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Kingston
Jamaica

Jamaica:
2018/19 Budget and other recent tax developments
No new taxes but change is constant

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Introduction

In 1789 Benjamin Franklin wrote a letter to the French physicist Jean-Baptiste Le Roy which included one of his most famous quotes *"…in this world, nothing is certain except death and taxes."*

Brian J. Denning, Tax Services Leader

Jamaican taxpayers are likely to note that Mr. Franklin omitted to mention the certainty of frequent tax rule changes. For many years taxpayers have braced themselves annually at Budget time to see what new tax burdens will befall them. The Honorable Audley Shaw, Minister of Finance and the Public Service bucked the trend this year and announced in Parliament today that no new tax measures will be required to finance the 2018/19 Budget. In light of this, we take the opportunity to briefly look at the 2018/19 Budget as well as to outline other recent tax developments (click to navigate).

These include the signature by Jamaica of the **OECD Multilateral Tax Instrument (MLI)** which will modify our tax treaty network to implement various measures designed to prevent base erosion and profit shifting (BEPS). Two **new Bilateral Tax Treaties** have also been concluded. Our tax laws were recently amended to facilitate publicly listed companies in redeeming or repurchasing their own shares (known as **Share Buybacks**) in certain circumstances. We also take the opportunity to recap the benefits offered by the **Special Economic Zone (SEZ)** regime given that the supporting regulations were finally passed late last year.

Finally we outline some recent **US Tax Reforms** as well as the introduction by the European Union (EU) of a **Tax Blacklist** which are relevant to business operations.

2018/19 Budget Presentation

Let's Talk!

Read my Lips - No New Taxes:

The Honorable Audley Shaw, MP Minister of Finance & the Public Service delivered his 2018/19 Budget Presentation in Parliament today in which he advised how the Government intends to finance the J$773 billion 2018/19 Expenditure Budget tabled in Parliament last month.

With great pride and satisfaction, Minister Shaw held aloft the 2018/19 Revenue Measures document with 'NO NEW TAXES' boldly printed on the pink cover. To reinforce the point Minister Shaw signaled "*Read my Lips …*" a famous quote in 1988 from the then US presidential candidate George H.W. Bush (who subsequently had to renege on this commitment).

Jamaican taxpayers will be hoping that the country's fiscal position will remain strong to avoid any need for a Supplementary Budget later in the year. The signs are positive though with the Minister noting that tax revenue collections are expected to exceed projections by J$5 billion by the end of the 2017/18 fiscal year.

It was further noted that Jamaica's Debt:GDP Ratio was targeted at 111% by the end of 2017/18 but that it is expected to be surpassed with the ratio closing out the year at 105%. By comparison Minister Shaw indicated that Jamaica's Debt:GDP Ratio was 147% in 2012/13).

2018/19 Budget Presentation

Let's Talk!

Read my Lips - No New Taxes:

For 2018/19, Revenues and Grants are projected to generate J$590.6 billion as follows:

2018/19 - Revenue & Grants	J$ billions	% of GDP
Tax	518.4	25.7%
Non-Tax Revenues	60.9	3.0%
Capital	2.2	0.1%
Grants	9.1	0.5%
TOTAL	**590.6**	**29.3%**

This compares with the 2018/19 Expenditure Budget of J$773.7 billion which had been previously tabled in Parliament last month. Minister Shaw indicated that this is comprised as follows:

2018/19 – Estimated Expenditure	J$ billions
Non-Debt Expenditure	484.7
Public Debt Servicing	289.0
TOTAL	**773.7**

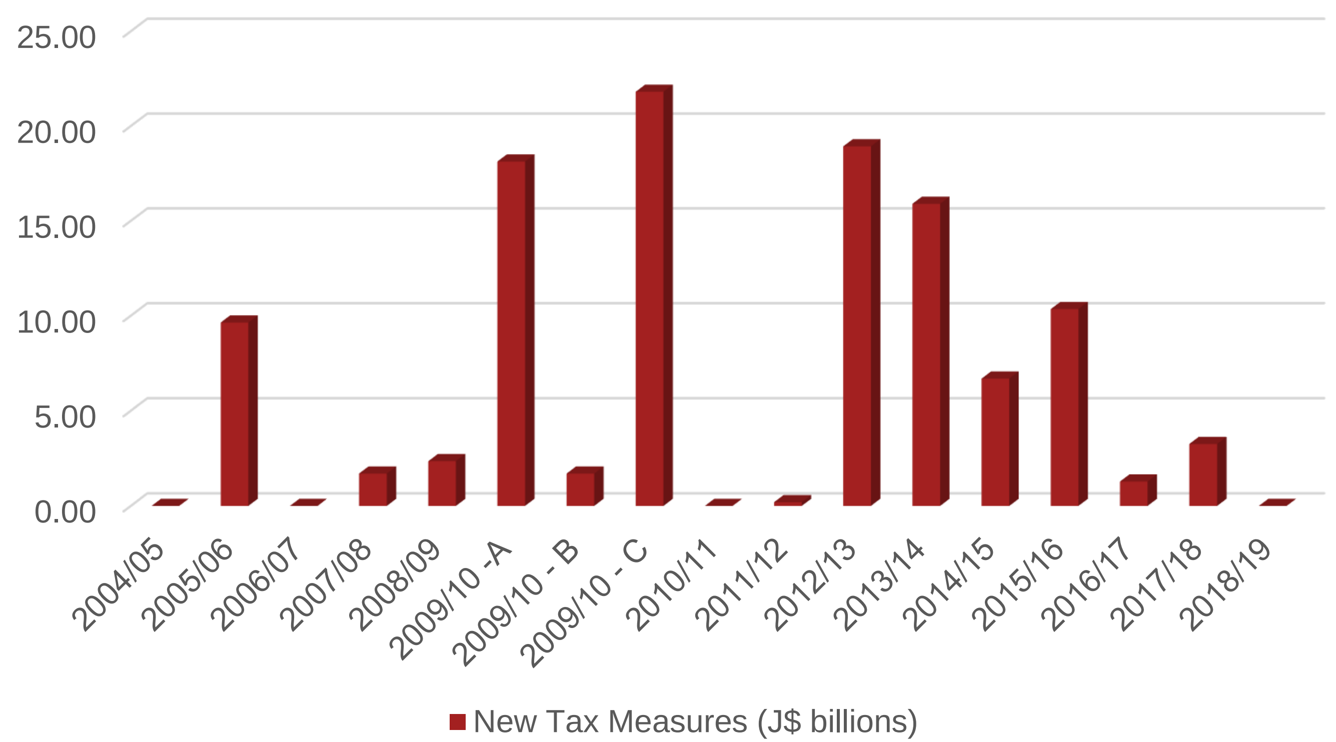
2018/19 Budget Presentation

Let's Talk!

Click Title Below to Navigate

Read my Lips - No New Taxes:

In his presentation today, Minister Shaw noted that this was the first time in fourteen years that no additional revenue measures were announced. The following chart highlights the quantum of tax measures introduced since 2004/05:



OECD Multilateral Tax Convention

Let's Talk!

Background:

The Organisation for Economic Co-operation & Development (OECD) has been spearheading the implementation of an inclusive framework by over 100 OECD and non-OECD jurisdictions to tackle Base Erosion and Profit Shifting (BEPS) tax avoidance strategies.

BEPS strategies are used by some taxpayers to exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions where there may be little or no economic activity. Extensive profit-shifting activities can contribute to the erosion of a jurisdiction's tax base. The OECD estimates annual losses from BEPS strategies of up to 10% of global corporate income tax revenues, (US$240 billion).

The OECD has developed 15 Actions to equip governments with domestic and international instruments to address tax avoidance in an effort to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. Among these is Action 15 which involves the execution of a Multilateral Instrument (MLI) to transpose BEPS solutions into existing bilateral tax treaties.

Signatories to the MLI agree to amend the application of their bilateral tax treaties in accordance with the provisions of the MLI. The use of the MLI has avoided the need to separately renegotiate over 1,100 bilateral tax treaties across the globe which would otherwise have taken decades to implement.

OECD Multilateral Tax Convention

Let's Talk!

Jamaica Signs the BEPS MLI:

On 24 January 2018, Jamaica was among six jurisdictions to sign the OECD BEPS Multilateral Convention, the others being Barbados, Côte d'Ivoire, Malaysia, Panama and Tunisia. This brought the total number of signatories to 78 jurisdictions.

Upon signature, Tax Administration Jamaica (TAJ) also filed Jamaica's list of notifications and reservations in relation to the MLI. The next step will be for Jamaica to ratify this multilateral treaty and lodge instruments of ratification with the OECD. We expect this to take place by the third quarter of 2018.

To date four jurisdictions – Austria, the Isle of Man, Jersey and Poland have ratified the Convention, which will enter into force three months after a fifth jurisdiction deposits its instrument of ratification.

What does the MLI do?

It inserts a number of measures into bilateral tax treaties covered by the MLI in an effort to target various BEPS strategies used by taxpayers and restrict the application of treaty benefits or protection in such circumstances. These include measures against ***hybrid mismatch arrangements*** (Action 2) such as the use of transparent or dual resident entities and ***treaty abuse*** (Action 6) by imposing limitation of benefits provisions and modifying certain rules in respect of dividend transfer payments.

OECD Multilateral Tax Convention

Let's Talk

What does the MLI do? - continued

The MLI also seeks to ***strengthen the definition of permanent establishment*** (PE) in the covered tax treaties (Action 7) and incorporate measures designed to counter various BEPS strategies (such as commissionaire arrangements and split contracts) that might otherwise be used by taxpayers to avoid triggering a PE in order to avoid tax.

The MLI focuses on ***improving dispute resolution mechanisms*** between the competent authorities of each jurisdiction by inserting a number of measures designed to make mutual agreement procedures (MAP) more effective (Action 14), including the introduction of a formal MAP arbitration mechanism.

The MLI is accompanied by a detailed Explanatory Statement and additional materials in an effort by the OECD to promote clarity & transparency.

Could I be impacted by the MLI?

If you or your businesses engage in cross-border transactions with overseas entities or earn income outside of Jamaica in respect of which you rely on tax treaty protection, it will be important to evaluate whether any treaty benefit you currently enjoy may be restricted or removed by virtue of modifications to Jamaica's tax treaty network to be made by the MLI, once implemented.

New Bilateral Treaties

Let's Talk

New Income Tax Treaties with Mexico & Italy

At present, tax treaties are in force between Jamaica and the following jurisdictions:

Canada
China,
Denmark
France
Germany
Israel
Norway
Spain
Sweden
Switzerland
United Kingdom
United States
CARICOM STATES:
Antigua
Barbados
Belize
Dominica
Grenada
Guyana
Saint Kitts & Nevis
Saint Lucia
St. Vincent & the Grenadines
Trinidad & Tobago

On 19 January 2018 Jamaica signed an income tax treaty in Kingston with **Italy**. This is the first tax treaty between the two countries. Both countries have also ratified the treaty so it now enters into force.

This follows the ratification by **Mexico** of its income tax treaty with Jamaica on 22 December 2017 so it will enter into force on 24 March 2018 as it had been previously ratified by Jamaica. The treaty had been signed in Mexico City on 18 May 2016.

Share Buy-Backs

Let's Talk!

New rules facilitate repurchase of listed shares:

The Companies Act provides various mechanisms whereby a company may either redeem or purchase its own shares subject to meeting the various conditions and requirements stipulated. Notwithstanding this, there were no complementary provisions in Jamaican tax law and this adversely impacted the capacity of companies to implement such transactions without triggering onerous tax liabilities.

Recognising the merits of facilitating companies in undertaking share redemptions and buy-backs, the Government recently amended the relevant tax laws to accommodate a transaction where:

1. a company redeems, purchases or otherwise acquires shares issued by it;
2. the shares are listed on a recognized stock exchange; and
3. the shares are redeemed, purchased or otherwise acquired by the company pursuant to the rules of this recognized stock exchange; and
4. comply with any terms and conditions upon which the shares were issued by the company.

It is intended that a redemption or buy-back of shares meeting the above criteria should no longer trigger a distribution for income tax purposes. In addition the buy-back should also be exempt from both transfer tax and stamp duty.

Special Economic Zones – A Recap

Let's Talk!

Special Economic Zones:

The Special Economic Zones Act, 2016 provides for the development, regulation, construction, supervision, management and control of Special Economic Zones (SEZ). It establishes a Special Economic Zone Authority (SEZA) to regulate and supervise SEZs. The long-awaited Regulations to support the SEZ Act were passed late last year.

The Minister of Industry, Commerce, Agriculture & Fisheries may designate a geographical area as a SEZ. Zones established can either be general or specialised (limited to specific economic activities). The SEZ Act does not permit the Minister to designate single-entity zones save in limited circumstances. Entities already operating as "approved enterprises" under the Jamaica Export Free-Zone Act are offered a four-year grandfathering period to migrate to the SEZ regime from the Free Zone regime (which has been repealed by Jamaica due to its WTO obligations).

Certain activities may not be conducted within a designated SEZ. These include extractive industries, tourism services, telecommunication services, public utilities, regulated financial services, construction services, real estate, health services, catering services or retail trade. The SEZ regime offers a series of tax incentives to approved developers and approved occupants of a designated Zone. Relief may not be claimed under certain other incentives in addition to the SEZ.

Special Economic Zones – A Recap

Let's Talk!

Special Economic Zones – Principal Tax Benefits:	Developer	Occupant
Corporate Income Tax (CIT):		
12.5% CIT Rate on profits derived from approved SEZ activities	√	√
Preferential Capital Allowances	√	√
Employment Tax Credit (ETC) (up to cap of 30% of tax payable)	√	√
Not subject to ETC claw-back provisions	X	√
Promotional (R&D) Tax Credit (up to cap of 10% of tax payable)	√	√
Exempt from income tax on profits derived from rental of property within Zone to unconnected parties	√	√
Income Tax on Dividends:		
Dividend income on shares held by approved developer/occupant	√	√
Dividends paid to a non-resident out of profits from approved SEZ activities – withholding tax @ 0%	√	√
Customs Duty: Exemption on imports into the SEZ	√	√
Duty drawback where local supplier sells into SEZ	√	√
GCT: Zero-rating of imports/supplies from customs territory into SEZ	√	√
Transfer Tax & Stamp Duty:		
ASD – Exemption on imports into the SEZ	√	√
50% relief of stamp duty on purchase/lease of land for use in SEZ	√	X
Exemption on lease of land by developer to occupant	√	√
Sale of land by developer for use in development/operation of SEZ	√	X
Asset Tax: Exemption from asset tax	X	√

US Tax Reforms

Let's Talk!

Extensive overhaul of the US tax code

The recent U.S. tax reform effort culminated with the enactment of the Tax Cuts and Jobs Act ("HR1") in December 2017. HR1's underlying principles include: the simplification of the U.S. tax code for individuals, and making U.S.-based businesses more competitive in the global market by lowering the corporate tax rate from 35% to 21% and moving the U.S. to a 'territorial' tax system.

HR1 includes significant changes to the manner in which the U.S. taxes international business. The change from a global tax system to a territorial tax system requires a 'cleanse' of the historic global system via the 'toll tax' which triggers a deemed repatriation of all untaxed foreign earnings for certain U.S. owners of applicable foreign corporations. The toll charge carries a reduced tax rate from the historic 35% corporate rate (and post-2017 corporate rate of 21%) and can be paid over a number of years beginning in 2017; however, these untaxed earnings were often indefinitely reinvested in the foreign country and thus would not have been subject to U.S. tax until repatriated.

HR1 has also introduced the Base Erosion and Anti-Abuse Tax (or "BEAT") which targets U.S. tax base eroding payments to non-U.S. affiliates with a minimum tax. Another new tax enacted by HR1, the Global Intangible Low-Tax Income ("GILTI") tax, operates similar to the Subpart F income regime and has a significant impact to U.S.-owned foreign entities with limited to no trade or business assets.

US Tax Reforms

Let's Talk!

Extensive overhaul of the US tax code - continued

Additionally, HR1 includes changes to the historic Controlled Foreign Corporation ("CFC") and Passive Foreign Investment Company ("PFIC") rules which cast a wider net over U.S. owned foreign corporations.

In light of the above, a number of structures commonly seen in the Caribbean will need to be re-examined; particularly those with U.S. ownership or affiliates. First, U.S. owners of Caribbean entities will need to determine if they are subject to the toll tax on any untaxed earnings within these non-U.S. entities.

Payments from U.S. affiliates to entities domiciled in the Caribbean which hold intellectual property ("IP") including patents, trademarks, etc. or provide reinsurance to the U.S. entities may now be subject to the BEAT.

Additionally, such Caribbean entities which are U.S. owned may cause the U.S. shareholders to be subject to the GILTI tax. The use of 'voter cutback' rules or the issuance of non-voting preference shares which thus historically limited a U.S. person's voting power in a foreign entity no longer mitigates the risk of the foreign entity being a CFC.

If your business or group is owned in whole or in part by US owners or you have US affiliates, you should pay particular attention to these reforms and consider how they may impact you.

EU Tax Blacklist

Let's Talk!

List of Non-Cooperative Jurisdictions

The European Union (EU) issued a list of non-cooperative tax jurisdictions on 5 December 2017.

The stated objective of this list is to assist the EU in fighting tax evasion and avoidance by targeting counter-measures against listed jurisdictions which the EU has determined "*consistently refuse to play fair on tax matters*". At present the precise counter-measures to be used have not yet been decided upon or implemented.

In evaluating what jurisdictions should be placed on the list, the EU assessed three key areas:

Transparency:	Does the jurisdiction comply with the international standards on information exchange?
Fair Tax Competition:	Does the country have harmful tax practices or regimes? Does it apply anti-BEPS measures?
Real Economic Activity:	Does the country's tax rate encourage artificial tax structures?

EU Tax Blacklist

Let's Talk!

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EU Tax Blacklist

List of Non-Cooperative Jurisdictions

In recognition of the major impact of hurricanes in the Caribbean in September 2017, it was agreed that the screening process would be temporarily put on hold for Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis, Turks and Caicos Islands and the US Virgin Islands.

The initial list classified seventeen jurisdictions (including four * in the Caribbean region) as non-cooperative (see table below). On 23 January 2018, eight jurisdictions were removed from the list following commitments made at a high political level to remedy EU concerns (see strike-through in table below).

- American Samoa
- Bahrain
- ~~Barbados *~~
- ~~Grenada *~~
- Guam
- ~~Korea (Republic of)~~
- ~~Macao SAR~~
- Marshall Islands
- ~~Mongolia~~
- Namibia
- Palau
- ~~Panama~~
- Saint Lucia*
- Samoa
- Trinidad & Tobago*
- ~~Tunisia~~
- ~~United Arab Emirates~~

The EU has indicated that jurisdictions removed from the list shall be subject to close monitoring to ensure that commitments made are followed through.

Let's Talk!

To discuss specifics on how these recent tax developments may impact your business or for assistance on any other tax matter, please liaise with your local PwC contact or any of the Tax Services team listed here.

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