

A BILL

entitled

PAYROLL TAX AMENDMENT ACT 2017

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WHEREAS it is expedient to amend the Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995, and for connected purposes;

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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 2017.

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(1) of the principal Act (interpretation)—

(a) insert the following definitions in alphabetical order—

“gross earnings”, in relation to an employee, means—

(a) all remuneration falling within section 7(1)(a) to (c); and

(b) remuneration provided in cash falling within section 7(1)(e);

and “deemed gross earnings”, in relation to a deemed employee has the meaning given in section 11(5);

“the standard rate bands” has the meaning assigned in section 3(2A);”;

(b) in paragraph (b) of the definition of “remuneration”, delete “subsection (2) of section 11” and substitute “subsection (3) of section 11”.

Amends section 3

4 (1) Section 3 of the principal Act is amended as follows.

(2) At the end of subsection (1) (payroll tax to be charged on employers and self-employed persons at the standard rate), insert—

“(c) every employee at the standard rate bands in respect of gross earnings paid to him during any tax period for services rendered by the employee during that tax period wholly or mainly in Bermuda, whether or not paid in Bermuda;

(d) every deemed employee at the standard rate bands in respect of deemed gross earnings paid to him during any tax period for

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services rendered by the deemed employee during that tax period wholly or mainly in Bermuda, whether or not paid in Bermuda.”

(3) After subsection (2), insert—

“(2A) In this Act, the expression “the standard rate bands” means the rate bands prescribed by the Rates Act for the purpose of subsection (1)(c) and (d).”

(4) In subsection (3) (\$750,000 cap on taxable remuneration)—

- (a) delete “\$750,000” in both places and substitute “\$900,000”;
- (b) delete “subsection (1)” and substitute “subsection (1)(a) and (b)”.

(5) After subsection (3) insert—

“(4) Where—

- (a) the gross earnings paid by an employer to an employee; or
- (b) the deemed gross earnings paid by an employer to a deemed employee; or
- (c) the deemed gross earnings paid by a self-employed person to himself,

exceed \$900,000 per annum, then, whether or not such gross earnings or deemed gross earnings (as the case may be) are paid in respect of one or more tax periods, the amount by which such gross earnings or deemed gross earnings exceed \$900,000 shall, for the purpose of subsection (1)(c) or (d), be disregarded.”

Amends section 6

5 In section 6 of the principal Act (deemed employees), insert the following paragraph into the table after paragraph (b)—

“

<u>Deemed employee</u>	<u>Employer</u>
(ba) member of a limited liability company (as defined in section 2 of the Limited Liability Company Act 2016), being a limited liability company which is carrying on business, who renders services to the limited liability company otherwise than as an employee and participates directly or indirectly in income or profits of the company;	the limited liability company

”

Amends section 9

6 In section 9 of the principal Act (rate where employees are in special situations)—

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- (a) in subsection (1), delete “standard rate in respect of remuneration” and substitute “standard rate for employers in respect of remuneration (other than bonus payments)”;
- (b) after subsection (1), insert—

“(1A) 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 in a special situation in respect of gross earnings paid by him to the employee during each tax period; and similarly for deemed employees.”;

- (c) in subsection (2)(e)(ii), after “hotel employee” insert “or restaurant employee”;
- (d) after subsection (2B) insert—

“(2C) For the purposes of subsection (1), “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.”

Repeals and replaces section 11

7 Section 11 of the principal Act (remuneration of deemed employees) is repealed and replaced as follows—

“Remuneration of deemed employees

11 (1) For the purposes of this Act, a deemed employee is deemed to be employed.

(2) For the purposes of calculating the tax payable by the employer of a deemed employee under this Act, a deemed employee is deemed to be paid deemed remuneration.

(3) A deemed employee’s deemed remuneration is—

- (a) his actual remuneration; or
- (b) his notional remuneration,

whichever is greater.

(4) For the purposes of calculating the tax payable by a deemed employee under this Act, the deemed employee is deemed to be paid deemed gross earnings.

(5) A deemed employee’s deemed gross earnings are—

- (a) his actual gross earnings; or
- (b) his notional remuneration,

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whichever is greater.”

Repeals and replaces section 19

8 Section 19 of the principal Act (recovery of tax from employee) is repealed and replaced as follows—

“Responsibility of employer to pay to Commissioner tax charged on his employees

19 (1) Notwithstanding section 3(1)(c) and (d) (tax charged on employees and deemed employees), every employer shall be responsible for paying to the Commissioner the full amount of tax chargeable on each of his employees in accordance with this Act in respect of gross earnings paid by him to the employee during each tax period (“the full amount of tax”).

(2) An employer may deduct from any gross earnings paid by him to an employee of his during any tax period an amount not exceeding the full amount of tax.

(3) But where an employee is paid gross earnings more than once during a tax period, the employer shall as far as may be reasonably practicable ensure that equal amounts are deducted from each payment.

(4) If an employer fails to make a deduction for tax, or fails to deduct the full amount of tax, from any payment referred to in subsection (2) made to an employee—

(a) the employer is not entitled to make that deduction from any later payment to that employee; and

(b) the employer assumes liability for the undeducted portion of tax and the employee’s liability is reduced or extinguished accordingly.

(5) An employer commits an offence if he—

(a) deducts an amount under this section from an employee’s gross earnings (whether equal to or less than the full amount of tax) in a tax period; and

(b) does not within fifteen days beginning on the last day of that tax period pay to the Commissioner the full amount of tax chargeable in accordance with this Act in respect of that employee’s liability.

(6) A person who commits an offence under subsection (5) is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$2,500;

(b) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding \$10,000.

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(7) Tax charged on an employer under this Act is not recoverable by him from gross earnings paid by him to an employee of his, notwithstanding any agreement to the contrary.

(8) In this section—

- (a) “employee” includes a deemed employee; and
- (b) “gross earnings” in relation to a deemed employee means his deemed gross earnings.”

Amends section 20

9 In section 20 of the principal Act (refunds and remissions)—

- (a) in subsection (1), delete “person” and substitute “employer or self-employed person” (in each place);
- (b) in subsection (2), delete “person” and substitute “employer”;
- (c) after subsection (2), insert—

“(3) No refunds shall be made by the Commissioner to an employee in respect of any deductions made by his employer to satisfy the employee’s payroll tax liability in accordance with this Act solely on the grounds that the amount of his gross earnings is reduced (including to nil) during any subsequent tax period.”

Repeals section 20A

10 Section 20A of the principal Act (relief from payroll tax) is repealed.

Amends section 22

11 In section 22(1) of the principal Act (reduction of tax period in certain cases), delete “a person” and substitute “an employer or self-employed person”.

Inserts section 24A

12 After section 24 of the principal Act insert—

“Anti-avoidance provision

24A (1) The Commissioner may take such action as he considers appropriate under the Taxes Management Act 1976 if it appears to the Commissioner that—

- (a) a person who is employed by two or more connected employers has entered into an arrangement with one or more of those employers; and
- (b) the main purpose, or one of the main purposes, for doing so appears to the Commissioner to be to reduce the amount of payroll tax which would otherwise be payable under this Act.

(2) For the purposes of subsection (1)—

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“arrangement” includes any arrangement, scheme or understanding of any kind, whether or not legally enforceable;

“connected employer” includes—

- (a) bodies corporate which are deemed to be associated with each other under section 43 of the Taxes Management Act 1976; and
- (b) employers other than bodies corporate which the Commissioner deems to be similarly associated.

(3) This section applies to deemed employees as it applies to employees.”

Amendments to the Payroll Tax Rates Act 1995

Amends section 3

13 In section 3 of the Rates Act (the standard rate)—

- (a) delete the heading and substitute “The standard rate: employers and self-employed persons”;
- (b) in subsections (1) and (2), delete “15.5%” and substitute “10.25%”.

Inserts section 3A

14 After section 3 of the Rates Act insert—

“The standard rate bands: employees and deemed employees

3A (1) The standard rate bands for the purposes of section 3(1)(c) and (d) are as set out in the table—

Table of standard rate bands

<i>Annual gross earnings band</i>	<i>Tax payable on that band</i>
up to \$48,000	4.75%
\$48,001 to \$96,000	5.75%
\$96,001 to \$235,000	7.75%
\$235,001 and above	8.75%

(2) For the avoidance of doubt, the standard rate bands shall be applied so that an employee is charged at the prescribed rate on each band of his gross earnings (and not just at the rate which would apply if all of his gross earnings were taken to fall into the maximum band applicable to him); and similarly for deemed employees.”

Amends section 4

15 Subsections (1) to (4) of section 4 of the Rates Act (rates where employees are in special situations) are repealed and the following subsection inserted—

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“(1) 0% is prescribed as the rate for the purpose of section 9.”

Amends section 5

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

- (a) in Class A, delete “11.25%” and substitute “6.0%”;
- (b) in Class B, paragraphs (a), (b) and (c), delete “8.75%” and substitute “3.5%”;
- (c) in Class B, paragraphs (d), (e) and (f), delete “7.25%” and substitute “1.75%”;
- (d) in Class BB—
 - (i) delete “12.25%” and substitute “7.0%”; and
 - (ii) delete “14.25%” and substitute “9.0%”;
- (e) in Class C, delete “6.0%” and substitute “0.0%”.

Repeals section 7

17 Section 7 of the Rates Act (tax recoverable from employees) is repealed.

Final provisions

Consequential amendments

18 In section 8(5) of the America’s Cup Act 2015 (ACEA and Regatta Officials exempt from paying the employer’s share of payroll tax for employees falling within the definition of Bermudian labour) after “payroll tax” insert, “(which the employer is not entitled to deduct from an employee’s earnings under section 19 of the Payroll Tax Act 1995)”.

Commencement

19 This Act comes into operation on 1 April 2017.

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EXPLANATORY MEMORANDUM

This Bill seeks to make a number of amendments to the Payroll Tax Act 1995 (the “principal Act”) and the Payroll Tax Rates Act 1995 (the “Rates Act”).

Clauses 1 and 2 are self-explanatory.

Clause 3 paragraph (a) amends section 2 of the principal Act to insert new definitions used in the amendments made by this Bill. The new definition of “gross earnings” will be used for the purpose of calculating an employee’s liability to payroll tax; the employer’s liability will continue to be calculated on the employee’s remuneration, defined more broadly in section 7. Paragraph (b) makes a consequential amendment (required as section 11 of the principal Act is being replaced by clause 7).

Clause 4 amends section 3 of the principal Act. Subsection (2) provides that employees and deemed employees are liable to payroll tax at the standard rate bands in respect of gross earnings paid to them during any tax period for services rendered during that tax period. Subsection (3) inserts new subsection (2A) which defines the standard rate bands. Subsection (4) increases the cap on taxable remuneration from \$750,000 to \$900,000. New subsection (4), inserted by subsection (5), introduces a matching \$900,000 cap on taxable gross earnings.

Clause 5 amends section 6 of the principal Act to provide that members of a limited liability company (as defined by the Limited Liability Company Act 2016) will be deemed employees of the LLC for the purposes of payroll tax.

Clause 6 amends section 9 of the principal Act. New subsection (1A) provides that, notwithstanding that employers are not chargeable at the standard rate in relation to remuneration paid to employees who are in a special situation, employers remain responsible under section 19 (inserted by clause 8) to pay to the Commissioner the full amount of tax chargeable on each employee in accordance with the Act in respect of gross earnings paid by the employer to the employee during each tax period. The employer will still be chargeable at the standard rate in relation to bonus payments, as defined in new subsection (2C), when employees are in a special situation. Subsection (2)(e)(ii) (hotel employee in November to March is a person in a special situation) is amended to include a restaurant employee.

Clause 7 repeals and replaces section 11 of the principal Act (remuneration of deemed employees) to include a provision defining deemed gross earnings for the purposes of calculating the tax payable by a deemed employee under the Act.

Clause 8 repeals and replaces section 19 of the principal Act. Subsection (1) provides that, although the Act is being amended to impose a payroll tax liability directly on employees and deemed employees, every employer remains responsible for paying to the Commissioner the full amount of tax chargeable on the gross earnings he pays to each of his employees in accordance with the Act. Subsection (2) provides that the employer may deduct the full amount of tax from the employee, but if he deducts without paying it over

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to the Tax Commissioner he will commit an offence under subsection (5). Subsection (3) requires the employer to deduct equal instalments from payments made during a tax period, so far as may be reasonably practicable to do so. If the employer does not deduct tax up to the full amount to which the employee is liable, subsection (4)(b) provides that the employer assumes liability for the undeducted portion of tax, and the employee's liability is reduced or extinguished accordingly.

Clause 9 amends section 20 of the principal Act (refunds and remissions). Subsections (1) and (2) are amended to clarify that they apply to employers and self-employed persons only, not employees. New subsection (3) provides that no refund of payroll tax paid in a tax period will be made to an employee solely on the grounds that the amount of his gross earnings is reduced (including to nil) during any subsequent tax period.

Clause 10 repeals section 20A of the principal Act (relief from payroll tax).

Clause 11 amends section 22(1) of the principal Act (reduction of tax period in certain circumstances) to clarify that it applies to employers and self-employed persons only, not employees.

Clause 12 inserts new section 24A into the principal Act. This is an anti-avoidance provision which provides for the Commissioner to take action under the Taxes Management Act 1976 if an employee has entered into an arrangement with connected employers to reduce the amount of payroll tax which would otherwise be payable.

Clause 13 paragraph (a) amends the heading of section 3 of the Rates Act to clarify that it relates only to the standard rate for employers and self-employed persons now that section 3A (inserted by clause 14) sets out the standard rate bands for employees and deemed employees. Paragraph (b) reduces the standard rate to 10.25%.

Clause 14 inserts new section 3A into the Rates Act. This sets out the standard rate bands for the purposes of section 3(1)(c) and (d), which range from 4.75% for any portion of an employee's gross earnings up to \$48,000, to a maximum rate of 8.75% for any portion of gross earnings of \$235,001 and above. However gross earnings over \$900,000 are not subject to payroll tax - see clause 4. Subsection (2) clarifies, for the avoidance of doubt, that the standard rate bands shall be applied so that an employee or deemed employee is charged at the prescribed rate on each band of his gross earnings (and not just at the rate which would apply if all of his gross earnings were taken to fall into the maximum band applicable to him). For example, an employee earning \$100,000 per annum will pay tax at 4.75% on his gross earnings up to \$48,000, tax at 5.75% on his gross earnings between \$48,001 and \$96,000, and tax at 7.75% on his gross earnings between \$96,001 and \$100,000. Weekly or monthly gross earnings will be taxed at a fraction of the annual standard rate bands, even if an employee is employed for only part of the year. The Tax Commissioner will provide illustrative tax calculators to assist employers and employees to calculate the actual weekly or monthly deduction required to meet an employee's liability to payroll tax.

Clause 15 amends section 4 of the Rates Act (rates where employees are in special situations) to reduce to 0% the payroll tax to which employers are liable in respect of such employees. (New section 9(1A) of the principal Act, inserted by clause 6, confirms that

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employers remain responsible to pay to the Commissioner the full amount of tax chargeable on each employee in a special situation).

Clause 16 amends section 5 of the Rates Act (rates for certain classes of employer) to reduce the rates of tax payable for the various classes of employer as indicated.

Clause 17 repeals section 7 of the Rates Act (tax recoverable from employees), as it is superseded by new section 19(2) inserted by clause 8.

Clause 18 makes a consequential amendment to section 8 of the America's Cup Act 2015 to clarify the meaning of the employer's share of payroll tax.

Clause 19 provides for commencement.