

THE EDUCATION TAX ACT

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Categories of taxpayers.
4. Imposition of education tax.
5. Income tax effects of this Act.
6. Liability of employer to pay tax due from employed persons.
7. Exemption.
8. Treatment of education tax paid by employer for purposes of income tax.
9. Employer failing to pay tax.
10. Power of Minister to remit education tax.
11. Designation of responsible officer by bodies corporate.
12. Offences and penalties.
13. General regulations as to payment and collection of education tax, etc.

SCHEDULES.

THE EDUCATION TAX ACT

Act
7 of 1987.

[1st July, 1983.]

[Sections 11 and 12: 8th May, 1987.]

1. This Act may be cited as the Education Tax Act. Short title.

2. In this Act— Interpreta-
tion.
 - “appointed day” means the 4th day of July, 1983;
 - “Commissioner” means the Commissioner of Inland Revenue;
 - “domestic worker” means a person employed otherwise than for the purposes of a trade or business, for the comfort or convenience of a member of a household or in or about a dwelling house or such other premises as may be prescribed in such capacities as housekeeper, cook, maid (including children’s maid) laundress, butler, general helper, gardener, chauffeur or other similar capacity;
 - “earnings” means in relation to any person in any income tax year, the statutory income computed pursuant to the Income Tax Act as being the statutory income of that person for that year modified to such extent as may be prescribed by regulations, and, without prejudice to the generality of the foregoing, such regulations may have the effect of increasing or decreasing the amount which shall be taken into account as earnings;
 - “education tax” or “tax” means the education tax imposed by this Act and includes all penalties and interest that are or may be added to a tax under this Act;

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“**emoluments**” means any emoluments assessable to income tax pursuant to paragraph (c) of section 5 of the Income Tax Act (other than annuities, pensions, superannuation or other allowances payable in respect of past services in any office or employment of profit and such other categories of emoluments as may be prescribed) being emoluments from which income tax is deductible pursuant to the Income Tax (Employments) Regulations, whether or not tax in fact falls to be deducted therefrom;

“**employed person**” means a person over the age of eighteen and under retirement age gainfully occupied in employment specified in the First Schedule and earning not less than the minimum wage as prescribed under the Minimum Wage Act;

First Schedule.

“**employer**” means any person who has in his employment a person who is required to pay education tax pursuant to this Act;

“**income tax**” means income tax payable pursuant to the Income Tax Act;

“**income tax year**” means the year of assessment as defined in the Income Tax Act;

“**retirement age**” means the age of sixty-five years;

“**self-employed person**” means, subject to section 3, a person gainfully occupied in Jamaica who, in relation to that occupation, is not an employed person;

“**taxpayer**” means any employed person, self-employed person or domestic worker and any employer who is required to pay tax pursuant to this Act;

“**tax week**” means the period of seven days commencing immediately after twelve o'clock midnight on each Sunday and ending at twelve o'clock midnight on the Sunday next following;

“tax year” means the period of fifty-two or fifty-three weeks beginning with the first Monday of January in any calendar year and ending on the Sunday immediately before the first Monday of the succeeding calendar year but in relation to the year 1983 it means the period beginning with the first Monday of July, 1983 and ending on the Sunday immediately before the first Monday in January, 1984;

“wages” includes salary or any other remuneration.

3.—(1) For the purposes of this Act, taxpayers shall be divided into the following categories—

Categories
of tax-
payers.

- (a) employed persons;
- (b) self-employed persons;
- (c) employers.

(2) The Minister may by regulations modify the application of subsection (1) in relation to cases where it appears to him desirable to do so by reason of the nature or circumstances of a person’s employment or otherwise, and, without prejudice to the generality of the foregoing, such regulations may provide—

- (a) for disregarding or for treating as not being employment, either as a self-employed person or as an employed person—
 - (i) employment which in the opinion of the Minister is of a casual or subsidiary nature or in which the person concerned is engaged only to an inconsiderable extent;
 - (ii) employment in the service, or for the purposes of the trade or business, or as a partner, of a relative of the person concerned;

- (iii) such employment in the service of, or in the service of a person employed to, such international organizations or countries (other than Jamaica), as may be specified in the regulations;
- (b) for treating as employment as an employed person—
 - (i) such employment as a self-employed person as may be specified in the regulations;
 - (ii) such employment outside Jamaica in continuation of gainful employment in Jamaica as may be specified in the regulations;
- (c) for treating as employment as a self-employed person—
 - (i) such employment as an employed person as may be specified in the regulations;
 - (ii) such employment outside Jamaica in continuation of gainful employment in Jamaica as may be specified in the regulations;
- (d) for treating for the purposes of this Act, or of such provisions thereof as may be specified in the regulations, a person's employment either as an employed person or as a self-employed person as—
 - (i) continuing during periods of holiday, incapacity for work or in such other circumstances as the Minister thinks appropriate;
 - (ii) ceasing in such circumstances as may be prescribed.

Imposition
of educa-
tion tax.

4.—(1) Subject to the provisions of section 6, education tax shall be payable under this Act by taxpayers in accordance with the provisions of this section.

(2) Education tax shall be payable in such manner and on such terms and conditions as may be prescribed in regulations, so, however, that different rates of tax, different methods of payment and different terms and conditions may be prescribed for different categories of taxpayers.

(3) Any regulations made pursuant to subsection (2) shall be subject to affirmative resolution of the House of Representatives and may be made to have effect from such date as may be specified therein not being a date earlier than the 1st day of July, 1983.

(4) Subject to the provisions of this Act and the regulations, no person may pay education tax unless he is liable to do so.

(5) The Minister may provide by regulations for the exemption of persons specified in those regulations, in whole or in part, from liability to pay education tax.

(6) Until varied or revoked by regulations made under section 3 (2) or under subsection (2) of this section the provisions of the Second and Third Schedules shall have effect.

Second
and Third
Schedules.

(7) All regulations made under section 3 (2) or under subsection (2) of this section shall have the same force and effect as if they were contained in the Second or Third Schedule, as the case may be.

5.—(1) Subject to the provisions of this Act, and except insofar as regulations otherwise provide, the provisions of the Income Tax Act, or any regulations thereunder, concerning payment, collection and recovery of income tax, and the enforcing of payment shall apply to education tax, in the same way as they apply to income tax; and no obligation as to secrecy imposed by statute or otherwise on persons employed in relation to income tax shall prevent information obtained in connection with the assessment or collection of income tax from being disclosed by or under the authority

Income tax
effects of
this Act.

L.N.
165/1999.

of the Commissioner of Taxpayer Audit and Assessment in connection with the operation of this Act relating to the calculation or collection of tax under this Act.

(2) Nothing in this Act shall prevent the disclosure, for the purposes of this Act, of information relating to tax payable pursuant to this Act.

Liability of
employer to
pay tax due
from em-
ployed
persons.

6.—(1) Subject to subsection (2), or where regulations otherwise prescribe, an employer liable to pay tax in respect of a person employed by him shall, in the first instance, be liable to pay also, on behalf of and to the exclusion of that person, any tax payable by that person as an employed person for the same tax week and, for the purposes of this Act, the tax paid by an employer on behalf of an employed person shall be deemed to be tax paid by the employed person.

(2) Where a taxpayer is employed to more than one employer and the total emoluments of such taxpayer for the tax week exceeds the minimum wage, the tax payable by such taxpayer shall be in such manner and at such times as may be prescribed.

(3) Notwithstanding any contract to the contrary, an employer shall not be entitled to deduct from the emoluments of a person employed by him, or otherwise to recover from such person, the education tax (hereinafter referred to as "employer's tax") which the employer is liable to pay in respect of that person; and any employer who deducts or attempts to deduct the whole or any part of such employer's tax from the emoluments of that person shall be guilty of an offence.

(4) An employer shall be entitled, subject to and in accordance with regulations, to recover from an employed person's pecuniary remuneration and not otherwise the

amount of any education tax paid or to be paid by him on behalf of that person.

7.—(1) The following employers shall, subject to subsection (3), not be liable to pay employer's tax under this Act— Exemption.

- (a) a Ministry or department of Government;
- (b) a statutory body or authority;
- (c) a company registered under the Companies Act, being a company in which the Government or an agency of Government holds not less than fifty-one *per centum* of the ordinary share (hereafter in this section referred to as a prescribed company);
- (d) any Parish Council;
- (e) the Kingston and St. Andrew Corporation;
- (f) the University of the West Indies.

(2) Nothing in subsection (1) shall exempt an employer referred to in that subsection from its obligation—

- (a) to deduct and account to the Commissioner for education tax required to be withheld from emoluments payable to persons employed by that employer; or
- (b) to render to the Commissioner returns and information required pursuant to this Act or the regulations.

(3) The Minister may, by notice published in the *Gazette*, exclude from the application of subsection (1) any statutory body or authority or any prescribed company, as the case may be, specified in that notice.

8. For the purposes of section 13 of the Income Tax Act, employer's tax payable pursuant to this Act shall be treated as expenses wholly and exclusively incurred in acquiring income.

Treatment of education tax paid by employer for purposes of income tax.

Employer failing to pay tax.

9.—(1) Where an employer who is liable to pay education tax in accordance with section 6, fails to pay such tax within the prescribed time, and the Commissioner is unaware of the amount, if any, which the employer is liable to pay, the Commissioner may give notice to such employer requiring him to render, within the time stated in the notice, a return showing the following particulars—

- (a) the name of every employed person to whom payment of wages was made by that employer during the period in question;
- (b) the amount of such wages paid; and
- (c) the amount of education tax due to be paid—
 - (i) on behalf of employed persons aforesaid; and
 - (ii) in respect of employer's tax.

(2) The Commissioner shall ascertain and certify the amount of education tax which the employer is liable to pay to the Commissioner in respect of the period in question.

(3) The production of the certificate issued by the Commissioner under subsection (2), shall be sufficient evidence that the amount shown in the said certificate is the amount of education tax that the employer is liable to pay to the Commissioner in respect of the period in question until the contrary is proved.

Power of Minister to remit education tax.

10. The Minister may remit the whole or any part of the education tax payable by any person if he is satisfied that it would be just and equitable to do so; and notice of such remission shall be published in the *Gazette*.

Designation of responsible officer by bodies corporate.

11.—(1) Where an employer is a body corporate such employer shall designate an officer of that body corporate (hereafter in this section referred to as the "responsible officer") who shall be—

- (a) answerable for doing all such acts, matters and things as are required to be done by virtue of this Act or the regulations for the payment of education tax; and
- (b) responsible for making payment to the Collector of Taxes of education tax payable on behalf of employed persons employed by that body corporate in accordance with the provisions of this Act or the regulations relating to the payment of such education tax.

(2) The employer shall give written notice to the Collector of Taxes of any designation made pursuant to subsection (1) and shall also notify the Collector of Taxes of any change in that designation.

(3) In the absence of any designation pursuant to subsection (1), the person who is the managing director of the body corporate or, as the case may be, the person who (by whatever name called) performs the duties normally carried out by a managing director or, if there is no such person, the person in Jamaica appearing to the Collector of Taxes to be primarily in charge of the body corporate's affairs shall for the purposes of this section be deemed to be the responsible officer.

(4) A responsible officer shall, within fifteen days after the end of each month, notify the Collector of Taxes of any outstanding balances of education tax payable by the body corporate as at the end of that month and any responsible officer who fails to do so shall be guilty of an offence under this Act.

(5) A responsible officer who fails or neglects to carry out his duties in accordance with this section shall—

- (a) in the event of failure or neglect to make payment of education tax as required by this section, be jointly and severally liable (together with the body

corporate) for the education tax and any penalty in relation thereto;

(b) in any other case, be liable (together with the body corporate) for any penalties under this Act, unless he satisfies the Collector—

(i) that there were *bona fide* reasons for the failure or neglect and that payment of education tax could not have been made in the circumstances; or

(ii) that he was overruled by the board of directors (hereinafter referred to as the board) or was otherwise prevented by the board or by any director thereof from carrying out his duties under this section.

(6) If the Collector is not satisfied as to the matters referred to in subsection (5), he shall advise the responsible officer concerned of his decision in writing.

(7) Where the responsible officer satisfies the Collector pursuant to subsection (5) (b) (ii) that he was overruled or prevented as mentioned in that subsection, each director shall be jointly and severally liable (together with the body corporate) for education tax and any penalty in relation thereto unless he proves that—

(a) there were *bona fide* reasons for overruling the responsible officer or preventing payment and that payment of education tax could not have been made in the circumstances; or

(b) he was neither a party to the decision by the board to overrule the responsible officer nor a party to any action by the board or any other director to prevent payment.

(8) A person who is designated a responsible officer shall not be liable in respect of education tax which became payable—

- (a) prior to his designation; or
- (b) during any period when, consequent on notification to the Collector, he is not the responsible officer.

(9) In this section—

“body corporate” means—

- (a) a statutory body or authority specified in a notice pursuant to section 7 (3); and
- (b) a company;

“company” means a company incorporated or registered under the Companies Act, not being a company exempt from liability to pay education tax pursuant to section 7.

12.—(1) If an employer has failed or neglected—

- (a) to pay any education tax which under this Act or the regulations he is liable to pay; or
- (b) to comply with the requirements either of this Act or the regulations relating to the payment and collection of such education tax and the furnishing of information relating thereto,

Offences
and
penalties.

such employer shall be liable on summary conviction in a Resident Magistrate’s Court to pay any amount outstanding and in addition a fine not exceeding five thousand dollars or treble the amount of education tax which is unpaid, whichever is the greater, and in default of such payment to imprisonment with or without hard labour for a period not exceeding twelve months.

(2) If any person practises or is concerned in any fraudulent act, contrivance or device with intent to defraud the Commissioner of education tax, he shall be liable on summary conviction in a Resident Magistrate’s Court to a

fine not exceeding five thousand dollars or treble the amount of the education tax which is unpaid or in respect of which payment is sought to be evaded, as the case may be, and, in default of payment, to imprisonment with or without hard labour for a term not exceeding twelve months.

(3) Any sum payable under the foregoing provisions of this section to the Commissioner shall be recoverable as a penalty and any such sum, other than a fine, shall, on recovery, be treated as a payment in satisfaction of the unpaid education tax.

(4) Every person having any official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential, all documents, information, returns, assessment lists or copies of such lists obtained from the Commissioner of Taxpayer Audit and Assessment and relating to the income or items of income of any person and shall make and subscribe a declaration to that effect before a Justice of the Peace.

(5) Every such person as is referred to in subsection (5) having possession of or control over any such documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies of such lists to any person—

(a) other than a person to whom he is authorized by the Minister to communicate it; or

(b) otherwise than for the purposes of this Act,

shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five thousand dollars and in default of payment, to imprisonment with or without hard labour for a term not exceeding twelve months.

