

BUSINESS LICENCE (AMENDMENT) BILL, 2019

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BUSINESS LICENCE (AMENDMENT) BILL, 2019

A BILL FOR AN ACT TO AMEND THE BUSINESS LICENCE ACT

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Business Licence Act, 2010 (*No. 25 of 2010*), may be cited as the Business Licence (Amendment) Act, 2019.
- (2) This Act shall come into force on the 1st day of July, 2019.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended —

- (a) by renumbering the section as subsection (1) and by inserting the following—
 - (i) by the deletion of the word “**business**” and the definition relating thereto and the substitution of the following —

“**business**” includes —

 - (a) a trade, profession, vocation, venture or undertaking;
 - (b) the provision of personal services, or technical and managerial skills, and any adventure or concern in the nature of trade that does not include employment;
 - (c) the provision by a club, association or organisation, for a subscription or other consideration, of the facilities or advantages available to its members;
 - (d) the admission, for consideration of persons to any premises, save and except any activities specified in section 13(3);

- (e) the exploitation of tangible or intangible property for the purpose of obtaining income on a continuing basis from such property, but does not include —
 - (i) the carrying out of activities as a passive holding entity; or
 - (ii) the rental of a building, premises, structure or other place or any part thereof that is not a commercial rental establishment;”;
- (ii) by the deletion of the word “**turnover**” and its definition and the substitution of the following —

“**turnover**” means total revenues in money and money’s worth accruing to a person from his business activities within The Bahamas during the prior financial year, including all cash, credit sales and commissions without any deductions whatsoever, but does not include —

 - (a) output tax collected by a business in accordance with the Value Added Tax Act, 2014 (*No. 32 of 2014*);
 - (b) the sale of capital assets, including real property unless such sale is in the ordinary course of the business;
 - (c) an amount received for or on behalf of a principal in an agency relationship except for agency fees or commission on sales or any similar amounts designed to remunerate the agent for its role or involvement in the sale or transaction;
 - (d) an amount received on items sold by an auctioneer, where the auctioneer has no title or any interest in the goods sold, except for the auctioneer fee or commission;
 - (e) export turnover;
 - (f) revenue accruing from transactions between members of a group under section 8(2A) which fall within the exclusions specified in Part B of the *Sixth Schedule*;
 - (g) revenue derived from services provided by a business to an entity where —

- (i) the ultimate beneficial owner of 90 % of the shares in both the business and the entity is the same person; and
 - (ii) the entity is not a business under this Act; and
 - (h) any other exclusion as the Minister may by order allow;” and
- (iii) by the insertion, in the appropriate alphabetical order of the following new definitions —
 - “**commercial rental establishment**” has the meaning assigned to it under the Value Added Tax Regulations, 2014 (*S.I. 87/2014*)
 - “**export turnover**” means turnover generated by the supply of services where the benefit or advantage is obtained outside The Bahamas;
 - “**fair market value**” has the meaning assigned thereto in the Value Added Tax Regulations, 2014 (*S.I. 87/2014*);
 - “**financial services entity**” means a business that is subject to the payment of a licensing or other fee and is regulated in accordance with —
 - (a) the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (b) the Securities Industry Act, 2011 (*No. 10 of 2011*);
 - (c) the Insurance Act (*Ch. 347*);
 - (d) the External Insurance Act (*Ch. 348*);
 - (e) the Financial and Corporate Services Providers Act (*Ch. 369*); or
 - (f) the Investment Funds Act, 2019 (*No.2 of 2019*);
 - “**financial year**” means a period of twelve months commencing on any one of the dates specified in section 3(3);
 - “**supply of services**” has the meaning assigned thereto in the Value Added Tax Act, 2014 (*No. 32 of 2014*);
 - “**value**” has the meaning assigned thereto in the Value Added Tax Act, 2014 (*No. 32 of 2014*).”;
- (b) by the insertion a subsection (2) —
 - “(2) For the purposes of this Act, a “**passive holding entity**” means an entity as defined in section 8(4) of

the Commercial Entities (Substance Requirement) Act, 2018 (*No. 32 of 2018*), which only —

- (a) holds equity participations or fixed interest investments; and
- (b) earns dividends, interest, capital gains or incidental income.”.

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended —

- (a) in subsection (1), by the insertion immediately after the words “carry on a business” of the words “in or from”;
- (b) by the deletion of subsection (3) and and the substitution of the following —

“(3) Every licensee who carries on a business in a financial year shall —

- (a) select as its financial year, a year commencing on any one of the following dates—
 - (i) 1st January;
 - (ii) 1st April;
 - (iii) 1st July; or
 - (iv) 1st October,

and where that licensee selects a financial year commencing on a date under paragraphs (b) to (d), the licensee must, in writing, advise the Secretary of the selected date;

- (b) by one of the dates specified in column III of the *Fifth Schedule*, file and submit to the Secretary —
 - (i) its application for renewal of the licence; and
 - (ii) its financial results in a manner prescribed by the Secretary showing the turnover of the business for the prior financial year; and
- (c) pay the business licence tax for the succeeding financial year.”.

4. Amendment of section 3A of the principal Act.

Subsection (1) of section 3A of the principal Act is amended by the insertion immediately after subsection (1) of the following —

“(1A) Any interest or fee payable under this section is recoverable as if it were business licence tax due and payable under this Act.”.

5. Amendment of section 4 of the principal Act.

Section 4 of the principal Act is amended —

- (a) in subsection (7), by the insertion, immediately after the words “31st day of December”, of the words “or on any one of the days specified in column II of the *Fifth Schedule*”; and
- (b) by the deletion of subsection (8) and the substitution as follows —
“(8) Notwithstanding the expiration of a licence under subsection (7), a business shall not, for three months after such expiration, be treated as being unlicensed by reason only of such expiration.”.

6. Amendment of section 5 of the principal Act.

Subsection (4) of section 5 of the principal Act is amended by the insertion immediately after the words “commits an offence” of the words “and is liable upon conviction to a fine not exceeding 10% of the value of the contract”.

7. Amendment of section 8 of the principal Act.

Subsection (2A) of section 8 of the principal Act is deleted and replaced as follows —

- “(2A) Where an applicant for a business licence is registered as a part of a group under section 23(7) of the Value Added Tax Act, 2014 (*No. 32 of 2014*) —
 - (a) the applicant shall pay a tax at a rate based on the combined turnover of all the members of the group and the transactions, described within the categories in Part A of the *Sixth Schedule*, shall be included in the calculation of turnover of the group;
 - (b) the members of the group are not required to account for transactions between members of the group which are described within the categories in Part B of the *Sixth Schedule*;
 - (c) each member of the group is jointly and severally liable where the group contravenes or fails to comply with a provision or requirement of this Act.”.

8. Amendment of section 9 of the principal Act.

Subsection (1) of section 9 of the principal Act is amended by the insertion immediately after the words “specified time any” of the words “information, documents, records or other”.

9. Insertion of new sections 9A, 9B and 9C into the principal Act.

The principal Act is amended by the insertion immediately after section 9 of the following new sections —

“9A. Secretary has lien on assets.

- (1) The Secretary has, from the date on which business licence tax becomes due and payable under this Act until the date the tax is paid, a lien on the assets in the possession or control of the Customs Department or any other Government entity —
 - (a) of the person liable to pay the tax;
 - (b) of any related person where the Secretary reasonably believes that the person liable to pay the tax —
 - (i) beneficially owns or enjoys the asset; and
 - (ii) transferred legal ownership of the asset to the related person in order to avoid payment of the tax.
- (2) A lien referred to in subsection (1) shall rank in priority to every other security interest in the asset subject to the lien.
- (3) For the purposes of this section “**related person**” has the meaning assigned thereto in the Value Added Tax Regulations, 2014 (*S.I. 87/2014*).

9B. Secretary has power to recover tax from agent.

- (1) The Secretary may, by notice in writing, require a person to be the agent of another person who is liable to pay tax under this Act where the person liable to pay tax fails to do so by the due date and the person required by the Secretary to be an agent —
 - (a) owes or may owe money to the person liable;
 - (b) holds or may subsequently hold money for or on account of the person liable;
 - (c) has authority from some other person to pay money to the person liable; or
 - (d) has possession of the property of the person liable.
- (2) A person in receipt of a notice under subsection (1) is deemed to be the agent of the person liable to pay tax and

must pay the money or deliver the property specified in the notice to the Secretary —

- (a) in the case of money or property due or held, within fifteen calendar days of the date of service of the notice;
 - (b) in case of money or property to become due or held, within fifteen calendar days of the date on which —
 - (i) the money becomes due; or
 - (ii) the money or property is held in any of the circumstances referred to in subsection (1).
- (3) Notwithstanding subsection (2), the Secretary may, in his discretion, permit a person deemed to be an agent under this section to pay the money specified in the notice in instalments.
 - (4) The Secretary must serve a copy of the notice referred to in subsection (1) on the person liable to pay tax.
 - (5) An agent under subsection (1) who makes a payment or delivers property to the Secretary pursuant to subsection (2) is treated as having acted under the authority of the person liable to pay the tax, and of all other persons concerned, and such payment or property is treated in the hands of the Secretary as if it were tax due under this Act.
 - (6) Notwithstanding any other law to the contrary, this section has effect and a person required to be an agent under subsection (1) incurs no liability in complying with the provisions of subsection (2).

9C. Secretary may require bond from temporary licensee.

- (1) The Secretary may, on the grant of a temporary licence pursuant to section 5, require the licensee to provide security in the form of a bond for any additional tax that may become payable by such licensee.
- (2) The Secretary may require the provision of a bond under this section in such form and manner as the Secretary may approve where the Secretary is satisfied that the licensee does not or will not permanently reside in The Bahamas.”.

10. Amendment of section 10 of the principal Act.

Section 10 of the principal Act is amended —

- (a) in subsection (1) —
 - (i) in paragraph (a), by the deletion of the word “three” and the substitution of the word “five”;

- (ii) in paragraph (b), by the deletion of the words “two weeks of the completion of the project” and the substitution of the words “two years of the completion of the project”;
- (b) by the insertion immediately after subsection (2) of the following new subsection —
 - “(2A) A person who is a party to a contract with a foreign person is jointly and severally liable together with the foreign person, to pay an amount of tax payable by the foreign person, where the foreign person fails to pay an assessment for the amount due and payable by him under section 5(2).”.

11. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended —

- (a) in subsection (2), by the insertion immediately after the words “as a deposit” of the words “or security for such amount in a form acceptable to the Secretary”;
- (b) in subsection (3), by the deletion of the words “as soon as practicable” and the substitution of the words “, within ninety days of the lodging of a notice of objection,”; and
- (c) in subsection (5), by the insertion immediately after the words “The Secretary shall” of the words “, within thirty days of the conclusion of the hearing of the objection,”.

12. Amendment of section 36 of the principal Act.

Section 36 of the principal Act is amended by the deletion of paragraphs (g) - (i) and the substitution of the following —

- “(g) by any financial services entity which has satisfied the Secretary that it has complied with its obligations to pay fees under the law regulating such entity;
- (h) by any registered insurer that carries on insurance business on behalf of an Apex body;
- (i) where the business is in its first year of operation;
- (j) where the business has a turnover no greater than \$100,000 for the prior financial year.”.

13. Amendment of First Schedule to the principal Act.

The First Schedule to the principal Act is amended —

- (a) in Part I —
 - (i) by the deletion of paragraph (1);
 - (ii) in paragraph (3), by the deletion of subparagraph (a);

- (b) by the deletion of Part II; and
- (c) by the deletion of Part III.

14. Insertion of new Fifth and Sixth Schedules into the principal Act.

The principal Act is amended by the insertion immediately after the *Fourth Schedule* of the following —

“FIFTH SCHEDULE
(sections 3(3) & 4(7))
Financial Years for Business Licence

I	II	III	IV
Commence ment of Financial Year	Expiration of Financial Year	Deadline for Renewal of Business Licence	Payment Deadline
1 January	31 December	31 January	31 March
1 April	31 March	30 April	30 June
1 July	30 June	31 July	30 September
1 October	30 September	31 October	31 December

SIXTH SCHEDULE

(section 8(2A)(b))

Calculation of Group Turnover

PART A

TURNOVER INCLUSIONS FOR GROUPS

Transactions that fall within the following categories will be included in the turnover of a licensee making a transfer and will consequently be included in the calculation of the turnover of the group —

- (a) the transfer of goods or services where there is value added prior to the further sale or consumption of those goods and services: turnover for the transferor licensee shall be the greater of consideration and ‘fair market value’;
- (b) the transfer of goods or services outside of the group, including transfers for no consideration and such goods and services shall be assessed at “fair market value” for determining the “turnover” of the transferring licensee;
- (c) transfer of goods or services to a licensee involved in an exempt activity under the Value Added Tax Act, 2014 (*No. 32 of 2014*); and the “fair market value” of the transfer shall be used in determining the turnover of the transferring licensee;
- (d) a transfer of goods or services, the sale or distribution of which would require a licence or approval by a regulator to be acquired are transferred at “fair market value”.

PART B

TURNOVER EXCLUSIONS FOR GROUPS

Transactions that fall within the following categories will be excluded from the turnover of a licensee making a transfer of goods or services and will consequently be excluded from the calculation of the turnover of the group —

- (a) procurement by a member for the group done to —
 - (i) provide marketing support to the group;
 - (ii) facilitate sales activities of the group;
 - (iii) provide technical or managerial support to the group;
 - (iv) provide general services to the group members;
 - (v) realise economies of scale for group members;

- (b) the transfer of goods or services where there is no ‘value added’ prior to the sale or consumption of those goods and services by the group member;
- (c) a transfer of a fixed asset by the transferring licensee and the transferee is not in the business of the sale, leasing, restoration or rental of such assets.”.

15. Transitional.

- (1) A person who, at the date of the commencement of this Act, is a licensee may select as its financial year, a year commencing on any one of the following dates —
 - (a) 1st April;
 - (b) 1st July; or
 - (c) 1st October.
- (2) Where a licensee selects a financial year under subsection (1), the licensee must so advise the Secretary, in writing, in a form and manner prescribed by the Secretary, on or before 1st December, 2019.
- (3) A licensee who fails to advise the Secretary of his selected financial year, shall be deemed to have selected the financial year commencing 1st January.
- (4) Subject to subsection (7), every licensee under subsection (1) who carries on a business in the year 2019, shall—
 - (a) on or before 31 January, 2020, file and submit to the Secretary —
 - (i) an application for renewal of its licence for the period 1 January to 31 December 2020; and
 - (ii) its financial results, in a manner prescribed by the Secretary, showing the turnover of the business for the period 1 January to 31 December 2019; and
 - (b) on or before 31 March, 2020, pay the business licence tax for the year 2020 based on its turnover for the period 1 January to 31 December, 2019.
- (5) Notwithstanding subsection (4), every licensee shall, on or before the relevant date specified in column II of the *Schedule* —
 - (a) file and submit its financial results, in a manner prescribed by the Secretary, showing the turnover of the business; and
 - (b) pay the pro-rated tax, calculated based on turnover, for the corresponding period specified in column III of the *Schedule*.

- (6) Where the conditions under subsection (5) are met, the business licence issued to a person, pursuant to subsection (4), shall be extended to the end of the relevant financial year in column I of the *Schedule*.
- (7) This section shall not apply to a licensee who submits a notification of the inactivation or cessation of a business by 31 December, 2019.

SCHEDULE

(Section 16)

Transitional Provisions for Business Licence

I	II	III
Financial Year	Deadline for Payment of Pro-rated Tax	Period for Pro-rated Tax & Financial Results
1 April 2020 – 31 March 2021	30 June, 2020	1 January, 2020 – 31 March, 2020
1 July 2020 – 30 June 2021	30 September, 2020	1 January, 2020 – 30 June, 2020
1 October 2020- 30 September 2021	30 December, 2020	1 January, 2020 – 30 September, 2020”

OBJECTS AND REASONS

The Business Licence (Amendment) Bill, 2019 seeks to amend the Business Licence Act (hereafter referred to as the “principal Act”) to facilitate new tax reform measures and to make various other amendments.

Clause 2 of the Bill seeks to redefine or amend a number of definitions.

Clause 3 of the Bill seeks to amend section 3 of the principal Act to provide for three additional financial years from which a licensee can choose its financial year which will alleviate the major bottlenecks of dealing with all renewals of business licences and payment of business licence taxes in the first quarter of the year.

Clause 4 of the Bill seeks to amend section 3A of the principal Act to make provision for interest and fees to be recoverable as if they were business licence tax due and payable under the principal Act.

Clause 5 of the Bill seeks to amend section 4(7) of the principal Act to provide for the dates on which the four financial years end. Additionally, it provides that a business shall not for three months after the expiration of its licence be treated as unlicensed by reason only of its expiration.

Clause 6 of the Bill seeks to amend section 5(4) to provide that where a foreign person commits the offence of carrying on business without the grant of a temporary licence, the foreign person is liable upon conviction to a fine not exceeding 10% of the value of the contract.

Clause 7 of the Bill amends section 8 (2A) of the principal Act to provide that where an applicant for a business licence is registered as part of a group under section 23(7) of the Value Added Tax Act, 2014 (*No. 32 of 2014*) —

- (a) the applicant shall pay a tax at a rate based on the combined turnover of all the members of the group and the transactions, which are described within the categories in Part A of the *Sixth Schedule*, shall be included in the calculation of turnover of the group;
- (b) the members of the group are not required to account for transactions between members of the group which are described within the categories in Part B of the *Sixth Schedule*.

Clause 8 of the Bill amends section 9(1) of the principal Act to seek to empower the Secretary to require that any business, or person to whom the Business Licence Act applies, furnish the Secretary with any information, documents, records or any other particulars that are required to assist him in the administration and enforcement of the Act.

Clause 9 of the Bill seeks to insert several new sections to empower the Secretary to collect taxes which are outstanding. The proposed section 9A seeks to provide for a lien on assets in the possession or control of the Customs Department or other Government entity. Further, the proposed section 9B makes provision for recovery of tax from an agent of a person who owes taxes. Lastly, the proposed section 9C seeks to provide for security in the form of a bond in the case of a temporary licensee.

Clause 10 of the Bill amends section 10(1) of the principal Act to allow for the Secretary to make an assessment of the tax payable pursuant to section 8 of the principal Act, within five years of the date of the issue of the business licence. Secondly, clause 10 provides for the Secretary to assess the tax payable by a foreign

person for a temporary licence, within two years of the date of the issue of the business licence.

Lastly, clause 10 of the Bill provides for the insertion of a new subsection into section 10, namely section (2A). The subsection seeks to make a party to a contract with a foreign person jointly and severally liable together for the payment of any amount due and payable by the foreign person.

Clause 11 of the Bill seeks amend section 11(2) of the principal Act to give the Secretary the discretion to vary the amount and form of the security to be provided when an objection is lodged. Lastly, clause 11 amends subsection (3) and (5) of section 11 of the principal Act to provide definitive time lines so as to provide certainty to an aggrieved tax payer.

Clause 12 of the Bill seeks to amend section 36 of the principal Act to provide for the following categories of business to be exempt from paying business licence fees

- (a) any financial services entity which has satisfied the Secretary that it has complied with its obligations to pay fees under the law regulating such entity;
- (b) any registered insurer that carries on insurance business on behalf of an Apex body;
- (c) where the business is in its first year of operation;
- (d) where the business has a turnover no greater than \$100,000 for the preceding year.

Clause 13 of the Bill amends the First Schedule of the principal to reflect the exemptions from payment of business licence tax as specified above in clause 12.

Clause 14 of the Bill seeks to provide for the insertion of a new Fifth and Sixth Schedule. The Fifth Schedule itemises the four financial years from which business licence holders can choose their financial year. The objective is to facilitate ease of doing business by spreading the processing of renewals over the year as opposed the current practice of doing so in the first quarter of the year.

Clause 15 of the Bill provides for transitional provisions for those persons who choose as their financial year, a year other than one which begins on 1 January.