ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER U12

UNIVERSAL SOCIAL LEVY ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—
Act 26 of 2021, in force 1 January 2022
Act 14 of 2022, in force 22 December 2022

Published by the
Attorney General's Chambers
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UNIVERSAL SOCIAL LEVY ACT

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UNIVERSAL SOCIAL LEVY ACT

Interpretation

1. (1) In this Act—

"Act" includes a provision of an Act and a regulation under an Act;

"Comptroller" means the Comptroller of Inland Revenue appointed under the Inland Revenue Department Act;

"employee" includes—

(a) any director of a company or corporation;

(b) any working partner of a partnership;

"employer" means any person, partnership, body of persons or any organisation—

(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;

"levy" means the universal social levy imposed under section 3;

"Minister" means the Minister of Finance;

"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;

"prescribed" means prescribed by regulations under section 27(1)(a);

"remuneration" includes any wages, salary, leave pay, additional payments for acting posts, commission, fee, bonus, perquisite (other than service charge) or allowance;

"self-employed person" means a person gainfully occupied in employment in Anguilla and who is not an employed person.

(2) Section 6(1)(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, 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 73 of the Inland Revenue Department Act.

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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) elected remuneration as prescribed;

(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 every employer, employee and self-employed person.

Rate of levy and upper wage limit

4. (1) Where any remuneration is made to or for the benefit of an employee, there shall be payable a levy comprising—

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

(b) a levy by the employer at the rate of 3% of the amount of such remuneration not exceeding $12,000.

(2) The term employer in this section does not apply to the Government of Anguilla, Government Agencies, Non-Governmental Organisations and churches incorporated in Anguilla.

(3) The levy payable on or after 1 January 2022 by a self-employed person shall be at the rate of 6% of his remuneration.

(4) Remuneration not exceeding a total of $2,000 per month for any pay period shall be exempted for the purposes of this Act.

(5) Where the remuneration for any pay period exceeds $2,000 the exemption under subsection (4) shall not apply to such remuneration.

(6) The following allowances shall be exempted up to a specified amount for the purposes of this Act—

(a) a telephone allowance of up to $400; and

(b) a travel allowance of up to $225.

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(7) The allowances referred to in subsection (6) are only eligible for exemption where—

(a) the costs are directly related to the nature of the employee's job; and

(b) the employee reasonably incurs these costs in the performance of his duties.

Employer to deduct levy

5. (1) Every employer shall deduct levy in accordance with 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, is deemed to have been paid by such employee to the Comptroller on the date on which such deduction was made.

(3) 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 Comptroller the total amount of levy due by the employer and his employees during the pay period, in compliance with section 4(1).

(2) In addition to any other requirements, an employer shall, where the service of an employee is terminated, transmit to the Comptroller all levies due in respect of that employee within one month from the end of the month in which the employment is terminated.

(3) If an employer, by reason of an error made in good faith, has paid to the Comptroller 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 Comptroller the amount of levy due by him during the pay period in compliance with section 4(3).

Filing returns and remitting levy

8. (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 is deemed to be a monthly payment, and such employee is 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.

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(3) A return is required to be filed by an employer or self-employed person not later than 10 days at the end of each pay period, whether or not remuneration was paid for a particular month.

Assessment of levy

9. (1) The Comptroller may—

(a) assess any levy required to be remitted by an employer under this Act within 2 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 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 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

10. 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 for each day of default to a maximum of $2,000.

Effect of assessment

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

(a) an assessment under section 9, 10 or 14 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 9, 10 or 14 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 9, 10 or 14 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.

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Notice of assessment

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

Onus of proof

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

Penalty in addition to amount owing

14. (1) When—

(a) an employer owes an amount under this Act; and

(b) the Comptroller is of the opinion that the reason that the amount is owing 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 from the employer to whom the demand is directed in the amounts stated in the demand.

Notice of objection

15. An employer may, in accordance with section 60 of the Inland Revenue Department Act, object to an assessment under section 9, 10 or 14 by the Comptroller.

Records

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

Hindering an officer

17. 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 55, 56 and 58 of the Inland Revenue Department Act 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.

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Offence re documents and records

18. Any person who with intent to avoid a levy under this Act—

(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 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 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, 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 300% of the levy sought to be evaded or to imprisonment for 2 years or to both.

Failure to file return

19. An employer who fails to file a return 40 days after the time specified in section 8 is guilty of an offence and liable on summary conviction to a fine of $100 for each day of default.

Failure to pay or remit levy

20. An employer who contravenes section 4 or 8(1)(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 100% of the levy required to be paid or remitted under section 4 or 8(1)(b).

Actions by corporate agent

21. A corporation is guilty of an offence if a person acting or purporting to act on behalf of the 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, 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.

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Offences and punishments re corporation

22. (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 100% of the amount of the levy sought to be evaded.

Offences and punishments re individual

23. (1) An individual is guilty of an offence who, with intent to avoid a levy under this Act—

(a) does any of the following—

(i) 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, in relation to a matter under this Act,

(ii) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation,

(iii) 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,

(iv) evades or attempts to evade compliance with this Act, including by failure to provide or produce information or a document as and when required by the Inland Revenue Department Act, in relation to a levy or payment of a levy imposed by this Act or the Inland Revenue Department Act in relation to a matter under this Act, or

(v) conspires with any person to commit an offence described in paragraphs (i) to (iv); and

(b) in so doing enables or assists, or attempts to enable or assist, or causes or could cause—

(i) a corporation to evade or attempt to evade payment of a levy payable by it, or

(ii) a corporation to claim or attempt to claim a refund greater than that to which it is entitled.

(2) When, in relation to a corporation referred to in subsection (1)(b)(i), 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.

(Act 14 of 2022, s. 2)

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

(a) to a fine of 100% 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.

(Act 14 of 2022, s. 2)

Offences and punishments re directors, officers or agents of the corporation

24. 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 is liable to be proceeded against and punished accordingly.

General punishment

25. A person who contravenes a provision of this Act or the Inland Revenue Department Act 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 or to imprisonment for 1 year or more or to both;

(b) for a second offence, to a fine of $20,000 or to imprisonment for 1 year or more or to both; and

(c) for a third or subsequent offence, to a fine of $40,000 or to imprisonment for 1 year or more or to both.

Limitation period

26. A prosecution for an offence under this Act may be commenced within 6 years from the date of the contravention but not afterwards.

Regulations by Minister

27. (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.

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Citation

28. This Act may be cited as the Universal Social Levy Act, Revised Statutes of Anguilla, Chapter U12.

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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; and

(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.

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