

A BILL

entitled

PAYROLL TAX AMENDMENT (NO. 2) ACT 2018

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WHEREAS it is expedient to amend the Payroll Tax Act 1995;

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:

Citation

1 This Act may be cited as the Payroll Tax Amendment (No. 2) Act 2018.

Amends section 5

2 In section 5 of the Payroll Tax Act 1995 ("the principal Act"), in subsection (8)(b), delete "in any one calendar month" and substitute "in each calendar month of a tax period".

Amends section 7

3 In section 7 of the principal Act, at the end of subsection (2) (payments which are not remuneration), insert—

“(h) any dividends relating to shares in—

(i) an exempt undertaking, paid to an employee or deemed employee of the exempt undertaking;

(ii) a company listed on the Bermuda Stock Exchange, or any other stock exchange recognised by the Minister for the purposes of

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this section, paid to an employee or deemed employee of the company or of a company in the same group;

- (i) in relation to a company not falling within paragraph (h), the first \$10,000 per annum of any dividends relating to shares in the company paid to an employee or deemed employee of the company.”

Amends section 9

4 In section 9 of the principal Act, in subsection (2)(e)(iii), delete “the employer’s payroll is not less than \$200,000 per annum or”.

Amends section 9B

5 (1) Section 9B of the principal Act (special provision for taxi drivers) is amended as follows.

(2) At the end of subsection (3), insert “in relation to any licence period beginning on or after 1 October 2018”.

(3) In subsection (5)—

- (a) in paragraph (b), delete “six months or more” and substitute “six months or less”;
- (b) in the full-out words following paragraph (b), delete “during the tax period in which” and substitute “not more than 30 days after”.

Inserts section 9C

6 After section 9B of the principal Act, insert the following new section—

“New hire relief for qualifying employers

9C (1) In this section—

“baseline total” means either—

- (a) the total number of full-time employees included in an employer’s March 2018 payroll tax submission; or
- (b) zero, in the case of an employer who commences business on or after 1 April 2018;

“new hire relief” has the meaning given in subsection (3);

“qualifying employee” means a person whose full-time employment by a qualifying employer—

- (a) first commences during the period 1 April 2018 to 31 March 2021 (otherwise than as a result of a merger or acquisition involving the employer); and

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- (b) has the effect of increasing the employer's total number of full-time employees from the baseline total;

"qualifying employer" means—

- (a) an exempted undertaking; or
- (b) any other employer—
 - (i) whose annual payroll is \$1,000,000 or more; and
 - (ii) who is liable to payroll tax at the standard rate and who is not receiving any other relief under this Act,

which employs one or more qualifying employees.

(2) Subject to subsections (4) and (5), a qualifying employer is entitled to new hire relief for each of the tax periods commencing on 1 April 2018 and ending on 31 March 2021 if the qualifying employer applies to the Commissioner for new hire relief in such form, and with such information and supporting documentation, as may be required by the Commissioner.

(3) "New hire relief" means that the qualifying employer will not be liable to pay the employer portion of payroll tax otherwise payable under this Act in respect of any qualifying employees.

(4) A qualifying employer shall not be entitled to new hire relief if the employer is in arrears with the payment of payroll tax.

(5) A qualifying employer shall not be entitled to new hire relief for a tax period unless the total number of full-time employees BT + QE is maintained throughout the tax period, where—

"BT" is the baseline total; and

"QE" is the number of qualifying employees in respect of whom the qualifying employer applies for new hire relief.

(6) Nothing in this section affects the responsibility of a qualifying employer under section 19 to pay to the Commissioner the full amount of tax chargeable in accordance with this Act on each of his qualifying employees in respect of remuneration paid by him to the employee during each tax period."

Commencement

7 This Act shall be deemed to have come 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”).

Clause 1 is self-explanatory.

Clause 2 amends section 5(8)(b) of the principal Act (person not an employee if employed for 16 hours or less) to clarify the meaning of that provision.

Clause 3 amends section 7(2) of the principal Act (payments which are not remuneration), to exclude from the definition of “remuneration” two additional types of payment. New paragraph (h) excludes any dividends relating to shares in an exempt undertaking or in a public company listed on the Bermuda Stock Exchange or any other stock exchange recognised by the Minister for these purposes paid to an employee or deemed employee. New paragraph (i) excludes the first \$10,000 per annum of any dividends relating to shares in a company not within paragraph (h) paid to an employee or deemed employee of the company.

Clause 4 amends section 9(2)(e) of the principal Act (retail store employees in special situation in January to March provided that employer’s payroll is not less than \$200,000 per annum or the employer is not in an Economic Empowerment Zone) to delete the reference to the employer’s payroll being not less than \$200,000.

Clause 5 amends section 9B of the principal Act (special provision for taxi drivers), which was inserted by section 7 of the Payroll Tax Amendment Act 2018 with effect from 1 April 2018. Subsection (2) provides that the new flat rate of payroll tax imposed by section 9B is payable in relation to any licence period beginning on or after 1 October 2018. Subsection (3)(a) corrects an error in section 9B(5)(b) to provide that a motor taxi owner may apply for a refund of half of the full amount of payroll tax paid in accordance with section 9B if he transfers his taxi permit six months or less (not six months or more) after the payment was made. Subsection (3)(b) makes an administrative change to subsection (5) to amend the time within which such an application may be made to not more than 30 days after the transfer.

Clause 6 inserts new section 9C (new hire relief for qualifying employers). The new section provides that a qualifying employer who applies to the Commissioner and whose application for new hire relief is approved by the Minister will not be liable to pay the employer portion of payroll tax otherwise payable under this Act in respect of its qualifying employees for tax periods from 1 April 2019 to 31 March 2021, provided the employer is not in arrears with payroll tax and the increased number of full-time employees is maintained. For these purposes, a qualifying employer is defined as either an exempt undertaking, or any other employer with a payroll exceeding \$1,000,000 liable to payroll tax at the standard rate and not receiving other payroll tax relief; and a qualifying employee is a full-time employee whose employment with a qualifying employer (a) first commences during the period 1 April 2018 to 31 March 2021 (otherwise than as a result of merger or acquisition), and (b) has the effect of increasing the employer’s total number of full-time

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employees from the baseline total, which is defined as either the total disclosed in the employer's March 2018 payroll tax submission, or zero if the employer commences business on or after 1 April 2018.

Clause 7 provides for commencement retrospective to 1 April 2018.