

**GUYANA TAX LAWS - URGENT NEED FOR RELIEF by MR. M. MUNTAZ**  
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Tax must certainly be ranked among the most distasteful and despicable topic for discussion. So frequently is there that feeling of awe and hostility between the taxpayer and tax collection. Undoubtedly, tax and the system adopted for its collection have profound economic consequences. All the property and income of the taxpayers are involved, very often to their detriment.

Inevitably the question must be asked whether the system of tax is rightly castigated or not. Or to put in another way, is the tax-payer justly taxed? Would we endorse **Dr. Johnson's** definition in his famous *Dictionary of the English Language* over two hundred years ago of Excise as "A hateful tax levied upon commodities, and adjudged not by the common judges of property, but wretches hired by those to whom the Excise is paid".

Or would we agree with **Blackstone**, arguably the greatest English jurist, when he castigated the procedure involved by stating that the rigour and arbitrary proceedings of excise laws seem hardly compatible with the temper of a free nation.

It is believed that Guyanese are among the most highly taxed people in the world. There is a tax for almost everything we own, earn or consume. The list of taxes is most formidable. There is Income Tax which is so familiar

to us all, Capital Gains Tax, Property Tax, Estate Duty, Conveyancing duty, Customs and Excise duty, Consumption Tax and even a Travel Tax. And the list continues. One can well imagine the cost and time spent by taxpayers in preparing their returns and accounts for tax purposes. Small wonder that there has been an increasingly adversarial atmosphere between the Revenue and taxpayers, who will have no hesitation of taking advantage of any loophole that may emerge, whereas many years ago there tended to be a line of propriety that most would not cross. This reflects the disrepute which the tax system has fallen because of the arbitrary nature of the rules.

From the moment goods enter Guyana, they are subject to a Customs Duty which may range from 5% to 7%. One only has to consider the duty payable on a motor vehicle to appreciate its severity. Most of the goods we import or manufacture are further subject to a consumption tax which range from 2% for nails to 76% for motor spirits, including gasoline. If you wish to travel outside of Guyana, in addition to the travel voucher tax, an additional tax of 50% is levied on your Airline ticket.

The imposition of this particular tax results in a very peculiar and intriguing situation. Whereas some international airlines like BWIA claim to be incurring millions of dollars losses annually, the simple device of taxation enables the Government to earn millions of dollars from the very airline, which is operating at a loss. The same situation applies to the multinational Corporations which manufacture motor vehicles. Whereas some of them are

incurring millions of dollars losses, the Government earns millions of dollars by imposing taxes to the tune of over 100% on these very vehicles.

Not only are the things we consume or use or the income we earn taxable but also, our property. For those who are fortunate to own assets in excess of \$50,000.00 there is a property tax commencing from ½ % to 1½ %.

Some categories of persons are exempted from the imposition of some or part of these taxes such as some Government employees and holders of political office. Our Income Tax Act specifically mentions persons and bodies which are exempted from the tax such as the President's official emoluments received 'both when in and when absent from Guyana', the income of local authorities in so far as that income is not derived from a trade or business carried on by the local authority, statutory or registered building or friendly societies, charitable and educational institutions as approved by the Minister, wound disability, pensions and gratuities to members of the Guyana Defence Force, the income of the Catholic Hospital, income of Sports organisations and some others.

These numerous taxes, coupled with the removal of subsidies have been responsible to a large extent for the escalating cost of living. What is needed and urgently is a general reduction across the board of most of the taxes and where necessary an outright abolition.

Three taxes which have profound consequences on the economy of the country (and the taxpayers' pocket) merit some further comments, namely Income Tax, Capital Gains Tax and Estate Duty.

## **INCOME TAX**

Of all the taxes it seems that income tax is the most despicable of them.

The Income Tax Act of Guyana Cap. 81:01 was passed since the year 1929 with subsequent amendments. This Act was based on the principles of the English Income Tax Laws. It would be helpful to give a brief background to the English Income Tax Laws. In 1799, **William Pitt**, the Prime Minister of England proposed the first ever Income Tax Act which was "An Act for granting to His Majesty an aid and contribution for the prosecution of the War". It will be noted that originally this was a wartime measure which was intended to be temporary and the rate did not exceed 10% and so continued for the next 100 years.

There were, as would be expected, numerous objections to this new measure. One critic described it as "an inquisition more intolerable than any tax".

Even the Chancellor of the Exchequer in the year 1815 adopted a defensive posture when seeking to retain income tax by stating "A right

honorable gentleman not long since, has begged pardon of God, and of the Public, for the part he had taken in imposing this tax in 1806”.

Eventually in the year 1816, income tax ceased. But 26 years later it reappeared during the period of **Sir Robert Peel**'s government, not as a wartime tax, but for the purposes of repairing the deficiency which then occurred in the revenue to meet the expenditure of the country, and to enable the Government to make some reforms, with the view of improving the commerce and manufactures of the Kingdom. This again was intended to be for a temporary period of three years. It has since been with us.

Inevitably there were several criticisms upon its re-introduction. No less a person than the **Duke of Wellington**, in proposing the reintroduction of income tax spoke of 'the odious power given to the Commissioners and concluded that it will not be continued for one moment longer than is absolutely necessary.

Thus it can be seen that this 'temporary period' has lasted for over 150 years. Will it continue for another 150 years?

In Guyana all persons, except those specifically exempted, are chargeable with income tax on their net income, earned or unearned, at a rate commencing from 5% on the first chargeable \$1500.00 and then on a graduated scale going up to as much as 70% on income over \$20,300.00. There are certain deductible allowances as \$1250.00 for self and wife or reputed wife and \$500.00 for each unmarried child 16 years and under. Also

for medical, school and life insurance. What our income tax Laws seem to ignore is the spiraling cost of living!

The annual allowance of \$1250.00 can hardly cover the cost of a rental apartment, much less the exorbitant cost of clothing and food, when available. It was **Adam Smith**, one of the great thinkers of his era who said

“Every tax ought to be so contrived, as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state”.

He enumerated some of the ways, which include the disincentive effects of the tax and the consequences of the temptation created by the tax to avoid it. “The law, contrary to all the ordinary principles of justice, first creates the temptation, and then punishes those who yield to it”. It is hoped that Parliament will take the necessary steps as urgently as possible to temper the severity of this “inquisition more intolerable than any tax”.

It is surprising that many persons from countries which are heavily taxed, forsake their homeland and seek refuge in calmer climes? What is needed is a considerable and realistic increase of the deductible allowances, to bring them in line with the cost of living and a reduction in the rate of tax. Also a distinction should be drawn between earned and unearned income. Why should the same rate be applicable to both? Unless these injustices are remedied, there will be no incentive to produce more or increase productivity.

Who would do so, knowing that 70% of his earnings at the highest level will be taken away by the Revenue?

### **CAPTIAL GAINS TAX**

The Capital Gains Tax Act Cap. 81:20 is of much later vintage, having been introduced in Guyana in the year 1966. It is charged in respect of the net capital gain of any property arising from the change of ownership by which the value of that property at the time when such change of ownership occurs exceeds the cost of acquisition or its value at the time it was acquired by that person. There is provision for setting off capital losses. Also certain persons are exempted from this tax as with case of income tax. There is a flat rate of 20% chargeable on the net capital gain. This tax applies to any property, both movable and immovable, but is not payable where more than 25 years have elapsed after the date of acquisition.

What the Act studiously omits is the granting of relief or exemption with respect to certain property, like a dwelling house or a private motor car. Under the English Capital Gains tax laws, no tax is payable on these two items which is causing grave hardship to the taxpayer. It completely ignores the question of inflation and depreciation of money.

In practice, this is what happens. A tax payer buys a dwelling house for his personal occupation say \$30,000.00. He wishes to sell the property at the present inflated market price for \$60,000.00. Assuming he had done no

improvement to the property, he is liable to pay tax of 20% on \$30,000.00 i.e. \$6,000.00. If he wishes to purchase a similar property, maybe in a different district, it will cost him about the same \$60,000.00. Thus he has \$6,000.00 of his capital eroded by the imposition of this tax. A similar position arises in the case of a car or other property for personal use. The exemption granted where more than 25 years have elapsed from the date of acquisition is far too long and should be reduced drastically. It is hoped that our Parliament will enact the necessary legislation to exempt at least private dwelling houses and motor cars from such taxation and reduce the time limit of 25 years to 7 years. It should be mentioned that where the net chargeable gain does not exceed \$1,000.00, no tax is payable. By contrast, in English, the first £5,000.00 (\$25,000.00) is exempted from taxation and then after adjustment for inflation. Could we not borrow another leaf from the English?

#### ESTATE DUTY

A taxpayer may feel that his burdens have ended upon death, having to pay so many taxes during his lifetime. Unfortunately, this is not so and it will be cold comfort for him to know that even after death his estate is still subject to the payment of estate duty. The final coup de grace.

The Estate Duty Act was imposed in Guyana since the year 1898, just four years after its introduction in England. Our law was patterned along the lines of the English law. It is interesting to note that upon its introduction, like

income tax, the rate of taxation was small, the maximum rate being 8% of the deceased's net assets. However, over the years this figure has escalated to 80%. In Guyana the maximum rate is 60%. In the year 1975, estate duty in England was replaced by a capital transfer tax. In Guyana, the position has remained unchanged. Before its replacement in England, the widow or widower of a deceased person was entitled to a tax free allowance of up to £15,000.00 (G\$75,000.00). Also there is a tax free allowance of £50,000.00 (G\$250,000.00) in respect of gifts to charities. Both of those allowances are not included in our Estate Duty Act. The absence of these allowances, especially the former is cause great hardship to widows and widowers. Very often, the main asset a deceased person has left is a dwelling house. Why should a widow or widower be taxed on this? In many cases, he or she may not even have the cash to pay the estate duty.

I think it is time that the necessary amendment be made to our law to include these allowances. Also, small estates to the value of say \$10,000.00 should not be subject to estate duty. It is worthy to not that under the new English Capital Transfer Tax, the first £50,000.00 is free of tax.

## **CONCLUSION**

Reference must be made to a tendency which has arisen in recent items to attach conditions before payment of certain taxes is effected. A case in point is the requirement of a practice certificate in relation to members of

certain professions, like legal and medical practitioners, accountants, engineers and surveyors. In addition to paying a tax for the Certificate, it is stated that the above persons shall not practice for reward in any year unless the above Certificate is issued by the Commissioner of Inland Revenue and provided he has complied with certain provisions of the Income Tax Act which requires him, *inter alia*, to submit his returns and make the necessary payment of income tax due to date. These conditions seem discriminatory and may be an infringement of one's 'right to work' as enshrined in our **Constitution.**

Also recently, legislation was passed which requires a Certificate from the Commissioner of Inland Revenue stating that similar provisions of the Income Tax Act have been complied with regards to Returns and payment of income tax before one can pass title by way of sale or gift of any immovable property or motor vehicles. One wonders what other form of property this law will entrap at a later date?

Another disturbing feature which has reared its head recently, is the imposition of substantial penalties for late returns and late payments of certain taxes. In the case of estate duty and income tax the penalty is staggering 25% and 30% per annum respectively! Unless the taxpayer is ever vigilant, he may find not only his whole income but his estate being gobbled up by this drastic imposition.

Had **Shylock** imposed such a penalty for the late payment of his 'pound of flesh', his conduct would certainly be considered harsh and unconscionable. Could not the wages and salaries rise as substantially and frequently as the taxes and penalties?

Reference must also be made of the Property Tax Act Cap. 81:21 which was recently amended to increase the exemption granted to individuals for certain personal properties. Also to update the value of property for tax purposes by twenty-five years. When this Act was passed in the year 1962, the first \$200,000.00 of an individual's property was exempted from the tax. This figure has not changed and still remain after 21 years. Surely, with the high rate of inflation and the depreciating value of money, this sum must at least be doubled. I want to think that this is an oversight by framers of the recent amendment and should be corrected speedily.

Well, **Adam Smith** has the last word:

"When a nation is already overburdened with taxes, nothing but the necessity of a new conflict, nothing but either the animosity of national vengeance, or the anxiety for national security, can induce the people to submit, with tolerable patience, to a new tax".

*NB. 1. At 2008, the annual Income Tax allowance was \$336,000.*

*2. With effect from 1999, the annual Property Tax allowance was \$7,500,000.*

*3. The Capital Gains Tax remains at 20%.*

*4. The Estate Duty Act was repealed in 1991 (with savings).*

*5. A new Value Added Tax (VAT) of 16% was introduced from 1<sup>st</sup> January 2008.*

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