



BERMUDA

MISCELLANEOUS TAXES ACT 1976

1976 : 17

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[preamble and words of enactment omitted]

[Section 19 of 2004:22 and paragraph 1(1) of the Schedule to that Act retitled the "Hospital Insurance Act 1970" as the "Health Insurance Act 1970" effective 1 January 2006. These amendments are not individually noted.]

PART I

PRELIMINARY

Interpretation

1 In this Act, unless the context otherwise requires—

“this Act” includes the regulations;

“approved hospital or health insurance scheme” means a hospital or health insurance scheme approved by the Minister for the purposes of this Act;

“approved life assurance scheme” means a life assurance scheme approved by the Minister for the purposes of this Act;

“approved retirement scheme” means a retirement scheme approved by the Minister for the purposes of this Act;

“approved training scheme” means a training scheme approved by the Minister for the purposes of this Act;

“bookmaker” means a bookmaker within the meaning of the Betting Act 2021;

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, and includes an adventure or concern in the nature of trade, but a person shall not be deemed to be carrying on business merely by reason of having been the author of a literary, dramatic, musical or artistic work and having assigned or granted an interest in the copyright of such work for a consideration;

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- “Commissioner” means the person holding the office of Tax Commissioner;
- “domestic service” includes all personal service rendered by an employee to an individual employer in respect of such employer or a member of his household otherwise than in connection with a business carried on by such employer, or other person, for gain;
- “employment tax” means employment tax charged under Part III;
- “farmer or horticulturist” includes any person who at any farm, orchard, garden, plant nursery, greenhouse or structure used for the growing or raising of any plants, livestock or poultry, cultivates the soil or raises or harvests any agricultural or horticultural commodity including the raising, feeding, caring for, training and management of livestock, bees and poultry, but shall exclude a person operating or managing a livery stable, as well as a person engaged in the business of landscape gardening or landscaping;
- “financial year” means the period of twelve months extending from the first day of April in any year to the thirty-first day of March in the year next following;
- “fixed odds betting” means fixed odds betting within the meaning of the Betting Act 2021;
- “hospital levy” means hospital levy charged under Part IV;
- “hotel” in relation to hotel occupancy, tax means an hotel as defined for the purposes of the Hotels (Licensing and Control) Act 1969 [*title 17 item 2*];
- “licensed person” in relation to betting duty, means a betting operator within the meaning of the Betting Act 2021;
- “member of the governing body” means a person entitled to vote at the general meeting of the governing body;
- “Minister” means the Minister of Finance;
- “person” includes any company, partnership, association or body of persons, whether corporate or unincorporate;
- “pool betting agent” means a pool betting agent within the meaning of the Betting Act 2021;
- “profit sharing scheme” means a scheme under which an employee in his capacity as such shares in whatever manner the profit of his employer;
- “proprietor” includes manager;
- “Rates Act” means an Act for the purposes of setting out the rate of tax to be charged pursuant to this Act and other matters ancillary thereto;
- “regulations” means regulations under section 38;
- “rental value” means the rental value of the premises calculated on a monthly basis as valued under the Land Valuation and Tax Act 1967 [*title 14 item 31*], and in the absence of such valuation means a fair monthly market rent;

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“tax period” means the tax period prescribed in this Act in respect of the taxes charged by it;

“winnings” means winnings within the meaning of the Betting Act 2021.

[Section 1 definitions "bookmaker" and "pool betting agent" amended, definitions "fixed odd betting" and "winnings" repealed and substituted, and definition "licensed" repealed and substituted with "licensed person" by 2021 : 22 s. 98 effective 1 August 2021]

Approval of schemes

2 (1) The Minister shall have power by order made under this section to approve for the purposes of this Act a scheme of any of the following kinds, that is to say, a hospital insurance scheme, a health insurance scheme, a life assurance scheme, a retirement scheme and a training scheme.

(2) An order under this section may be made subject to such terms and conditions as the Minister thinks fit.

(3) The power to make an order under this section includes power to revoke or vary by another such order an order previously made in the exercise of that power, but before the Minister makes an order varying or revoking an order under this section he shall give notice of his intention to any person who the Minister thinks will be affected by the variation or revocation, and take any representations made by that person into account.

(4) The Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply in relation to an order made under this section.

PART II

PROVISIONS COMMON TO EMPLOYMENT TAX AND TO HOSPITAL LEVY

Determination of the employer

3 For the purposes of Parts III and IV, “employer” means the person for whom an employee performs any service, of whatever nature, as employee of such person, except that—

- (a) if the person for whom the employee performs the service does not have control of the payment of remuneration for such services, the term “employer” means the person having control of the payment of remuneration;
- (b) where a person pays remuneration to an employee on behalf of a person outside Bermuda the term “employer” means the person so paying remuneration.

Meaning of employee

4 (1) For the purposes of Parts III and IV, “employee” means—

- (a) any director, officer or member of the governing body of a body corporate:

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Provided that a director, officer or member of the governing body of a body corporate which is an exempt undertaking within the meaning of section 9 shall not be deemed to be such an employee unless he also regularly performs managerial functions in connection with the day-to-day carrying on of the business of the body corporate under a contract of service;

- (b) any individual natural person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour or otherwise;
- (c) any individual natural person who performs services for remuneration—
 - (i) as an insurance salesman; or
 - (ii) as a salesman engaged in the solicitation on behalf of another person of orders from third parties.

(2) Notwithstanding subsection (1), the following shall not be employees for the purposes of Parts III and IV—

- (a) persons under sixteen years of age;
- (b) persons employed by the employer for not more than sixteen hours in any calendar month;
- (c) persons ordinarily employed outside Bermuda, if their period of employment in Bermuda, whether with one or more employers, does not exceed thirteen consecutive weeks.

Certain persons to be deemed to be employees

5 (1) Notwithstanding anything in section 3(2), for the purposes of Part III or IV a musician or other entertainer, whether or not (apart from this subsection) he is the employee of any other person, shall in respect of any performance for which he is engaged by any hotel, restaurant, night club or other club or other establishment of a similar kind, or by any person on behalf of such an establishment, be deemed (regardless of the terms of the agreement constituting the engagement) to be the employee of the establishment or person, as the case may be, making the engagement and not of any other person.

(2) Notwithstanding anything in section 3(2)(b), to the contrary, any person who, in accordance with a marketing method approved by the owner or user of a trade mark or trade name, solicits orders for goods bearing that mark or name which are to be delivered at a future date shall be deemed to be the employee of the owner or user of such mark or name, as shall any person who transmits such orders to such owner or user either directly or through any other person in consideration of thereby obtaining a commission or profit on the transaction:

Provided that nothing in this subsection shall apply where a salesman solicits orders for goods to be re-sold by the purchaser thereof at any shop, warehouse or other trade premises.

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Self-employed persons

6 (1) For the purposes of Parts III and IV a self-employed person is an individual natural person—

- (a) who, either alone or with others, carries on business for gain in Bermuda or outside Bermuda from a place of business in Bermuda, otherwise than as an employee as defined in section 4 or 5; or
- (b) who, whether or not he is an employee as defined in section 4 or 5 and whether or not by virtue of an agreement—
 - (i) manages or assists in the management of any business carried on for gain in Bermuda or outside Bermuda from a place of business in Bermuda; or
 - (ii) renders personal services to any such business, and who benefits directly or indirectly from the profits or income of such business otherwise than by way or remuneration for the purpose of section 12 or, as the case may be, section 21 or in addition to receiving such remuneration.

(2) For the purposes of Parts III and IV the remuneration deemed to be paid to such a self-employed person shall be—

- (a) the remuneration for the purposes of section 12 or, as the case may be, section 21 (if any) paid or given; or
- (b) the notional remuneration assessed under section 6,

whichever is the greater amount.

Assessment of notional remuneration

7 (1) For the purposes of Parts III and IV, the notional remuneration of a self-employed person shall be assessed at an amount considered to be the fair and equitable valuation of the services rendered by such individual to the business in respect of which the taxpayer is chargeable to tax under Part III or, as the case may be, Part IV.

(2) The notional remuneration shall be assessed in the first instance by the taxpayer who shall have regard to and only to—

- (a) the nature and extent of the services rendered by the individual whose notional remuneration is being assessed to the business in respect of which the taxpayer is chargeable to tax under Part III or, as the case may be Part IV; and for that purpose the services rendered by an individual to a business include any services rendered by him to the business which directly or indirectly affect or influence the financial viability of the business;
- (b) the experience and special skill of that individual;
- (c) the nature of the said business;
- (d) the remuneration of persons engaged in the business—

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- (i) of persons other than the taxpayer, and rendering similar or comparable services;
- (ii) of the taxpayer, and rendering similar or comparable services;
- (iii) of the taxpayer, other than such persons as are mentioned in subparagraph (ii);
- (e) the financial records of the business, that is to say, records which—
 - (i) state the services rendered by the individual which generate any form of revenue for the business; and
 - (ii) describe the allocation of benefits to the individual from the business.

(3) The Commissioner may make such inquiries as he thinks fit for the purpose of ascertaining whether the assessment by any taxpayer under subsection (2) is adequate and the Commissioner may thereafter, if he is of the opinion that the assessment is inadequate, increase the assessment and, in so doing, he shall have regard to that subsection.

(4) Subject to subsection (5), an assessment by the taxpayer under subsection (2) shall be made in the return furnished by him for the purposes of section 7 or, as the case may be, section 8 of the Taxes Management Act 1976 .

(5) Where an assessment has been made by the taxpayer or the Commissioner of any person's notional remuneration during any tax period, that assessment shall be deemed to be the taxpayer's or Commissioner's assessment, as the case may be, of such person's notional remuneration during subsequent tax periods, being tax periods in which such person renders services to the business carried on by the taxpayer, until such assessment is varied by a further assessment under this section:

Provided that—

- (a) no such further assessment by the taxpayer shall have the effect of reducing any assessment deemed to be the Commissioner's assessment under this subsection;
- (b) the taxpayer may at any time within three months of the last day of a tax period in respect of which the Commissioner has been so deemed to have made an assessment apply in writing to the Commissioner to have such assessment re-assessed by him and the Commissioner may, thereupon, confirm or vary such assessment.

(6) The assessment of the Commissioner under subsection (3) shall be retrospective to such tax period as he may determine:

Provided that the Commissioner shall not exercise his powers under this subsection to assess tax retrospectively after the expiration of two years from the date when the last return for the financial year in which the tax period occurs was furnished for the purposes of section 7 or section 8 of the Taxes Management Act 1976 .

(7) There shall for the purposes of Part III but not Part IV be deducted from the notional remuneration of a self-employed person who is carrying on the business of a motor

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taxi operator, and who drives a motor taxi in pursuance of such business, the notional remuneration attributable to the services rendered by such individual.

(8) In this section “taxpayer” means taxpayer within the meaning of section 12 or, as the case may be, section 21.

[Section 7 amended by 1991:17 effective 1 April 1991]

Indexation of notional remuneration

7A (1) This section shall have effect for the purposes of facilitating the determination under section 7 of taxpayers’ notional remuneration.

(2) Subject to subsections (5) and (6), a taxpayer’s notional remuneration in financial year 2 shall, where the statutory conditions obtain in relation to him, be deemed to be the greater of the following two amounts—

- (a) the amount arrived at by the operation of the indexing mechanism set forth in First Schedule;
- (b) the amount of the taxpayer’s notional remuneration in financial year 2, as assessed by him.

(3) The statutory conditions referred to in subsection (2), in relation to a taxpayer, are that in respect of financial year 1—

- (a) the taxpayer made an assessment of his notional remuneration under section 7(2); and
- (b) the Commissioner did not make an assessment of the taxpayer’s notional remuneration under section 7(3).

(4) In this section and First Schedule—

“financial year 1” means the financial year immediately preceding financial year 2;

“financial year 2” means the financial year in question.

(5) Subsection (2) shall not have effect in relation to a taxpayer where the taxpayer, by application in writing setting forth his reasons, requests the Commissioner to determine the taxpayer’s notional remuneration in financial year 2 on a basis different from that provided for in that subsection and the Commissioner accedes to the taxpayer’s application.

(6) This section shall not be taken to restrict the Commissioner’s power to make a retrospective assessment under section 7 of a taxpayer’s notional remuneration, except where the Commissioner has determined the taxpayer’s notional remuneration under subsection (5) of this section.

[Section 7A inserted by 1990:19 effective 1 April 1990]

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Commissioner may obtain information to assist him in exercise of powers under section 6

8 (1) Any person carrying on business in Bermuda or who employs any other person in Bermuda may be required by the Commissioner to furnish information to assist him in the exercise of his powers of assessment under section 6:

Provided that nothing in this subsection shall empower the Commissioner to require any person to furnish information relating to an exempt undertaking within the meaning of section 8.

(2) For the purposes of subsection (1) the Commissioner may serve on the person required to furnish information a notice setting out the information desired and such person shall answer the inquiries thereon and return the same to the Commissioner, properly certified as accurate, not later than the time stated by the Commissioner in the notice, being a time reasonable in the circumstances, or such extended time as the Commissioner in his discretion may allow.

(3) Any person who—

- (a) without reasonable cause refuses or neglects to answer any inquiry which he is required to answer by notice served under subsection (2);
- (b) without reasonable cause refuses or neglects to return to the Commissioner any answer when and as the same is required of him under subsection (2),

commits an offence:

Punishment on summary conviction: a fine of \$1,000.

(4) Any person who supplies any material particular under this section which he knows to be false commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$2,500.

Meaning of “exempt undertaking”

9 (1) Subject to subsections (2) and (3), for the purposes of Parts III and IV an exempt undertaking is an exempted undertaking as defined in the Companies Act 1981 .

(2) Notwithstanding subsection (1), the following shall not be exempt undertakings for the purposes of Parts III and IV—

- (a) an exempted company which is required, in respect of any of its business activities, to be licensed under the Companies Act 1981 or other public Act authorising such company to carry on business within Bermuda or, in the case of an exempted company incorporated by private Act, would be so required in the absence of any provision to the contrary in such Act;
- (b) an exempted partnership or permit company which is carrying on any business activity in respect of which, if the partnership or company were an exempted company, it would require to be licensed under the Companies Act 1981 or in respect of which it requires a licence under any

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public Act (other than under section 69 of the Bermuda Immigration and Protection Act 1956) to carry on business within Bermuda.

(3) Where an entity specified in subsection (1) is not an exempt undertaking by reason of subsection (2) the Commissioner shall, if he is satisfied that the business activities referred to in subsection (2),—

- (a) are insignificant in comparison with the other business activities of such entity within Bermuda or carried on outside Bermuda from a place of business in Bermuda, direct that such entity shall be deemed to be an exempt undertaking for the purposes of Parts III and IV;
- (b) are carried on as a business enterprise distinct and separable from the other business activities of such an entity, direct that such an entity shall be deemed to be an exempt undertaking for the purposes of Parts III and IV in relation to any activities attributable to the carrying on of such other business activities.

[Section 9 amended by 1994:5 effective 25 March 1994]

Election by exempt undertakings

9A (1) An exempt undertaking may make an election under this section as to the remuneration on which it is to be charged to tax under Parts I to IV.

(2) An exempt undertaking may for that purpose choose between option A and option B, and that choice is the election referred to in subsection (1).

(3) Where an exempt undertaking chooses option A, Parts I to IV shall have effect in relation to the exempt undertaking as if this section had not been enacted.

(4) A choice of option A may be made by the exempt undertaking delivering a notice in writing for the purpose to the Commissioner in a form approved by him; but, unless the provisions of the Second Schedule are satisfied in relation to an exempt undertaking in respect of a tax period, that exempt undertaking shall be deemed to have chosen option A in respect of that tax period.

(5) Where an exempt undertaking chooses option B, Parts I to IV shall, subject to the Second Schedule, have effect in relation to the exempt undertaking as if it were not an exempt undertaking.

(6) The Second Schedule shall have effect as to the procedure which an exempt undertaking must follow to choose option B, the consequences of such a choice, and otherwise in relation to options A and B.

[Section 9A inserted by 1994:5 effective 25 March 1994]

Responsibility for collection of employment tax and hospital levy

10 The Tax Commissioner shall be responsible for the collection of employment tax and hospital levy.

[Part II - IV of this Act, any references to those Parts, or to Hospital Levy or Employment Tax are repealed by s. 26 (subject to the provisions of that section) by 1995:16 effective 1 April 1995]

PART III
EMPLOYMENT TAX

Employers to be liable in respect of employee's remuneration

11 (1) Subject to this Act, employment tax at the rate prescribed in the Rates Act shall be charged on every employer in respect of the remuneration paid or given by him to, or with respect to, each of his employees during any tax period on account of services performed by the employee wholly or mainly in Bermuda, whether or not the remuneration is paid in Bermuda.

(2) Employment tax shall not be charged on any person under this section in respect of any remuneration in respect of which tax is to be charged under section 11.

Tax chargeable in respect of self-employed persons

12 (1) Subject to this Act employment tax at the rate prescribed by the Rates Act shall be charged on every person (hereinafter in this section called "the taxpayer")—

- (a) being a self-employed person, in respect of remuneration which is deemed by section 5(2) to be paid to the taxpayer during any tax period;
- (b) being other than a self-employed person, in respect of remuneration which is deemed by section 5(2) to be paid to a self-employed person, being remuneration deriving from the taxpayer.

(2) Notwithstanding subsection (1), no self-employed person shall be charged to tax in respect of remuneration deemed by section 5(2) to be paid to him during any tax period if any other person is chargeable to tax in respect of the same remuneration under paragraph (b) of the said subsection (1).

Meaning of remuneration in this Part

13 (1) Subject to subsection (2), remuneration for the purposes of this Part includes—

- (a) any wages, salary, leave pay, commission, gratuity, fee, bonus, perquisite or allowance;
- (b) any amount paid with respect to an employee to a retirement or provident fund, scheme or society or under a hospital or health insurance scheme;
- (c) the rental value of any place of residence provided rent free;
- (d) where a place of residence is provided at a rent less than the rental value, the excess of the rental value over such rent;
- (e) the value of meals, board, lodging and other benefits of any kind whatever and whether received in cash or in any medium other than cash;
- (f) any moneys paid under a profit sharing scheme;
- (g) any gain realised by the exercise of, or by the assignment or release of, a right to acquire shares or stock in a body corporate obtained by an

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employee and arising out of services rendered (whether in the capacity of director or otherwise) by such employee to such body corporate;

- (h) any money or other thing of value paid or given by an employer to, or with respect to, an employee or ex-employee in connection with the permanent termination of his employment on account of redundancy or otherwise, whether or not so paid or given—

- (i) in a lump sum or in a series of payment; or

- (ii) in respect of one or more tax periods,

being money or a thing of value paid or given for services rendered to the employer wholly or mainly in Bermuda; and it shall be assumed that any money or other thing of value paid or given by an employer to, or with respect to, an employee or ex-employee of his at, or within three years of, the permanent termination of the employment is remuneration for the purposes of this Part within this paragraph unless the contrary is proved.

(2) Notwithstanding subsection (1), remuneration for the purposes of this Part does not include—

- (a) payments with respect to an employee under the Contributory Pensions Act 1970 , the Health Insurance Act 1970 , under an approved retirement scheme, under an approved life insurance scheme, or under an approved hospital or health insurance scheme;
- (b) any moneys paid to an employee under the Workmen's Compensation Act 1965 , or otherwise on account of sickness or injury or of medical or hospital expenses in connection with sickness or injury but excluding leave pay for sick-leave granted in accordance with the contract or terms of employment;
- (c) remuneration paid by an employer to an employee in respect solely of domestic service in the residence of the employer or in respect solely of service as a gardener in the garden or grounds of such residence;
- (d) any moneys paid by an employer who is carrying on the business of an hotel, restaurant, boarding house or other like business out of a fund entirely constituted of the proceeds of any service charge imposed upon accounts rendered;
- (e) the cost of passages provided at the commencement and termination of his contract for a person engaged outside Bermuda for employment in Bermuda under a contract for a fixed period and the cost of such passages for his dependants;
- (f) remuneration paid or given by an employer to an employee, being a person possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956 , who is receiving training under an approved training scheme while in the employment of such employer;

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- (g) remuneration paid or given to an employee who is employed to drive a motor taxi lawfully operated under any provision of law and attributable to such employment;
- (h) remuneration paid or given to an employee who is a full time student at any school, training institution, university or other similar body, and who is employed on a Saturday, a public holiday or during a period of vacation including a half-term holiday;
- (i) remuneration paid or given by an employer who is a contractor employed in the construction, maintenance or operation of the Bases (as defined in the United States Bases (Agreement) Act 1952) to an employee so employed and attributable to such employment;
- (j) remuneration paid or given by an employer to a registered nurse within the meaning of the Nurses Act 1969 in respect of personal services rendered to such employer or a member of his household;
- (k) remuneration paid or given to an employee who is a member of the Royal Bermuda Regiment in respect of any period of training (including annual camp) or while serving with the Regiment during any period when they are embodied;
- (l) remuneration paid or given to an employee in respect of any period of jury service within the meaning of Jurors Act 1971 ;
- (m) the value of any right to airline concessionary travel, that is to say, any right to travel by air free of charge or at a reduced rate granted to an employee of any employer carrying on an air transport service, or to any relation of such an employee, as part of that employee's contract of service or apprenticeship with that employer;
- (n) remuneration paid or given as a lay-off allowance to an employee whose employment is temporarily discontinued because of seasonal or other short-term reasons.

[Section 13 subsection (2)(k) amended by 2015 : 48 s. 25 and s. 26 effective 1 November 2017]

General exemption

14 (1) Subject to this section, for the purpose of ascertaining the employment tax payable by a person chargeable to employment tax there shall be deducted from the amount of the remuneration in respect of which such person is chargeable included in a return furnished in accordance with section 7 or section 8 of the Taxes Management Act 1976 (including any remuneration which is deemed by section 5(2) to be paid to any individual)—

- (a) where the return relates to one tax period, the amount prescribed in the Rates Act; or
- (b) where the return relates to a period of more than one tax period, for each tax period to which the return relates, the amount so prescribed.

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(2) For the purpose of ascertaining the employment tax payable by a person chargeable to employment tax who was so chargeable during part only of a tax period, the amount to be deducted for that tax period from the amount of the remuneration in respect of which such person is chargeable included in a return relating to that tax period shall be such amount which bears to the amount prescribed for the purposes of subsection (1) the same proportion as the number of days in that tax period during which the person chargeable to tax was so chargeable bears to the total number of days in that tax period.

(3) This section shall apply to two or more bodies corporate deemed to be associated under section 43 of the Taxes Management Act 1976 as if such bodies corporate were a single person.

Refunds and remissions

15 (1) Where the aggregate of the remuneration in respect of which any person is chargeable to employment tax under section 10 or 11 does not exceed—

- (a) in the case of a person who is chargeable to employment tax during the whole of any financial year, such sum as may be prescribed by the Rates Act; or
- (b) in the case of a person who is chargeable to tax during part only of any financial year, such amount as bears to such sum the same proportion as that part of the year bears to a year,

the Commissioner shall refund to that person the amount of tax paid by him in respect of any tax period during that year or such part of that year and shall remit any tax which has not been paid.

(2) Notwithstanding anything to the contrary in this Part, if the aggregate of the remuneration in respect of which a person is chargeable to employment tax under section 10 or 11 exceeds—

- (a) the sum prescribed for the purposes of subsection (1) (a), in the case of a person who is chargeable to tax during the whole of a financial year; or
- (b) the amount determined in accordance with subsection (1)(b), in the case of a person who is chargeable to tax during part only of the financial year,

employment tax shall be charged on such person at the rate of 100 per centum of such excess if thereby the tax otherwise chargeable under this Act is reduced, and the Commissioner shall refund to that person any employment tax paid by him in respect of that year in excess of the tax hereby charged in respect of any tax period during that year or such part of that year and shall remit any such excess which has not been paid.

(3) This section shall apply to two or more bodies corporate deemed to be associated under section 43 of the Taxes Management Act 1976 as if such bodies corporate were a single person.

Particular exemptions

16 Employment tax shall not be charged on—

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- (a) a Government Board;
- (b) an exempt undertaking;
- (c) a charity registered under the Charities Act 1965 ;
- (d) the Bermuda Hospitals Board;
- (e) the Bermuda College;
- (f) any school operated with the consent of the Minister responsible for education under the Schools Act 1926 or which was in existence at the commencement of that Act;
- (g) the Corporations of Hamilton and St. George's;
- (h) parish councils;
- (i) an educational, sporting, cultural or scientific institution, association or society which in the opinion of the Minister is carried on otherwise than for the purpose of profit or gain by the individual members thereof;
- (j) the Bermuda National Trust;
- (k) any farmer or horticulturist in relation to any activities attributable to the carrying on of a farming or horticultural enterprise;
- (l) any fisherman holding a fishing boat licence issued under the regulations under the Fisheries Act 1972 in relation to any activities attributable to the carrying on of the business of a fisherman;
- (m) any operator of a public carriage (as defined in the Public Carriage Act 1949) in relation to any activities attributable to the business of a public carriage operator;
- (n) any body of persons corporate or unincorporate which, in the opinion of the Minister, is established principally for religious purposes in relation to any activities of such body other than the carrying on of a business of a commercial character;
- (o) a foreign or Commonwealth government or any agency thereof;
- (p) contractors being nationals of the United States of America employed in the construction, maintenance or operation of the Bases (as defined in the United States Bases (Agreement) Act 1952) in relation to activities attributable to such employment.

[Section 16 paragraph (f) amended by BR 5 / 2011 para. 5 effective 25 February 2011]

Employment tax not recoverable from employee

17 Employment tax charged on any employer under this Part shall not be recoverable by such employer from the remuneration paid by him to his employee, notwithstanding any agreement to the contrary.

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Tax period: Employment tax

18 For the purposes of this Part “tax period” means—

- (a) in respect of the time beginning on the 1st of April, 1976 and ending on the 30th of March, 1979, each and every calendar month;
- (b) thereafter, but subject to section 19, each and every period of three calendar months commencing with the months of April, May and June, 1979.

Special power of Tax Commissioner to reduce length of tax period in certain cases

19 (1) Subject to subsection (3), the Tax Commissioner shall have power, on application made to him for the purpose by a person chargeable to employment tax (hereafter in this section called a “taxpayer”, to grant permission in writing for that taxpayer’s tax period to be each and every month for such time not exceeding twelve months, subject to such conditions, as may be specified in the permission.

(2) Subject to subsection (3), a permission granted by the Tax Commissioner may be renewed by him for such further time not exceeding twelve months (whether or not continuously with the time of an earlier permission granted to that taxpayer), and as often, as in the Tax Commissioner’s opinion the circumstances warrant.

(3) The Tax Commissioner shall not grant or renew a permission under this section unless he is satisfied that the taxpayer in question will suffer hardship if the permission is not granted or renewed.

(4) Where a permission granted or renewed under this section is in force, the provisions of this Act respecting tax periods shall have effect as respects that taxpayer subject to the terms of the permission.

(5) For the avoidance of doubt it is hereby declared that any decision made by the Tax Commissioner under the powers conferred upon him by this section is not a decision in relation to which Part IV of the Taxes Management Act 1976 applies .

[Part II - IV of this Act, any references to those Parts, or to Hospital Levy or Employment Tax are repealed by s. 26 (subject to the provisions of that section) by 1995:16 effective 1 April 1995]

PART IV

HOSPITAL LEVY

Employers to be liable in respect of employee’s remuneration

20 (1) Subject to this Act, hospital levy at the rate prescribed in the Rates Act shall be charged on every employer in respect of remuneration paid by him to, or with respect to, each of his employees during any tax period on account of services performed by the employee wholly or mainly in Bermuda, whether or not the remuneration is paid in Bermuda.

(2) Hospital levy shall not be charged on any person under this section in respect of any remuneration in respect of which levy is charged under section 21.

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(3) Notwithstanding anything to the contrary in this section, hospital levy shall be charged on the following persons at one half of the rate prescribed by the Rates Act for the purposes of subsection (1)—

- (a) a charity registered under the Charities Act 1965 ;
- (b) a parish council;
- (c) any body of persons corporate or unincorporate which, in the opinion of the Minister, is established principally for religious purposes in relation to any activity of such body other than the carrying on of a business of a commercial character;
- (d) the manager (as defined for the purposes of the Education Act 1954) of a school (as so defined);
- (e) the Government.

Levy chargeable in respect of self-employed persons

21 (1) Subject to this Act, hospital levy at the rate prescribed by the Rates Act shall be charged on every person (hereinafter in this section called “the taxpayer”)—

- (a) being a self-employed person, in respect of remuneration which is deemed by section 5(2) to be paid to the taxpayer during any tax period;
- (b) being other than a self-employed person, in respect of remuneration which is deemed by section 5(2) to be paid to a self-employed person being remuneration deriving from the taxpayer.

(2) Notwithstanding subsection (1), no self-employed person shall be charged to tax in respect of remuneration deemed by section 5(2) to be paid to him during any tax period if any other person is chargeable to tax in respect of the same remuneration under paragraph (b) of the said subsection (1).

Variation in case of exempt undertakings

22 (1) Notwithstanding anything to the contrary in this Part, where a person on whom hospital levy is to be charged under this Part is an exempt undertaking hospital levy shall be charged on such exempt undertaking in respect of each of its employees on account of services performed by the employee wholly or mainly in Bermuda without reference to the remuneration actually paid by it to such employee but on the assumption that each employee is paid during any tax period such remuneration as is specified in the Rates Act.

(1A) For every exempt undertaking hospital levy shall consist of two separate portions, namely—

- (a) the basic levy; and
- (b) the additional levy;

and the basic levy and the additional levy shall be charged on each such undertaking at the rates respectively prescribed in the Rates Act.

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[subsection [1A] inserted by 1990:19 effective 1 April 1990]

(2) For the purposes of this section, where the Commissioner is satisfied that a person is employed by a number of exempt undertakings associated as a group, and certifies accordingly, that person shall be deemed to be the employee of that one of those exempt undertakings which is selected by the group, and not to be an employee of any other.

(3) Where an employee of an exempt undertaking is employed by that exempt undertaking for part only of a tax period, the remuneration on which the exempt undertaking may be charged hospital levy in respect of that employee shall bear the same proportion to the remuneration specified in the Rates Act and referred to in subsection (1) as the portion of the tax period for which he is so employed bears to the complete tax period.

(4) In this section—

- (a) “employee” means any person in respect of whose remuneration or notional remuneration the exempt undertaking would, but for this section, be chargeable to hospital levy by reason of section 18 or 19; but that expression does not include any person in so far as he is the recipient or beneficiary of any payment described in section 23(2);
- (b) an exempt undertaking is to be treated as associated with another exempt undertaking if at the time in question one of the two has control of the other, or both are under the control of the same person or persons; and any two or more exempt undertakings so associated are collectively referred to as a group.

(5) Remuneration which apart from this subsection is chargeable under subsections (1) to (4) to hospital levy in respect of an employee of an exempt undertaking shall be disregarded for the purpose of calculating additional hospital levy payable by that exempt undertaking under paragraph (b) of subsection (1A) if the employee—

- (a) is a person possessing Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956; and
- (b) is receiving training under an approved training scheme while in the employment of that exempt undertaking.

[Section 22 amended by 1994:5 effective 25 March 1994]

Meaning of remuneration in this Part

23 (1) Subject to subsection (2), remuneration for the purposes of this Part includes—

- (a) any wages, salary, leave pay, commission, fee or bonus;
- (b) moneys paid under a profit sharing scheme;
- (c) any money or other thing of value paid by an employer, not being an exempt undertaking, to, or with respect to, an employee or ex-employee in connection with the permanent termination of his employment on account of redundancy or otherwise, whether or not so paid—

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- (i) in a lump sum or in a series of payment; or
- (ii) in respect of one or more tax periods,

being money or a thing of value paid for services rendered to the employer wholly or mainly in Bermuda; and it shall be assumed that any money or other thing of value paid by such an employer to, or with respect to, an employee or ex-employee of his at, or within three years of, the permanent termination of the employment is remuneration for the purposes of this Part within this paragraph unless the contrary is proved.

(2) Notwithstanding subsection (1), remuneration for the purposes of this Part does not include—

- (a) payments with respect to an employee under the Contributory Pensions Act 1970 , the Health Insurance Act 1970 , under a retirement scheme, or under a hospital or health insurance scheme;
- (b) remuneration paid by an employer to an employee in respect solely of domestic service in the residence of the employer or in respect solely of service as a gardener in the grounds of such residence;
- (c) any moneys paid by an employer who is carrying on the business of an hotel, restaurant, boarding house or other like business out of a fund entirely constituted of the proceeds of any service charge imposed upon accounts rendered;
- (d) remuneration paid by an employer to a registered nurse within the meaning of the Nurses Act 1969 in respect of personal services rendered to such employer or a member of his household;
- (e) remuneration paid under the authority of the Government Authorities (Fees) Act 1971 ;
- (f) remuneration paid as a lay-off allowance to an employee whose employment is temporarily discontinued because of seasonal or other short-term reasons;
- (g) remuneration paid to an employee who is a full time student at any school, training institution, university or similar body, and who is employed on a Saturday or a public holiday or during a period of vacation including a half-term holiday.

General exemption

24 Hospital levy shall not be charged on any individual natural person (hereinafter in this section called “the taxpayer”) where—

- (a) the taxpayer is not chargeable to tax in respect of remuneration paid by him to any other person; and
- (b) the remuneration deemed to have been paid to such person under section 5(2) does not exceed such amount as may be fixed by the Rates Act.

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Particular exemptions

25 Hospital levy shall not be charged on—

- (a) *[repealed by 1978 : 22]*
- (b) *[repealed by 1978 : 22]*
- (c) any operator of a public carriage (as defined in the Public Carriage Act 1949) in relation to any activities attributable to the business of a public carriage operator;
- (d) a foreign or, subject to section 25, a Commonwealth government or any agency thereof;
- (e) contractors being nationals of the United States of America employed in the construction, maintenance or operation of the Bases (as defined in the United States Bases (Agreement) Act 1952) in relation to activities attributable to such employment.

Payment of contributions by employee

26 (1) An employer may deduct and retain from the remuneration paid by him to his employee during any tax period an amount equivalent to—

- (a) the whole of the hospital levy chargeable to the employer, where the employer is chargeable to levy under section 18(3);
- (b) 58.33% of the hospital levy chargeable to the employer, in any other case,

in respect of the remuneration paid to the employee during that tax period:

Provided that—

- (a) where an employee is paid 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 of such payments;
- (b) if an employer fails to make a deduction for hospital levy, or fails to make the full amount of such a deduction, from any payment that he makes under paragraph (a) of this proviso, he shall not be entitled to make any deduction on that account from any subsequent payment; and
- (c) an employer who is an exempt undertaking—
 - (i) shall not make any deduction in respect of the additional levy provided for in section 22(1A)(b); and
 - (ii) in making a deduction in respect of the basic levy provided for in section 22(1A)(a), shall not deduct from the remuneration paid by him to his employee a greater amount than he could have deducted had the employer been charged to levy under section 20 or 21 under the remuneration which was actually paid to his employee or which is deemed by section 6(2) to have been so paid.

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(2) Subject to subsection (1) hospital levy charged on any employer under this Part shall not be recoverable by such employer from the remuneration paid by him to his employee notwithstanding any agreement to the contrary.

[Section 26 amended by 1990:19 effective 1 April 1990; and by 1994:5 effective 25 March 1994]

Hospital levy to be paid by the Government

27 (1) For the purposes of this Part “employer” shall include the Government, any agency thereof, and any Government Board; and “employee” shall be construed accordingly.

(2) The Government shall be charged to hospital levy in respect of salaries (including any additional salary) paid under the Legislature and Executive Council Salaries Act 1969 or under the Ministers and Members of the Legislature (Salaries and Pensions) Act 1975 as if the Government were the employer of the persons entitled to payment thereunder and section 24 shall apply in relation to such payments as though such persons were the employees of the Government.

Tax period: Hospital levy

28 For the purposes of this Part “tax period” means each and every period of three calendar months commencing with the months of April, May and June 1976, except that, where the person chargeable to hospital levy is also chargeable to employment tax, that expression means in relation to him, during—

- (a) the time beginning on the 1st of April, 1976 and ending on the 30th of March, 1979; or
- (b) the time any permission granted to him under section 19 for his tax period to be a monthly tax period remains in force

each and every calendar month.

[Part II - IV of this Act, any references to those Parts, or to Hospital Levy or Employment Tax are repealed by s. 26 (subject to the provisions of that section) by 1995:16 effective 1 April 1995]

PART V

HOTEL OCCUPANCY TAX

Hotel occupancy tax

29 (1) Subject to this Act, hotel occupancy tax shall be charged on the proprietor of an hotel in respect of each guest accommodated in the hotel at such percentage of the rack rate charge made by such hotel in respect of such person as may be prescribed in the Rates Act.

(2) In this section “rack rate charge” means, subject to subsection (3), the charge made for accommodation at an hotel.

(3) Where the charge made for accommodation at an hotel—

- (a) includes any meals in respect of which no separate charge is made; or

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- (b) is in accordance with—
 - (i) published rates for accommodation; or
 - (ii) the rates quoted to the person responsible for the payment of such charge or his agent,and such rates as so published or so quoted include any meals in respect of which no separate charge is made,

then the rack rate charge shall include, in addition to the charge made for accommodation, the charge made for such meals.

Statement to be delivered to persons accommodated

30 (1) Every proprietor of an hotel shall on the departure therefrom of the person accommodated deliver or cause to be delivered to that person a statement setting forth clearly—

- (a) particulars of the accommodation provided for that person;
- (b) the charges made therefor; and
- (c) the amount payable under this Act (as read with the Rates Act) for tax in respect thereof.

(2) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$500.

Exemption

30A (1) Where an entitled person who has been accommodated as a guest at an hotel establishes to the Tax Commissioner's satisfaction that he has paid an amount to the proprietor of the hotel as hotel occupancy tax in respect of the accommodation, the Tax Commissioner shall issue in respect of him a certificate to that effect specifying the amount.

(2) A certificate issued by the Tax Commissioner in respect of an entitled person pursuant to subsection (1) shall be authority to the Accountant General to pay to the entitled person the amount specified in the certificate.

(3) In this section "entitled person" means a person entitled under the Consular Relations Act 1971 [*title 6 item 1*] or the Diplomatic Privileges Act 1980 [*title 6 item 5*] to exemption from paying taxes on charges incurred by him for hotel accommodation.

Responsibility for collection of hotel occupancy tax

31 The Tax Commissioner shall be responsible for the collection of hotel occupancy tax.

Tax period: hotel occupancy tax

32 For the purposes of this Part "tax period" means each and every calendar month commencing with the month of April 1976.

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PART VA PASSENGER CABIN TAX

Passenger cabin tax

32A *[Repealed by 2019 : 11 s. 2]*

[Section 32A repealed by 2019 : 11 s. 2 effective 1 April 2019]

Registration for passenger cabin tax

32B *[Repealed by 2019 : 11 s. 2.]*

[Section 32B repealed by 2019 : 11 s. 2 effective 1 April 2019]

Payment of passenger cabin tax

32C *[Repealed by 2019 : 11 s. 2]*

[Section 32C repealed by 2019 : 11 s. 2 effective 1 April 2019]

Waiver of tax liability by Minister

32CA *[Repealed by 2019 : 11 s. 2]*

[Section 32CA repealed by 2019 : 11 s. 2 effective 1 April 2019]

Power to modify tax liability in exceptional circumstances

32D *[Repealed by 2019 : 11 s. 2]*

[Section 32D repealed by 2019 : 11 s. 2 effective 1 April 2019]

Tax period: passenger cabin tax

32E *[Repealed by 2019 : 11 s. 2]*

[Section 32E repealed by 2019 : 11 s. 2 effective 1 April 2019]

PART VB PASSENGER DEPARTURE TAX

Passenger departure tax: passenger ships

32F (1) Passenger departure tax shall be charged in respect of every passenger departing from Bermuda by passenger ship.

(2) Tax due under this section shall be collected on or before departure by the owner, operator or agent of the passenger ship in question and submitted, together with a return in the prescribed form, to the Commissioner—

(a) *[repealed]*

(b) in respect of passengers departing from Bermuda by passenger ship, within seven days beginning with the date of departure,

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and section 7(1) of the Taxes Management Act 1976 (returns) shall apply accordingly.

(3) For the purposes of this section, “passenger ship” has the meaning assigned by section 1 of the Passenger Ships and Other Vessels Act 1972.

[Section 32F section heading and subsections (1) and (2) amended by BR 15 / 2017 reg. 2 effective 16 March 2017; Section 32F subsection (3) amended by 2019 : 27 s. 8 effective 1 January 2020]

Passenger departure tax: pleasure craft

32G *[Repealed by 2019 : 27 s. 5]*

[Section 32G repealed by 2019 : 27 s. 5 effective 1 January 2020]

Exemptions

32H (1) Passenger departure tax shall not be payable in respect of the following persons—

- (a) children under the age of two years;
- (b) the officers and crew of any vessel departing from Bermuda;
- (c) persons travelling on behalf of, or at the expense of, the Government of the United Kingdom or of any foreign Government;
- (d) *[repealed]*
- (e) *[repealed]*
- (f) passengers on ships which arrive in Bermuda solely by reason of distress or emergency;
- (g) career consular officers and consular employees within the meaning of the Consular Relations Act 1971 and members of their families forming part of their households who are—
 - (i) not Commonwealth citizens; and
 - (ii) not engaged in private occupation for gain in Bermuda,if the status of such persons is evidenced by a certificate issued by the head of the consular post;
- (h) passengers on pleasure craft who are bona fide participants in an event approved by the Minister for the purposes of this paragraph.

(2) Where no passenger departure tax is paid in respect of a person on the basis that he is exempted under this section, the person rendering the return shall produce such evidence as the Commissioner may require to satisfy himself that no tax fell to be paid in the case of such person; and if the Commissioner is not so satisfied, the person making the return shall be liable to pay the tax accordingly.

[Section 32H subsection (1) amended by BR 15 / 2017 reg. 2 effective 16 March 2017]

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Registration for passenger departure tax

32I (1) *[repealed]*

(2) Where the owner of a passenger ship receives a permit under section 3 of the Passenger Ships Act 1972 (or a copy of such a permit) in respect of visits to Bermuda by that ship, he shall apply within seven days in the prescribed form and manner to the Commissioner for registration under section 6 of the Taxes Management Act 1976, indicating the names of the operator and agent of the ship (if any) in relation to those visits.

[Section 32I subsection (1) repealed by BR 15 / 2017 reg. 2 effective 16 March 2017]

Liability for payment of passenger departure tax

32J For the purposes of the Taxes Management Act 1976, the owner of a passenger ship shall be jointly and severally liable with the operator and agent (if any) named under section 32I for payment of passenger departure tax; and references in that Act to persons chargeable to tax, or otherwise having obligations in relation to tax, shall be read as references to the owner, operator or agent of the ship in question.

[Section 32J amended by BR 15 / 2017 reg. 2 effective 16 March 2017]

Penalty for late payment

32K Section 22 of the Taxes Management Act 1976 shall apply in relation to passenger departure tax as if for the words “for every month, or part of a month” there were substituted “for every week, or part of a week”.

Refunds of tax in certain cases

32L A person is entitled to a refund of passenger departure tax if he makes a claim in writing to the Commissioner within 90 days beginning with the date of his departure or, in the case of pleasure craft, his arrival, and satisfies the Commissioner that passenger departure tax was paid in respect of him and that he is exempted under section 32H.

Tax period: passenger departure tax

32M For the purposes of this Part, “tax period” means—

(a) *[repealed]*

(b) a week, in relation to passenger departure tax payable in respect of passengers departing by passenger ship.

[Section 32M paragraph (a) repealed by BR 15 / 2017 reg. 2 effective 16 March 2017]

Penalty for non-payment

32N Any person who fails to pay passenger departure tax as required by this Part is guilty of an offence and liable on summary conviction to a fine of \$75 for each person in respect of whom the payment should have been made.

[Part VB inserted by 1999:18 s.2 effective 1 June 1999; Section 32N amended by 2019 : 11 s. 3 effective 1 April 2019]

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PART VC

LARGE SHIP INFRASTRUCTURE TAX

Meaning of “large passenger ship”

32O *[Repealed by 2020 : 12 s. 2]*

[Section 32O repealed by 2020 : 12 s. 2 effective 1 May 2020]

Large ship infrastructure tax

32P *[Repealed by 2020 : 12 s. 2]*

[Section 32P repealed by 2020 : 12 s. 2 effective 1 May 2020]

Application of Part VB to large ship infrastructure tax

32Q *[Repealed by 2020 : 12 s. 2]*

[Section 32Q repealed by 2020 : 12 s. 2 effective 1 May 2020]

PART VD

TRANSPORT INFRASTRUCTURE TAX

Interpretation of Part VD

32R For the purposes of this Part—

“Dockyard” means Heritage Wharf or King’s Wharf at the Royal Naval Dockyard, Ireland Island;

“passenger ship” has the meaning assigned by section 1 of the Passenger Ships and Other Vessels Act 1972.

[Section 32R inserted by 2020 : 12 s. 3 effective 1 May 2020]

Transport infrastructure tax

32S (1) In addition to any passenger departure tax payable under Part VB, transport infrastructure tax shall be charged in respect of each visit by a passenger ship to Bermuda where the ship is docked in Dockyard, or is at anchor with tender to Dockyard.

(2) Transport infrastructure tax shall be payable by the owner, operator or agent of the ship at the rate prescribed in the Rates Act, calculated by reference to the number of passengers departing from Bermuda on the ship.

[Section 32S inserted by 2020 : 12 s. 3 effective 1 May 2020]

Application of Part VB to transport infrastructure tax

32T Section 32F(2) and sections 32H to 32N (collection, exemptions, registration, liability for payment, penalty for late and non-payment, refunds and tax period) shall apply,

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with the necessary modifications, in relation to transport infrastructure tax as they apply to passenger departure tax.

[Section 32T inserted by 2020 : 12 s. 3 effective 1 May 2020]

PART VI BETTING DUTY

Betting duty

33 (1) There shall be charged on all bets made, received or negotiated by a licensed person wherever made, received or negotiated a duty, to be known as betting duty, in such amount as may be prescribed in the Rates Act.

(2) Betting duty shall be paid by the bookmaker or pool betting agent who receives or negotiates the bet.

(3) In the case of fixed odds betting the person responsible for the payment of duty under subsection (2) may recover the amounts paid by way of betting duty from the winnings; but the amount so recoverable shall not, when expressed as a percentage of those winnings, exceed an amount equal to the percentage prescribed as the rate of betting duty under the Rates Act.

Payment of betting duty

34 (1) Every person responsible for the payment of betting duty shall pay the duty payable in respect of bets received or negotiated by him in the course of any week upon close of business at the end of that week or as soon as reasonably practicable thereafter.

(2) A person failing to pay betting duty in accordance with subsection (1) shall, for the purposes of section 16 of the Taxes Management Act 1976 [*title 14 item 40*], be deemed to have failed to furnish a return in accordance with the Taxes Acts.

Returns

35 (1) Returns submitted for the purposes of Part II of the Taxes Management Act 1976 [*title 14 item 40*] shall—

- (a) show the amounts received as bets and the amount of tax charged thereon during the tax period to which they relate;
- (b) be accompanied by the certificate thereon of an approved accountant reporting whether the return is in agreement with the books of account of the person on whose behalf it is submitted and represents a fair record of the total amount received as bets during the period to which the return relates.

(2) In subsection (1) “approved accountant” means a public accountant who is a member of the Chartered Professional Accountants of Bermuda.

[Section 35 amended by 2014 : 8 s. 16 effective 11 April 2014]

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Accounts

36 Every person for the time being carrying on the business of bookmaker or pool betting agent shall—

- (a) keep such books, records and accounts in relation to the business as the Tax Commissioner may direct;
- (b) for at least two years or such shorter or longer period as the Tax Commissioner may in any particular case direct, preserve, at his principal place of business in Bermuda, any books, records and accounts directed to be kept by him under paragraph (a) and any other books, records, accounts or documents relating to the business; and
- (c) permit any public officer authorized in that behalf by the Tax Commissioner to enter on any premises used for the purposes of the business, to inspect any totalisator used for the purposes thereof, and to inspect and take copies of any books, records or other documents in his possession or power or on any premises used for the purposes of the business, being books, records, accounts or documents which relate or appear to relate to the business,

and any such person, and any other person employed in, or having functions in connection with, any such business shall, if required so to do by the Tax Commissioner, produce, at a time and place to be specified by the Tax Commissioner, any such books, records, accounts, or other documents relating to the business and make, at the time and to persons to be so specified, such returns relating to the business, and give such other information relating to the business, as the Tax Commissioner may require.

[Section 36 amended by 1996:14 effective by notice in the Official Gazette]

Penalties

37 Where a person commits an offence by contravening any of the provisions of section 34:

Punishment on summary conviction: a fine of \$1,000.

Responsibility for collection of betting duty

38 The Tax Commissioner shall be responsible for the collection of betting duty.

[Section 38 amended by 1996:14 effective by notice in the Official Gazette]

Tax period: Betting duty

39 For the purposes of this Part “tax period” means each and every period of three calendar months commencing with the months of April, May and June 1976.

PART VI

A

TIMESHARING OCCUPANCY TAX

Timesharing occupancy tax

39A Subject to this Act, time sharing occupancy tax shall be charged on the developing owner of a timesharing scheme in respect of the sale or resale of every timesharing interval at such percentage of the purchase price of the timesharing interval as may be prescribed in the Rates Act.

Statement to be delivered to purchasers of timesharing intervals

39B (1) Every developing owner shall on the sale or resale of a timesharing interval in a timesharing scheme provide or cause to be provided to the purchaser a statement setting forth clearly—

- (a) particulars of the purchase price of the timesharing interval;
- (b) the amount payable under this Act (as read with the Rates Act) for tax in respect thereof.

(2) Every developing owner shall deliver or cause to be delivered to the Tax Commissioner for certification by the Tax Commissioner a copy of the statement referred to in subsection (1) as soon as may be after the sale or resale of the timesharing interval.

(3) Any person who contravenes this section commits an offence:

Punishment on summary conviction: a fine of \$500.

Responsibility for collection of timesharing occupancy tax

39C The Tax Commissioner shall be responsible for the collection of timesharing occupancy tax.

Refund of timesharing occupancy tax

39CC (1) Subject to subsection (2), the Minister may direct the repayment to the developing owner of any timesharing occupancy tax previously paid to the Tax Commissioner where it is proved to the satisfaction of the Minister that—

- (a) the contract for the sale or resale of the timesharing interval in respect of which the tax was paid was, by mutual agreement of the parties thereto, cancelled before the purchaser first exercises his right to occupy and use the timesharing interval; and
- (b) the developing owner has refunded to the purchaser an amount equal to the timesharing occupancy tax paid by him in respect of the sale or resale of the relevant timesharing interval.

(2) No repayment of timesharing occupancy tax shall be made under subsection (1)—

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- (a) unless the claim for repayment and the evidence in support thereof are submitted to the Tax Commissioner within two years of the date of the execution of the contract;
- (b) during any period when the Minister responsible for Tourism has suspended the licence of the developing owner or the managing agent under the Timesharing (Licensing and Control) Act 1981 [title 26 item 22].

Interpretation

39D For the purposes of this Part—

“tax period” means the period commencing on the date of the execution of the contract to purchase the timesharing interval and ending twenty-five days thereafter; and the expressions “developing owner”, “purchaser”, “timesharing interval” and “timesharing scheme” shall have the meanings respectively assigned to those expressions in the Timesharing (Licensing and Control) Act 1981 [title 26 item 22].

PART VI

B

TIMESHARING SERVICES TAX

Timesharing services tax

39E Subject to this Act, timesharing services tax shall be charged on every managing agent of a timesharing scheme in respect of the amount payable by every purchaser of a timesharing interval on account of the costs of the operation and maintenance of the timesharing scheme during any tax period at such rate as may be prescribed in the Rates Act.

Statement to be delivered to purchasers

39F (1) Every managing agent of a timesharing scheme shall, upon payment by the purchaser of the amount payable by him on account of the costs of the operation and maintenance of the timesharing scheme, deliver or cause to be delivered to the purchaser a statement setting forth clearly—

- (a) particulars of the amount paid;
- (b) the amount payable under this Act, (as read with the Rates Act) for tax in respect thereof.

(2) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$500.

Responsibility for collection of timesharing services tax

39G The Tax Commissioner shall be responsible for the collection of timesharing services tax.

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Interpretation

39H For the purposes of this Part—

“tax period” means each and every calendar month commencing with the month of January 1982;

“costs of the operation and maintenance of the timesharing scheme” means payment for—

- (a) club membership dues;
- (b) electricity, fuel, sanitation and water;
- (c) use of any recreational or sporting facilities;
- (d) housekeeping services;
- (e) the replacement of any furniture, fittings, appliances and floor coverings;
- (f) the operation and maintenance of the premises generally;

“managing agent” means a person who undertakes the duties, responsibilities and obligations of the management of a timesharing scheme; and

the expressions “purchaser”, “timesharing interval”, and “timesharing scheme” shall have the meanings respectively assigned to those expressions in the Timesharing (Licensing and Control) Act 1981 [*title 26 item 22*].

PART VI

C

CONTRACTS EXCHANGE TAX

Contracts exchange tax

39I (1) Subject to this Act, there shall in every tax period be charged on every contracts exchange a tax, to be known as contracts exchange tax.

(2) Contracts exchange tax shall be charged on the trading fees at the prescribed rate.

Interpretation of expressions in this Part

39J In this Part—

“contracts exchange” means an organization (other than—

- (a) the Bermuda Stock Exchange; or
- (b) as respects any service provided by a licensed bank of a kind that was included in its banking services before the commencement of the Miscellaneous Taxes Amendment (No. 2) Act 1982, such a bank

which maintains a marketplace or other facilities for the trading of contracts;

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“prescribed” means prescribed in the Rates Act;

“taxpayer” means the contracts exchange on which in the case in question contracts exchange tax is charged under section 39I;

“tax period” means each and every calendar month;

“trading fees” means the fees charged by a contracts exchange in respect of transactions;

“transaction” means a transaction carried out on a contracts exchange, being a transaction of one of the following kinds, that is to say—

- (a) entering an order to purchase or sell a contract;
- (b) the actual purchase or sale of a contract.

Minimum tax

39K *[Repealed by 1986:25]*

Pro-rating of contracts exchange tax in certain circumstances

39L *[Repealed by 1986:25]*

Responsibility for collection of contracts exchange tax

39M The Tax Commissioner shall be responsible for the collection of contracts exchange tax.

PART VI

D

[Part VID repealed by 1999:18 s.3 effective 1 June 1999]

PART VII

SUPPLEMENTARY

Regulations

40 The Minister of Finance may make regulations, not inconsistent with this Act, providing for any of the following matters—

- (a) prescribing the manner in which meals, board, lodging or other benefits are to be valued for the purposes of section 12;
- (b) the refund or remission of hotel occupancy tax where an hotel refunds to any person moneys paid for the accommodation of a guest at the hotel.

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Crown not bound

41 The Crown is not bound by this Act save in so far as may be expressly provided to the contrary.

Application of other tax laws

42 The following statutory provisions shall cease to have effect in relation to any tax period (as defined for the purposes of those provisions) subsequent to the tax period ending immediately prior to the 1st of April 1976—

The Employment Tax Act 1973 [*title 14 item 36*]

The Hotel Occupancy Tax Act 1973 [*title 14 item 38*]

Part IV of the Betting Act 1975 [*title 28 item 27*].

Amendment of the Stamp Duties Act 1976

43 [*omitted*]

FIRST SCHEDULE

(Section 7A)

THE INDEXING MECHANISM

1 Paragraphs 2 and 3 of this Schedule state the manner of operation of the indexing mechanism mentioned in section 7A.

2 If the Bermuda Consumer Price Index published by the Government ("the Index") for the December next preceding financial year 1 differed from the Index for the December next preceding that December, then—

- (a) the amount of the taxpayer's notional remuneration in financial year 1, as assessed by him but altered to an extent equal to the extent, in percentage terms, of that difference, is the amount to be taken for the purposes of section 7A(2)(a); but so that
- (b) if in any case the result obtained by a calculation under sub-paragraph (a) is not a multiple of \$5, that result shall be rounded up to the nearest amount that is such a multiple.

3 If however the Index for the December next preceding financial year 1 did not differ from the Index for the December next preceding that December, then the amount of the taxpayer's notional remuneration in financial year 1, as assessed by him, is the amount to be taken for the purposes of section 7A(2)(a).

[First Schedule inserted by 1990:19 effective 1 April 1990; and amended by 1994:5 effective 25 March 1994]

SECOND SCHEDULE

(Section 9A)

ELECTION BY EXEMPT UNDERTAKING UNDER SECTION 9A

A—PERMANENT PROVISIONS

Choice of option B: new exempt undertakings

1 This paragraph, paragraphs 2 and 3 and paragraphs 7 to 9 apply in relation to an exempt undertaking which, being an employer which—

- (a) has not previously been registered as an employer under the Taxes Management Act 1976; and
- (b) is not in default in respect of any of its duties as an employer under that Act,

wishes to choose option B.

2 The exempt undertaking shall forthwith deliver to the Commissioner notice in writing in a form approved by him that it has chosen option B.

3 The choice of option B under paragraph 2 takes effect in law as soon as the notice is received by the Commissioner.

Choice of option B: old exempt undertakings

4 This paragraph and paragraphs 5 to 9 apply in relation to an exempt undertaking which, not being an employer described in sub-paragraph (a) of paragraph 1, wishes to choose option B.

5 The exempt undertaking shall deliver to the Commissioner notice in writing in a form approved by him that it has chosen option B in respect of a financial year (specifying the financial year); and the notice must be received by the Commissioner on or before the 31st December next preceding that financial year.

6 The choice of option B under paragraph 5 takes effect in law as soon as the notice is received by the Commissioner.

Duration of operation of option B

7 (1) Where a choice of option B has once been made under paragraphs 1 to 3 or, as the case may be, under paragraphs 4 to 6, that choice may not be cancelled except with effect from—

- (a) the beginning of the third financial year next succeeding the financial year in relation to which that choice first applied; or

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(b) the beginning of some later financial year.

(2) An exempt undertaking wishing to cancel a choice of option B and switch to option A must deliver to the Commissioner for the purpose notice in writing in a form approved by him.

(3) A notice under sub-paragraph (2) must specify a financial year in respect of which option A has been chosen, and must be received by the Commissioner on or before the 31st December next preceding that financial year.

(4) A notice once received under sub-paragraph (3) may not be withdrawn.

Duty to inform employees

8 An exempt undertaking which delivers a notice to the Commissioner under paragraph 2 or 5 or 7(2) shall within fifteen days of doing so in writing inform each person who is at the time an employee of the exempt undertaking of the rights that the choice the subject of the notice will confer upon the exempt undertaking as employer to make deductions from that employee's remuneration.

Offence

9 If an exempt undertaking contravenes paragraph 8, it commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

B—TRANSITIONAL PROVISIONS

Special provision for 1994

10 As respects 1994, paragraphs 1 to 9 above apply with the modification specified in paragraph 11.

11 In relation to an exempt undertaking to which paragraph 4 applies and which wishes to choose option B in respect of the financial year beginning on 1st April 1994, the words "31st December next preceding that financial year" are deleted from paragraph 5 and the words "31st March 1994" are substituted.

[Second Schedule inserted by 1994:5 effective 25 March 1994]

[Part II - IV of this Act, any references to those Parts, or to Hospital Levy or Employment Tax are repealed by s. 26 (subject to the provisions of that section) by 1995:16 effective 1 April 1995]

[Assent Date: 25 March 1976]

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