



# Government of Anguilla

## *Official Gazette*

[Extraordinary]

Published by Authority

VOL. 38

MONDAY 7<sup>th</sup> MARCH 2011

NO.4

### NOTICES

The following document is circulated herewith and forms this issue of the Official Gazette:-

### BILL:-

8. Interim Stabilisation Levy Bill, 2011



ANGUILLA

BILL FOR  
**INTERIM STABILISATION LEVY ACT, 2011**

Published by Authority

**INTERIM STABILISATION LEVY ACT, 2011**

## TABLE OF CONTENTS

## SECTION

1. Interpretation
2. Applicability
3. Imposition of levy
4. Rate of levy and upper wage limit
5. Employer to deduct levy
6. Payment of levy by employer
7. Payment of levy by self employed person
8. Remittance by Director
9. Filing returns and remitting levy
10. Assessment of levy
11. Late filing penalty
12. Effect of assessment
13. Notice of assessment
14. Onus of proof
15. Penalty in addition to amount owing
16. Notice of objection
17. Records
18. Hindering an officer
19. Offence re documents and records
20. Failure to file return
21. Failure to pay or remit levy
22. Actions by corporate agent
23. Offences and punishments re corporation
24. Offences and punishments re individual
25. Offences and punishments re officers, directors, etc.
26. General punishment
27. Limitation period
28. Regulations by Minister
29. Regulations by Governor in Council
30. Citation
31. Coming into force

I Assent

Governor  
\_\_\_\_\_

ANGUILLA

NO. /2011

A BILL FOR

## INTERIM STABILISATION LEVY ACT, 2011

An Act to provide for the imposition of a levy on income from employment and to provide for matters incidental thereto or connected therewith.

[Gazetted           ] [Commencement:           ]

ENACTED by the Legislature of Anguilla

**Interpretation**

1. (1) In this Act—

“Act” includes a provision of an Act and a regulation under an Act;

“assess” includes reassess;

“Comptroller” means the Comptroller of Inland Revenue appointed under the Inland Revenue Department Act, No 6 of 2010;

“Director” means the Director appointed under the Social Security Act, R.S.A. c. S45;

“employer” means any person, partnership, body of persons or any organization—

(a) for whom an individual performs services as an employee;

(b) paying any remuneration from employment; or

(c) making any other payments within the meaning of this Act,

and includes the Government of Anguilla;

“employee” includes—

(a) any director of a company or corporation;

(b) any working partner of a partnership;

“pay period” means a month, week or such other period in respect of which remuneration is calculated and paid by an employer to an employee;

“remuneration” includes any wages, salary, leave pay, additional payments for acting posts, commission, service charges, fee, bonus, perquisite or allowance;

“self-employed person” means a person gainfully occupied in employment in Anguilla and who is not an employed person;

“levy” means the Interim stabilization levy imposed under section 3;

“prescribed” means prescribed by regulation under section 28(1)(a);

(2) Section 6(d) of the Interpretation and General Clauses Act does not apply to computing time under this Act.

(3) This Act shall be read together with the applicable provisions of the Inland Revenue Department Act, 2010 as if they constituted a single Act.

(4) Except where this Act provides otherwise, when a notice or document is to be served on a person under this Act, it shall be served on that person in accordance with section 34 of the Inland Revenue Department Act, 2010.

### **Applicability**

2. (1) This Act shall also apply to self-employed persons in the categories of employment specified in the Schedule.

(2) A self-employed person is deemed for the purposes of this Act to employ himself and pay himself deemed remuneration.

(3) A self-employed person's deemed remuneration is his—

(a) actual remuneration, or

(b) his notional remuneration,

whichever is greater.

(4) The criteria to assess the notional remuneration may be prescribed.

### **Imposition of Levy**

3. There shall be imposed a levy on employer, employee and self employed person.

### **Rate of levy and upper wage limit**

4. (1) Where any payment or remuneration is made to or for the benefit of an employee on or after the commencement of this Act there shall be payable a levy comprising—

(a) a levy by the employee at the rate of 3%; and

(b) a levy by the employer at the rate of 3%,  
of the amount of such remuneration or payment;

The term employer in this subsection does not apply to Government of Anguilla, Government Agencies, Non-Governmental Organisations and churches incorporated in Anguilla.

(2) The levy payable on or after the commencement of this Act by a self employed person shall be at the rate of 6% of his remuneration.

(3) There shall be for every pay period an upper wage limit of \$7,000.

#### **Employer to deduct levy**

5. (1) Every employer shall deduct levy in accordance with the provisions of this Act from the remuneration of his employees for each pay period at the time of payment of such remuneration.

(2) The levy deducted under subsection (1) from the remuneration of an employee and remitted to the Comptroller as provided in this Act, shall be deemed to have been paid by such employee to the Comptroller on the date on which such deduction was made.

For the purpose of this section, any person who receives remuneration in cash or kind from an employer is deemed to be an employee of such employer.

#### **Payment of levy by employer**

6. (1) Within 10 days of the end of each pay period, an employer shall transmit to the Director the total amount of levy due by the employer and his employees during the pay period in compliance with the provisions of section 4(1).

(2) In addition to any other requirements, an employer shall, where the service of an employee is terminated, transmit to the Director all contributions due in respect of that employee within one month from the end of the month in which the employment is terminated together with the employee's contribution card.

(3) If an employer, by reason of an error made in good faith, has paid to the Director by way of levy any amount exceeding what was due at a particular time, the excess payment shall be set off against any levy that falls due subsequently.

#### **Payment of levy by self employed person**

7. Every self employed person shall at the end of each pay period remit to the Director the amount of levy due by him during the pay period in compliance with section 4(2).

#### **Remittance by the Director**

8. The Director who is responsible to collect the levy under sections 5, 6 and 7 shall, within 20 days of the end of each pay period, remit to the Comptroller the levies collected by him during the pay period.

#### **Filing returns and remitting levy**

9. (1) Every employer who is required to make levy deductions from the remuneration of his employees under section 5 shall, not later than 10 days after the end of each month—

- (a) file a return in relation to the levy for the previous month in the form and manner and containing the information prescribed or, if no regulation is made prescribing the foregoing, then in the form and manner and containing the information specified by the Comptroller; and
- (b) remit to the Comptroller the levy for the previous month.

(2) Where the remuneration of an employee is not paid monthly, the aggregate of the payments made in each calendar month shall be deemed to be a monthly payment, and such employee shall be deemed to be an employee to whom remuneration is paid monthly and the deduction of levy appropriate to such monthly payment may be made from any one or more of the payments made during the month.

#### **Assessment of levy**

10. (1) The Comptroller may—
- (a) assess any levy required to be remitted by an employer under this Act within 4 years from the day the levy was required to be remitted; and
  - (b) assess interest and penalties in addition to the levy required to be remitted.
- (2) Notwithstanding subsection (1), if an employer —
- (a) has made any misrepresentation that is attributable to neglect, carelessness or wilful default;
  - (b) has committed a fraud in making a return or in furnishing any information under this Act or the Inland Revenue Department Act, 2010 in relation to a levy; or
  - (c) has failed to disclose any relevant information;

the Comptroller may assess any levy required to be remitted and assess interest and penalties at any time the Comptroller considers reasonable.

(3) Liability to remit a levy imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(4) The Comptroller is not bound by a return filed or information furnished by or on behalf of any employee under this Act or the Inland Revenue Department Act, 2010 in relation to a levy and may, notwithstanding a return filed or information so furnished, or if no return has been filed or information has been furnished, assess the levy payable under this Act.

#### **Late filing penalty**

11. If an employer fails to file a return as and when required by this Act, the Comptroller may assess against the employer a penalty of \$50.00 for each day of default to a maximum of \$2,000.00.

#### **Effect of assessment**

12. (1) Unless it is varied or vacated on an objection or appeal—

- (a) an assessment under section 10, 11 and 15 is deemed to be valid and binding notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it; and
- (b) the amount assessed in an assessment under section 10,11 and 15 is, for the purposes of collection and recovery, deemed to be an amount owing under this Act and to be conclusively established as a debt due to the Crown.

(2) Every employer assessed under section 10,11 and 15 shall, within 15 days after service of the notice of assessment, pay the amount assessed against the employer whether or not an objection to or appeal from the assessment is pending.

#### **Notice of assessment**

13. The Comptroller shall serve or caused to be served notice of an assessment under this Act on the employer assessed.

#### **Onus of proof**

14. The onus of disproving an assessment under this Act is on the employer assessed.

#### **Penalty in addition to amount owing**

15. (1) When—

- (a) an employer owes an amount to the Crown under this Act; and
- (b) the Comptroller is of the opinion that the reason that the amount is owing to the Crown by that employer is attributable to—
  - (i) neglect, carelessness or wilful default by or on behalf of that employer, or
  - (ii) fraud or evasion committed by or on behalf of that employer;

the Comptroller may determine the amount owing by the employer and assess against the employer a penalty in the amount of 25% of the amount owing.

(2) On assessing a penalty under subsection (1), the Comptroller may in the assessment demand payment of the amount owing and the amount of the penalty from the employer to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is proof, in the absence of evidence to the contrary, that the unpaid amount and the penalty assessed under this section are owing to the Crown from the employer to whom the demand is directed in the amounts stated in the demand.

#### **Notice of objection**

16. An employer may, in accordance with section 26 of the Inland Revenue Department Act, 2010, object to an assessment under section 10 by the Comptroller.

#### **Records**

17. Every employer shall keep such records as may be prescribed.



**Hindering an officer**

18. No person shall—

- (a) hinder, molest or interfere with any compliance officer or assistant engaged in the performance of any duty or in the exercise of any power imposed or conferred on him by sections 21, 22 and 24 of the Inland Revenue Department Act 2010 in relation to the administration and enforcement of this Act; or
- (b) prevent or attempt to prevent such officer or assistant from performing such duty or exercising such power.

**Offence re documents and records**

19. Any person who—

- (a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, statement, record or other document delivered or made under this Act or in a return, statement, record or other document delivered or made under the Inland Revenue Department Act, 2010 in relation to a levy;
- (b) destroys, alters, mutilates or disposes of records that an employer is required to keep under this Act or the Inland Revenue Department Act, 2010 in relation to levies;
- (c) makes or assents to, or acquiesces in the making of false or deceptive entries in, or omits or assents to or acquiesces in omitting a material particular from, any record referred to in paragraph (b);
- (d) wilfully evades or attempts to evade compliance with this Act or the Inland Revenue Department Act, 2010 in relation to a matter under this Act, or
- (e) conspires with any person to commit an offence described in paragraphs (a) to (d);

is guilty of an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of not more than 300% of the levy sought to be evaded or to imprisonment for not more than 2 years or to both.

**Failure to file return**

20. An employer who fails to file a return as and when required by this Act, or provide or produce information or a document as and when required by the Inland Revenue Department Act, 2010 in relation to a levy is guilty of an offence and liable on summary conviction to a fine of \$100.00 for each day of default.

**Failure to pay or remit levy**

21. An employer who contravenes section 3 or 4(b) is guilty of an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of 300% of the levy required to be paid or remitted under section 3 or 4(b).

**Actions by corporate agent**

22. If a person acting or purporting to act on behalf of a corporation—

- (a) knowingly; or
- (b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act;

makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, statement or answer filed or made as required by or under this Act or by or under the Inland Revenue Department Act, 2010 in relation to a matter under this Act, as a result of which the levy that would have been payable by the corporation, if the levy had been assessed or determined on the basis of the information provided in the return, application, statement or answer, is less or more, as the case may be, than the levy payable by the corporation, the corporation is guilty of an offence.

#### **Offences and punishments re corporation**

23. (1) A corporation that wilfully evades or attempts to evade payment of a levy payable by it is guilty of an offence.

(2) Where a corporation is guilty of an offence under subsection (1), it is liable on summary conviction to a fine of 300% of the amount of the communication levy sought to be evaded.

#### **Offences and punishments re individual**

24. (1) An individual who—

- (a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return, application, statement or answer filed or made as required by or under this Act or the Inland Revenue Department Act, 2010 in relation to a matter under this Act;
- (b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation;
- (c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in omitting to enter a material particular in records or books of account of a corporation;
- (d) wilfully in any manner evades or attempts to evade compliance with this Act or payment of a levy imposed by this Act or the Inland Revenue Department Act, 2010 in relation to a matter under this Act; or
- (e) conspires with any person to commit an offence described in paragraphs (a) to (d);

and in so doing enables or assists or attempts to enable or assist or causes or could cause—

- (f) a corporation to evade or attempt to evade payment of a levy payable by it, or
- (g) a corporation to claim or attempt to claim a refund greater than that to which it is entitled;

is guilty of an offence.

(2) When, in relation to a corporation referred to in subsection (1) (f), an individual is guilty of an offence under subsection (1), that individual is liable on summary conviction—

- (a) to a fine of 300% of the amount of the levy sought to be evaded; or
- (b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

(3) When, in relation to a corporation referred to in paragraph (1)(g), an individual is guilty of an offence under subsection (1), that individual is liable on summary conviction—

- (a) to a fine of 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled;  
or
- (b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

#### **Offences by Directors, Officers or Agents of the Corporation**

25. Where an offence committed by a Corporation under this Act is proved to have been committed with the authorisation, consent, connivance, acquiescence or participation of any director, officer or agent of the Corporation, that person as well as the Corporation shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

#### **General punishment**

26. A person who contravenes a provision of this Act or the Inland Revenue Department Act, 2010 in relation to a matter under this Act for which a punishment is not otherwise provided is guilty of an offence and liable on summary conviction—

- (a) for a first offence, to a fine of \$10,000.00 or to imprisonment for not more than 6 months or to both;
- (b) for a second offence, to a fine of \$20,000.00 or to imprisonment for not more than 12 months or to both; and
- (c) for a third or subsequent offence, to a fine of \$40,000.00 or to imprisonment for not more than 2 years to both.

#### **Limitation period**

27. A prosecution for an offence under this Act may be commenced within 4 years from the date of the contravention but not afterwards.

#### **Regulations by Minister**

28. (1) The Minister may make regulations for the better administration of this Act including regulations—

- (a) prescribing anything under this Act that may be prescribed;
- (b) respecting the duties of employers in relation to the remittance of levy under this Act;
- (c) respecting returns to be made to the Comptroller;
- (d) defining any term used in this Act or the regulations and not defined in the Act.

(2) A regulation may provide that a contravention of any of its provisions is an offence.

**Regulations by Governor in Council**

29. The Governor in Council may by regulation amend or repeal and replace section 4.

**Citation**

30. This Act may be cited as the Interim Stabilisation Levy Act, 2011.

**Coming into force**

31. This Act comes into force on 1 April 2011.

*Speaker*

Passed by the House of Assembly this     day of                     , 2011

*Clerk of the House of Assembly*

**SCHEDULE**

(Section 2)

**CATEGORIES OF EMPLOYMENT**

The categories of self-employed persons include—

- (1) Professionals such as accountants, lawyers, doctors, architects, dentists, consultants, chemists and engineers.
- (2) Persons engaged in their own business in commerce or trade whether as directors, owners, proprietors, including owners of shops, or who independently provide service of all kinds.
- (3) Farmers: agricultural or horticultural.
- (4) Fishermen.
- (5) Taxi-drivers.
- (6) Street vendors and traders.
- (7) Technicians and skilled workers—plumbers, electricians, shoemakers, carpenters, beauticians and barbers.
- (8) Other persons who offer their skills and services for pay and are not subject to the general direction and control of the recipient of the services as to how such are to be applied.

**OBJECTS AND REASONS**  
*(The objects and reasons do not form a part of this Bill)*

The primary objective of the Bill is to impose a levy on income from employment of employees and self employed persons. It creates offences, penalties etc for failure to comply with the provisions of this Bill

S. 1 defines the terms used in this Bill.

S 2 enables the application of the provisions to self employed persons.

Sections 3 and 4 impose the levy and specifies the rates in respect of employees, employers and self employed persons. Section 4(1) exclude the Government of Anguilla, Government Agencies, Non Governmental organisations and churches from the payment of levies in respect of their employees.

Section 5, 6 and 8 enable the employer to deduct levy from the remuneration of employee at the end of each pay period and remit within 10 days to the Director of Social Security who in turn remit the same to the Comptroller within 20 days of the end of each pay period.

Section 7 requires self employed persons to remit levy to the Director of Social Security at the end of each pay period.

S. 9 requires the employer to file a return and to remit the levy for a particular month within 10 days after the end of that month.

S. 10 sets out the components of an assessment. S. 10(1) provides that the Comptroller can, within 4 years from the day the levy became payable, make an assessment of the levy, interest and penalties against the employer who has not remitted the levy as required. S. 10(2) provides that the Comptroller can assess a levy, interest and penalties against an employer *at any time* in cases involving misrepresentation, fraud in making a return or furnishing information or failure to disclose relevant information. S. 10(3) provides that an incorrect or incomplete assessment, or the fact that no assessment was made, does not affect the liability to remit the levy. S. 10(4) provides that the Comptroller is not bound by any return or information furnished by or on behalf of an employer under the Act.

S. 11 provides for a penalty if an employer fails to file a return as and when required.

S. 12(1)(a) insulates an assessment by the Comptroller from legal challenge by making it valid and binding notwithstanding any error, defect or omission in it or any proceeding under the Act relating to it. S. 12(1)(b) deems an assessment to be an amount owing, and a debt due, to the Crown (unless, of course, the employer avails himself or herself of the right to object to it). The employer assessed must pay the assessment within 15 days after it is served. If the service provider doesn't do so, he or she becomes liable to penalties and, of course, interest.

S. 13 provides that the Comptroller must serve or cause to be served every notice of assessment on the employer assessed.

S. 14 provides that the onus of disproving an assessment is on the employer assessed.

S. 15 provides that, when an amount of a levy is owing by an employer to the Crown and the Comptroller is of the opinion that the reason the amount is owing is attributable to neglect, carelessness or wilful default or fraud or evasion by or on behalf of the employer, the Comptroller may assess a penalty against the employer in the amount of 25% of levy owing. This provision allows the Comptroller to penalize an employer who is careless or fraudulent in making returns or paying a levy.

S. 16 sets out the right of an employer who is assessed to serve on the Comptroller a notice of objection under section 28 of the Inland Revenue Act, 2010. That objection permits an administrative review of the

decision or action objected to and allows the person objecting to set in motion the appeal procedures in Part 6 of the Inland Revenue Department Act.

S. 17 requires the employer to keep such up-to-date and accurate records as may be prescribed by regulation.

S. 18 to 26 set out a variety of offences.

S. 27 provides that the limitation for laying a charge is 4 years from the date of contravention. (The usual limitation is 6 months.)

S. 28 sets out the Minister's regulation-making powers.

S. 29 permits the Governor in Council by regulation to amend or repeal and replace section 4, which specifies the rate of levy on employers.

S. 30 and 31 provide for the citation of the Act and its coming into force.