

PAYROLL TAX GUIDANCE NOTES FOR QC'S WHILE PROVIDING SERVICES IN BERMUDA

In accordance with the Payroll Tax Act 1995 (the 1995 Act), the Government of Bermuda levies a Payroll Tax on all Employers and Self-Employed persons who operate a business or provide services in the Islands of Bermuda. Section 7 of the Taxes Management Act 1976, states inter alia, that any person chargeable to tax in respect of any tax period shall apply to the Collector, within seven days of that particular tax period. Therefore, as Self-Employed persons, it is incumbent on you to register at the Office of the Tax Commissioner (OTC) and thereafter to file the relevant tax returns.

PAYROLL TAX REGISTRATION

A Payroll Tax registration form **must** be completed and submitted to the OTC, with a valid form of identification (passport or driver's license, or copy thereof if it is certified or notarised), to the attention of a Tax Inspector. If you are unable to submit your form for any reason you may delegate a representative to register on your behalf. A Payroll Tax form has been attached for your convenience, and can also be obtained from the OTC or downloaded from the tax website at www.taxbermuda.gov.bm.

WHAT IS TAXABLE

Tax is levied on total remuneration earned while physically in Bermuda which includes gross salary/wages plus any benefits or allowances paid in addition to the salary wages amount. As QC's your benefits may typically include the cost of meals and lodging, if separately paid by the client over and above the gross salary/wage amount. You are encouraged to contact an Officer of the OTC if you are unsure about what is considered to be remuneration.

PAYMENT OF PAYROLL TAX

The due date for Bermuda Payroll Tax returns is 15 days after each calendar quarter end. That is all tax returns must be submitted to the OTC on or before April 15th, July 15th, October 15th and January 15th. Be advised that late returns will incur penalties of up to 30% of the total taxes owed. Currently, if you earn less than \$50,000 in Bermuda in any quarter the statutory tax rate is 9.25%. However, this is subject to change, so you must enquire as to the correct statutory rate applicable. You should endeavour to settle the taxes obligation on work completed in Bermuda before you leave the island. However, if you do not anticipate returning to work in Bermuda during a particular quarter, you need not wait until the end of the quarter to pay the tax; it may even be done while you are still in Bermuda.

THE PROCEDURE FOR THE QUARTERS AFTER YOU LEAVE BERMUDA

If you believe that you will not return to Bermuda to work for the remainder of a calendar year, you may elect to make your account inactive, by completing the **Tax Deletion/Inactive Form** (attached). If you do not complete the form, you must continue to file the **Payroll Tax Return** for each subsequent quarter, stating that your income in Bermuda for the quarter was ***nil***. If it becomes apparent that you need to file more than two nil returns during a calendar year it is advisable that you make the account inactive.

If it is generally accepted that the work you completed in Bermuda was a one-off event then you must submit the **Tax Deletion/Inactive Form** electing to be deleted from the Tax Register. If it turns out that you do return to Bermuda for work, you will be required to re-register.

Please be advised that failure to comply with the 1976 and 1995 Acts will result in the levying of penalties and additional taxes.

ADDITIONAL INFORMATION ON TAXATION OF QC'S

Note: This was distributed to members on 6 May 2011

Here is further information concerning the payroll taxation of the QC's visiting Bermuda to do work. HM Revenue & Customs assigned a technician to research the matter. The technician stated that the unilateral tax credit relief is indeed available for remuneration of a QC for work done in Bermuda, even though there is no double taxation treaty between the two countries. For authority, the technician cited the last paragraph of the brochure INTM161120, on their website www.hmrc.gov.uk. That paragraph states:

“Where tax credit relief is only allowable under the unilateral provisions, TIOPA10/S9(3) states that profits from, or remuneration for, personal or professional services performed in the foreign country are deemed to be income arising in that country. This is more narrowly drawn than the corresponding provision in an agreement (see above). In *Yates v GCA International Ltd* (64 TC37), where services under a contract were performed partly in Venezuela and partly in the UK, it was held that unilateral credit relief was only allowable for the Venezuelan tax attributable to the fees paid for the services that were performed in Venezuela, limited to the UK tax charged on the profits to which those fees gave rise, after deduction of expenses.”

The technician also took the position that the income tax in the UK is equivalent to the payroll tax in Bermuda. However, the HMR&C technician advised that the QC would still owe the UK the difference between what the QC paid in taxation in Bermuda and what the QC has to pay in the UK. In other words, the QC would not owe any more than the QC would have paid had the QC done all the work in the UK. The other limitation is that the credit is only up to the amount of tax the QC would have had to pay on the income in the UK. Because Bermuda's payroll tax rate is much lower than the UK's income tax rate that limitation should not apply.

Kind regards,
Paul Lacy
Executive Director