducted by the respective companies issuing the contracts.
Income Tax liability for Company X for the year 2014 was calculated as $67,000.00

i. What amount of the contractors levy can be offset against this liability?
ii. What amount of the contractors levy is refundable if any?

Answer

i. For 2014, Company X will be able to utilize up to a maximum of $67,000 of the Contractors Levy withheld for the same period as a tax credit against his Income Tax liability.
ii. The balance of $18,000 ($85,000 – $67,000) cannot be refunded to Company X because there is no provision for the refund or carry forward of the CL under the Income Tax Act. Section 32 of the ITA states that the CL can only be used to reduce the income tax liability for that particular year. Therefore, it can only lower the taxpayer's Income tax liability to the extent that it reduces it to nil but it cannot place the taxpayer in a credit position.

X. Using the information in the illustration above, suppose the CG carried out an audit on Company X for year of assessment 2014 and an audit assessment was raised for an additional $20,000, how much money would the company be required to pay to settle the audit assessment?

Answer

Company X has an unutilized CL of $18,000 which can now be used in part settlement of their revised income tax liability. They would only be required to pay $2,000 out of pocket to satisfy the audit assessment in full.

XI. C.B. Steel Fabrication Limited fabricates steel structures in their warehouse and then erects them on site for their clients.

- Their clients deducted Contractor Levy (2%) from the entire contract sum.

Is this treatment correct?

Answer

No. The fabrication work done at the warehouse of C.B. Steel Fabrication Limited is subject to GCT and should be shown separately on the invoice in accordance with Regulation 20 (1) of the of the GCT Regulations.

Regulation 20 (1)(b) specifically provides that where a registered taxpayer "erects or installs those goods by carrying out construction operations as defined in the Contractors Levy Act", the registered taxpayer must show separately on the GCT invoice the cost of the goods, the tax due on the cost of the goods and the cost of the erection or installation. Therefore, the charge to erect and install the steel structures would not be subject to GCT. Only the actual cost of the steel structures would attract GCT.

However, the portion relating to the erection and installation of the steel structure on site would qualify as construction operations and would be subject to the 2% Contractors Levy in accordance with section 2 of the CLA.

XII. Cassico is an overseas company that has a contract to repair a tank for a local entity. The fabrication works was subcontracted out and performed overseas, but it was a part of the cost of the local contract.

i. Should Contractors Levy be withheld on the value of the fabrication work which was done overseas?

ii. Is the Levy applicable to both the labour and material cost?

Answer

i. No. Fabrication work done off the island of Jamaica is not subject to the contractors levy. In accordance with Section 2 of the CLA, activities carried out overseas constitutes "construction operations" "carried out or to be carried out otherwise than in Jamaica" and therefore is not subject to the levy. Despite the fact that the fabrication cost is a part of the overall contract to be completed in Jamaica the CLA does not recognise the portion of the cost originating outside of the island and as such the levy is only applicable on works done in Jamaica. Therefore, any costs arising outside of Jamaica will not be subject to the levy.

ii. No. Cost of local materials supplied, that ultimately form a part of the repair work for the erected structure, may not be subject to the levy under the CLA (refer to matrix paragraph 15- Contractor/Installer). Where the contractor is reimbursed for actual materials or components cost used in the repair then that portion of the cost will not be subject to the levy. However, the levy will apply to all labour, equipment rental and associated cost (including hireage of cranes, haulage trucks, tractors etc.) incurred in the repair of the tank.

XIII. Company B contracted Company C to build a Plant. Total billed cost from Company C was $2,320,000. The invoice separated the price charged by Company C as follows:

Cement	550,000
Steel	850,000
Sand	135,000
Stone	125,000
Total Materials	1,660,000
Haulage	200,000
Crane Rental	160,000
Labour	300,000
Total Service	660,000

i. Is the total invoiced amount subject to contractor's levy?
ii. List line items not chargeable to contractors levy.

Answer
You need to identify the type of contractor and the type of contract in order to determine if the Levy is applicable to the entire contract value.

Based on the information provided, the assumption is that the type of contractor is a retailer, and the type of contract is a cost plus contract. Therefore, only the following charges would be subject to the levy.

Haulage	200,000
Crane Rental	160,000
Labour	300,000

Contractors Levy applicable is $660,000 @2% = $13,200

XIV. A USA based company is contracted to perform construction operations including offshore installation of pipes. The individuals visited the island and executed the contract and returned to the USA after 20 days.

Is Contractors Levy to be withheld from the payments made to the USA Company?

Answer.

Yes. Whether or not a permanent establishment exists the levy would be deductible as the construction operations were performed in Jamaica. Section 2 of the Act which gives meaning to the term 'Construction operations' which only excludes such activities if they are performed outside of the island.

XV. The retention clause of a one-year construction contract valued at $1.2m dictated that 10% of the certified amounts be retained. The contract period runs from January 2019 to December 2019. The total amount retained would not become due and payable until 6 months after the satisfactory completion of the contract. Payments were made periodically based on the sum certified by the bill of quantity done monthly.

The certified sum on January 31, 2019 was $100,000, in keeping with the retention clause the amount payable was calculated as $90,000 (100,000*90%).

Should the Levy deductible as at January 31, 2019 be calculated on?

(a) $100,000
(b) $90,000

Answer:

The levy payable as at January 31, 2019 should be calculated on $90,000. Section 3 of the CLA dictates that the levy must be calculated on the gross amount of the payment. Upon completion of the contract the amount retained when paid will be subjected to the levy.

XIV. The retention clause of a construction contract valued at $1.2m stipulated that 10% of the contract price was to be retained. The clause also stipulated that the retained sum ($120,000) would become due and payable 6 months after the satisfactory completion of the contract. The construction operations were completed on December 31, 2019, at which time, the total levy deducted and paid over to TAJ amounted to $24,000 (2% of the bill of quantity certified amount). On March 25, 2020 faults were detected which required corrective work, the contractor was unable to rectify the issue and consequently the retained sum was forfeited.

Is anyone entitled to a refund?
If yes, who is so entitled?

How is the refund claimed?

Answer:
Yes. Section 7 (assessment provision) of the CL Act allows the Commissioner to assess and if necessary refund excess payments where;

a. There is a dispute regarding the amount of levy.
b. The amount deducted in the Commissioner's opinion, is greater or less than the amount required under the Act.
c. It appears to the Commissioner that there is just cause to do so.

Consequently, the contractor who suffered the levy in respect of the contract price which is now confirmed to be a lower amount due to the loss of rights over the retained sums, may request that the Commissioner reassess his liability and determine refundable amounts accordingly. However, to the extent that the levy deducted and paid has already been applied against Income tax liabilities the amount will not be refunded.

EXHIBITS

Exhibit 1: Extracts from Contractors Levy Act

Section 2: Interpretation

2. In this Act-
"construction operations" means such operations as are specified in Part I of the First Schedule but does not include the operations specified in Part II of that Schedule; and references to construction operations shall be taken-

(a) except where the context otherwise requires, as including references to the work of individuals engaged in carrying out such operations; and

(b) as not including references to operations carried out or to be carried out otherwise than in Jamaica;

Section 3: Imposition of the Levy

"Subject to any regulations made pursuant to section 14 (1) (d), any person who makes any payment either to or on account of a principal contractor or a sub-contractor pursuant to a contract entered into on or after the date of commencement of this Act in respect of construction operations, tillage operations or haulage operations performed, or required to be performed, by that principal contractor."

Section 4: Collection of the Levy

(1) "Subject to section 13 (l), a person who deducts the levy from any payment shall be deemed to be collecting the levy on behalf of the Collector of Taxes for the parish in which the levy is deducted and shall, within fourteen days after the end of the calendar month in which the levy is deducted, pay to the Collector of Taxes the amount of the levy so deducted.

(2) Subject to the provisions of this Act and except -in so far as regulations otherwise provide, the provisions of the Tax Collection Act concerning payment, collection and

recovery of tax and the enforcing of payment shall mutatis mutandis apply to the levy in the same way as they apply to tax.

(3) A person who is required to make a deduction of levy pursuant to this Act and fails to do so shall nevertheless be liable to make payment to the Collector of Taxes in like manner and in like amount as if he had made the deduction aforesaid.

(4) Every person who is required by this Act to deduct the levy from any payment shall, within fourteen days after making the payment, furnish the principal contractor or sub-contractor, as the case may be, with a certificate setting out the gross amount of the payment and the amount of the levy which has been deducted (or, as the case may be, ought to have been deducted) and such other particulars as may be prescribed.

Section 5- Treatment of the levy for the purposes of Income Tax

"For the purposes of the Income Tax Act the levy deducted from any payment to a principal contractor or subcontractor in any year shall not be treated as an expense under section 13 of the Income Tax Act but shall be regulated by the provisions of section 25E or section 32 (3), as the case may be, of that Act."

Section 7- Assessment of the levy

(1) "A Collector of Taxes may assess the amount payable as levy where-

(a) there is a dispute regarding the amount of the levy between the person liable to deduct the levy from any payment and either the person entitled, to receipt of that payment or the principal contractor or subcontractor, as the case may be; or

(b) the amount (if any) deducted as levy from any payment is, in his opinion, either less or greater than the amount required to be deducted as levy under this Act; or

(c) it appears to him that it is just in the circumstances of the case to do so.

(2) A Collector of Taxes shall cause a notice of assessment to be served personally or sent by registered post to any person appearing to him to be affected by the payment; and-

(a) where that person is, consequent on the assessment, is required to make any payment to the Collector of Taxes, payment shall be made pursuant to section 4 (1) as if the date of receipt of the notice were the date on which levy was deducted from a payment; and

(b) if any refund of the levy is required, the Collector of Taxes shall make the refund or adjustment accordingly."

Section 11: Exemption from payment of levy Fourth Schedule

"where any of the institutions or persons specified in the Fourth Schedule is a principal contractor or a sub-contractor in relation to construction, tillage or haulage operations, that institution or person shall be exempt from the levy and accordingly payments to them shall be made without the deduction prescribed by section 3".

Section 13 (1) - Penalties

"Where any person fails to pay or account for the levy by the date required by section 4 (l), he shall be treated as if the levy were increased at the rate of twenty-five per centum per annum, or such other rate as the Minister may by order prescribed, in respect of each day during which the failure continues after the date on which the levy is due and payable."

Section 14 (1) - Regulations

"The Minister may make regulations generally for the proper carrying out of the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, make regulations-

> *(d) relieving from the provisions of section 3 certain payments by a principal contractor to a sub-contractor and by a sub-contractor to a principal contractor."*

Exhibit 2: Extracts from Contractors Levy Act (Levy, Payment & Returns) Regulations

Regulation 2: Interpretation

"levy payer" means any person who is required to make a deduction of levy pursuant to section 3 of the Act."

Regulation 3 Payments and returns of levy. Schedule.

"A levy payer shall submit a return of all amounts payable under section 4(1) of the Act to the Collector of Taxes in accordance with the form set out in the Schedule."[vii]

[vii] See Exhibit 4 for Schedule

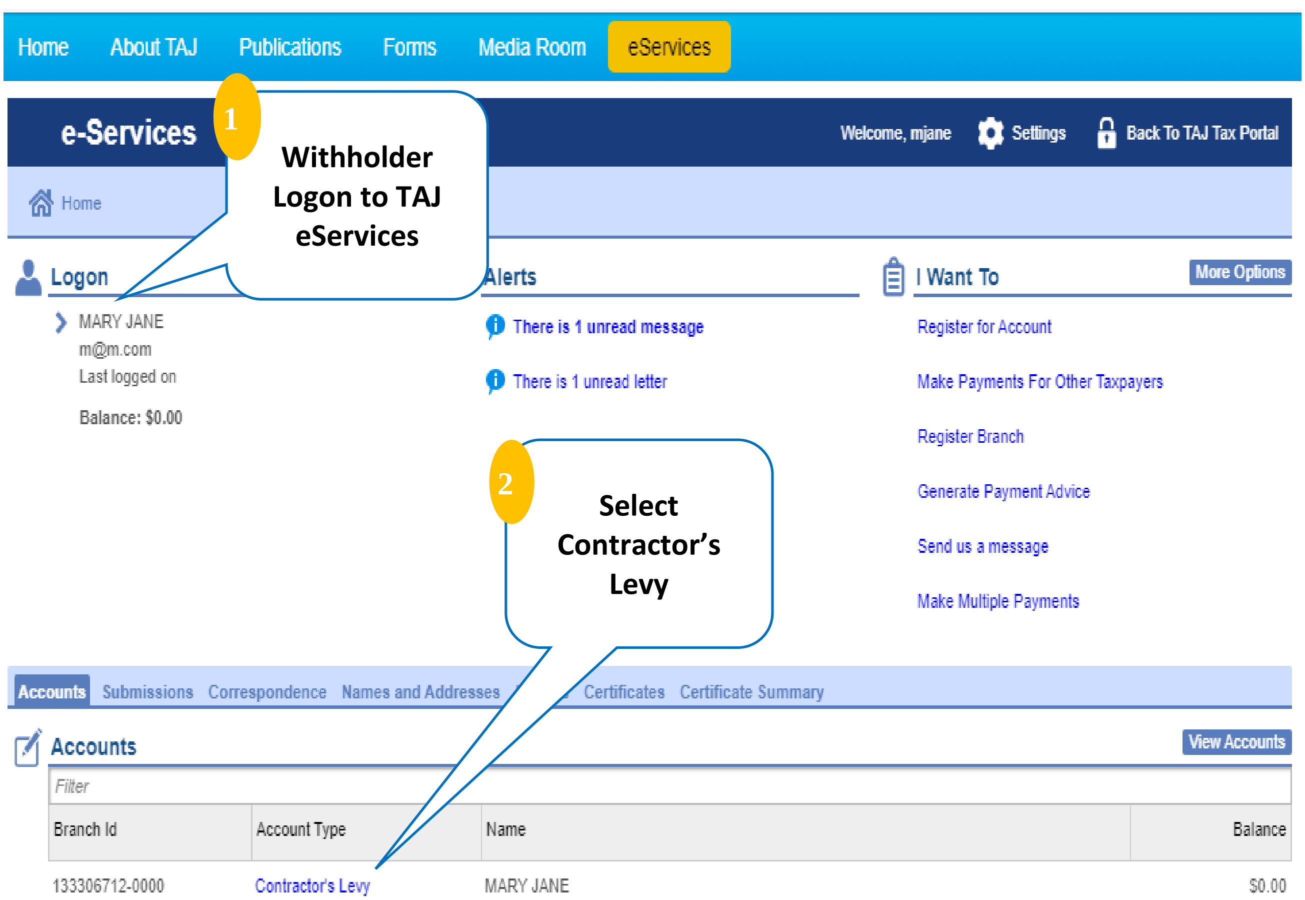
Exhibit 3: How to Guide for Contractors Levy - Return Filing & Submitting Certificates

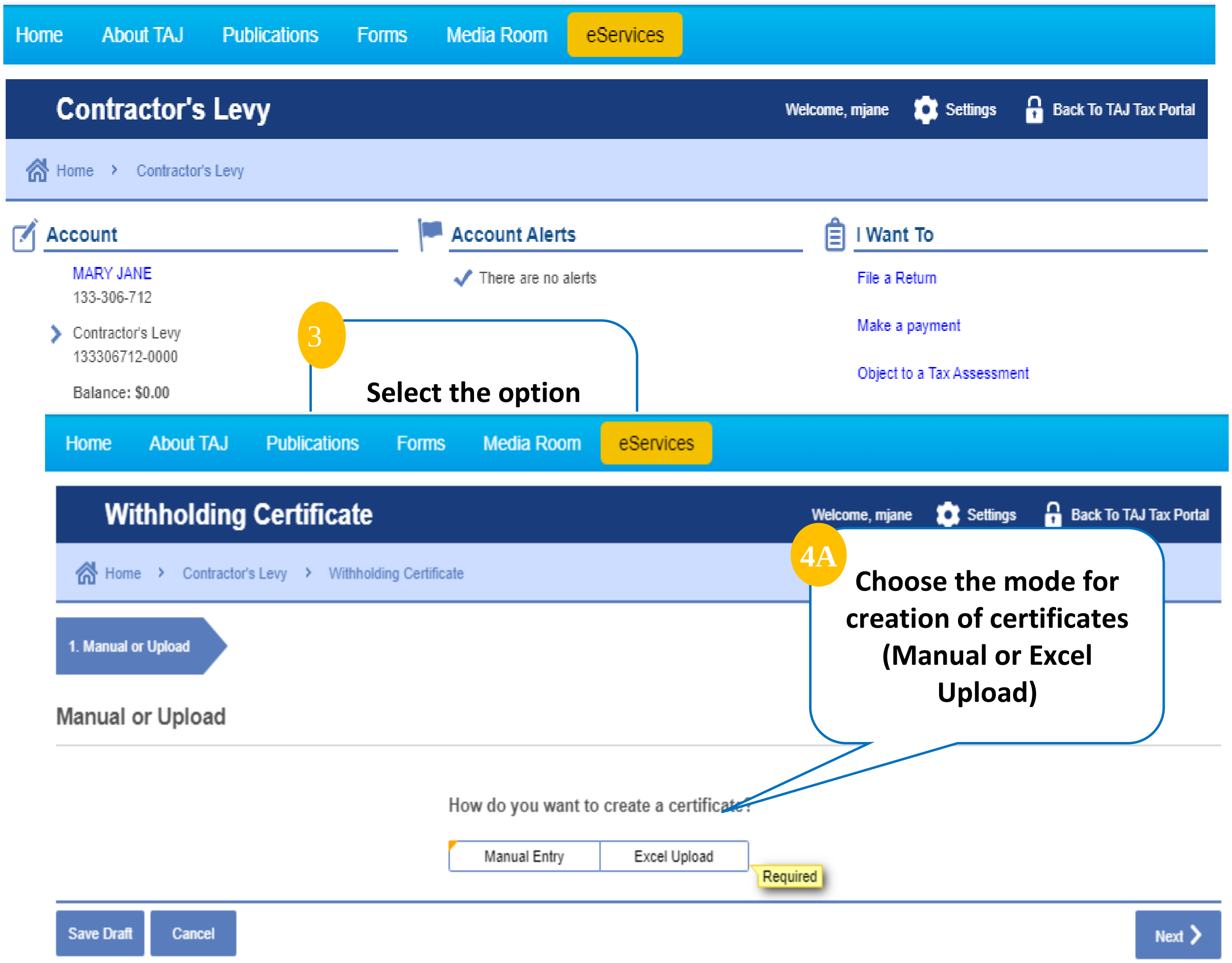
Creating & Submitting the Certificates

Contractors Levy is withheld at 2% of the value paid on a contract. The amount withheld is paid over by the withholder to Tax Administration Jamaica (TAJ) within fourteen days after the end of the calendar month in which the levy is deducted. The withholdee (contractor) can claim the tax withheld as a credit on their annual income tax return.

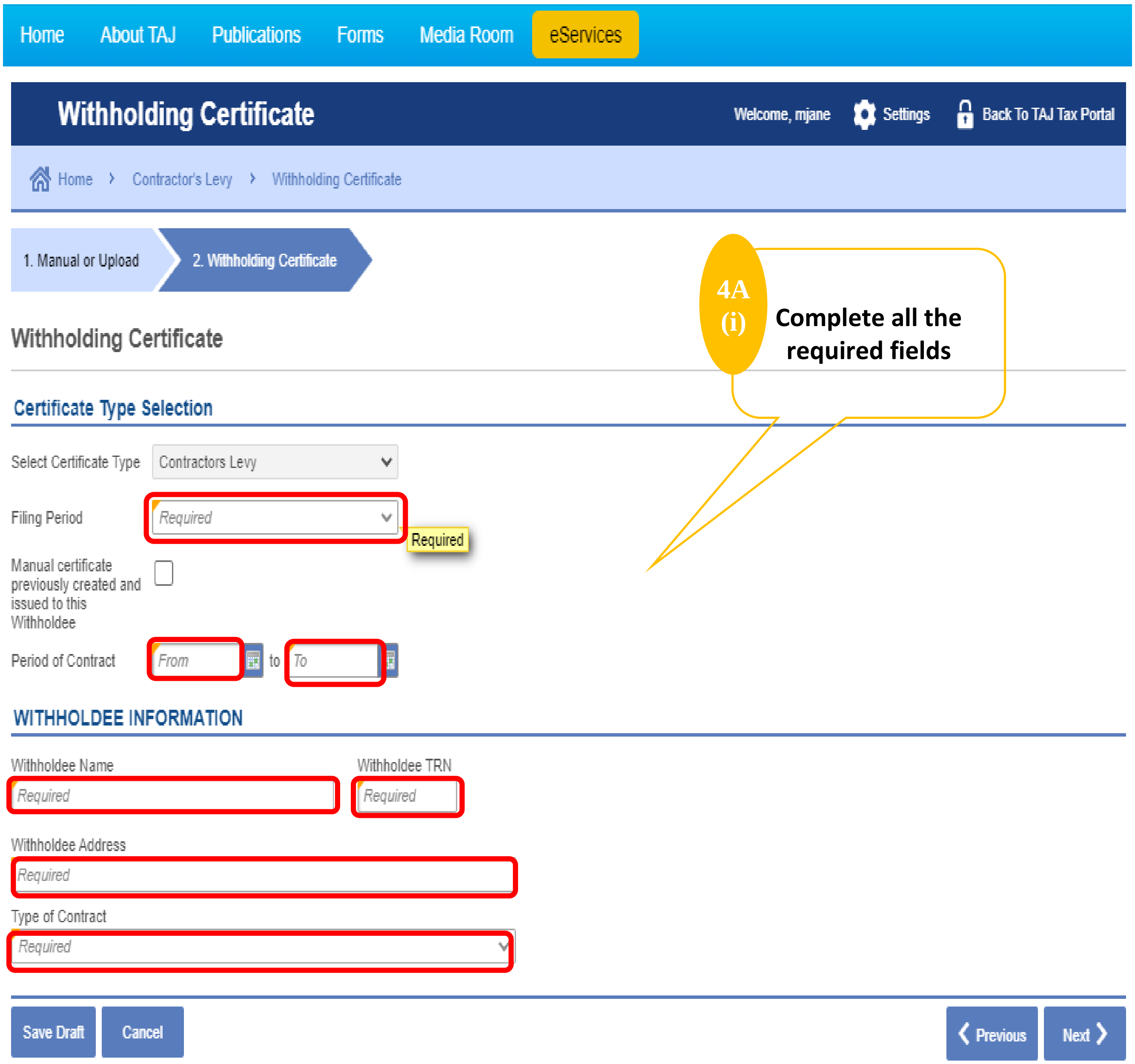
A certificate is issued after uploading withheld amount and is accessible by both the withholder and withholdee on TAJ's online platform.

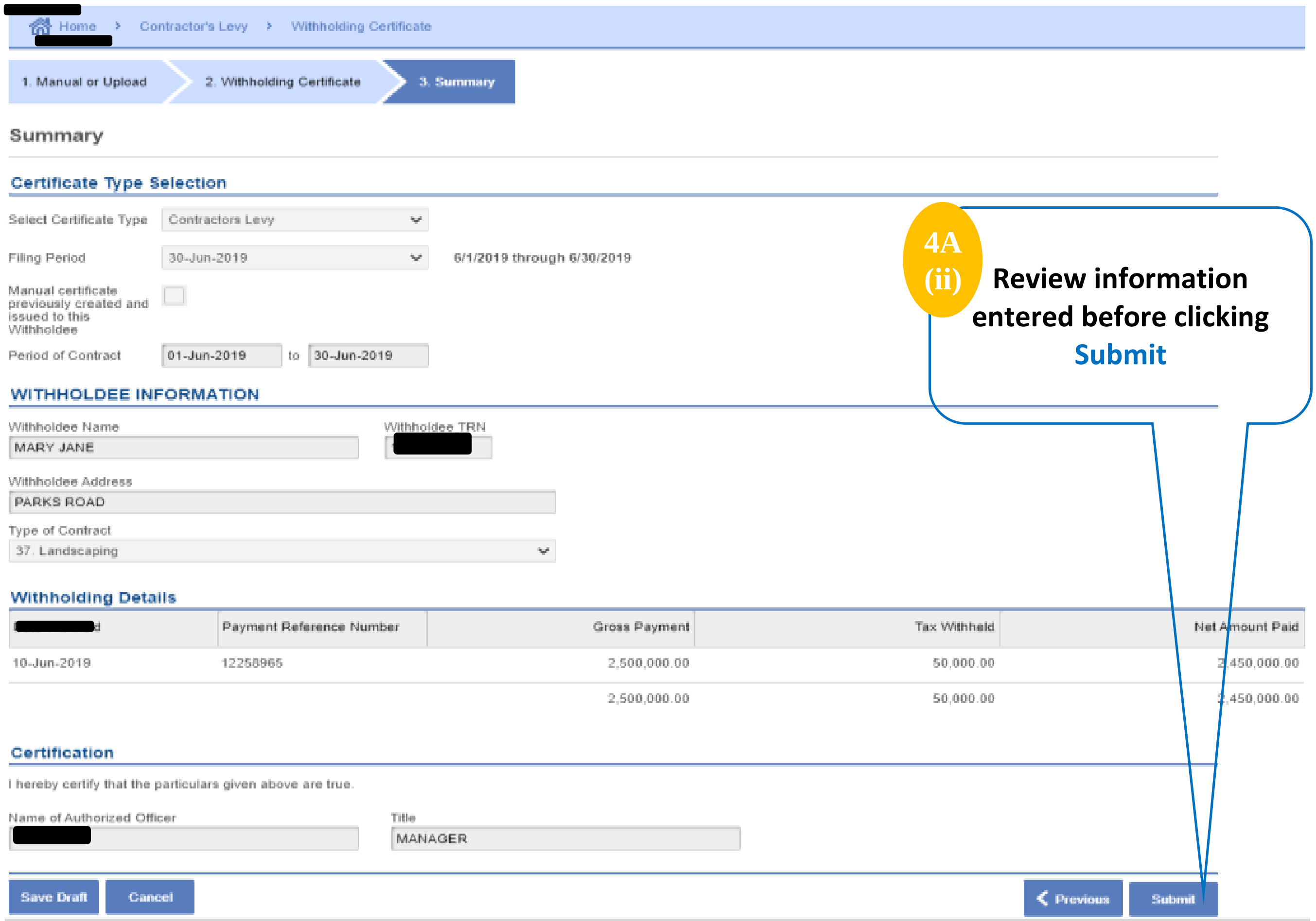
1. Withholder Logon to TAJ eServices
2. Select Contractors Levy
3. Select the option that applies to submit certificates



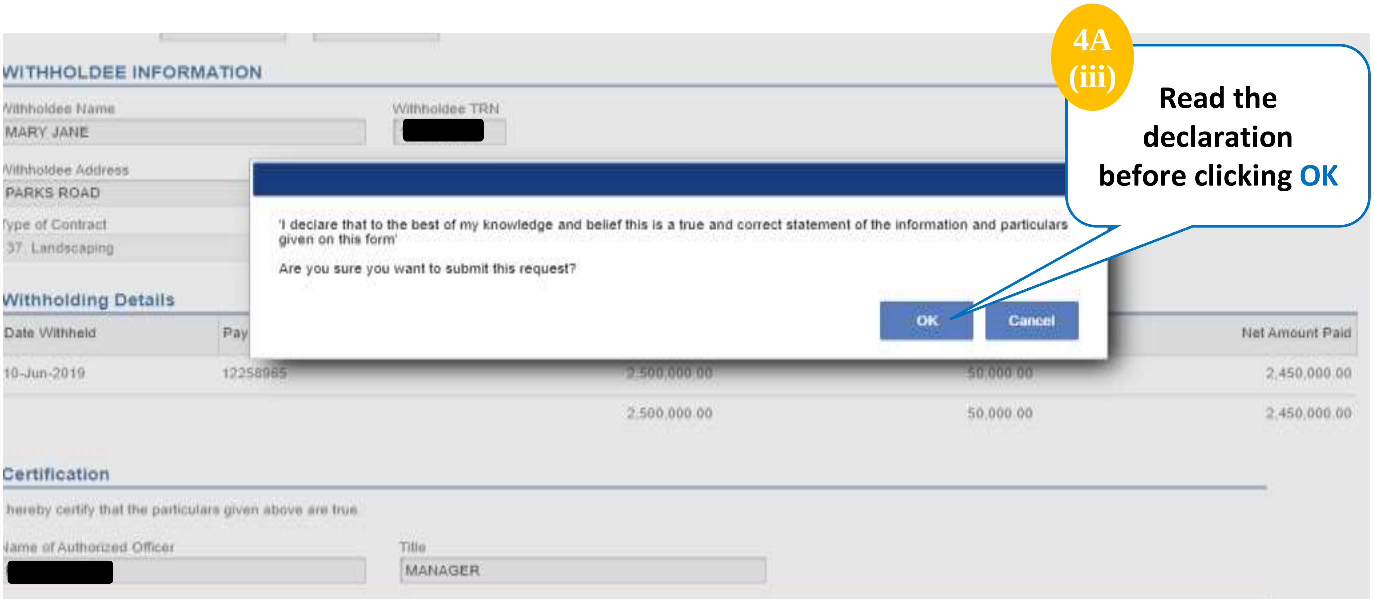

Home
About TAJ
Publications
Forms
Media Room
eServices
Contractor's Levy
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home › Contractor's Levy
Account
MARY JANE
133-306-712
Contractor's Levy
133306712-0000
Balance: $0.00
Account Alerts
There are no alerts
I Want To
File a Return
Make a payment
Object to a Tax Assessment
3
Select the option
Home
About TAJ
Publications
Forms
Media Room
eServices
Withholding Certificate
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home › Contractor's Levy › Withholding Certificate
4A
Choose the mode for creation of certificates (Manual or Excel Upload)
1. Manual or Upload
Manual or Upload
How do you want to create a certificate?
Manual Entry
Excel Upload
Required
Save Draft
Cancel
Next

4A. Manually uploading certificates:

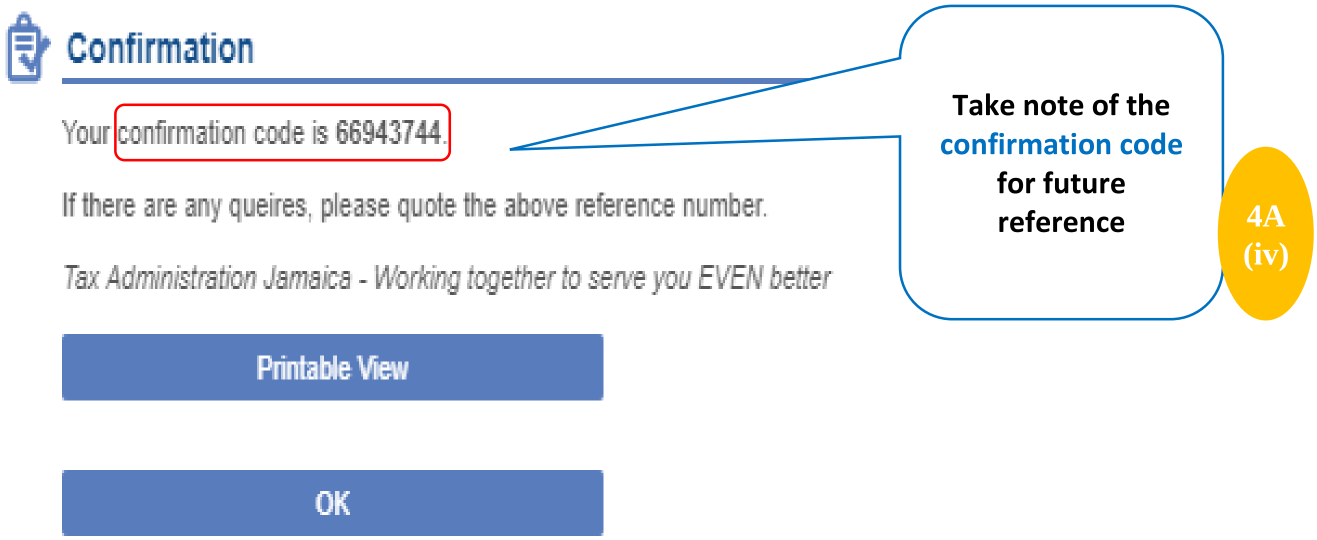




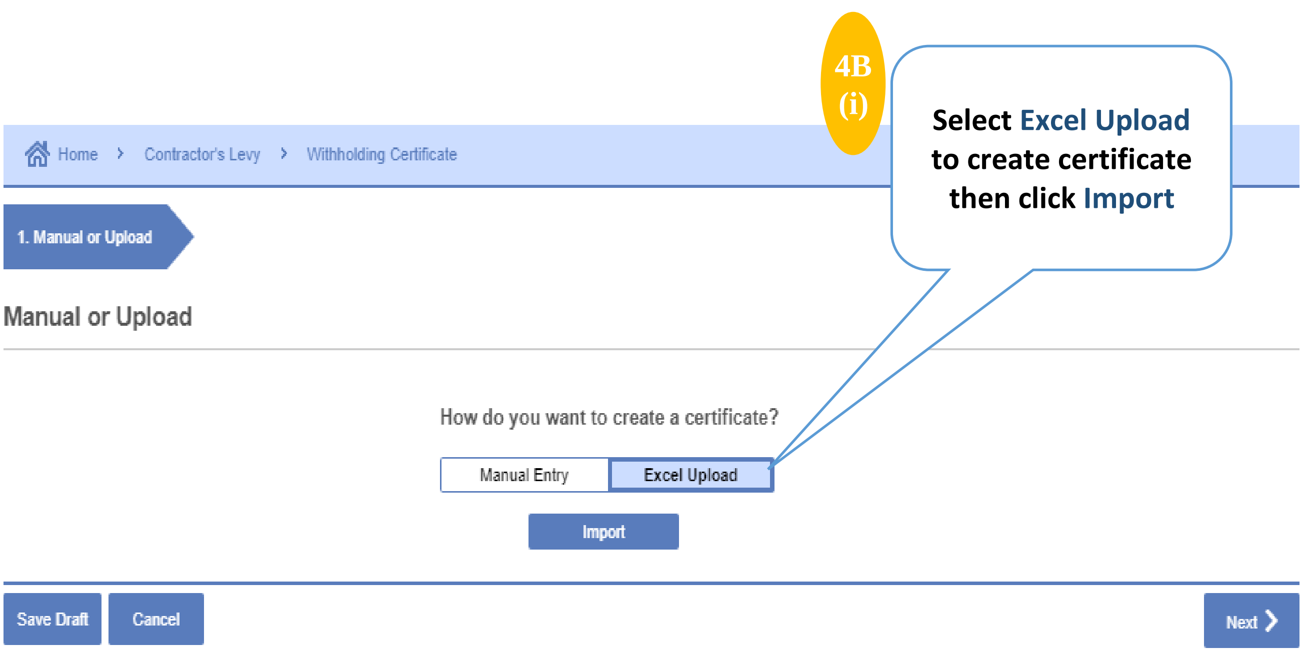
4A (ii) Review information entered before clicking **Submit**



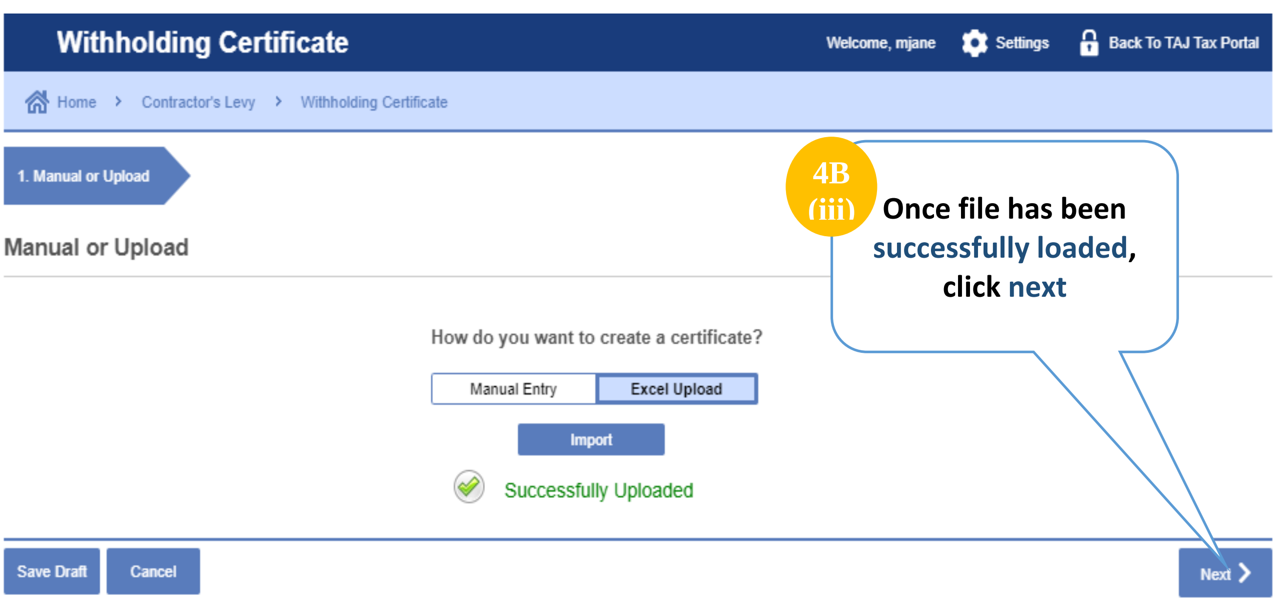
4A (iii) Read the declaration before clicking **OK**

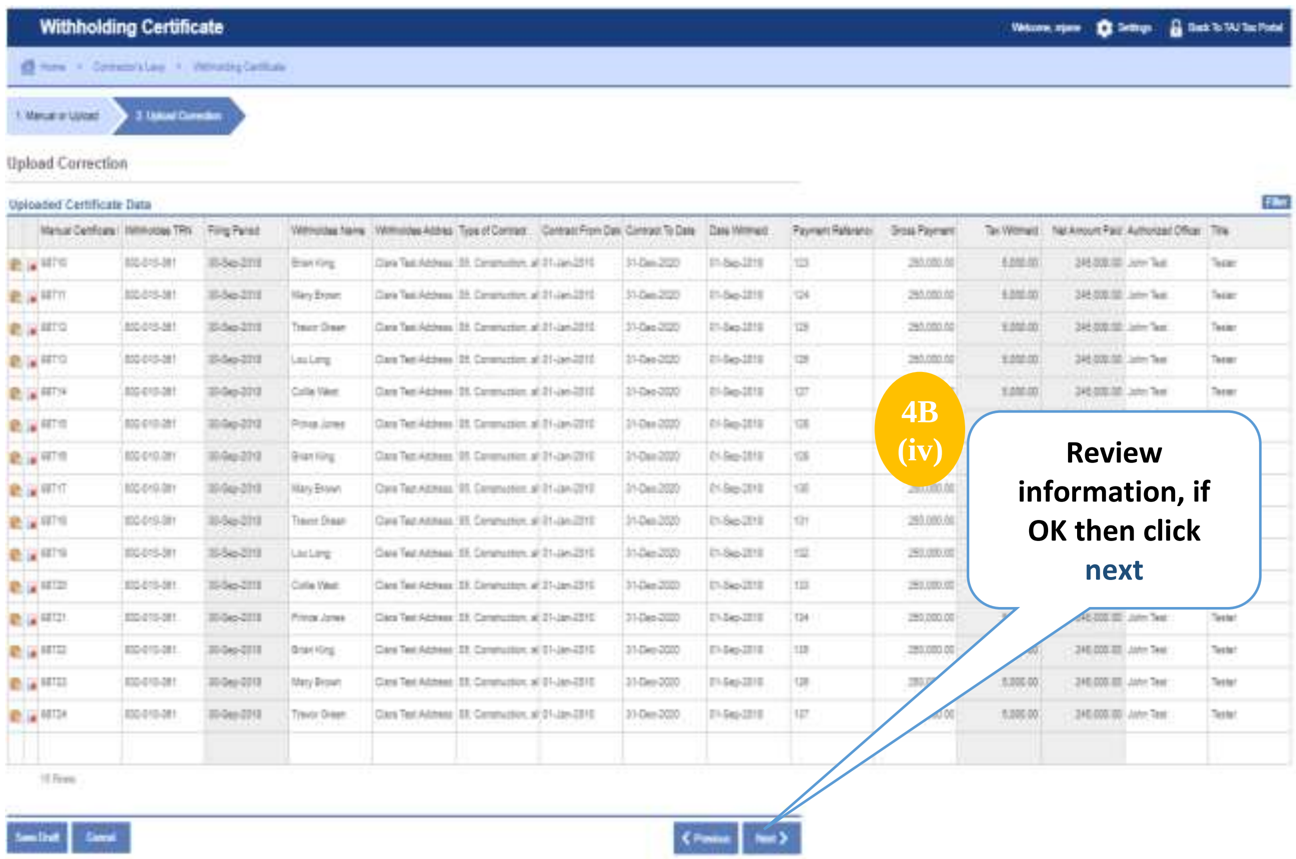


4B. Using Excel sheet to upload certificates:

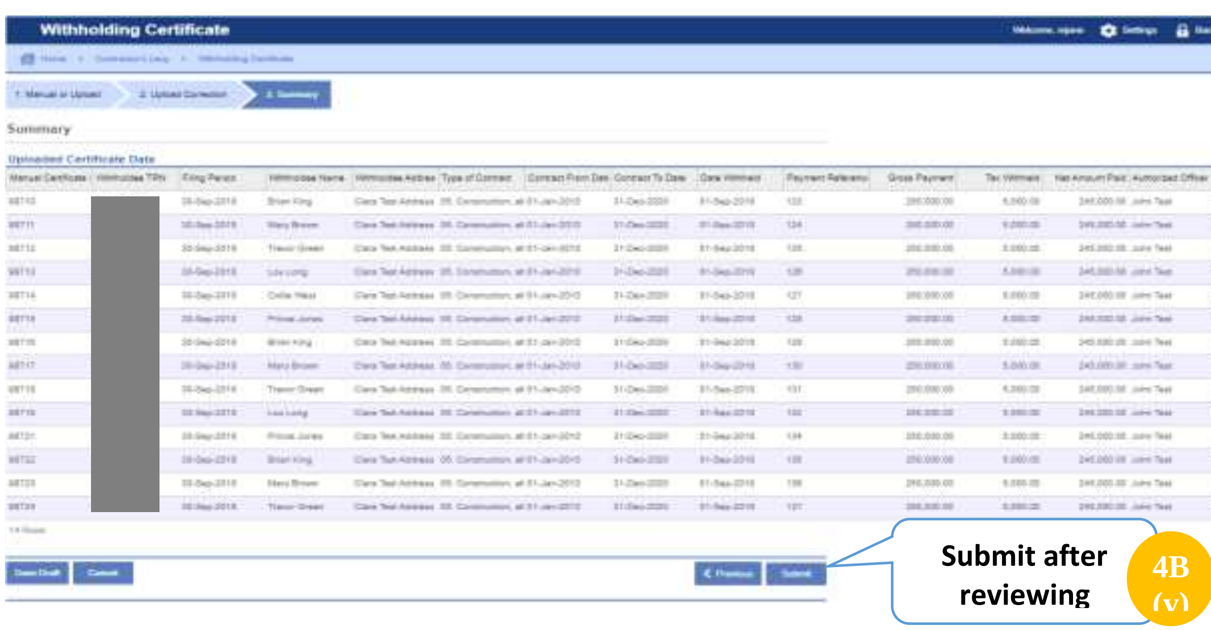


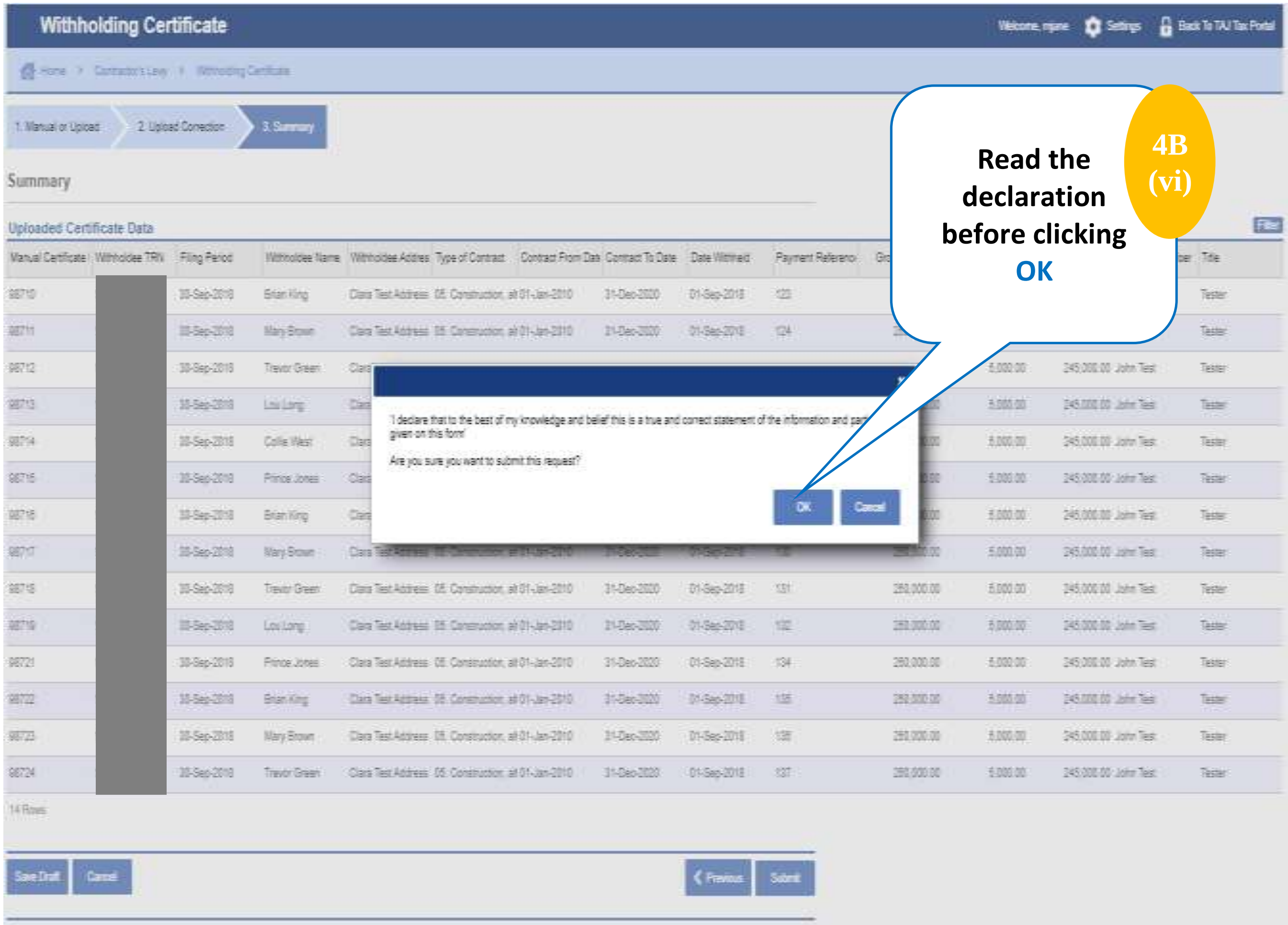

Withholding Certificate
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home
Contractor's Levy
Withholding Certificate
1. Manual or Upload
Manual or Upload
How do you want to create a certificate?
Select a file to import:
Choose File
No file chosen
Import
Cancel
Save Draft
Cancel
Next
4B (ii)
Attach the file from the relevant location

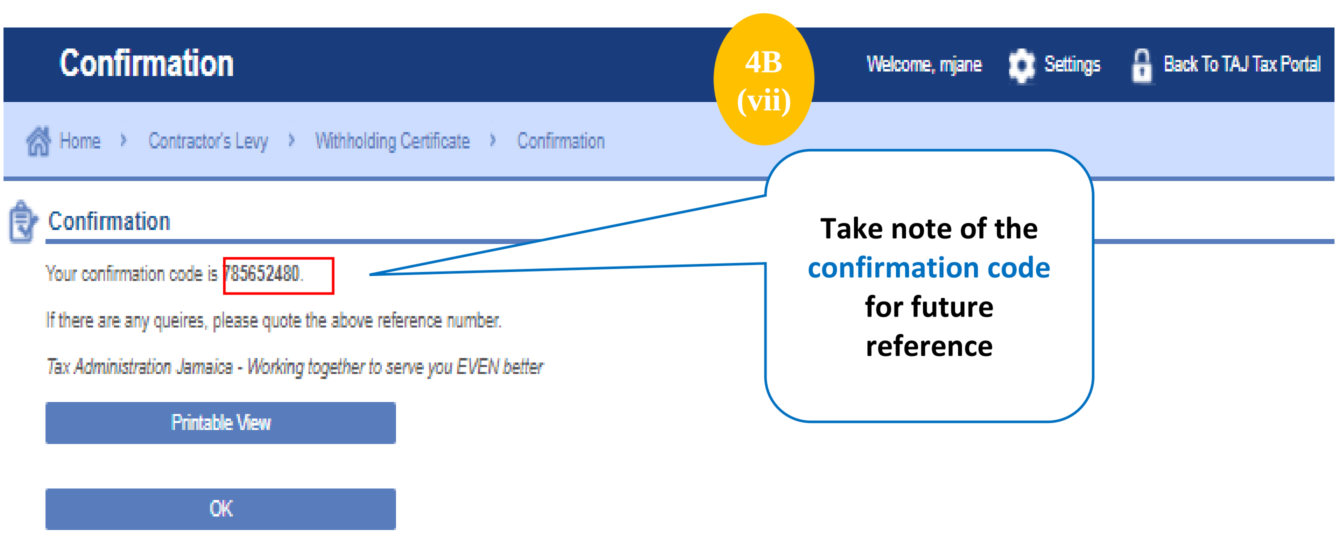

Withholding Certificate
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home
Contractor's Levy
Withholding Certificate
1. Manual or Upload
Manual or Upload
How do you want to create a certificate?
Manual Entry
Excel Upload
Import
Successfully Uploaded
Save Draft
Cancel
Next
4B (iii)
Once file has been successfully loaded, click next



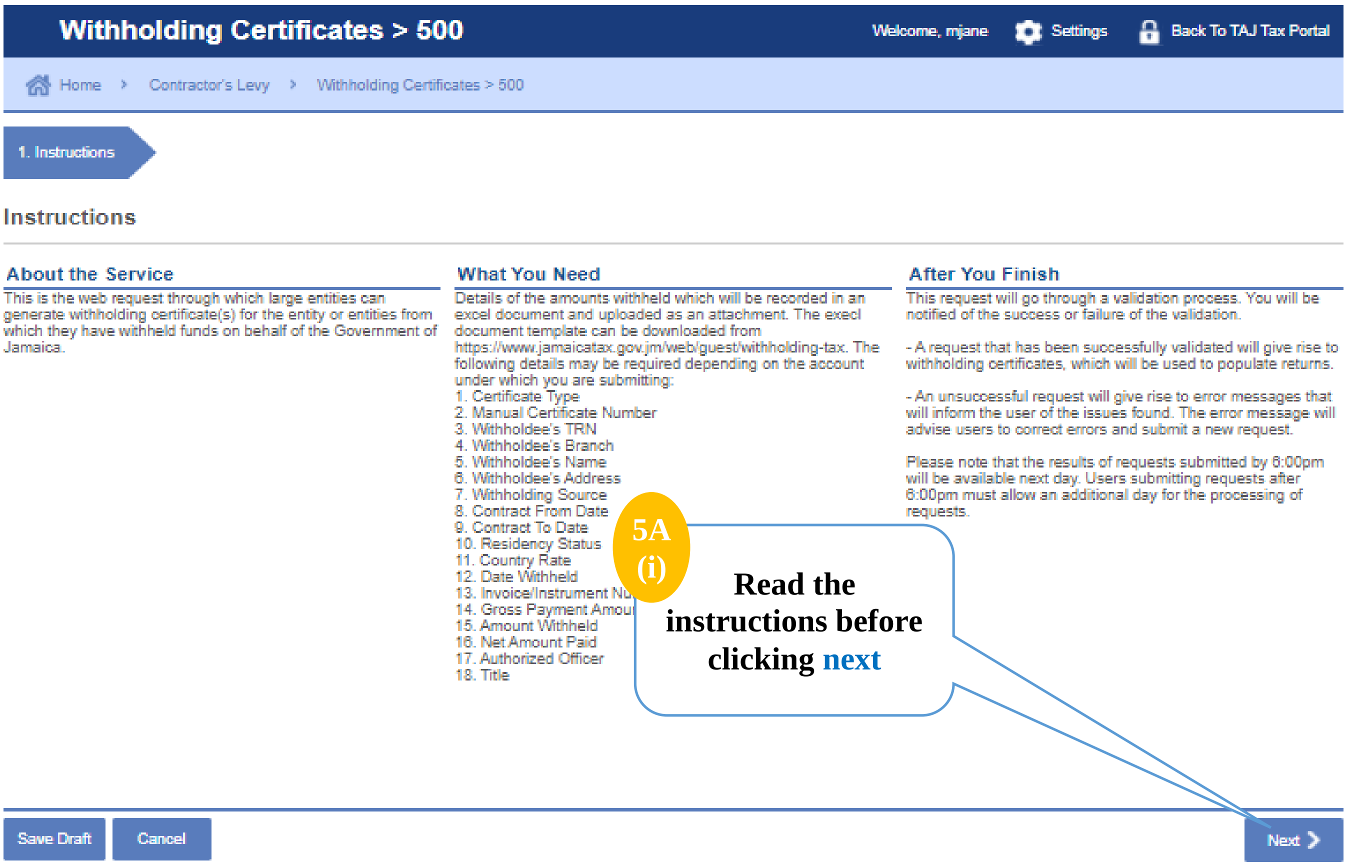
Note: <u>**After** clicking **'Next'** the system will validate the data from the Excel upload. Any error identified (highlighted in red) must be corrected before proceeding</u>.

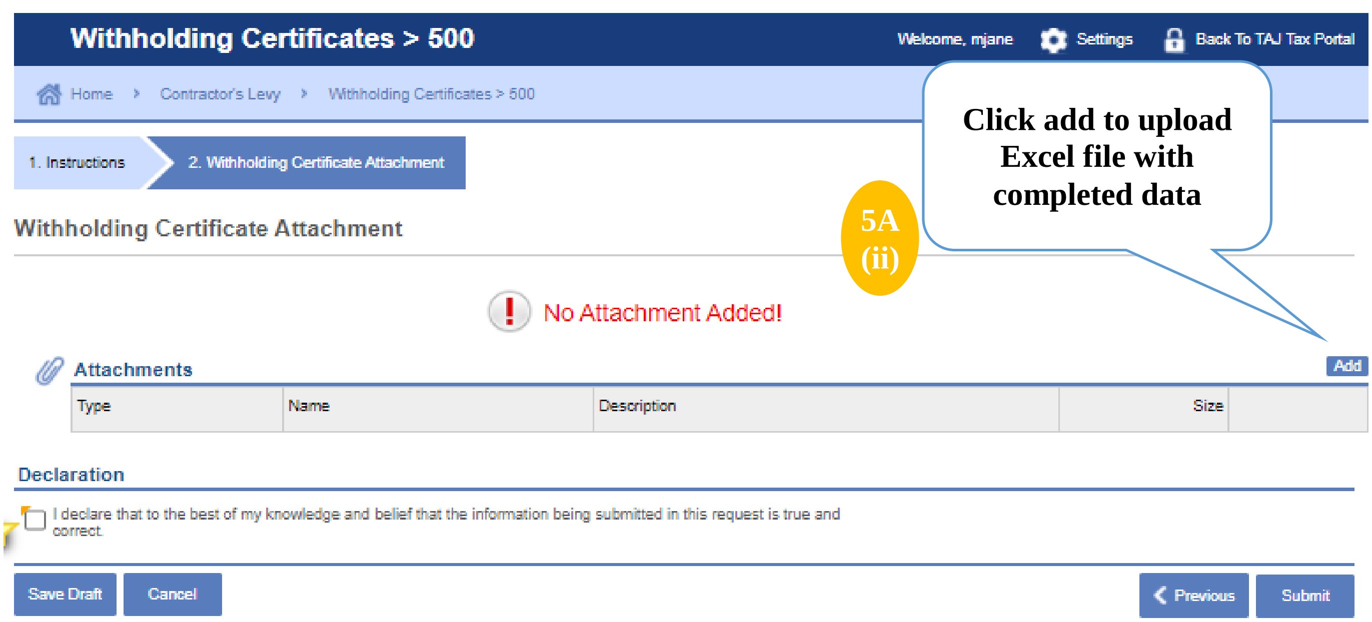


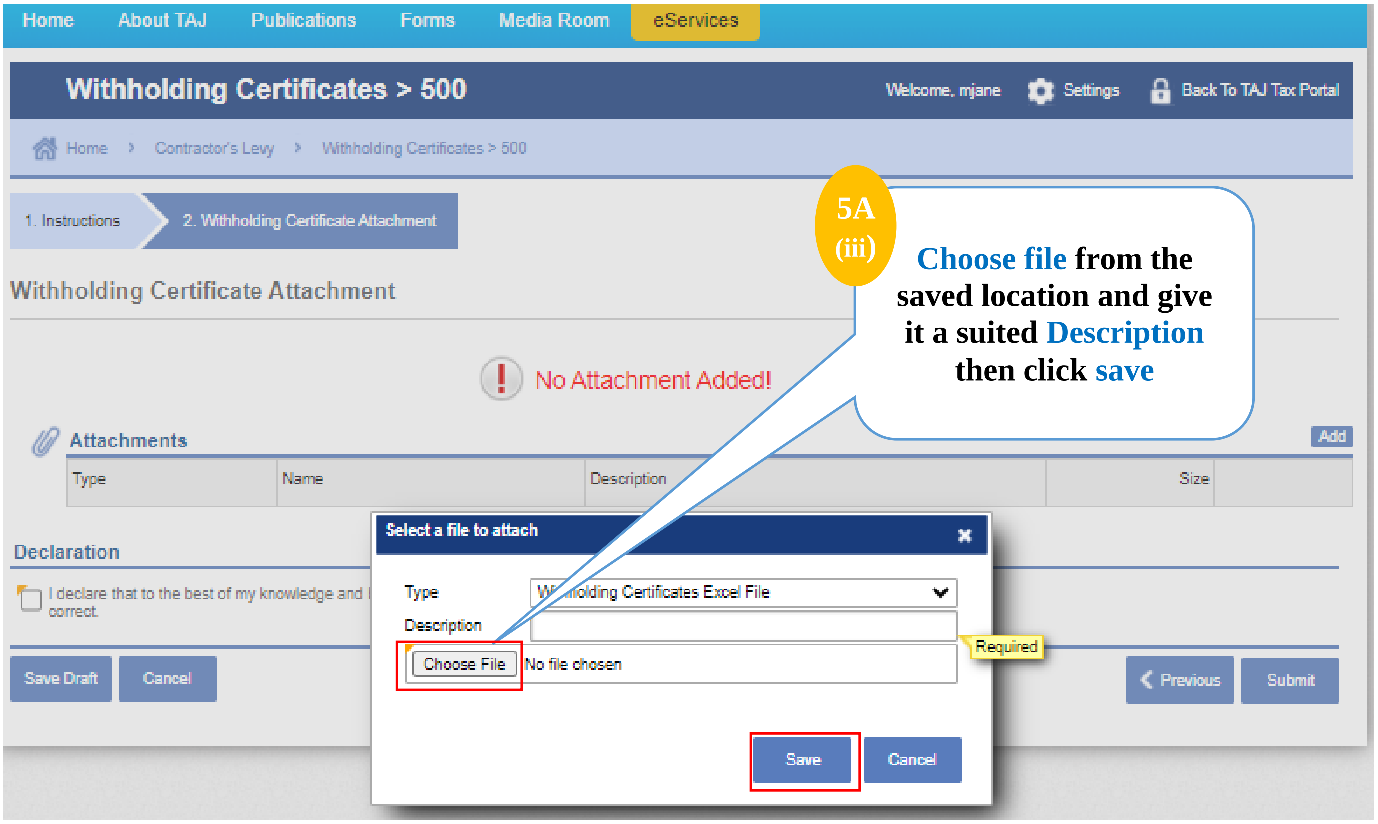

Withholding Certificate
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home › Contractor's Levy › Withholding Certificate
1. Manual or Upload
2. Upload Correction
3. Summary
Summary
Uploaded Certificate Data
I declare that to the best of my knowledge and belief this is a true and correct statement of the information and particulars given on this form
Are you sure you want to submit this request?
OK
Cancel
14 Rows
Save Draft
Cancel
Previous
Submit
4B (vi)
Read the declaration before clicking OK

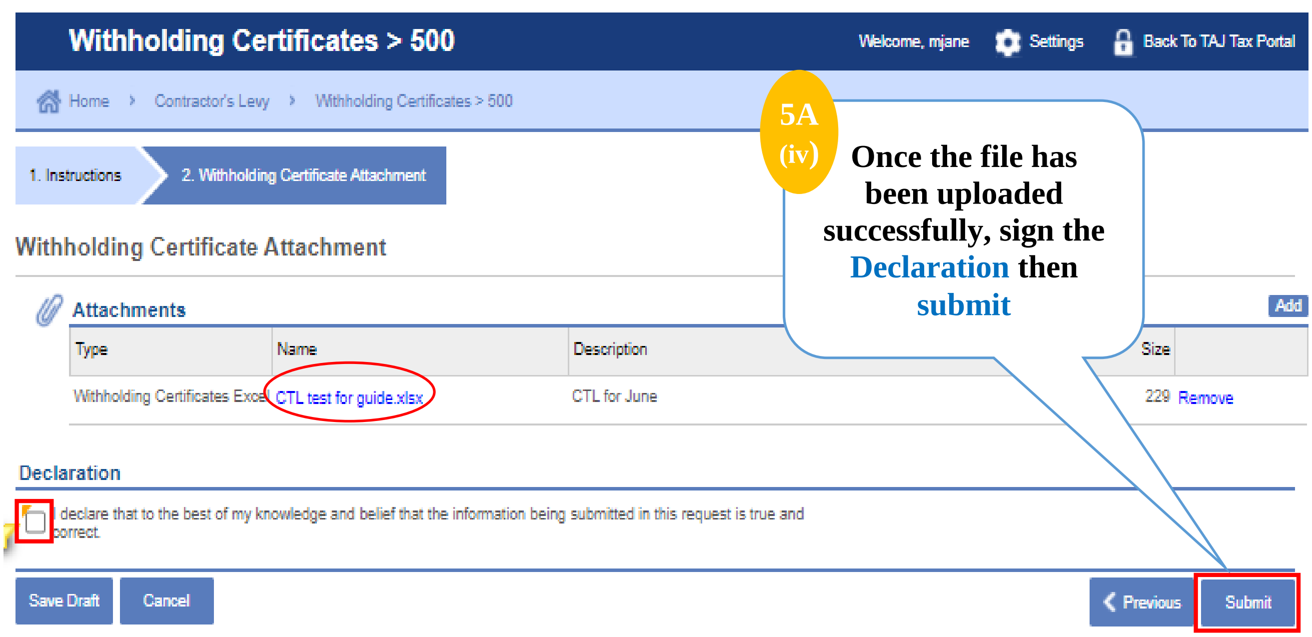

Confirmation
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home › Contractor's Levy › Withholding Certificate › Confirmation
Confirmation
Your confirmation code is 785652480.
If there are any queires, please quote the above reference number.
Tax Administration Jamaica - Working together to serve you EVEN better
Printable View
OK
4B (vii)
Take note of the confirmation code for future reference

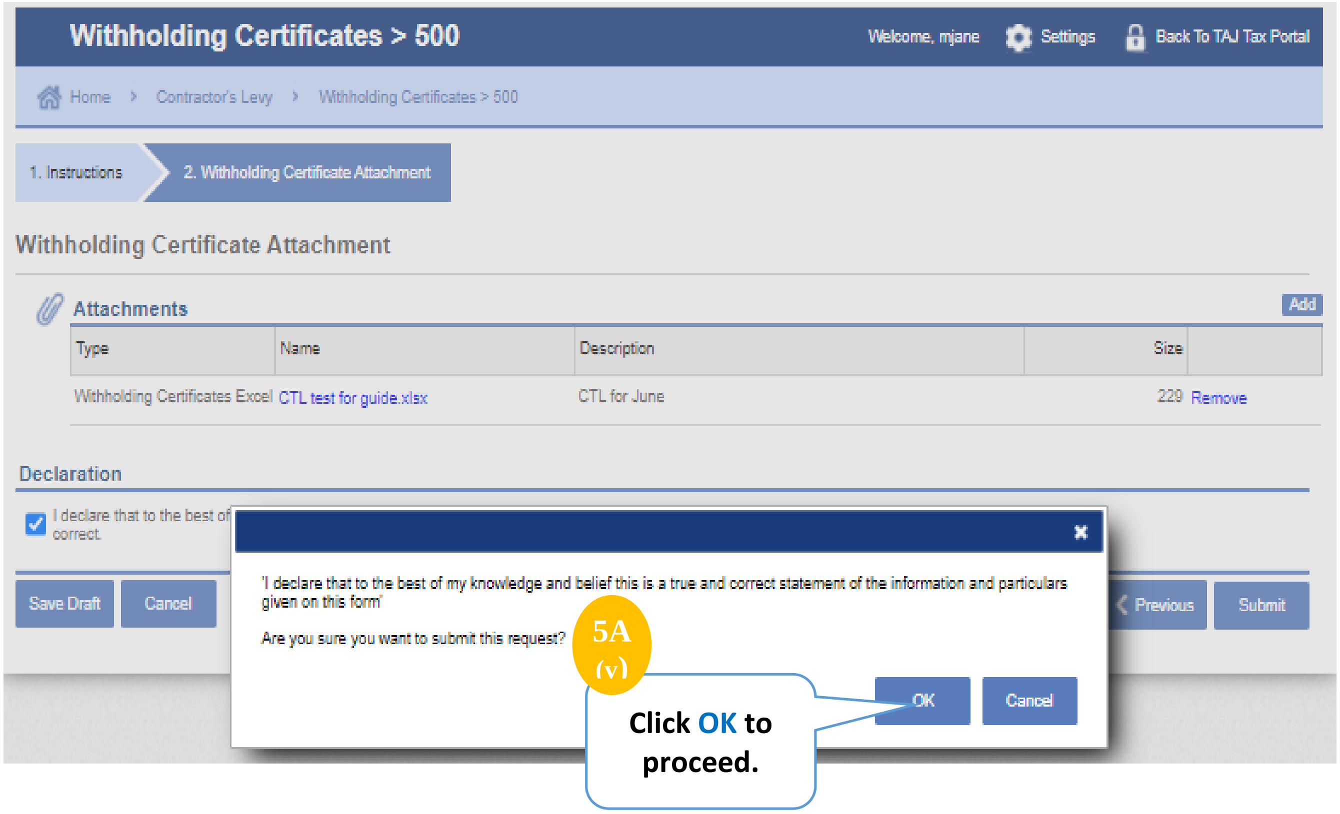
5. Submitting withholding certificates greater than 500 records



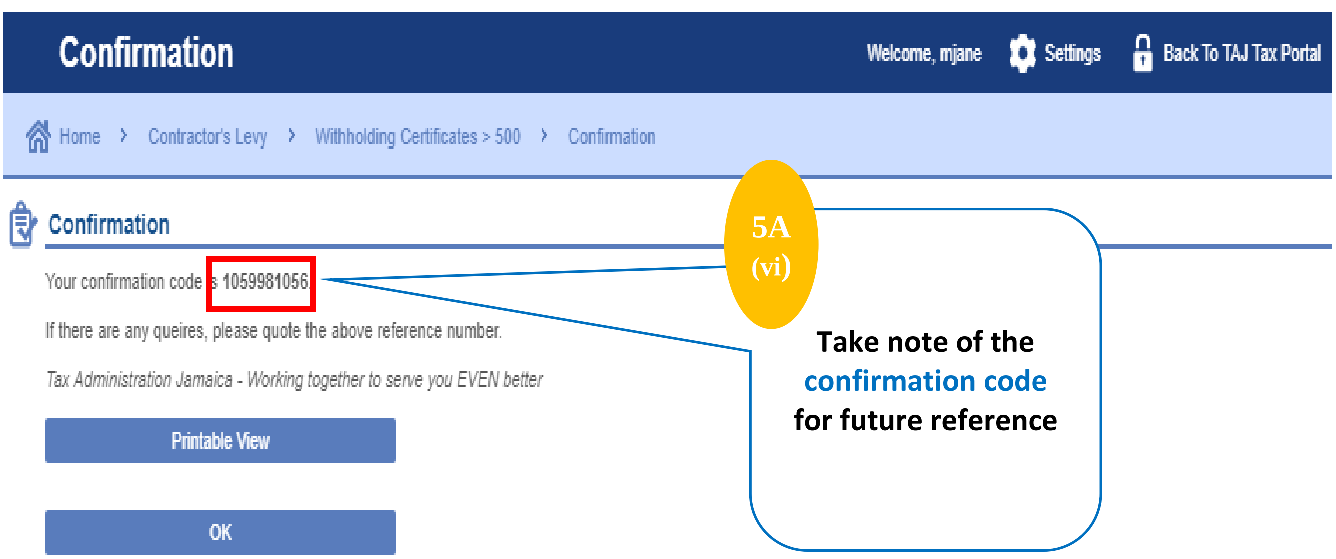



Home
About TAJ
Publications
Forms
Media Room
eServices
Withholding Certificates > 500
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home > Contractor's Levy > Withholding Certificates > 500
1. Instructions
2. Withholding Certificate Attachment
Withholding Certificate Attachment
No Attachment Added!
Attachments
Add
Type
Name
Description
Size
Declaration
I declare that to the best of my knowledge and I
correct.
Save Draft
Cancel
Previous
Submit
Select a file to attach
Type
Withholding Certificates Excel File
Description
Required
Choose File
No file chosen
Save
Cancel
5A (iii)
Choose file from the saved location and give it a suited Description then click save


Withholding Certificates > 500
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home > Contractor's Levy > Withholding Certificates > 500
1. Instructions
2. Withholding Certificate Attachment
Withholding Certificate Attachment
Attachments
Add
Type
Name
Description
Size
Withholding Certificates Excel
CTL test for guide.xlsx
CTL for June
229
Remove
Declaration
declare that to the best of my knowledge and belief that the information being submitted in this request is true and
correct.
Save Draft
Cancel
Previous
Submit
5A (iv)
Once the file has been uploaded successfully, sign the Declaration then submit

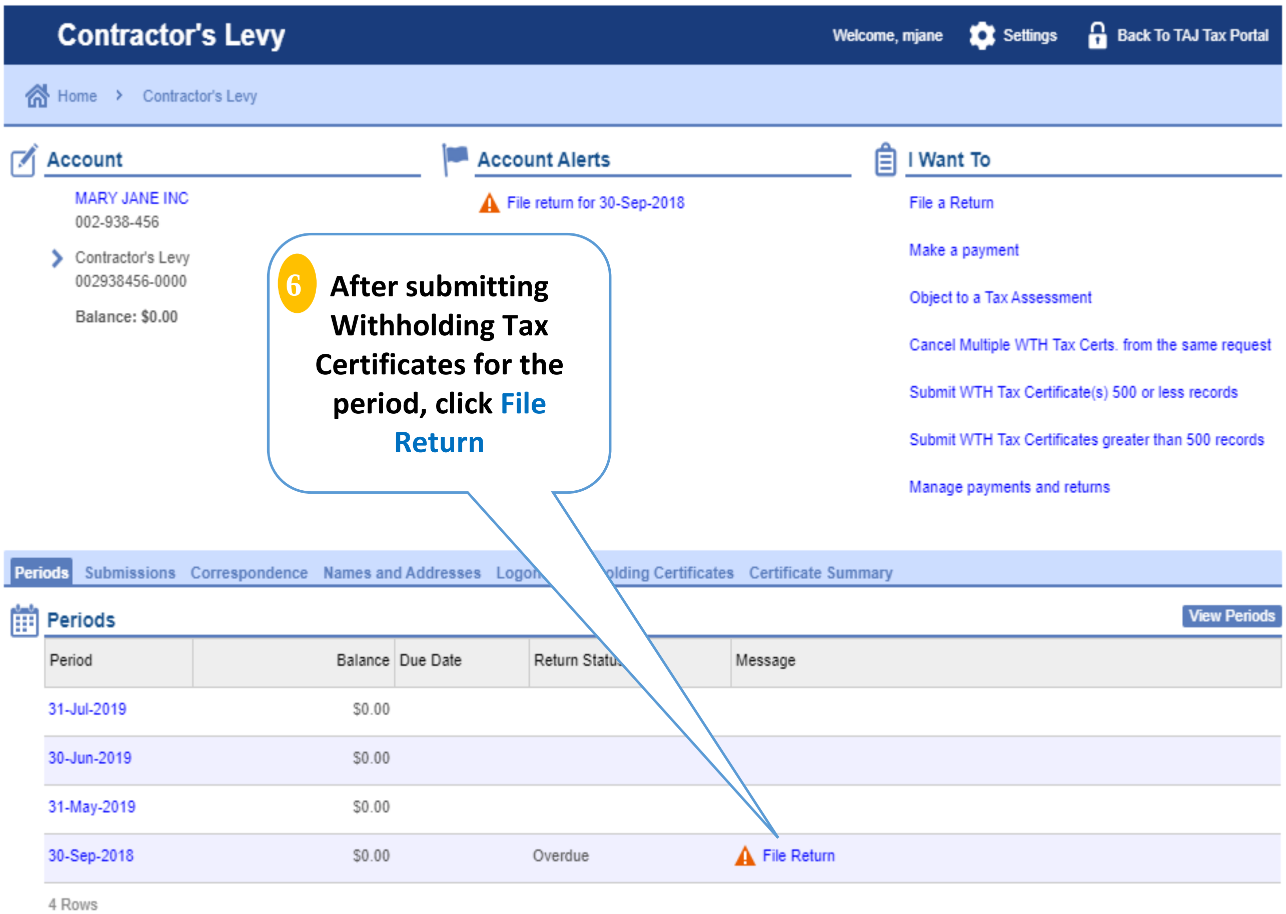


Withholding Certificates > 500
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home > Contractor's Levy > Withholding Certificates > 500
1. Instructions
2. Withholding Certificate Attachment
Withholding Certificate Attachment
Attachments
Add
Type
Name
Description
Size
Withholding Certificates Excel
CTL test for guide.xlsx
CTL for June
229
Remove
Declaration
I declare that to the best of
correct.
Save Draft
Cancel
Previous
Submit
'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'
Are you sure you want to submit this request?
5A (v)
OK
Cancel
Click OK to proceed.



Confirmation
Welcome, mjane
Settings
Back To TAJ Tax Portal
Home > Contractor's Levy > Withholding Certificates > 500 > Confirmation
Confirmation
Your confirmation code is 1059981056
If there are any queires, please quote the above reference number.
Tax Administration Jamaica - Working together to serve you EVEN better
Printable View
OK
5A (vi)
Take note of the confirmation code for future reference

6. Filing Contractor's Levy (CL01) Return



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7. Review the Contractors / Sub-Contractors details, then submit

Contractor's Levy - CL01- 9/30/2018

Section B: SUMMARY OF CONTRACTS (TO WHICH CONTRACTOR'S LEVY APPLIES)

11. Number of Contracts to which Contractors Levy is applicable	14
12. Number of Contractor's/Sub-Contractor's hired	1
13. Gross Payments to contractor(s)/sub-contractors for the period (Schedule 1, total column (g))	3,500,000.00
14. Contractors Levy Payable for the period (Schedule 1, total column (h))	70,000.00

Section E: CONTRACTOR/SUB-CONTRACTOR DETAILS

Contractors / Sub-Contractors 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036 133-347-036

7

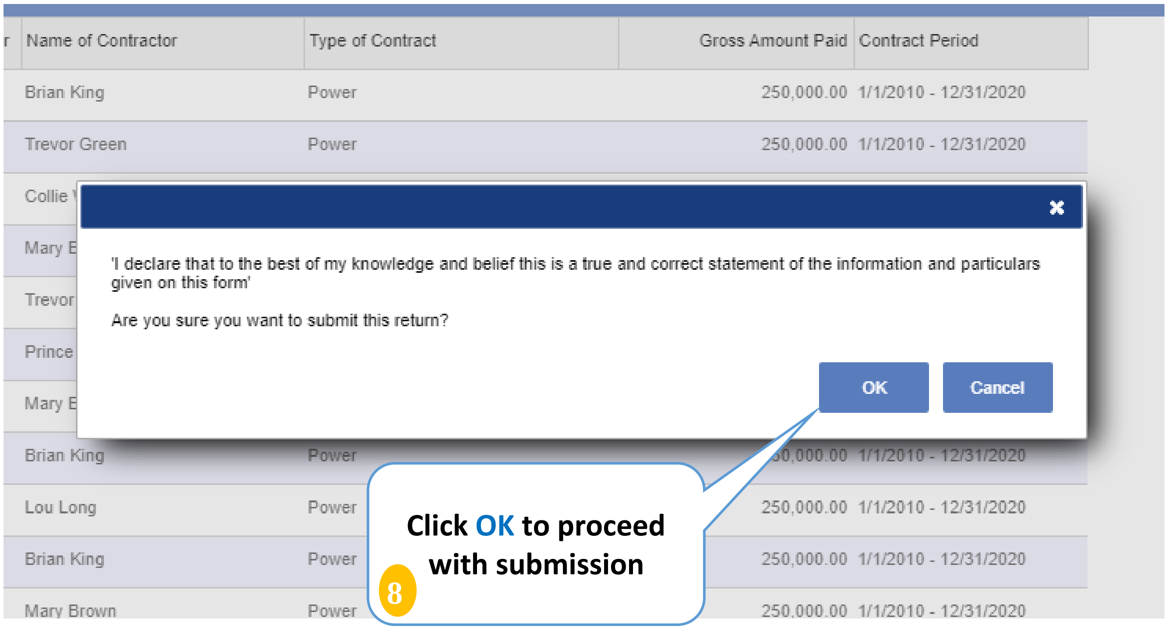
TRN of Contractor	Name of Contractor	Type of Contract	Gross Amount Paid	Contract Period
133-347-036	Brian King	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Trevor Green	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Collie West	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Mary Brown	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Trevor Green	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Prince Jones	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Mary Brown	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Brian King	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Lou Long	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Brian King	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Mary Brown	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Lou Long	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Prince Jones	Power	250,000.00	1/1/2010 - 12/31/2020
133-347-036	Trevor Green	Power	250,000.00	1/1/2010 - 12/31/2020

14 Rows

Review the Contractors / Sub-Contractors details, then submit

Save Draft Cancel Submit

8. **Proceed with submission**



9. **Note Confirmation Number**

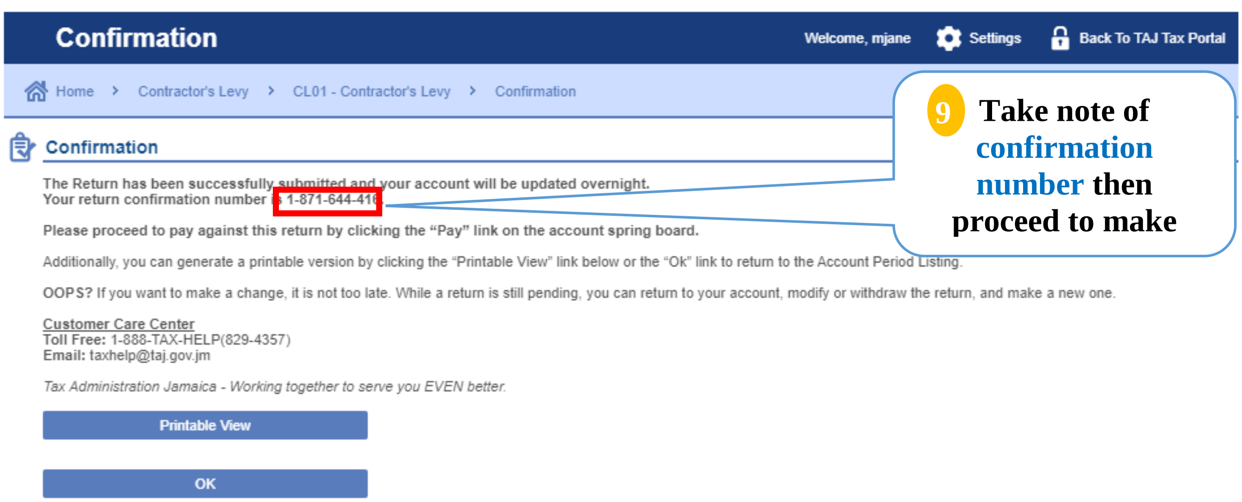


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Exhibit 4: (Schedule) CL01 Form: Return of Payment made and Levy Withheld

THE CONTRACTORS LEVY ACT
RETURN OF PAYMENTS MADE AND LEVY WITHHELD
(CONTRACTORS LEVY)

CL01

This form is to be completed by any person who has contracted the services of either a contractor or sub-contractor to carry out construction, haulage or tillage activities subject to Contractors Levy under The Contractors Levy Act.

This return is due within fourteen days after the end of any month in which the payment of the contract sum was made and may be filed at any Tax Office or on-line at www.jamaicatax.gov.jm

Section A: GENERAL INFORMATION

1.Name of Person withholding levy:

2. Taxpayer Registration Number (TRN)

3. Return Period
Year Month Day to Year Month Day

4. Address of Person withholding:

5. Mailing Address *(if different from 4)*

6. Telephone:

7. Fax Number:

8. E-mail Address:

9. Tick Appropriate Box:
☐ New Address ☐ Revised Return (State reason)

10. Reason for Revised Return:

Section B: SUMMARY OF CONTRACTS (TO WHICH CONTRACTORS LEVY APPLIES) *(Complete Schedule 1 Overleaf)*

Number of Contracts to which Contractors Levy is applicable	11	
Number of Contractors/ Sub-Contractors hired	12	
Gross Payments to contractor(s)/sub-contractors for the period *(Schedule 1, total column (g))*	13	

Section C: CONTRACTORS LEVY PAYABLE

Contractors Levy Payable for the period *(Schedule 1, total column (h))*	14	

OFFICIAL USE

Preparer's Details - *(To be completed if prepared by person other than Taxpayer)*

Preparer's Name: (Individual/Firm)	Address	TRN
		Contact Number

Section D - DECLARATION

Note: ***Any false statement herein will render you liable to penalties and/or criminal proceedings.***

I declare that, to the best of my knowledge and belief, this is a true and correct return of the information and particulars given in the form.

Name of Responsible Officer ____________ Title ____________

Signature ____________ Date ____________

Form No.CL01 (Revised 2016/08) Tax Administration Jamaica

Tax Administration Jamaica
Working together to serve you EVEN better

Name of Person withholding Levy: TRN: Return Period: Sheet____of____

SCHEDULE 1 - CONTRACTOR/SUB-CONTRACTOR DETAILS							
(a) TRN of Contractor/ Sub-Contractor	(b) Name of Contractor/ Sub-Contractor	(c) Address	(d) Type of Contract	(e) Period of Contract	(f) Levy Rate (%)	(g) Gross Amount Paid	(h) Levy Withheld
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
				-			
					Total		

Exhibit 5: Extract from the Income Tax Act – Withholding Tax on Specified Services

Section 31B was inserted in the Income Tax Act in the 2015, amendments to include withholding tax on specified services.

Section 31B (11)
"gross revenue" means the aggregate amount of income from all sources (before any deductions under this Act);

"specified service" includes the following services—
(i) accounting;
(ii) auditing;
(iii) catering;
(iv) consultancy;
(v) decorating;
(vi) engineering (architectural, electrical, mechanical and structural);**
(vii) entertainment;
(viii) information technology;
(ix) janitorial;
(x) laundry;
(xi) legal;
(xii) landscaping;
(xiii) management;
(xiv) repairs or maintenance;**
(xv) the **rental** or leasing of **motor vehicles or equipment:****
(xvi) **transportation, haulage** or tours.**

** In respect of services rendered as construction operations, tillage operations or haulage operations and such services the Withholding Tax on Specified Services provisions shall not apply to the payments made in respect of those contracts. (Items in **bold**). Instead these services will attract Contractors Levy.

References

www.ijasbt.net, Research Article, Bibek Thapa, Keshab Raj Pande, Baburam Khanal, Santosh Marahatta ***"Effect of Tillage, Residue Management and Cropping System on the Properties of Soil"***, International Journal of Applied Sciences and Bio Technology, Vol. 6 (2) pgs. 164-168, June 2018

Contractors Levy Act of Jamaica, 1985

General Consumption Tax Act of Jamaica, 1991

General Consumption Tax Regulations, 1991

Income Tax Act, 1955

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www.esub.com ***"4 Types of Construction Contracts"***, Tyler Riddell, August 14, 2017

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