

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

PAYROLL TAX AMENDMENT ACT 2018

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WHEREAS it is expedient to amend the Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995, to increase penalties for offences under the Taxes Management Act 1976, and for connected purposes;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Preliminary

Citation

1 This Act may be cited as the Payroll Tax Amendment Act 2018.

Interpretation

2 In this Act—

“the principal Act” means the Payroll Tax Act 1995;

“the Rates Act” means the Payroll Tax Rates Act 1995.

Amendments to the Payroll Tax Act 1995

Amends section 2

3 In section 2 of the principal Act (interpretation)—

(a) in subsection (1), delete the definition of “profit-sharing scheme” and substitute—

“ “profit-sharing scheme” means a scheme or arrangement under which an employee or deemed employee in any way whatsoever shares his employer's profit, including by way of dividend;”;

(b) in subsection (1), in the definition of “remuneration”, delete from “but” to the end of paragraph (c);

(c) in subsection (2), after “to him” in both places insert “(whether directly or indirectly)”.

Amends section 7

4 In section 7 of the principal Act (meaning of remuneration)—

(a) in subsection (1)(e), delete “, lodging or other benefit of any kind whatever,” and substitute “or lodging,”;

(b) after subsection (1)(h), insert—

“(i) any other benefit of any kind whatsoever, whether provided in cash or otherwise than in cash.”

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Amends section 9

5 In section 9 of the principal Act (employees in special situations), in subsection (2) (e)(i), delete “a taxi-driver,”.

Inserts section 9A

6 After section 9 of the principal Act, insert—

“Rate where employee is disabled person

9A (1) An employer is not chargeable to tax at the standard rate for employers in respect of remuneration (other than bonus payments) paid to any employee of his who is a disabled person, but is chargeable to tax instead at the rate prescribed by the Rates Act for the purpose of this section.

(2) Nothing in subsection (1) affects the responsibility of an employer under section 19 to pay to the Commissioner the full amount of tax chargeable in accordance with this Act on each of his employees who is a disabled person in respect of remuneration paid by him to the employee during each tax period; and similarly for deemed employees.

(3) An employee shall not be required by his employer to obtain a medical certificate for the purposes of this section if the employee is not willing to do so.

(4) In this section—

“bonus payments” includes—

(a) any description of performance-related payment made, whether as a lump sum or series of payments, in addition to an employee’s basic salary or wages; and

(b) any money paid under a profit-sharing scheme;

“disability” means a functional impairment, whether physical, intellectual, neurological, psychiatric or sensory, that limits or prevents the carrying out of normal day to day activities;

“disabled person” means a person who has a permanent disability and who is in possession of a certificate from a medical practitioner which confirms—

(a) the nature of the disability; and

(b) the fact that the disability impacts the person’s ability to find or retain suitable employment;

“medical practitioner” means a medical practitioner who is registered under the Medical Practitioners Act 1950.”

Inserts section 9B

7 After section 9A of the principal Act (inserted by section 6 above), insert—

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“Special provision for taxi drivers

9B (1) In this section—

“Board” means the Public Service Vehicles Licensing Board established under the Motor Car Act 1951 (“the 1951 Act”);

“motor taxi owner” means a person who holds a taxi permit;

“taxi driver” means any motor taxi driver, any motor taxi owner and any other person who operates a motor taxi service in accordance with section 33 of the 1951 Act (use of motor taxis);

“taxi permit” means a permit granted by the Board under section 33 of the 1951 Act.

(2) Notwithstanding the provisions of this Act or the Rates Act, a taxi driver shall not be liable to payroll tax at the employer’s standard rate or employee’s standard rate bands in relation to his remuneration as a taxi driver.

(3) A motor taxi owner shall be required to pay to the Commissioner a flat rate of payroll tax per annum of such amount as prescribed by the Rates Act for the purpose of this section before the vehicle licence for the taxi may be issued by the Transport Control Department.

(4) Where a motor taxi owner applies for a vehicle licence for a period of six months or less, he shall be required to pay one half of the amount prescribed for the purposes of subsection (3) before the vehicle licence for the taxi may be issued by the Transport Control Department.

(5) A motor taxi owner—

(a) who has paid the full amount of payroll tax prescribed for the purposes of subsection (3) in relation to his annual vehicle licence; and

(b) who transfers his taxi permit six months or more after making such payment,

may apply to the Commissioner for a refund of half of the amount prescribed for the purposes of subsection (3), provided he makes such application during the tax period in which the transfer takes place.

(6) No refund of payroll tax paid under this section shall be payable if a taxi permit is at any time suspended or revoked by the Board under section 33 of the 1951 Act.

(7) Section 19 (responsibility of employer to pay to Commissioner tax charged on his employees) does not apply to the employer of any taxi driver in respect of the payroll tax payable under this section.

(8) In section 59 of the 1951 Act (licence duties), after subsection (3) insert—

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“(3A) No licence for a motor car operated as a taxi shall be issued unless the applicant has paid in full to the Tax Commissioner the payroll tax due under section 9B(3) or (4) (as the case may be) of the Payroll Tax Act 1995.”.

Amends section 11

- 8 In section 11 of the principal Act (remuneration of deemed employees)—
- (a) in subsection (2), delete “deemed to be paid deemed remuneration” and substitute “deemed to be paid his actual remuneration”;
 - (b) repeal subsection (3).

Repeals sections 12 and 13 and First Schedule

- 9 Repeal sections 12 and 13 of, and the First Schedule to, the principal Act (which relate to notional remuneration).

Amends section 14

- 10 In section 14 of the principal Act (remuneration of self-employed persons)—
- (a) in subsection (1), delete “and pay himself deemed remuneration” and substitute “, and deemed to pay himself his actual remuneration”;
 - (b) repeal subsections (2) and (4);
 - (c) in subsection (3), delete “otherwise than by way of, or in addition to, being paid actual remuneration”.

Amends section 18

- 11 In section 18 of the principal Act (Commissioner may obtain information)—
- (a) in subsection (1), delete “assessment under section 12 as extended by section 14”, and substitute “assessment under section 16 of the Management Act”;
 - (b) in subsection (3) (refusing or neglecting to furnish information), delete “\$1,000” and substitute “\$50,000”;
 - (c) in subsection (4) (knowingly furnishing false information), delete “\$2,500” and substitute “\$100,000”.

Amends section 24A

- 12 In section 24A of the principal Act (anti-avoidance provision), after subsection (2) insert—

“(2A) The Commissioner may take such action as he considers appropriate under the Management Act if it appears to the Commissioner that an employer or employee is not accurately declaring an employee’s remuneration in order to reduce the amount of payroll tax which would otherwise be payable under this Act. ”

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Inserts section 24B

13 After section 24A of the principal Act insert—

“Guidance regarding compliance

24B (1) The Commissioner, with the approval of the Minister, shall issue guidance regarding compliance with this Act, and may amend and update the guidance as necessary.

(2) The guidance shall be published on the Bermuda Government Portal at the following web address: www.gov.bm; and copies shall be available for inspection at the office of the Tax Commissioner during normal working hours.

(3) In determining whether a person has committed an offence under this Act, or an offence under the Management Act relating to payroll tax, a court shall consider whether a defendant has followed any relevant guidance issued under this section.

(4) Guidance issued under this section is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.”

Removes references to “deemed remuneration”

14 In the principal Act—

- (a) in each of the following provisions, delete “deemed remuneration” and substitute “remuneration”: section 2(1) (in paragraphs (a)(ii) and (b)(i) of the definition of “payroll”); section 3(1)(a)(ii), (b) and (d), (3)(b) and (c), (4)(b) and (c);
- (b) in the full-out words of section 3(3) and (4), delete “or deemed remuneration” in each place, and make the necessary grammatical changes;
- (c) repeal section 19(8)(b).

Amendments to the Payroll Tax Rates Act 1995

Amends section 3A

15 In section 3A of the Rates Act (the standard rate bands), the Table is amended as follows—

- (a) in the first entry (tax payable on remuneration up to \$48,000), delete “4.75%” and substitute “4.00%”;
- (b) in the second entry (tax payable on remuneration from \$48,001 to \$96,000), delete “5.75%” and substitute “6.50%”.

Inserts section 4A

16 After section 4 of the Rates Act, insert—

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“Rate where employee is a disabled person

4A 0% is prescribed as the rate for the purposes of section 9A.”

Inserts section 4B

17 After section 4A of the Rates Act (inserted by section 16 above), insert—

“Taxi drivers

4B \$1,000 is prescribed as the amount for the purposes of section 9B.”

Amends section 5

18 In section 5 of the Rates Act (rates for certain classes of employer)—

- (a) in paragraph (e) of Class B (payroll tax rate of 1.75% for certain categories of self-employed persons), delete “a taxi-driver or”;
- (b) after paragraph (j) of Class C, insert—

“

(k) an employer, not falling within paragraph (j), who establishes a small business (within the meaning of the Bermuda Economic Development Corporation Act 1980) and registers it under section 4(1)(c) of that Act; provided that no such employer shall, by virtue of this paragraph, be chargeable to tax at this rate for a period exceeding four tax periods beginning with, and including, the tax period in which the business is established.	0.0%
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”

- (c) repeal Class D.

Amendments to Taxes Management Act 1976

Increases penalties for offences

19 In the Taxes Management Act 1976—

- (a) in section 14 (failure to keep prescribed accounts and destroying etc accounts), delete “\$1,000” and substitute \$100,000;
- (b) in section 27(2) (failure to appear before Tribunal, refusing to produce documents or answer questions etc), delete “\$200” and substitute \$100,000;
- (c) in section 36(1) (failure to register, make return or answer Collector’s question etc), delete “\$1,000” and substitute \$100,000;
- (d) in section 36(2) (furnishing false return or giving false testimony etc), delete “\$2,500” and substitute \$100,000;
- (e) in section 36(3) (assisting in or inducing the making or delivery for any purposes of tax any incorrect return or accounts), delete “\$2,500” and substitute \$100,000;

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- (f) in section 36A (special duty of taxpayers collecting money from third parties)—
 - (i) in subsection (2)(a) (breach of duty), delete “\$2,500” and substitute \$25,000;
 - (ii) in subsection (2)(a) (fraudulent breach of duty), delete “\$10,000” and substitute \$100,000;
 - (iii) in subsection (3) (additional maximum daily penalty for continuing offence under subsection (2)), delete “thirty dollars” and substitute “\$500”;
- (g) in section 37(1) (evasion of tax by wilful act or wilful default etc), delete “\$2,500” and substitute \$100,000;
- (h) in section 37(2) (fraudulent evasion of tax etc), delete “\$10,000” and substitute \$500,000;
- (i) in section 38 (obstruction or hindrance of public officer), delete “\$1,000” and substitute \$100,000.

Final provisions

Consequential amendments

20 Revoke paragraphs 1 to 3 of the Schedule to the Tax (Accounts and Records) Regulations 1991 and substitute—

“1 Records to be kept by Employers for Payroll Tax

(1) Financial statements and business operating account statements.

(2) Payroll records setting out—

(a) the gross remuneration for each employee or deemed employee;

(b) the deductions made therefrom; and

(c) the net remuneration paid to each employee or deemed employee,

and “remuneration” has the meaning given by section 7 of the Payroll Tax Act 1995.

2 Supplementary Records to be kept by Employers for Payroll Tax

Records setting out details of all types of remuneration falling within each paragraph of section 7(1) of the Payroll Tax Act 1995 paid to or in respect of each employee or deemed employee as follows, including the nature of each type of remuneration and details as to how each of those amounts was calculated—

(a) any wages, salary, leave pay, commission, gratuity, fee, bonus, perquisite or allowance;

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- (b) any money paid under a profit-sharing scheme;
- (c) any money or other thing of value paid or given to him as an employee or an ex-employee in connection with the permanent termination of his employment on account of redundancy or otherwise;
- (d) any amount paid with respect to him to a retirement or provident fund, scheme or society, or under a hospital or health insurance scheme;
- (e) the value of any meals, board or lodging, and whether provided in cash or otherwise than in cash;
- (f) the rental value of any place of residence provided rent-free;
- (g) where a place of residence is provided at a rent less than the rental value, the excess of the rental value over that rent;
- (h) any gain obtained by the exercise by him of, or the assignment or release by him of, a right to acquire shares or stock in a body corporate, being a right arising out of services rendered by him (whether in the capacity of director otherwise) to that body corporate;
- (i) any other benefit of any kind whatsoever, whether provided in cash or otherwise than in cash.

3 Records to be kept by Self-employed Persons for Payroll Tax

In the case of a self-employed person, all the records prescribed in paragraphs 1 and 2 above.”

Saving

21 For the avoidance of doubt, nothing in section 7, which inserts section 9B into the principal Act (special provision for taxi drivers), affects the liability of any taxi driver to payroll tax which is outstanding on the coming into operation of this Act.

Commencement

22 This Act comes into operation on 1 April 2018.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Payroll Tax Act 1995 (“the principal Act”) and the Payroll Tax Rates Act 1995 (“the Rates Act”), to increase penalties for offences under the Taxes Management Act 1976 (“the Management Act”), and to make consequential and connected provision. The most significant change to the payroll tax regime is the repeal of the concept of notional remuneration for deemed employees and self-employed persons, so that all employees, deemed employees and self-employed persons will be taxed on the basis of their actual remuneration (as defined by section 7 of the principal Act).

Clauses 1 and 2 are self-explanatory.

Clause 3 amends section 2 of the principal Act (interpretation) to broaden the definition of “profit-sharing scheme”, and to remove a reference to notional remuneration.

Clause 4 amends section 7(1) of the principal Act (meaning of remuneration) to clarify that remuneration includes indirect payments, and by amending subparagraph (e) and inserting a new final subparagraph (i) in order to clarify that remuneration includes any benefit whatsoever not included in any of the preceding subparagraphs.

Clause 5 amends section 9 of the principal Act (employees in special situations) to delete the reference to taxi drivers, because special provision is being made for taxi drivers under new section 9B inserted by clause 7.

Clause 6 inserts new section 9A into the principal Act (employer rate where employee is a disabled person, as defined).

Clause 7 inserts new section 9B into the principal Act (special provision for taxi drivers). A person who holds a taxi permit will be required to pay a flat rate of payroll tax per annum (\$1,000 as prescribed by clause 17) before his annual vehicle licence may be issued by the Transport Control Department under the Motor Car Act 1951. Apart from that, taxi drivers will no longer be liable to payroll tax in respect of remuneration as a taxi driver. Provision is made for a partial payment and refund in cases of permit transfer etc.

Clause 8 amends section 11 of the principal Act (remuneration of deemed employees) to delete the reference to notional remuneration and provide that a deemed employee is deemed to be paid his actual remuneration.

Clause 9 repeals sections 12 and 13 of, and the First Schedule to, the principal Act, which relate to notional remuneration.

Clause 10 amends section 14 of the principal Act (remuneration of self-employed persons) to delete the references to notional remuneration, and provide that a self-employed person is deemed to pay himself his actual remuneration.

Clause 11 amends section 18 of the principal Act (powers of Commissioner to obtain information) so that the powers apply to an assessment under section 16 of the

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Management Act, and increases the maximum fines for criminal offences of non-compliance with this section.

Clause 12 amends section 24A of the principal Act (anti-avoidance provision).

Clause 13 inserts new section 24B into the principal Act, which requires the Tax Commissioner to issue and publish guidance regarding compliance with the principal Act. Subsection (3) provides that in determining whether a person has committed an offence under the principal Act, or an offence under the Management Act relating to payroll tax, a court shall consider whether a defendant has followed any relevant guidance issued under this section. This provision is modelled on section 49M of the Proceeds of Crime Act 1997 (guidance for money laundering offences).

Clause 14 removes references to “deemed remuneration” throughout the principal Act.

Clause 15 amends section 3A of the Rates Act (the standard rate bands) to decrease the first rate band to 4.00% and increase the second rate band to 6.50%.

Clause 16 inserts new section 4A into the Rates Act to prescribe an employer rate of 0% in relation to employees falling within the definition of disabled person in section 9A of the principal Act (inserted by clause 6).

Clause 17 inserts new section 4B into the Rates Act to prescribe an amount of \$1,000 for motor taxi owners for the purposes of section 9B of the principal Act (inserted by clause 7).

Clause 18 amends section 5 of the Rates Act to remove taxi drivers from Class B (1.75% rate); to insert new paragraph (k) into Class C (0% for new small businesses registered under the Bermuda Economic Development Corporation Act 1980 for first year of business); and to repeal Class D.

Clause 19 makes significant increases to the maximum fines for criminal offences under the Management Act.

Clause 20 makes a consequential amendment. It revokes and replaces paragraphs 1 to 3 of the Schedule to the Tax (Accounts and Records) Regulations 1991 to update the records which employers and self-employed persons must keep for payroll tax purposes, and to align those records with the definition of “remuneration” in section 7 of the principal Act.

Clause 21 is a saving to clarify, for the avoidance of doubt, that nothing in section 7, which inserts section 9B into the principal Act (special provision for taxi drivers), affects the liability of any taxi driver to payroll tax which is outstanding on the coming into operation of this Act.

Clause 22 provides for commencement on 1 April 2018.