

**A BILL
ENTITLED**

AN ACT to Make provision for a minimum business tax in relation to specified taxpayers, and to validate and confirm as lawful the provisional imposition and collection of such tax, and for connected matters.

BE IT ENACTED by The Queen's Most Excellent Majesty,
by and with the advice and consent of the Senate and House of
Representatives of Jamaica, and by the authority of the same, as
follows:-

Short title.

1. This Act may be cited as the Minimum Business Tax Act, 2015.

**Interpre-
tation.**

2. – (1) In this Act -

“Commissioner General” means the Commissioner General of
Tax Administration Jamaica;

“minimum business tax” means the tax imposed under section 4;

“prescribed amount” has the meaning assigned to it in subsection
(2);

“prescribed penalty” means the penalty specified in section 6(4);

“specified taxpayer” has the meaning assigned to it in the
Schedule;

"year of assessment" means the period of twelve months
commencing on the first day of January in each year.

(2) The reference in subsection (1) to the “prescribed amount” is
a reference to the amount of three million dollars or such other amount
as the Minister may, by order subject to affirmative resolution,
prescribe.

**Application
of Income
Tax Act.**

3. Subject to the provisions of this Act, the provisions of the *Income*

Tax Act, other than section 79 (enforcement of taxes), apply, with such modifications as may be necessary, to the minimum business tax as they apply in relation to income tax.

Liability to minimum business tax.

4. Notwithstanding any provision to the contrary in the *Income Tax Act* or any other enactment, and subject to the provisions of this Act, every specified taxpayer shall pay, by way of tax, a sum (in this Act referred to as the “minimum business tax”) in the amount and manner specified in the Schedule.

Administration of tax.

5. – (1) The Commissioner General is responsible for administering the minimum business tax.

(2) The provisions of the *Tax Collection Act* relating to –

- (a) the payment, collection and recovery of tax and
- (b) offences and penalties,

apply with the necessary changes to the payment, collection and recovery of the minimum business tax.

(3) In addition to any other remedy provided under the *Income Tax Act* or *Tax Collection Act*, the minimum business tax and any prescribed penalty payable in connection therewith may be sued for and recovered in the Revenue Court or in a Resident Magistrate's Court (without limit of amount) by a Collector of Taxes as a debt due to the Government.

Failure to pay tax and penalty therefor.

6. – (1) A specified taxpayer who has, by the respective due dates for payment in any year of assessment, failed to pay, in whole or in part, any amount of minimum business tax due and payable, is liable to the prescribed penalty for the month in which the minimum business tax or any portion thereof becomes outstanding and for each subsequent calendar month or part thereof, until the specified

taxpayer's liability for the minimum business tax is discharged, and the specified taxpayer's liability to pay the minimum business tax is only to be treated as discharged on the date that the amount thereof is paid in full.

(2) Minimum business tax or any portion thereof is regarded as outstanding if it is unpaid as at the first day of the calendar month following the due date for payment.

(3) For the purposes of this Act, the prescribed penalty is the amount of one and a half *per cent*, or such other percentage as the Minister may by order prescribe, for each calendar month or part thereof, of the amount of any minimum business tax that is outstanding within the meaning of subsection (2).

(4) The prescribed penalty is payable in lieu of the interest which would otherwise be chargeable on the outstanding amount under the *Income Tax Act* or the *Tax Collection Act*.

Regulations. 7. – (1) The Minister may make regulations generally for the proper administration of and giving effect to the provisions of this Act.

(2) Notwithstanding section 29(b) of the *Interpretation Act*, regulations made under this Act may provide, in respect of the breach thereof, for the imposition of penalties, on summary conviction in a Resident Magistrate's Court, of a fine not exceeding one million dollars or imprisonment for a term not exceeding six months or of both such fine and imprisonment.

(3) Regulations made under this section are subject to affirmative resolution.

Power of Minister to amend monetary penalties and Schedule. Validation and indemnity.

8. The Minister may, by order subject to affirmative resolution –
- (a) amend any monetary penalty prescribed by or under this Act;
 - (b) amend the Schedule.
9. – (1) Notwithstanding sections 3 and 4(2) of the *Provisional Collection of Tax Act* and anything to the contrary in any other enactment –
- (a) the purported imposition of a minimum business tax by the two Orders, made pursuant to section 3 of the *Provisional Collection of Tax Act* and each entitled the *Provisional Collection of Tax (Minimum Business Tax) Order, 2014*, and published in the *Jamaica Gazette Supplement, Proclamations, Rules and Regulations*, on March 31, 2014 and November 28, 2014, respectively; and
 - (b) the collection of the tax purportedly imposed under either of those Orders, and the collection of tax as minimum business tax during any period prior to the coming into operation of this Act,

by the Government, and persons acting on behalf of the Government, in good faith and inadvertent that the imposition and collection was invalid, improper or unlawful, by virtue of the Orders not having been confirmed, by resolution of the House of Representatives, pursuant to section 3(4) of the *Provisional Collection of Tax Act*, are hereby declared to have been validly, properly and lawfully done to all intents and purposes and with effect as if duly authorized by law.

- (2) Every person liable to be legally proceeded against on the ground that any of the acts referred to in subsection (1), though done

in good faith, was unauthorized, unlawfully done, or otherwise illegal or improper for any of the reasons specified in subsection (1), is freed, acquitted, discharged and indemnified as well against The Queen's Most Gracious Majesty, Her Heirs and Successors as well as against all persons, whatever, from such liability.

SCHEDULE (Sections 2, 4 and 8)

Further Provisions for Minimum Business Tax

Interpretation 1. - (1) In this Schedule -

“assessment period” in relation to any specified taxpayer, means the period of twelve months commencing on the first day of January in each year or, as applicable, the permitted accounting period within the meaning of section 6(7) of the *Income Tax Act*;

“gross revenue” in relation to an individual, means the aggregate amount of income of the individual from all sources (before any deductions under the *Income Tax Act*) but excluding-

(a) all sums referred to in paragraph (c) of section 5(1) of the *Income Tax Act* that are subject to tax, and which tax is subject to deduction at source in accordance with the *Income Tax (Employments)*

Regulations;

(b) all items referred to in sub-paragraphs

(i) to (viii) of the proviso to paragraph (c) of section 5 (1) of the *Income Tax Act* that are specifically not subject to tax under that paragraph; and

(c) any other income which is subject to deduction at source pursuant to the *Income Tax Act*, and which is not income earned in the carrying out or exercise of a trade, profession, vocation or business.

“specified taxpayer” means -

(a) a company or other body corporate, incorporated or registered under any of the following enactments, namely –

(i) the *Companies Act* (including companies incorporated outside of Jamaica and registered under Part X of that Act);

(ii) the *Building Societies Act*;

(iii) the *Co-operative Societies Act*

(iv) the *Friendly Societies Act*;

(v) the *Industrial and Provident Societies Act*,

other than –

(vi) an entity that is a charitable organization registered under the *Charities Act*;

(vii) an entity that is an international

organization that is the subject of a declaration under section 6 of the *Diplomatic Immunities and Privileges Act*;

(viii) a foreign organization that is the subject of a declaration under section 3 of the *Technical Assistance (Immunities and Privileges) Act*; or

(ix) any other entity or category of entity that the Minister may, by order, prescribe.

(b) an individual who carries on or exercises a trade, profession, vocation or business (otherwise than as a partner in a partnership) who has gross revenue from any such activity of not less than the prescribed amount in that individual's most recent assessment period ending prior to June 15 of the year of assessment in which the minimum business tax is payable (whether or not the individual's most recent assessment period has ended in that year or assessment or in the prior year of assessment);

(c) an individual who carries on or

exercises a trade, profession, vocation or business as a partner in a partnership and who has gross revenue of not less than the prescribed amount in that individual's most recent assessment period ending prior to June 15 of the year of assessment in which the minimum business tax is payable (whether or not the individual's most recent assessment period has ended in that year or assessment or in the prior year of assessment), and for this purpose—

- (i) the total income of the partnership for that assessment period is to be allocated to each partner in like manner as the profits or losses of the partnership are allocated, or in such other manner as the Commissioner General may allow; and
- (ii) any other income comprising part of the individual's gross revenue in the assessment period

(including gross revenue, other than income from the partnership, that arises from any activity referred to in paragraph (b)) is also to be included in determining whether the individual has gross revenue of not less than the prescribed amount in the assessment period.

Rate of tax.

2. - (1) Minimum business tax is payable by a specified taxpayer in each year of assessment in accordance with this Schedule and the other provisions of this Act.

(2) The minimum business tax payable in each year of assessment is the sum of \$60,000.00, and is payable as follows –

- (a) \$30,000.00, on or before June 15 of the year of assessment;
- (b) \$30, 000.00, on or before September 15 of the year of assessment.

Credit for income tax.

3. - (1) Subject to sub-paragraphs (3) and (4), the minimum business tax paid by a specified taxpayer in any year of assessment is to be credited towards the income tax payable by the specified taxpayer for the assessment period of the specified

taxpayer that ends in that year of assessment, and may not be credited towards the income tax payable by the specified taxpayer for any other assessment period.

(2) Subject to sub-paragraphs (3) and (4), the minimum business tax paid by a specified taxpayer in a year of assessment accordingly discharges a corresponding amount of the liability of the specified taxpayer to income tax for the assessment period ending in that year of assessment (without reducing or otherwise affecting the remainder of such liability), and for no other assessment period.

(3) In the case of an individual (including a partner in a partnership), the amount of minimum business tax paid by the individual may not be credited towards income tax payable by the individual on emoluments of the individual that are included in the individual's final return of income.

(4) For the purposes of this paragraph, the minimum business tax is to be applied against the remaining income tax (if any) after all other credits have been taken, and may not be claimed as a credit unless all other credits have first been fully utilized.

(5) An entity incorporated or registered under the *Co-operative Societies Act* or that is otherwise a specified taxpayer, but which is, in respect of any assessment period, not liable to

income tax, shall pay and bear the minimum business tax for the applicable year of assessment, notwithstanding that the entity is not able to benefit from the credit conferred under this paragraph.

**Minimum
business tax as
final tax.**

4. The minimum business tax is not to be used —
- (a) as an allowable deduction for the purposes of computing statutory income or chargeable income, as the case maybe; or
 - (b) in determining estimated tax payable,
- under the *Income Tax Act*.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to make permanent the minimum business tax that was initially imposed by Orders made under the *Provisional Collection of Tax Act*.

By virtue of the Orders not having been confirmed by resolution of the House of Representatives as statutorily required, this Bill also provides for the validation of the imposition and collection of the tax prior to the coming into operation of this Act.

**Peter D. Phillips, Ph. D., M.P.
Minister of Finance and Planning**

