



GOVERNMENT OF ANTIGUA AND BARBUDA
Inland Revenue Department

Interpretations, Rulings & Opinions Inland Revenue Department
1 of 2018
(Issued January 2018)

**Re: Policy of the Inland Revenue Department's
application of Section 11(i) of the Income Tax Act Cap
212**

This ruling is made under the authority of Commissioner of Inland Revenue.

LEGISLATIVE REFERENCE:

The Income Tax Act Cap 212

Section 11(i) as amended.

Issue:

The issue of the Commissioner determining amounts he considers reasonable and just as an allowable tax deduction for salaries, wages, allowances, directors' fees and other payments made for services rendered by owners, shareholders, directors, spouses, and children of shareholders and directors or close family members (**The Group**) in excess of 25% of otherwise chargeable profits, has caused a need for a policy on the application of this piece of legislation. This policy seeks to provide clarity and bring a common understanding to this matter; as well as to state clearly the Inland Revenue's stance on the matter.

Policy:

With the 30th June, 2016 abolition of Personal Income Tax and Pay as You Earn (PAYE) taxes on payments and emoluments to The Group referred to in section

11(i) of the Income Tax Act Cap 212, this section will be applied as stated in the legislation for all corporations. However, while applying this piece of legislation in situations of a loss or slight chargeable profits*, the corporation is granted expenses categorised as **emoluments** to The Group of **no more than \$75,000 per person per financial year. For Individuals who at the end of the year occupy the position of director, a further grant of an additional \$24,000 per person will be allowed as an expense only if this additional expense can be matched by the average dividend paid (NOT simply declared) over the three (3) previous financial years.** This allowable deduction is what the Commissioner *deems* ***“reasonable and just”*** and can only be granted once **all** of the following conditions are satisfied:

1. The Schedule B of the Corporate Income Tax Returned filed must clearly state the name and the address of each person and the amount and nature of the expense attributable to each individual.
2. IAS 24 “Related Party Disclosures” must be complied with in full in the financial statements which accompany the Corporate Income Tax Return Submitted.
3. At least 60% of the emolument expense limit granted must be actually paid to the individual stated and NOT simply accrued. This means that if more than 40% percent of the expense limit remains as an account payable for each financial year in the name of that individual, the unpaid portion of the expense will be deemed a loan provided by the individual and will NOT be taken into consideration for the granting of an allowable expense. If no specific salary account payable is preserved and only a general account payable is kept by the corporation, then payments intended to debit this general account payable will be acknowledged on a First In First out Basis from 1st July, 2016, whether or not the repayment was intended to reduce an emolument expense payable to a member of The Group. *(Please note for the purpose of this policy statement on section 11(i) if a member of The Group decides to later forgive any portion of the emolument payable to them by the corporation, then this gain by the corporation will **not** be taxed if it was previously disallowed as an expense.)*
4. The amount categorized as emoluments must be wholly and exclusively incurred in the production of income and must not exceed the fair market value for the services provided. Additionally, if the corporation has other

expenses in the name of the individual for services rendered besides emoluments, the amount granted for emoluments by this policy will be reduced by the portion of expenses deemed as other than emoluments.

5. If an individual of The Group receives emoluments in a tax year from two or more related parties as defined by section 10(1)(j) of the Income Tax Act Cap 212, where the total amount from all related parties exceeds the maximum amount granted under this policy statement, then the amount granted as an allowable deduction for that individual will instead be the percentage attributable to each related party in question of the individual's total emoluments from all related parties multiplied by the maximum amount granted under this policy.

For expenses not categorized as emoluments

The amount considered “**reasonable and just**” shall be the entire expense stated in the income statement once **all** of the following conditions are satisfied:

1. The Schedule B of the Corporate Income Tax Returned filed must clearly state the name and the address of each person and the amount and nature of the expense attributable to each individual.
2. IAS 24 “Related Party Disclosures” must be complied with in full in the financial statements which accompany the Corporate Income Tax Return Submitted.
3. The amount must be wholly and exclusively incurred in the production of income and must not exceed the fair market value for the services provided.
4. Either, a signed contract and supporting invoices to support the transactions,
OR,
The amount has been filed to the Inland Revenue Department under the Unincorporated Business tax or any other law that applies at the time of the time of the transactions.

Any expense not supported by the criteria stated above will be disallowed or capped in accordance with the legislative direction of amounts in excess of 25% of otherwise chargeable profits.

Please note the following:

- *“Slight chargeable profits” are profits of a minor nature that when they are multiplied by 25%, the result is below the maximum granted under this policy.
- For the purpose of this policy the expression "**emoluments**" means all salary, wages, overtime, purposes of bonus, commission or other amounts for services, perquisites, directors' fees, retiring allowance or pension, but shall not include any salary or share of profits arising from a trade, profession or vocation carried on by any person either by himself/herself or in partnership.
- Rent paid to a related party, which is covered in section 10(1)C of the Income Tax Act Cap 212, is excluded from this policy statement.
- Any amount categorized as a pension expense to a member of The Group that is not part of a structured pension plan, where there are three entities involved; *(1) the Corporation, (2) the fund or plan that receive contributions from the company and invests them to generate earnings, and (3) the shareholder/director or their children/family*, will not be granted an amount that is reasonable and just. If the amount categorized as a pension expense to a member of The Group is attributable to a structured pension plan described above but is not treated in an identical fashion to **all** fulltime employees of the corporation, **or** is only available to The Group and not employees deemed outside of The Group (**at least one fulltime employee of the corporation must be existent outside The Group**), then the expense to the corporation will **not** be granted an amount that is considered reasonable and just.

Signature: 

Date: 26/1/2018

Ralph Warner
Commissioner of Inland Revenue Department Antigua and Barbuda