



Technical Bulletin

Accounting for General Consumption Tax (GCT) on Imported Services

This advisory seeks to clarify and outlines the Revenue's position on Imported Services.

Key Definitions:

"Imported services" means a supply of services other than services that are exempt from the payment of tax under the GCT Act to a person who is resident in Jamaica by a person who is-

- (a) not resident in Jamaica; or
 - (b) resident in Jamaica where the services are supplied by a business carried on by that resident outside Jamaica
- to the extent that the services are to be utilized or consumed in Jamaica and to the extent that the supply of the services would be a taxable supply if they were performed in Jamaica by a registered taxpayer.

"Principal Act" means the General Consumption Tax Act

"Resident" means a person resident in Jamaica for the year in question for the purposes of the Income Tax Act.

"Services" means the supply, other than the sale of real property, of anything for a consideration which is not a supply of goods.

"Service importer" means the recipient of imported services.

"Taxable activity" means any activity, carried on in the form of a business, service, trade, profession, vocation, association or club, whether or not for a pecuniary profit which-

- (a) involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and
- (b) in the case of imported services, is carried on at least once or, in the case of any other activity, is carried on continuously or regularly by any person; but
- (c) does not include--

- (i) any activity carried on essentially as a private recreational pursuit or hobby;
- (ii) any engagement, occupation or employment under any contract of service;
- (iii) a directorship of a company; or
- (iv) any activity specified in the Third Schedule.

Rationale for Imposing the Tax on the Recipient of the Imported Service:

The GCT Act is enforceable in Jamaica. The non-resident making the supply without a Permanent Establishment (PE) in Jamaica is not required to register or collect tax on such supplies and is not subject to the provisions of the GCT Act.

GCT is imposed on imported services:

- (a) to remove the incentive for persons to acquire services from non-residents, including offshore branches of the person, in preference to using local suppliers whose services would be taxable;
- (c) to limit reverse charging to services for which the person would have been entitled, to a full input tax credit if the supply of the services had otherwise been taxable; and
- (d) to ensure that reverse charged GCT is subject to the same post-supply adjustment rules as locally purchased services.

Issue:

- Uncertainty as to which category of taxpayers the provisions of Section 23B applies (Registered Taxpayers, Suppliers of Exempt Goods & Services and Otherwise Unregistered Suppliers)
- Uncertainty as to reporting mechanism for output tax and claiming input tax credit in respect of imported services.

History:

Imposition of General Consumption Tax:

3(1) Subject to the provisions of this Act, there *shall be imposed, from and after the 22nd day of October, 1991, a tax to be known as general consumption tax-*

- (a) *on the supply in Jamaica of goods and services by a registered taxpayer in the course or furtherance of a taxable activity carried on by that taxpayer; and*
- (b) *on the importation into Jamaica of goods and services, by reference to the value of those goods and services".*

However there was no mechanism for persons to account for tax on imported services. Further, the Revenue was not enforcing the provision in relation to registered taxpayers. As such section 23B was inserted into the principal Act in December 2003.

New Provision Section 23B

"Where a taxable activity consists of the supply of imported services by a person who is not resident in Jamaica, the recipient of those services shall, for the purposes of that supply, be deemed to be a registered taxpayer and shall pay the tax chargeable in respect of that supply to the Commissioner of Inland Revenue, in accordance with the provisions of section 33(1)"

(2) For the purpose of valuing an imported service under this section, such value shall be determined in accordance with and in a manner set out in section 7 of the principal Act.

Notwithstanding the effective date of the new provisions, the Commissioner did not actively enforce until July 1, 2009.

In 2014 a decision was taken to revise the provision. This revision was necessary because in the past, individuals were not correctly accounting for the GCT on imported services, primarily because there was uncertainty as to how it should work.

Section 23B of the principal Act was repealed and the following substituted;

23B.-(I) Subject to subsection (3)-

- (a) a service importer who is a registered taxpayer shall, in respect of the supply of imported services that are received by that service importer-*
 - (i) be deemed to be the supplier of those services;*
 - (ii) be liable to pay the tax payable in respect of the supply of those services to the Commissioner General; and*
 - (iii) be required to file a return and to pay the amount of tax in accordance with the provisions of section 33(1); and*
- (b) a service importer who is not a registered taxpayer shall, in respect of the supply of imported services that are received by that service importer*
 - (i) be deemed to be the supplier of those services and to be a registered taxpayer;*
 - (ii) be liable to pay the tax payable in respect of the supply of those services to the Commissioner General; and*
 - (iii) be required to file a return and to pay the amount of tax in accordance with the provisions of section 33(1).*

(2) The value of an imported service under this section shall be determined in accordance with section 7.

(3) Subsection (1) shall not apply to:

(a) a service importer who, in the twelve month period immediately prior to the date that imported services are received, makes supplies that have an aggregate value of less than three million dollars, excluding the value of any imported services received by the service importer during that twelve month period; or

(b) a service importer who is an individual, in respect of imported services that are received by that individual for his private use.

Regulations 14 Amended to insert paragraphs 16 & 17-

(16) Subject to paragraph (17), a service importer who is liable to pay tax under section 23B(1)(a) of the Act in respect of imported services is entitled to claim as a credit any input tax payable by the service importer in respect of those imported services in accordance with the provisions of this regulation.

(17) A service importer is not entitled to claim a credit under paragraph (16) in respect of imported services that are received by the service importer from a connected person (in relation to the service importer) unless the service importer proves to the satisfaction of the Commissioner that –

(a) the consideration payable by the service importer to the person who in relation to subsection (1) is a connected person for the imported services does not exceed the market value of those services; and

(b) the connected person has the capacity to supply the imported services to the service importer.

Imported Services:

For the purposes of imported services, 'services' include the supply of intangible property. Services which are frequently supplied by non-residents include, but are not restricted to, the following:

- a. Franchise;
- b. Copyright;
- c. Intellectual property rights;
- d. Professional & Technical services;
- e. Telecommunication;
- f. Licence;
- g. Royalties;

- h. Digital products, including computer software;
- i. Insurance & Re-insurance;
- j. Leasing of equipment;
- k. Use of Exclusive rights;
- l. Entertainment;
- m. Seminars, conference;
- n. Management contracts;
- o. Consultancy;
- p. Legal, accounting and other professional services

Taxpayers Impacted by the Provision:

- ✓ A registered taxpayer under the GCT Act (whether resident or non-resident) who imports services whether the services are performed in the island or elsewhere.
- ✓ A taxpayer who is not registered for GCT who imports services irrespective of where the services are performed and the residency status of the taxpayer so long as the services are acquired in the furtherance of their business operations in Jamaica which does not fall within the exemptions below.

Taxpayers exempted from the provision:

- ✓ A Taxpayer whether registered or not who in the twelve month period immediately prior to the date that imported services are received, makes supplies that have an aggregate value of less than \$10M (prior to April 1, 2019 \$3M), excluding the value of any imported services received by the service importer during that twelve month period;
- ✓ An individual who imports services for his private use.

Reporting Mechanism - Reversed Charge Mechanism:

The Revenue has adopted a *reverse charge mechanism* for taxpayers to account for the tax. This is an accounting procedure where the recipient acts as both the supplier and recipient. The recipient will account for the tax as if he is the supplier.

What is a *reverse charge*?

The Act does not use the term 'reverse charge'. For the purpose of administering the provisions, *reverse charge* is being employed as the term is widely used in relation to imported services.

Reverse charge is a VAT (***Value Added Tax***) accounting rule where the buyer, instead of the seller, is liable to pay VAT on a sale made by the seller.

Under a reverse charge mechanism, the importer of a taxable imported service, whether or not a registered taxpayer is liable to assess himself (self-assess) and charge GCT (output tax) on the value of the supply. For the purpose of accounting for the GCT the recipient is also deemed to be the supplier of the service.

Operation of the Provision:

The following rules are applicable under the reverse charge mechanism.

- a) The non-resident supplier should not be a registered taxpayer. That is, the existence of a PE in Jamaica;
- b) The performance of the service may take place outside the Island or within the Island, notwithstanding section 19(b)(ii);
- c) If the service is performed within the Island, and the supplier is in the island for a short period, which does not bring into existence a PE, the supplier will be treated as a non-resident for the purpose of the provision (imported service);
- d) If the supply is made to a non-registered Jamaican resident, for the recipient to account for the tax, the provision deems that recipient to be a registered taxpayer. The deemed taxpayer will be subject to the same filing conditions as an ordinary registered taxpayer;
- e) The deemed registered taxpayer is subject to an audit and may be assessed pursuant to section 38 of the GCT Act;
- f) All other provisions relating to filing, accounting for tax, penalties and interest are applicable to the deemed registered taxpayer;
- g) No tax is applicable to zero-rated or exempt services, or to services not realized in Jamaica;
- h) Where tax was applied to goods imported into the Island and the value of those goods includes the value of any related imported service, no further tax should be payable on the value of that imported service. The service would have already been subject to tax (because it formed part of the cost of the imported goods for customs purposes);
- i) Where exempt goods are imported into Jamaica for which insurance and freight charges were added, the value of these services will not be taxed. These services will be treated as incidental to the importation of exempt goods thus form part of the cost of the said imports.
- j) If an asset is imported, that requires installation, and the value for customs purpose does not include the installation cost, the installation of that asset will be treated as imported services if it is installed by a non-resident and the cost of the installation is subject to GCT.
- k) If an asset is repaired outside of Jamaica, and if the re-importation of the asset is not subject to custom duty, the cost to repair the asset is subject to tax.

Registration:

Recipients who are not ordinarily registered taxpayers will not be required to complete an Application Form for Registration.

The Revenue has adopted an implicit registration system. This means that the unregistered taxpayer will be deemed to be registered once the service is received by the service importer.

RAIS accounts will only be created for periods which the service importer submits a return, or the Commissioner has reason to believe that a service was imported by that person.

Time of supply:

Except as otherwise provided in the GCT Act or Regulations made under the Act, a taxable supply of imported service takes place when -

- (a) An invoice for the supply is issued by the supplier; or
- (b) Payment is made for the supply; or
- (c) The services are rendered, as the case may be, to the recipient,

- Whichever comes first.

Value of the supply:

- a) Section 7 of the Act is applicable. The taxable value is the consideration for the service.
- b) If the value is stated in a foreign currency, section 21 will be applicable.

Rate of tax:

Section 4 of the Act is applicable as the applicable rate of tax in force at the time of supply will be applied to the taxable value.

Tax invoice:

Section 22 & Regulation 8 are applicable.

The recipient should prepare a *"self-tax invoice"*. This should include, among other things -

- 1. The date the service was provided,
- 2. The supplier of the service,
- 3. The value of the service,

4. Rate of tax,
5. The purpose for which the service was supplied,
6. The amount of tax and time of payment or due date for payment.

Input Tax Credit:

- ✓ A registered taxpayer is entitled to claim a tax credit where the service importer acquires imported services from an unconnected person, subject to Regulation 14, on the supply received by him. The credit will not be allowed if the corresponding output tax was not reported on the said GCT return or on a previous return;
- ✓ A taxpayer who is engaged in a mixed activity may have to apportion the tax charged on the imported services where the importer acquires imported services from an unconnected person. This means, he will not be able to claim a credit relating to the exempt part of the activity;
- ✓ Subject to the provisions of regulation 14, where a service importer acquires imported services from a **connected person**, he may only claim a credit if he can prove to the satisfaction of the Commissioner General, that the following two conditions are met:
 - (i) the consideration payable by the service importer to the connected person for the imported services does not exceed the market value for those services; and
 - (ii) the connected person has the capacity to supply the imported services to the service importer.
- ✓ A taxpayer who is not ordinarily registered for GCT who is deemed to be the supplier of the imported services, is not entitled to a tax credit, as the supply was not obtained for the purpose of making a taxable supply or for use in a taxable activity.

The term "connected person" is defined in the Income Tax Act and covers a wide array of relationships. As a general rule, companies that are ultimately beneficially owned by the same shareholders in whole or in part would fall within the definition.

Filing of Return:

Applicable sections - Section 33 & Regulations 6 & 7

Section 33 requires every registered taxpayer who is liable to pay tax to prepare a return in a prescribed form. Form 4A - General Consumption Tax Standard Return available on TAJ's web portal has been expanded to include boxes 20, 21 and 35 to facilitate the reporting of GCT on imported services. (Form 4D 26, 26 & 37, Form 4E 21, 21 & 33 Form 4G 11)

Arrangement to avoid paying the tax:

If it appears to the Commissioner that steps were, or are being, taken to arrange for the supply to be performed in such manner as to avoid paying the tax, the Commissioner may void such transaction and make an assessment of tax which in his opinion is due and payable.

FAQs:

- I. As a service importer who commenced business less than 12 months ago, am I liable to account for GCT on imported service regardless of the value of my supplies?

Ans.

You will be liable to account for GCT on imported service if during the period preceding the date of importation, the value of your supplies is \$10M or more, even if you have only traded for 1 month.

- II. If my monthly supply when annualized exceeds \$10M but I only made supplies for 5 months aggregating to \$6M, am I liable to account for tax on imported services in the following month?

Ans.

No you are not liable to account for GCT on imported services since your aggregate supply over a 12 month period does not equal or exceed \$10M.

- III. As a service importer who is not a registered taxpayer what form do I use to account for GCT on imported service?

Ans.

You should fill out a Form 4G - GENERAL CONSUMPTION TAX RETURN (MISCELLANEOUS ACTIVITIES FOR EXEMPT AND NON REGISTERED TAXPAYERS)

- IV. I am a developer or occupant under the Special Economic Zones Act, am I liable to account for GCT on imported services?

Ans.

No GCT on imported services is zero rated for entities operating under the Special Economic Zone Act other than a zone user.

- V. As a Ministry, Department, Agency or Authority of Government, that makes no supply or my aggregate supply is less than \$10M, am I liable to account for GCT on imported services?

Ans.

No, a Ministry, Department, Agency or Authority that makes no supply, or whose supply is less than \$10M is not required to account for GCT on imported services.

- VI. I was voluntarily registered for GCT and I file my GCT returns on a monthly basis, but my aggregate supplies is less than \$10M over a 12 month period, am I liable to account for GCT on imported services?

Ans.

No you are not liable to account for GCT on imported services, notwithstanding that you are a registered taxpayer, your aggregate supply does not exceed \$10M.

- VII. I am in the business of providing medical services and all my activities are exempt, am I liable to account for GCT on imported services?

Ans.

Yes you are liable to account for GCT on imported services using form 4G, provided that your aggregate supplies is \$10M or more for the preceding 12 months.

- VIII. I am in the business of making taxable and exempt supplies, and my total supplies for the last 12 months was \$100M and my imported services is used in making both taxable and exempt supplies. Am I entitled to apportion the input tax credit in relation to the imported service?

Ans.

Yes you are entitled to apportion the input tax credit in relation to the imported service.