

MINISTRY PAPER NO. 18

Introduction of further measures to  
deal with evasion and avoidance

I have to inform this Honourable House that Government has decided to introduce further measures to deal with evasion and avoidance of tax.

2. The incidence of evasion of tax by unlawful means and avoidance of tax by finding legal loopholes is rapidly increasing. This is a natural by-product of the commercial and financial activities of the country becoming more sophisticated but results in a serious loss of revenue. The only defence against such loss of revenue in every country is the enacting of new provisions which, in the case of unlawful evasion, strengthen the hand of the Commissioner of Income Tax in discharging his duties and in the case of avoidance which take advantage of loopholes, introduce specific measures of an anti-avoidance nature.

3. As the Income Tax Law of Jamaica was enacted and the Income Tax Department was organised under the colonial system, a more substantial modification of the existing Law and a more thorough re-organisation of the Income Tax Department are required than the usual ordinary improvements.

4. Certain anti-avoidance measures decided upon last year are now in the legislative machinery to which a number of new ones are being added this year.

5. The new provisions will remove loopholes resulting from weaknesses of the Law as inherited on Independence in the following respects:-

- (i) The definition of 'trade' as a basis for taxation in the Income Tax Law is, in fact, out-dated and reflects the 19th century situation in England. The excessive importance is attached to the place where the contract is made so a contract signed outside the island in most cases results in tax being collected on the profit by foreign countries instead of Jamaica.

In the old days the trader made his living by repeated small dealings whilst in the modern economy buying and selling of, let us say, a single merchant ship or supplying equipment to a single generating plant, can bring immense profits but under the old ideas this would escape tax. Business actions are sometimes closed up in such a way that the motive of making profit only comes to the surface after the first step in the deal was completed. The Law will be altered to bring all these situations within the concept of taxable trading.

- (ii) The next batch of provisions deals with abuses by branch establishments making payments to overseas connected persons under the heading of Management Expenses, Know-how fees, Advisory Services, etc. Very similar to this category are the arrangements by which Jamaican residents contract with companies set up in tax haven countries to reduce tax payable in Jamaica.

The existing rules relating to taxation of non-domiciled foreigners create an excessively favourable /

favourable position as compared with the tax liability of Jamaicans working side by side with them. Securing the continued happy relationship between the two groups of employees is an added reason for introducing various measures which will put to an end the existing malpractices.

- (iii) Industrial and Provident Societies which have been created for the economic benefits for small people but have been used by the wealthiest elements of the society to avoid tax. This will be prevented without any way affecting these societies if they are used for their original purposes.

6. The Government is aware of the existence of other serious loopholes but ordinary practical limitations (legislative work and enforcement of new rules) make it inescapable that the aim of stopping these loopholes should be achieved gradually step by step. The present measures are part of the continuous work of the Government in this respect.

7. In cases of unlawful evasion of tax apart from creating a better machinery for discovery of the evasion there will be increased penalties enacted for fraudulent evasion of tax and for ~~wilful neglect~~ resulting in under-assessment.

8. A considerable loss of the revenue has been caused by employers and others who collect taxes from employees and others on behalf of the Revenue but fail to pay over these sums either in time or at all. Actions and omission which result in the above situation will be made a specific offence and it is expected that thereby these losses to the Revenue will cease.

EDWARD SEAGA  
Minister of Finance & Planning  
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