Issued by: Tax Administration Jamaica (TAJ)
Issue Date: November 10 2022
Advisory #: 112022/02/IT-TA
Technical Paper: **"Applicability to Employment Tax Credit (ETC) for Companies listed on the Jamaica Stock Exchange (JSE) Junior Market"**

TECHNICAL ADVISORY

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Abbreviations and Glossary of terms

Benefit	Black's Legal Dictionary, as well as the Oxford English Dictionary, defines this as an advantage, profit or gain. A benefit may be an incentive.
ETC	Employment Tax Credit
FIA	Fiscal Incentive (Miscellaneous Provisions) Act
Fiscal incentive	In the FIA this means any exemption or relief, in respect of any tax, duty, fee, levy, fine or other impost, that is granted under any enactment.
Grandfather Clause	This is a legislative provision in which an old rule continues to apply to some existing situations while a new rule will apply to all future cases.
Incentive	Black's Legal Dictionary, as well as the Oxford English Dictionary, defines this as a payment, benefit or concession to stimulate investment, greater compliance or compliance.
ITA	Income Tax Act
JSE	Jamaica Stock Exchange
Junior Market	The JSE Junior Market serves small and medium-sized companies (SMEs) and allows investors to put capital into legitimate SMEs whose shares trade on a JSE platform. This represents an opportunity for SMEs to raise capital and contribute to the growth and development of the Jamaican economy.
Specified Payments	Specified payments are the total employees' and employer's contributions for - amounts required, under section 6 of the Education Tax Act, to be paid in respect of, or on behalf of, employees of the eligible person; - contributions payable under section 12 of the HEART Act in respect of emoluments paid to employees of the eligible person; - amounts required, under section 12 of the NHT Act, to be paid in respect of, or on behalf of, employees of the eligible person; and - amounts required, under section 6 of the National Insurance Act, to be paid in respect of, or on behalf of, employees of the eligible person.
Tax Credit	A tax credit is an amount subtracted directly from the tax liability of a taxpayer after the tax liability has been computed.

Purpose of this Technical Advisory

The purpose of this Technical Advisory is to provide guidance on issues arising with respect to the eligibility to the employment tax credit (ETC) by companies listed on the Jamaica Stock Exchange (JSE) Junior Market.

This Advisory will address whether the companies listed on the JSE Junior Market as provided for under the Seventh Schedule of the Income Tax Act are entitled to claim the ETC.

Legislations

Fiscal Incentives (Miscellaneous Provisions) Act (FIA)

- Section 2

Income Tax Act:

- Section 2
- Section 32A
- Section 48B
- Paragraphs 2 & 3 of The Seventh Schedule to the Income Tax Act

Background

The Fiscal Incentives (Miscellaneous Provisions) Act (FIA) was introduced in Jamaica in January 2014 as part of the tax reform programme by the Government of Jamaica (GOJ). A number of fiscal incentives known collectively as the Omnibus incentives that affected income tax among other taxes and duties were established or varied by the FIA. This new Omnibus incentive regime replaced the long-standing or "Legacy" incentives, i.e. all legislated incentives that existed prior to January 1, 2014, which were subsequently repealed.

The objectives of the FIA regime were to:

- amend the Income Tax Act (ITA) to include new fiscal incentives that are of a general application;
- enhance existing fiscal incentives;
- repeal certain enactments that grant fiscal incentives to specific sectors of the economy.

Companies benefitting from fiscal incentives under any one of the Legacy incentives prior to January 1, 2014 had the option to continue to do so after January 1, 2014 by accessing fiscal incentives and continue their benefits in one of two (2) ways:

- Operating under the Legacy incentive until the benefits expired in keeping with the scheduled end date. However, prior to the expiration of the Legacy incentive, they were required to opt to 'switch' to operating under the Omnibus incentive legislation; or
- Alternately, companies had the option to operate under the Omnibus incentive legislation as of January 1, 2014, (that is, not have their fiscal benefits 'grandfathered').

However, what was made clear was that companies would not be permitted to simultaneously claim fiscal benefits under both the Legacy incentives and the Omnibus incentives regime.

The GOJ kept a number of legislated incentives post January 1, 2014 given their significance to continued economic growth and development, one of which was the JSE Junior Market found in the ITA. One of the features of FIA regime which is contained in the Seventh Schedule (Section 48B) of the Income Tax Act grants special tax incentives for companies listed on the JSE Junior Market. The FIA also introduced the Employment Tax Credit (ETC) via Section 32A which is a non-refundable income tax credit available to an eligible person in the year of assessment.

The ETC is limited to 30% of the tax payable in respect of the income, profits or gains from a trade, profession or vocation or the total specified payments within the assessment period, whichever is less.

Issues

Issue 1: Is the Employment Tax Credit an incentive?

Issue 2: Whether a company listed on the Jamaica Stock Exchange (JSE) Junior Market can benefit from the Employment Tax Credit pursuant to Section 32A of the Income Tax Act.

Legislative Provisions

Fiscal Incentives (Miscellaneous Provisions) Act (FIA) provides as follows:

Section 2
"fiscal incentive" means any exemption or relief, in respect of any tax, duty, fee or other impost that is granted under any other enactment".

Income Tax Act

(i) **Section 32A**

(2) "A person other than a regulated company (in this section referred to as an "eligible person") shall be entitled to claim credit (in this section referred to as "employment tax credit"), in accordance with the provisions of this section, against income tax payable by that person under this Act in any year of assessment

(3) The amount of employment tax credit for any year of assessment shall be an amount equivalent to the total of specified payments by an eligible person that are made in respect of any month ending within the assessment period for that person.

(4) The amount of employment tax credit that may be claimed by an eligible person in respect of any year of assessment shall be limited to an amount that is 30% of any tax payable by the

eligible person in respect of the income, profits or gains of the eligible person for the relevant assessment period arising from –

(a) the carrying of a trade, profession or vocation by the eligible person; and
(b) the rental by the eligible person of a hotel or resort cottage that is licensed as tourist accommodation under the Tourist Board Act."

(16) Notwithstanding any other provision of this section, the following persons shall not be entitled to claim employment tax credit –

(a) a person who has been declared by order of the Minister under section 2 of the Bauxite and Alumina Industries (Encouragement) Act to be a recognized bauxite producer;
(b) an approved group head office company within the meaning of section 2(1) of the Income Tax Act;
(c) an approved enterprise within the meaning of section 2(1) of the Special Economic Zones Act".

(ii) **Section 48B**

Relief to companies listed on Junior Market. Seventh Schedule -Junior Stock Market Companies

"The provisions of the Seventh Schedule shall have effect with regard to the granting of relief to companies listed on the Jamaica Stock Exchange Junior Market".

(iii) **The Seventh Schedule (Section 48B)**

The relevant provisions in the Seventh Schedule state:

"2. (1) Subject to the conditions specified in paragraph 3, a newly eligible company and an existing eligible company shall be entitled to the tax incentives specified in sub-paragraph (2).

(2) The tax incentives referred to in sub-paragraph (1) are as follows –

(a) in relation to a newly eligible company, an exemption from the payment of all income tax that the company would have otherwise been liable to pay under this Act in respect of income, profits and gains had it not been a newly eligible company, calculated as follows –

(i). the first five-year period after initial admission, a full exemption from the payment of such tax; and

(ii). in the subsequent five-year period commencing on the date following the end of the period in sub-paragraph 2(a)(i), an exemption from payment of 50 percent of such tax;

(b) in respect of an existing eligible company, the same relief from the payment of all income tax that the company would have otherwise been liable to pay under this Act in respect of income, profits and gains had it not been an existing eligible company, calculated in the same manner as set out in sub-paragraphs 2(a)(i) and (ii).

3. (1) Subject to sub-paragraph (2), the conditions referred to in paragraph 2 are that:

(a) the eligible company shall remain listed on the Junior Market or Main Market for a combined continuous period of not less than fifteen years from the date of initial admission;

(b) the subscribed Participating Voting Share capital of the eligible company shall not exceed five hundred million dollars or any other amount set by the Minister in accordance with the provisions of this Act from time to time, in the ten-year period following from the date of initial admission; and

(c) the eligible company shall not benefit in any way from any other income tax incentive, exemption, remission or other benefit granted under any other enactment, so that an eligible company may either elect to continue to receive such income tax incentives as it may have been granted prior to the date of commencement of this Act, or to receive the incentive referred to in paragraph 2 instead."

Analysis of the Issues

Issue 1: Is the Employment Tax Credit an incentive?

Consideration was given to whether the ETC should be considered a "benefit" or an "incentive". A review of the definitions found in the Black's Legal Dictionary as well as the Oxford English Dictionary indicates that an *"incentive is a payment, benefit or concession to stimulate investment, greater compliance or compliance"*; whereas a *"benefit is an advantage, profit or gain"*. As such, an incentive is a benefit but a benefit may not be an incentive. The focus to make the determination is to look at the intended objective of the particular regime. One of the objectives of the ETC is that the credit was designed to encourage taxpayers to be compliant with the filing and payment of the statutory deductions. Based on the foregoing understanding, the ETC is in fact primarily an incentive which is also a benefit.

Issue 2: Whether a company listed on the Jamaica Stock Exchange (JSE) Junior Market can benefit from the Employment Tax Credit pursuant to Section 32A of the Income Tax Act.

The JSE Junior Market was not specifically excluded under Section 32A (16); however, we recognize that the provisions under that section are not the only reference to the non-eligibility of persons obtaining an ETC benefit. The Seventh Schedule of the ITA also provides an exclusion for entities benefitting under the JSE Junior Market to get an advantage from any other income tax incentives (such as the ETC).

Section 32A (16) specifically provides the exclusion of other specific types of entities which should not obtain a benefit from the ETC. Paragraph 3 (c) of the Seventh Schedule specifically precludes entities on the Junior Stock Exchange from benefitting from any other income tax incentive, exemption, or remission.

The 2016 amendment indicates that an entity registered on the JSE Junior Market cannot benefit from any income tax incentive other than that which was granted under section 48B and the revised Seventh Schedule of the ITA. Those who, at the effective date of that legislative change, enjoyed such relief by way of the ETC were required to choose to either benefit wholly and solely from the provisions of the Seventh Schedule or from the ETC or any other such income tax incentives and preferential income tax treatment, but not from a combination of the two incentives or benefits.

Therefore, entities who have transitioned to the JSE Junior Market are not entitled to claim ETC from the effective date of the transition. They are not permitted to benefit from two income tax incentives. The CG is of the view that, provided that a company, eligible as per the statutory provisions governing the JSE Junior Market, and is a beneficiary of those incentives, then such a company would not be entitled to benefit from the ETC during the material time that they are listed under the JSE Junior Market.

Restriction of Benefits to Entities Under the JSE Junior Market in the Year of Transition

Where an entity transitioned other than at the beginning of an accounting year, the entitlement to the incentives under the JSE Junior Market begins on the effective date of the transition. Therefore, the entitlement to the ETC would be from the beginning of the accounting period to the effective date of the transition.

For example, an entity whose accounting period is April 1, to March 31st, transitioned effective July 1, this entity would be entitled to ETC on profits earned for the period April 1 to June 30th, and full exemption from income tax in relation to profits earned for the period July 1 to March 31st under the JSE Junior Market provisions.

Conclusion

When the Fiscal Incentives (Miscellaneous Provisions) Act was introduced, it was clear that companies that were either benefiting under one of the Legacy incentives or under one of the other retained legislated incentives were not eligible for the ETC.

While the companies listed on the JSE Junior Market are not expressly mentioned in the excluded list in section 32A (16), the existence of one such provision or section of the ITA does not act as a bar for the inclusion of other such provisions or sections. Consequently, section 48B when read in conjunction with the revised Seventh Schedule leads to the conclusion that companies listed on the JSE Junior Market should not be eligible for the ETC.

The substance of Paragraph 3 (c) of the Seventh Schedule of the ITA, notwithstanding its wording, precludes companies in the Seventh Schedule (being companies listed on the JSE Junior Market) from benefitting from the ETC. Of importance to note is that, in general, income tax incentives, exemptions or remissions are legislated by provision of the Income Tax Act itself; however, there are exceptions.

Companies that currently enjoy income tax incentives or other preferential income tax treatment who elect to transfer to the JSE Junior Market will cease to benefit from any current income tax incentives or preferential income tax treatment after they transfer to the JSE Junior Market.