

Further to my previous comments, made on 25th May, 2018, to the Tobago Self-Government Bill, 2018, the changes made to the Tobago Self-Government Bill, 2020 and the Draft Tobago Island Administration Bill, 2021 are noted. A copy of the previous opinion and the previous Bill is attached hereto for ease of reference.

Of particular note are the following sections:

- Clause 21 of the Tobago Self-Government Bill, 2020, whereby the Fifth Schedule is inserted into the Constitution, whereby it is clarified that the Tobago Island Government would have exclusive administrative powers in Tobago with respect to the Finance but not with respect to Taxation.
- Clause 23(4) of the Tobago Island Administration Bill, 2021, where notable changes were made to the responsibilities of the Fiscal Review Commission which is now responsible to, inter alia:
 - Ensure that all revenues, fees and duties collected in Trinidad that are attributable to Tobago such as from custom duties, import duties and stamp duties and other duties shall be held for the account of Tobago;
- Clause 24 of the Tobago Island Administration Bill, 2021, which states that “There shall be a fund to be called ‘the Tobago Fund’ which shall consist of (a) such monies as shall be appropriated by Parliament for the use of the Tobago Island Government; and (b) such other monies as the Tobago Island Government may lawfully collect, borrow or be granted”.

As the Tobago Island Government does not have administrative powers over taxation, and the responsibilities of the Fiscal Review Commission has been changed so that it no longer has the power to ensure that Companies operating in Tobago pay taxes in Tobago, it would appear that the taxes for the Island of Tobago would still be collected by the Board of Inland Revenue. Therefore, these taxes are not monies that are “lawfully collected” by the Tobago Island Government but are monies that ought to be held in account for Tobago. The question therefore remains as to whether Tobago taxes are to be paid into the Consolidated Fund together with taxes collected on behalf of the Island of Trinidad or whether the Tobago taxes would fall under Clause 24(a) as being appropriated by Parliament for the use of the Tobago Island Government to be paid into the Tobago Fund.

The question also remains as to whether the functions and/or operations of the Board of Inland Revenue would have to change and/or adapt in any way, to not only administer the taxes for the Island of Tobago separately from the taxes of the Island of Trinidad but giving consideration to Section 4 of the Income Tax Act, which does not allow for tax information to be shared except in certain circumstances. Changes may be necessary to that section of the Income Tax Act, to allow for information to be shared with the Fiscal Review Commission, for the Commission’s fulfilment of its duties under Clause 23(4) of the Tobago Administration Bill.

The Board of Inland Revenue therefore seeks clarification regarding:

- The separation of taxes for the Island of Trinidad and the Island of Tobago, and the effect of same on the administrative duties of the Board of Inland Revenue;
- The sharing of taxpayer information with the Fiscal Review Commission of the Tobago Island Government in light of section 4 of the Income Tax Act.

Given the issues identified in my memo, I recommend that the JSC be informed of the conflict between the responsibility being granted to the Fiscal Committee and section 4 of the Income Tax Act. The Fiscal Committee cannot ensure revenues attributable to Tobago are being held in account for Tobago if the BIR does not have the power to share taxpayer information with the Committee. Ultimately, the BIR is a body governed by statute and we have to act in accordance with what the law permits us to do.

Further, there is the issue of whether the functions of the BIR would have to be changed to give effect to the separation of taxes collected on behalf of Trinidad and taxes collected on behalf of Tobago. This goes to the question of the Tobago Fund that has been created, however the Constitution mandates the BIR to pay all revenue received in Trinidad and Tobago into one Consolidated Fund. This also goes to the issue of the administrative functions of the BIR in keeping a separation in the accounting systems for both islands and whether further changes would have to be made to the Income Tax Act to reflect the necessary change in the administrative functions or whether it would simply be practical changes that has to be made.

If you need any further clarification, please feel free to contact us.