

A BILL

entitled

PAYROLL TAX AMENDMENT AND VALIDATION (NO. 2) ACT 2022

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WHEREAS it is expedient to amend the Payroll Tax Act 1995 to clarify what constitutes actual remuneration, clarify and widen some of the exclusions from remuneration, and make related amendments;

Be it enacted by The King'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 which amends the Payroll Tax Act 1995 ("the principal Act") may be cited as the Payroll Tax Amendment and Validation (No. 2) Act 2022.

Amends section 7

2 Section 7 of the principal Act is amended as follows—

- (a) in subsection (1)(a), delete "gratuity,";
- (b) in subsection (2)(a) delete "payments with respect to an employee" and substitute "payments, by an employer or self-employed person with respect to an employee, a deemed employee or in the case of a self-employed person himself, "; and
- (c) after subsection (2)(b), insert—

“(ba) any gratuity for services rendered, whether paid by a customer directly or paid by an employer or self-employed person from a

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fund entirely constituted of gratuities paid by customers for services rendered;”.

Amends the Miscellaneous Taxes Act 1976

3 The Miscellaneous Taxes Act 1976 is amended as follows—

- (a) in section 1, in the definition of “approved life assurance scheme” delete, in both cases, “life assurance” and substitute “life insurance”;
- (b) in section 2(1) delete “life assurance” and substitute “life insurance”;
- (c) in section 13(1)—
 - (i) in paragraph (a), delete “gratuity,”;
 - (ii) in paragraph (h), remove the full stop and insert “; and”;
 - (iii) after paragraph (h) insert—
 - “(i) any other benefit of any kind whatsoever, whether provided in cash or otherwise than in cash.”;
- (d) in section 13(2)—
 - (i) in paragraph (a), delete “payments with respect to an employee” and substitute “payments, by an employer or self-employed person with respect to an employee (including a person deemed to be an employee pursuant to section 5) or in the case of a self-employed person himself,”; and
 - (ii) after paragraph (c) insert—
 - “(ca) any gratuity for services rendered, whether paid by a customer directly or paid by an employer or self-employed person from a fund entirely constituted of gratuities paid by customers for services rendered;”.

Consequential amendment

4 In the Schedule to the Tax (Accounts and Records) Regulations 1991, in paragraph 2(a) delete “gratuity,”.

Validation and transitional provisions

5 (1) This section applies to—

- (a) any determination made or action taken under the principal Act for the purposes of determining remuneration or any exclusion from remuneration under section 7 of the principal Act;
- (b) any determination made or action taken under the Miscellaneous Taxes Act 1976 for the purposes of determining remuneration or any exclusion from remuneration under section 13 of the Miscellaneous Taxes Act 1976;

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(c) any order made by the Tax Commissioner to which section 23(5) of the principal Act refers for the approval, variation or revocation of approval of any scheme to which section 23(1) of the principal Act refers, and any action taken under the principal Act pursuant to or as a result of such order of approval, variation or revocation of approval.

(2) Any determination or action to which subsections (1)(a) and (b) above refer that was made or taken prior to the coming into operation of this Act, but which could have been so made or taken pursuant to the changes made by section 2(c) or 3(d)(ii) of this Act, respectively, shall be deemed to have been validly made or taken.

(3) Any order or action to which subsection (1)(c) above refers that was made or taken as of 1 April 2021 shall be deemed to have been validly made or taken.

Commencement

6 (1) Subject to subsection (2), this Act shall come into operation on assent.

(2) Sections 2(b) and 3(d)(i) shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill amends the Payroll Tax Act 1995 (“the principal Act”) to clarify what constitutes actual remuneration, clarify and widen some of the exclusions from remuneration, and make related amendments.

Clause 1 provides the citation for the Bill.

Clause 2 amends section 7 of the principal Act to remove from the definition of “remuneration” the reference to “gratuity” as what is intended to be caught by the reference to “gratuity” is sufficiently captured under section 7(1)(i) of the principal Act. This clause also amends section 7(2)(a) of the principal Act to broaden the application of that provision. Presently, section 7(2)(a) excludes, from remuneration, payments made under the Contributory Pensions Act 1970, the Health Insurance Act 1970 or under an approved health insurance, hospital, life insurance or retirement scheme with respect to employees only. Finally, this clause inserts new section 7(2)(ba) into the principal Act to expressly exclude from remuneration any gratuity, when paid by a customer directly or paid by an employer or self-employed person from a fund constituted entirely of gratuities from customers. This provision clarifies the current practice that a gratuity originating from the customer for services rendered does not constitute remuneration.

Clause 3 amends the Miscellaneous Taxes Act 1976 to bring certain sections of that Act, where relevant to employment tax, into harmony with the changes made to the principal Act under this Bill as well as to replace the reference to “life assurance” with “life insurance” in keeping with the principal Act.

Clause 4 makes a consequential amendment to the Tax (Accounts and Records) Regulations 1991 to remove the reference to gratuity in keeping with clause 2 of this Bill.

Clause 5 validates any determination made or action taken under section 7 of the principal Act or under section 13 of the Miscellaneous Taxes Act 1976 for the purposes of determining remuneration, where such determination or action, although made or taken prior to this Bill coming into effect, could have been made or taken pursuant to the changes made under this Bill to exclude from remuneration (and therefore payroll tax liability) any gratuities that originate from the customer. This clause also validates, as of 1 April 2021, any order made by the Tax Commissioner to which section 23(5) of the principal Act refers, and any action taken pursuant to such order.

Clause 6 provides for the commencement of the Bill, which is to occur on assent. However the provisions of the Bill which broaden the exclusion from remuneration of payments made under the Contributory Pensions Act 1970, the Health Insurance Act 1970 or under an approved scheme will come into effect on such day as the Minister may appoint by notice published in the Gazette.