

MINISTRY PAPER NO. //

Assurance re Amendment of International Business
Companies (Exemption from Income Tax) Law, No.
36 of 1956

The House is invited to give an assurance to persons who have registered or propose to register Companies under the International Business Companies (Exemption from Income Tax) Law, No. 36 of 1956, that amending legislation will be introduced to clarify the provisions of the Law relating to (a) the payment of dividends to non-resident shareholders of an International Business Company and (b) the residential classification for income tax purposes, of any person or persons having control of such companies who visit the island from time to time for the sole purpose of supervising the business of any of these companies.

2. Briefly, the Law, which is designed to encourage influential international and other organisations to set up their management offices in Jamaica, provides for exemption from income tax of the profits of these companies and of dividends paid to their non-resident shareholders so long as the companies do not, inter alia, trade within the West Indies, British Guiana and British Honduras and are not by any means controlled (whether directly or indirectly) by persons resident in any of these territories. Several persons who have registered and are interested in registering such companies in Jamaica, have, however, pointed out that Section 4 of the Law is so worded that the Commissioner of Income Tax has the power to decide whether or not the usual tax must be deducted at source from such dividends. They also contend that there is no safeguard in the Law to prevent a person who visits the island from time to time solely for the purpose of supervising the affairs of the company from being classified, after a certain number of visits, in accordance with normal income tax practice, as a resident of Jamaica for income tax purposes.

3. Regarding (a), under section 4 of the Law, if a company declares a dividend it is obliged to deduct tax at the rate of 7/6d in the £ and pay it over to the Commissioner of Income Tax unless the Commissioner, pursuant to the first proviso of section 21 of the Income Tax Law, authorises the payment of dividend without deduction of tax. In effect, therefore, dividends are prima facie subject to tax. It has been represented that by taxing dividends payable out of the profits (which are tax free) of an international business company the whole purpose of the tax free concessions under the Law would be lost.

The first proviso to Section 21 of the Income Tax Law to which reference is made above, states that the Commissioner of Income Tax may authorise the payment of dividends without deduction of tax "where he is satisfied that the shareholders are not liable to tax". There can be both resident and non-resident shareholders with the latter in the majority and it has always been the

intention. . . . /

intention that non-resident shareholders should be exempt from payment of income tax on dividends received from an International Business Company but that such dividends should not be exempt if paid to a resident of the Island. In the latter case these dividends may be treated as income in the hands of the shareholders and assessable on them as such. There is therefore no need for the application of Section 21 of the Income Tax Law, 1954. It would therefore be in keeping with the intentions of the Law that provision be made to make it clear that the provisions of Section 4 of the Law shall apply only to dividends paid to resident shareholders of an international business company.

4. Regarding (b), Section 2 defines an International Business Company as a body corporate which, inter alia, is not by any means controlled by "persons resident" in the prescribed area. The expression "persons resident" is not defined in the Law nor in the Income Tax Law, Law 59 of 1954. In practice its meaning is based on United Kingdom case law which has established that frequent and regular visits, even of short duration, constitute a person a "resident" for purposes of income tax liability. Any attempt to define "person resident" would therefore be extremely difficult and would have complications in income tax practice. The problem is that a non-resident controlling shareholder of an international business company however may have to make frequent and regular visits to the Island for the purpose of supervising the company's operations and the possibility exists that technically he may become a "resident" for income tax purposes as explained above. To exclude the possibility of such a technical disqualification and without attempting to define "person resident" it would be in keeping with the intentions of the Law to provide that, for purposes of the International Business Companies Law, any person or persons having control of the Company who visits the island temporarily in connection with the Company's business shall not be regarded, for that reason only, as being a "person resident". This amendment would not preclude any such person from becoming a "person resident" under other considerations which may apply and which should properly be taken into account.

5. The representations were considered by the Cabinet on the 16th October, 1961, and it was decided that in view of the basic intention of the law, an assurance should be given that steps would be taken to introduce legislation in the House to clarify the position on the lines stated above and to put these particular matters beyond doubt. This decision was communicated to the persons concerned. They have, however, pointed out that should there be a change of Government before the necessary action is taken to amend the Law, the new Government would not be bound by this assurance.

As it is not possible for the necessary amending legislation to be introduced into the House before its dissolution a Resolution will be moved in due course asking the House to endorse the assurance given by the Cabinet that steps will be taken to amend the Law on the lines indicated and from the date on which the Cabinet's assurance was given.

V. L. ARNETT
Minister of Finance,
6th March, 1962.