

The Bahamas' New 'BUSINESS LICENCE ACT, 2023'

NEW LEGISLATION - *Business Licence Act, 2023* (the "**New Act**") which repeals and replaces the *Business Licence Act, 2010* (the "**Repealed Act**") is now in force along with the ancillary *Business Licence Regulations, 2023* (the "**New Regs**").

The New Act is a consolidation and amendment of the law relating to business licences from the period commencing 2010 to 2022.

Who does the New Act apply to?

The New Act applies to persons carrying on business in or from within The Bahamas. For the purposes of the New Act "*business*"¹ includes *inter alia* a trade, profession, vocation, venture or undertaking and the exploitation of tangible or intangible property for the purpose of obtaining income on a continuing basis from such property for the purposes of creating turnover.

The applicability of the New Act has not changed, it is the same as previous years. For the avoidance of doubt, the New Act clarifies that investment funds regulated by the SCB pursuant to the *Investment Funds Act, 2019* ("**IFA**") and pure equity holding entities² are not considered to be carrying on business and therefore do not require a business licence.

What are the annual rates of business licence tax?

The Second Schedule of the New Act details the rates of annual business licence tax applicable to entities doing business in and from within The Bahamas. The rates of tax vary between business types and there are specific rates for financial services entities and international business companies. The rates are based on turnover³.

The general rates of business licence tax are as follows:

Turnover Per Annum	Annual Tax
Less than \$100,000.00	Exempt
greater than \$100,000.00 but not exceeding \$500,000.00	0.5% of turnover
greater than \$500,000 per annum but not exceeding \$5 million	0.75% of turnover
greater than \$5 million	1.25% of turnover

How are Financial Services Entities impacted?

¹ Section 2

² "**pure equity holding entity**" means a commercial entity that only holds equity participations in other entities and only earns dividends and capital gains.

³ "**turnover**" means total revenues in money and money's worth accruing to a person from his business activities in or from within The Bahamas during the year of assessment, without any deductions on account of the cost of property sold, the cost of materials used, the cost of services used, labour costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other deductions whatsoever. See section 32 for further details.

For the purposes of the New Act, financial services entities are businesses that are subject to the payment of a licensing or other fee and are regulated in accordance with —

- the Banks and Trust Companies Regulation Act, 2020 (“**BTCRA**”);
- the Securities Industry Act, 2011 (“**SIA**”);
- the Financial and Corporate Services Providers Act, 2020 (“**FCSPA**”); or
- the IFA;
- the Digital Assets and Registered Exchanges Act, 2020 (“**DARE**”);
- the Insurance Act (*Ch. 350*);
- the External Insurance Act (*Ch. 348*);

The rates of business licence tax applicable to financial services are:

Type of Financial Service Entities	Annual Tax
Authorized Dealers	2.25% of total revenues net of interest expenses
Authorized Agents under the BTCRA	the greater of \$10,000 and 1.25% of turnover but up to a maximum of \$100,000
Other Public ⁴ Banks and Trust Companies	the greater of \$25,000 and 1% of turnover but up to a maximum of \$100,000
Non-bank Money Transmission Businesses (MTBs)	the greater of \$10,000 and 1.25% of turnover but up to a maximum of \$100,000
Insurers under the Insurance Act	Tax at the rates prescribed under paragraph (3) of Part I of the Second Schedule of the New Act on revenues other than gross premiums. Tax collected by the Insurance Commission and paid to the Secretary in accordance with the Insurance Act.
Persons required to be registered or licensed under the <i>Carbon Credit Trading Act, 2022</i> (“ CCTA ”), DARE, IFA and SIA	2.25% of turnover from operations in the domestic market 0.25% of turnover up to a maximum of \$100,000 from operations outside of the domestic market
Moneylenders	2.25% of turnover
Other financial services entities	the greater of \$2,500 and 1.25% of turnover but up to a maximum of \$100,000

Where a financial service entity carries on more than 1 category of financial service or other activities that are not financial services, tax is calculated at the highest of the rates of tax applicable to the business.

⁴ The meaning of “**public**” is being clarified with the Department of Inland Revenue

“Operations in the domestic market” means —

- (a) dealing in financial instruments denominated in Bahamian dollars;
- (b) dealing in products listed on the Bahamas International Securities Exchange (BISX);
- (c) the provision of products or services to persons deemed resident for exchange control purposes.

How are non-regulated⁵ International Business Companies doing business from within The Bahamas impacted?

International Business Companies (“**IBCs**”) doing business from within The Bahamas (meaning their operations are exclusively outside of The Bahamas) are *generally* subject to the following business licence taxes on revenue that is attributable to operations outside The Bahamas —

Turnover Per Annum	Annual Tax
Less than \$1 million	\$2,500.00
greater than \$1 million	0.25% of turnover up to a maximum tax of \$100,000.00

Proprietary trading⁶ and family office⁷ businesses have the following rate of business licence tax:

Type of Business	Annual Tax
Proprietary Trading	a tax of the greater of \$15,000 or 0.25% of revenues derived from proprietary trading up to a maximum of \$100,000. On all revenues derived from activities other than proprietary trading, a tax at the applicable rate under Parts I to III of the Second Schedule based on the nature of the business and the amount of the revenue.
Family Office	a tax of the greater of \$10,000 and 0.25% of turnover up to a maximum of \$100,000.

The New Act clarifies revenue of an IBC derived from the following activities is deemed to be from operations from within The Bahamas —

⁵ “**regulated business**” means a business the carrying on of which is subject to a licence or approval being granted pursuant to an application made under any other law.

⁶ “**proprietary trading**” means trading by an entity of one or more of the following solely for the entity’s own account or for the account of any affiliate of the entity and not for the account of unrelated third parties — (a) securities as defined in section 2 of the SIA; (b) a commodity; (c) a digital asset as defined in section 2 of DARE; or (d) a carbon trading product as defined in section 2 CCTA.

⁷ “**family office**” means a business that: (a) is ultimately beneficially owned by one or more persons related by consanguinity or other family relationship, or if not so owned, is operated solely for the benefit of such persons; and (b) generates turnover only from managing assets for such persons mentioned in (a) and their descendants whether directly or indirectly through intermediate legal entities and trusts.

- the sale or exploitation of tangible or intangible property that is located or registered in The Bahamas;
- the export of goods;
- the sale or other provision of goods or services to persons —
 - deemed resident for exchange control purposes; or
 - who are within The Bahamas at the time that the goods or services are sold or otherwise provided; and
- professional services, including legal services, architectural services, consultancy services, engineering services, accountancy services and advisory services.

The New Act also provides, where the turnover of an IBC is derived from business activities performed partly within and partly outside The Bahamas, for the purposes of calculating tax payable, the IBC is required to allocate and apportion the turnover between the locally performed activities and the activities performed outside The Bahamas. For activities performed inside The Bahamas, the general rates of tax will apply.

When is business license tax due?

Business licences expire on 31 December of each year and must be renewed no later than 31 January of each year, with the applicable business license tax being paid no later than 31 March.

Failure to file and pay by the above deadlines will result in the following penalties:

Offence	Penalty
Late filing of application for licence renewal or a return	\$100.00
Late payment of tax	10% of the tax liability
Interest rate per annum on payments made 30 days or more after the due date	5% of the tax liability

In addition to the filing deadlines above, the New Regs require the following to be submitted on applications for renewal of a business licence:

Turnover Per Annum	Renewal Requirement
Under \$250,000.00	Income Statement ⁸
\$250,000.00 or more but less than \$5 million dollars	An independent practitioner's report on the turnover of the business issued by an independent practitioner in accordance with International Standards on Review Engagements
\$5 million dollars or more	Audited financial statements for the previous calendar year issued by an independent practitioner

⁸ This can be prepared in-house and does not require independent practitioner sign-off.

It is to be noted for businesses with a year-end other than 31 December meeting the audit requirement threshold will need to submit audited financials for the tax year (i.e. 01 Jan – 31 Dec), irrespective of their financial year.

Any other notable provisions which continue to apply?

The following notable provisions which existed under the Repealed Law continue to apply under the New Law:

- Directors continue to be jointly and severally liable together with a company to pay tax payable by the company, together with interest and penalties in relation to such tax⁹, albeit more extensive guidance and penalties are now given.
- The Secretary has from the date on which tax becomes due and payable until the date the tax is paid, a lien on the assets in the possession or control of the Department of Inland Revenue, the Customs Department or any other public body. This ranks in priority to every other security interest in the asset subject to the lien¹⁰.
- Every licensee must complete and submit in the prescribed form within 14 days, or such longer period as the Secretary may allow, of: (a) any change of particulars or amendment of a licence; or (b) the inactivation or cessation of a business¹¹.
- The Secretary will not grant a business licence to a foreign person¹² (including non-regulated IBCs) unless such application has received the approval of the Minister of Finance¹³ *vis-à-vis* The Bahamas Investment Authority.

Please note the above is intended to be a general summary and not legal advice. For further assistance or clarification please contact the corporate and commercial law team of Delaney Partners at info@delaneypartners.com.

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⁹ Section 42

¹⁰ Section 49

¹¹ Section 28

¹² “**Foreign person**” means: (a) an individual who is not (i) a citizen of The Bahamas; or (ii) a permanent resident with a right to work in The Bahamas; (b) a company incorporated in The Bahamas where any of its shares or other capital is legally or beneficially owned by a person who is not a Bahamian or where it is in any manner, whether directly or indirectly, controlled by a person who is not a Bahamian; (c) a company incorporated at any place outside The Bahamas; (d) a firm in which any of the partners or members is not a Bahamian or where it is in any manner, whether directly or indirectly, controlled by any person who is not a Bahamian; (e) a trust in which any of the trustees or any person having a beneficial interest in the trust is not a Bahamian.

¹³ Section 21