THE MINISTRY OF ATTORNEY GENERAL AND LEGAL AFFAIRS

MINISTERIAL RESPONSE

The Twentieth Report of the Public Accounts Committee on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Year 2017.

I. Introduction

The Twentieth Report of the Public Accounts Committee on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Year 2017 was presented in the Senate on February 12, 2019, and in the House of Representatives on February 15, 2019.

Standing Orders 100(6) and 110(6) of the Senate and House of Representatives respectively, require the Minister with responsibility for the Ministry/Body reported on by a Joint Select Committee to present to each House a paper responding to the recommendations/comments contained in the Report.

This report is the Ministerial Response to the recommendations and comments as presented in the Twentieth Report, to be presented to the Parliament, through the Attorney General and Minister of Legal Affairs.

II. Summary of Issues Identified, Recommendations and Responses

During the Committee's inquiry into the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Year 2017 the following issues were identified and recommendations proposed that require written responses by the Attorney General and Minister of Legal Affairs. The responses of the Attorney General and Minister of Legal Affairs to these recommendations are contained hereinafter in this report.

Issues Identified

3. Limitation of Scope/Independence (page 22 of the Twentieth Report).

The Auditor General has a constitutionally enshrined right to access all documents for the audit of the Public Accounts, nevertheless access to certain data at the Inland Revenue Division was denied by invocation of the official secrecy provisions of section 4 of the ***Income Tax Act, Chapter 75:01***. Officials from the AGD indicated that the limitation of scope was included in its Report because in order to audit the collection of revenue, the AGD would need access to taxpayers' information. However, due to the interpretation and application of the secrecy provisions of section 4 of the ***Income Tax Act*** by the Board of Inland Revenue, the AGD was debarred from having access to those particulars.

The Auditor General's Report states "*The interpretation and application by the Board of Inland Revenue of the secrecy provisions of section 4 of the* **Income Tax Act**, *have posed a challenge to the audit of revenue at the Inland Revenue Division. A legal opinion on this matter was prepared by the Legal Officer at the Auditor General's Department and forwarded to the Attorney General on 18th September, 2013 for consideration and final approval. The Attorney General in 2015 assured the Auditor General that the necessary steps were being taken to ensure that the Auditor General's access to the information is facilitated. Apart from the information* *covered by section 4 of the* ***Income Tax Act****, the weaknesses in internal control and lack of access to information highlighted in this Report are red flags that emphasize the need for a more intensive investigation into the operations of this major revenue collector*."

The Report further goes on to say that: "*Following the recommendations of the Public Accounts Committee in the first quarter of 2017, the Chairman of the Board of Inland Revenue and the Auditor General met on several occasions under the auspices of the Ministry of the Attorney General and Legal Affairs. These meetings were intended to chart the way forward pending amendment to section 4 of the* ***Income Tax Act, Chapter 75:01****. To date the matter has not been resolved*."

Recommendation:

- **The Ministry of the Attorney General and Legal Affairs (AGLA) should submit an updated timeline for the way forward for the amendment to section 4 of the Income Tax Act, Chapter 75:01 highlighting how the confidentiality and personal privacy considerations can be addressed while allowing for transparency and accountability in the conduct of affairs by the Board of Inland Revenue against the background of the scrutiny role of the Auditor General.**

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of resolving the issue of restricted access to information by the Inland Revenue Division and the possible hindrances this may cause to the audits by the Auditor General's Department. The Attorney General notes that this issue needs to be resolved through legislative amendment.

The Attorney General and Minister of Legal Affairs can confirm that meetings were again held (i.e. subsequent to the Ministerial Response of the Attorney General which was made in response to the First Report of the Public Accounts Committee (PAC) for the First Session, Eleventh Parliament on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the financial years 2014 and 2015, where this same issue also arose) with the Chairman of the Board of Inland Revenue and the Auditor General.

The Ministry of the Attorney General and Legal Affairs met with the Chairman of the Board of Inland Revenue and the Auditor General on 24th March, 2017, 4th April, 2017, 22nd June, 2017, and on 11th July 2017. The Honourable Attorney General and Minister of Legal Affairs was personally present during one of the last meetings between the Chairman of the Board of Inland Revenue and the Auditor General to assist in charting a way forward. Unfortunately, there was no agreement between the BIR and the Auditor General with respect to the amendment of section 4 of the ***Income Tax Act, Chap. 75.01***. As a result of the aforementioned no further discussions were held.

The Attorney General and Minister of Legal Affairs notes that any proposed legislative amendments required to amend the ***Income Tax Act, Chapter 75:01*** would firstly fall under the purview and jurisdiction of the Ministry of Finance. The Permanent Secretary of the Ministry of Finance has the designated authority and responsibility for proposals for amendment in respect of any amendments which would seek to amend the said ***Income Tax Act*** in a manner to resolve the conflict which exists between the BIR and the Auditor General.

The Attorney General and Minister of Legal Affairs therefore advises that draft amendments can be prepared in respect of resolving the conflict between BIR and the Auditor General upon receiving written instructions from the authorized officials at the Ministry of Finance in accordance with the current procedures for the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Based on the aforementioned, the Ministry of the Attorney General and Legal Affairs is **<u>not</u>** able to provide an updated timeline for the way forward for the amendment to section 4 of the ***Income Tax Act***, Chapter 75:01, highlighting how the confidentiality and personal privacy considerations can be addressed while allowing for transparency and accountability in the conduct of affairs by the Board of Inland Revenue against the background of the scrutiny role of the Auditor General, as this matter is currently outside the control of the Ministry of the Attorney General and Legal Affairs.

III. Conclusion

The Attorney General and Minister of Legal Affairs remains willing and able to prepare all necessary legislation upon receiving written instructions from the authorized officials at the Ministry of Finance in accordance with the current procedures for the preparation of draft legislation.