TURKS AND CAICOS ISLANDS

HOTEL, RESTAURANT AND TOURISM(TAXATION) ORDINANCE 2019

(Ordinance 6 of 2019)

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HOTEL, RESTAURANT AND TOURISM(TAXATION) ORDINANCE 2019

(Ordinance 6 of 2019)

Assent……..……..8th March 2019

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AN ORDINANCE TO CONSOLIDATE AND TO PROVIDE FOR A TAX ON HOTELS, RESTAURANTS AND TOURISM SERVICES AND FOR RELATED PURPOSES

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Hotel, Restaurant and Tourism (Taxation) Ordinance 2019 and shall come into operation on the date of publication in the *Gazette*.

Interpretation

2. In this Ordinance—

"board" means meals only;

"bedroom" includes cabin;

"facility fee" means the facility fee as defined under section 2 of the Hotel and Restaurant (Service Charge) Ordinance;

"guest" means any person of or over the age of ten years who is accommodated for reward or not in premises to which this Ordinance applies;

"lodging" means accommodation only;

"meal" means a meal eaten by a person whether seated at a table or not and includes a meal purchased at premises to which this Ordinance applies, but eaten elsewhere;

"proprietor" in relation to premises to which this Ordinance applies, means the person who carries on, or intends to carry on, at those premises any business of providing for reward or not board and lodging or lodging only, whether on his own behalf or on behalf of another as manager, agent or otherwise;

"reward" means the consideration for the provision of accommodation in premises to which this Ordinance applies to any person, whether to be received in money or otherwise;

"service charge" means the service charge as defined under section 2 of the Hotel and Restaurant (Service Charge) Ordinance;

"service" in relation to the accommodation of a guest in premises to which this Ordinance applies, means the provision of any service mentioned in section 6(1) or prescribed thereunder;

"tax" except in Parts IV,VII and VIII and Schedules 1 and 2, means the tax imposed by section 6(1);

"turnover" means the total gross receipts in money or money's worth accruing to a person for his own use and benefit from his business activities during the specified period, including all cash and credit sales and commissions without any deductions;

"vessel" includes any ship, boat, hovercraft or other type of floating structure or vessel, whether used in navigation or permanently moored, for the operation of which a business licence is required or is in force permitting its use for reward or not for board, or lodging or any combination.

(2) Any reference in this Ordinance to the premises of a proprietor shall be taken to be a reference to the premises to which this Ordinance applies of which he is the proprietor.

(3) For the purposes of this Ordinance a person shall be treated as being accommodated for reward or not in any premises to which this Ordinance applies notwithstanding that he occupies

sleeping accommodation in a separate building outside those premises, if—

(a) he is provided with that accommodation in the course of the business of providing for reward or not board and lodging, or lodging only, at those premises and;

(b) the building is habitually used for the purpose by way of an annexe or overflow in connection with those premises and is occupied and managed with those premises.

PART II

PREMISES AND REGISTRATION

Premises to which this Ordinance applies

3. (1) Subject to subsections (2) and (3), this Ordinance shall apply to any premises used, or intended to be used, for the purpose of providing for reward or not board and lodging or lodging only.

(2) This Ordinance shall not apply to any premises referred to in subsection (1) (not being a hotel or guest house within the meaning of the Business Licensing Ordinance) or to any part of those premises, as long as those premises or that part of those premises, as the case may be, are being wholly used for the accommodation of a person of any of the following descriptions, either alone or together with his family—

(a) a person who belongs to the Islands within the meaning of the Immigration Ordinance;

(b) a person who is the holder of a permanent residence certificate under the Immigration Ordinance;

(c) a person who is lawfully engaged in any gainful occupation in the Islands.

(3) This Ordinance shall not apply to any premises referred to in subsection (1) or any part of those premises for so long as those premises or that part of those premises, as the case may be, are let unfurnished to any person for his own accommodation, either alone or together with his family.

Registration of premises to which this Ordinance applies

4. (1) A proprietor shall, where his premises have not commenced to be used for the accommodation of guests, at least one month before the date on which his premises are proposed to

be so used, apply to the Permanent Secretary, Finance in writing, in such form as the Permanent Secretary, Finance shall determine, for the registration of the premises as premises to which this Ordinance applies, stating the number of bedrooms contained in the premises, the maximum number of guests which may be accommodated in the premises, the services provided, or intended to be provided, in the Islands, for guests accommodated in the premises, whether within or outside the premises, and such other particulars as the Permanent Secretary, Finance may require.

(2) On receipt of an application for the registration of any premises under subsection (1), the Permanent Secretary, Finance, if he is satisfied that the premises are premises to which this Ordinance applies, shall register the premises in a register kept solely for the purpose to be called "The Register of Premises for the Accommodation of Guests" (in this section referred to as "the register").

(3) An entry in the register relating to any premises shall state the name and address of the proprietor, the number of bedrooms contained in the premises for the use of guests, the maximum number of guests which may be accommodated in the premises, the services provided, or intended to be provided, in the Islands for guests accommodated in the premises, whether within or outside the premises, and such other particulars as the Permanent Secretary, Finance thinks fit or the Governor may direct to be included in the entry.

(4) Where there has been any change as respects any of the particulars contained in an entry in the register with respect to any premises, the proprietor or, in the event of his death, his personal representative, shall serve on the Permanent Secretary, Finance a notice in writing giving particulars of the change, and the Permanent Secretary, Finance shall make such appropriate amendments to the entry as may be required.

(5) If the Permanent Secretary, Finance is satisfied that any premises have ceased to be premises to which this Ordinance applies, he shall cancel the entry in the register relating to the premises and shall serve on the person who was the proprietor of the premises at the time of the cancellation of the entry a notice in writing stating that the entry has been cancelled.

Registration of guests

5. (1) A proprietor shall keep a register in such form as shall be approved by the Permanent Secretary, Finance, which shall be kept solely for the purposes of this section and which shall be called "The Register of Guests" (in this Ordinance referred to as "the Guests' Register").

(2) Subject to subsection (3), every guest who is accommodated in premises to which this Ordinance applies shall, on arriving at the premises—

(a) inform the proprietor of his full name and nationality and of the address of his ordinary place of residence; and

(b) sign the Guests' Register kept at the premises.

(3) The obligation under subsection (2) to sign a Guests' Register shall be taken to have been complied with—

(a) in the case of guests who are husband and wife, if the register is signed by either of them on behalf of them both;

(b) in the case of a guest who is a child under the age of seventeen years and who is accompanied by a person of or over that age, if the register is signed by that person on behalf of that child; and

(c) in the case of a guest who is unable to sign his name by reason of any physical or mental disability, if the proprietor records in the entry in the register relating to that guest that the guest is unable to sign his name for the reason specified in that entry.

(4) A proprietor shall—

(a) require all guests to comply with their obligations under subsection (2);

(b) enter in the Guests' Register kept at his premises—

(i) the names, nationality and address of the ordinary place of residence of each guest;

(ii) the date and time of the reception at the premises of each guest at the commencement of the period for which the guest is being accommodated in the premises;

(iii) the date and time of the departure of each guest from the premises on the expiration of that period; and

(iv) in the case where a child who is, or appears to the proprietor to be, under the age of twelve years is being accommodated for reward or not in the premises, a record of the fact of the accommodation of the child in the premises

and of the period for which he is being accommodated; and

(c) keep that register in safe custody at his premises and preserve any entry in that register for not less than seven years following the date on which the entry was made.

PART III

TAX RATE AND COLLECTION OF TAX

Imposition and rate of tax in respect of board and lodging

6. (1) Subject to the provisions of this Ordinance, there shall be paid by each guest accommodated in any premises to which this Ordinance applies a tax at the rate of 12% of the total amount of the charges paid or payable by or in respect of the guest in respect of all or any of the following services, that is to say—

(a) sleeping accommodation;

(b) meals, including any intoxicating liquor or other beverage whether supplied with, as an ancillary to, separately from or accompanied by, a meal;

(c) the provision of lighting, fuel, water, furniture, domestic appliances or equipment;

(d) laundering;

(e) any privilege, amenity, facility or service for the employment of any cultural or recreational activity or pursuit;

(f) any other privilege, amenity, facility or service in connection with the accommodation of the guest in those premises;

(g) any other service as may be prescribed,

being services provided in the Islands for the guest, whether within or outside the premises, in the course of the business of providing for reward or not board and lodging, or lodging only, carried on at the premises.

(2) For the avoidance of doubt, any charges paid or payable by or in respect of the guest in respect of the provision for the guest of service incidental to the provision of board and lodging or lodging only are part of the charges for the calculation of the tax under subsection (1).

(3) Tax shall be payable in respect of the actual amount of the charges referred to in subsection (1) or, where those charges

have been assessed by the Permanent Secretary, Finance under and in accordance with this Ordinance, in respect of those charges as so assessed.

(4) For the avoidance of doubt, the tax rate shall not be applied to the service charge and the facility fee.

Variation of rate of tax

7. The Governor may by regulations vary the rate of tax, and may so vary the rate of tax as to provide for the imposition of tax at different rates in respect of premises of different classes or descriptions or in respect of different services.

Exemption from liability to pay tax

8. The Governor may by Regulations provide—

(a) that tax shall not be payable by or in respect of any guest of any class or description;

(b) that tax shall not be payable in respect of all or any services provided at, or in connection with, any premises of any prescribed class or description.

Collection of tax by proprietor

9. (1) Tax payable by a guest accommodated in premises to which this Ordinance applies shall be accounted for and paid by the proprietor in accordance with section 24.

(2) Where a proprietor is not resident in the Islands, any agent of his who is resident in the Islands and who has acted on his behalf in connection with the business carried on by him of providing for reward or not at his premises board and lodging, or lodging only, shall be accountable for, and liable to pay, tax in substitution for the proprietor for so long as the proprietor is not resident in the Islands.

(3) A proprietor who is not resident in the Islands shall file with the Permanent Secretary, Finance the name and address of any person who will act or is acting on his behalf in connection with the business carried on by him of providing for reward at his premises board and lodging or lodging only.

(4) Subject to section 21(4) and any regulations under section 69, a proprietor shall before the departure of a guest from his premises on the expiration of the period for which the guest has been accommodated in the premises, deliver or cause to be delivered to the guest a statement giving—

(a) the particulars of each service provided for the guest during or in respect of that period and of the charges made in respect of that service; and

(b) as a separate item, the amount of tax payable by the guest in respect of all those services.

(5) Where members of the same family or persons travelling as a group are accommodated in any premises to which this Ordinance applies, it shall be sufficient for the purposes of subsection (4) if one statement under that subsection is delivered to a member of the family or group showing the particulars of the services provided for all the members of the family or group, the aggregate amount of the charges made in respect of each of those services and, as a separate item, the aggregate amount of tax payable by the members of the family or group.

(6) A proprietor shall keep a copy of every statement delivered to a guest accommodated in his premises for a period of not less than seven years from the date on which the statement was delivered.

PART IV

ALL-INCLUSIVE PREMISES

Interpretation

10. In this part—

"all-inclusive premises" means a hotel in which no separate charge is made for meals, amenities, recreational activities, entertainment activities, alcoholic and non-alcoholic beverages tips and taxes and any other services that may be offered to a guest;

"day pass guest" means any person of or over the age of ten years who purchases a day pass services at an all-inclusive premises;

"day pass services" includes meals, drinks, entertainment activities, sports equipment and activities, lounge chairs, transfer to and from any port, daytime use of resort rooms and use of facilities;

"guest" means any person of or over the age of ten years who is accommodated for reward or not at an all-inclusive premises;

"other non-packaged services" means any services offered by an all-inclusive premises to a guest outside of the package of services at the package rate;

"package rate" means the rate per night per guest that each guest pays in respect of an all-inclusive premises;

Tax rate for all inclusive premises

11. Subject to the provisions of this Ordinance, there shall be paid by each guest or day pass guest at an all-inclusive premises a tax at the prescribed rate pursuant to section 7.

Amount of charges

12. (1) The total amount of the charges paid or payable by or in respect of a guest for an all-inclusive package of services and amenities at the package rate offered by an all-inclusive premises is in respect of all or any of the following—

(a) accommodation;

(b) meals;

(c) alcoholic and non-alcoholic drinks;

(d) sporting activities;

(e) entertainment activities;

(f) service charge and facility fee;

(g) ground transfers; or

(h) any other service or amenity provided in connection with the accommodation of the guest at an all-inclusive premises.

(2) The tax shall be charged on the all-inclusive package of services and other non-packaged services without any deduction or allowance than is authorised or allowed under this Part.

(3) Subject to subsection (2), for the avoidance of doubt, it is declared that in ascertaining the amount of charges, ground transfers shall only be excluded from the all-inclusive package of services, where the proprietor is not receiving any revenue from the ground transfer and all the ground transfer revenue is going to a person licensed to operate a public service vehicle under the Road Traffic Ordinance.

Amount of charges day pass guest

13.The total amount of the charges paid or payable by or in respect of a day pass guest shall be in respect of any day pass services that the all-inclusive premises provides.

Other non-packaged services

14. (1) For the purposes of calculating the amount of charges under section 12, other non-packaged services includes—

(a) a charge for internet access;

(b) use of the spa;

(c) tours of the Islands;

(d) valet parking;

(e) use of cabana and other amenities not included in the all-inclusive package of services;

(f) charge for phone and fax;

(g) gift shop purchases;

(h) any other service or amenity provided in connection with the accommodation of the guest at an all-inclusive premises; and

(i) any other services that may be prescribed.

(2) The tax shall be charged on other non-packaged services specified under subsection (1) at the rate of 12%.

Functions and business facilities service

15. (1) The supply of facilities for business meetings, conferences, weddings, banquets, trade exhibitions, merchandise displays and other such events are subject to tax at the prescribed rate.

(2) The supply of food and drink at the events in subsection (1) are also subject to tax at the prescribed rate.

Tax payable

16. Tax shall be payable in respect of the actual amount of charges referred to in section 12, 13, 14, and 15 or, where those charges have been assessed by the Permanent Secretary, Finance under and in accordance with this Ordinance, in respect of those charges so assessed.

Statement and receipt

17. (1) A proprietor of an all-inclusive premises shall issue, keep or cause to be kept a statement to which a receipt shall be issued to each guest, which shall contain the following information—

(a) the full name of the registered proprietor;

(b) the registration number of the registered proprietor;

(c) the description and value of the services rendered;

(d) the amount of the taxable transaction, that is—

(i)the package rate multiplied by the number of nights; and

(ii)the other non-packaged services.

(e) the issue date of the receipt;

(f) the total charge to the guest;

(g) the tax rate;

(h) as a separate line item, the amount of tax due on the taxable transaction as set out in paragraph *(d)*;

(i) the total charge, inclusive of the amount of tax, paid by the guest.

(2) A duplicate of every statement and the receipt shall be kept by a proprietor of an all-inclusive premises for a period of seven years.

(3) The proprietor of an all-inclusive premises, shall ensure that the duplicate is —

(a) available at all times for inspection; and

(b) produced for inspection on demand by the Permanent Secretary, Finance.

Treatment of service charge and facility fee

18. For the avoidance of doubt, the tax rate shall not be applied to the service charge and the facility fee.

Non application of tax rate

19. For the avoidance of doubt, no tax shall be calculated to form part of the package rate for a guest under ten years of age at an all-inclusive premises.

Application of Parts

20. With the exception of Parts VII and VIII, all the other Parts of this Ordinance applies to this Part, with the necessary modifications.

PART V

ADMINISTRATION OF TAX

Assessment of proprietor's charges in certain cases

21. (1) Where the Permanent Secretary, Finance is satisfied that, by reason of a lump sum payment being payable in advance by the guest of a proprietor in consideration partly for the provision of services in respect of which tax is payable and partly in consideration for anything other than the provision of such services, it is not reasonably practicable for the proprietor to deliver, or cause to be delivered, to or in respect of the guest a statement as required by section 9(4), the Permanent Secretary, Finance may, on the basis of information received by him assess, by agreement with the proprietor or, failing such agreement to the best of the Permanent Secretary, Finance's judgment, the portion of that lump sum payment which shall be taken for the purposes of this Ordinance to represent the total amount of the charges made for the provision by the proprietor of the services in respect of which tax is payable; and in that event tax shall be payable in respect of those services in all respects as if the total amount of the charges for those services as assessed under this subsection had been charged separately by the proprietor.

(2) Where an assessment is made under subsection (1) in respect of any services provided by a proprietor—

(a) the Permanent Secretary, Finance shall serve a notice on the proprietor specifying the amount assessed as being the total amount of the charges made in respect of those services, the amount of tax due from the proprietor in respect of those charges and the date on and from which the assessment is to have effect; and

(b) the proprietor shall be exempted from complying with section 9(4) in respect of those services for so long as the assessment continues to have effect.

(3) Subject to subsection (4), an assessment under subsection (1) shall have effect as if it had been made in respect of each guest of the proprietor on whom notice of the assessment has been served under subsection (2) if a lump sum payment as mentioned in subsection (1) is payable by or in respect of the guest in consideration, in part, for the provision by the proprietor of services of the same kind and to the same extent as those in respect of which the assessment has been made, whether or not the lump sum payment payable by the guest is of the same amount as that payable by any other such guest.

(4) Where notice of any assessment has been served on a proprietor under subsection (2), the Permanent Secretary, Finance may, if it appears to him that—

(a) the assessment was made on the basis of inaccurate or incomplete information; or

(b) there has been any variation in the amount of the portion of the lump sum payment assessed by virtue of that assessment, whether by reason of a variation in the amount of that lump sum payment or any variation in the extent or number of services provided by the proprietor or otherwise,

make a fresh assessment under subsection (1) so as to have effect for the purposes of this Ordinance instead of the original assessment on and from the date specified in the notice to be served on the proprietor under subsection (1), as having effect by virtue of this subsection, as the date on and from which the new assessment shall have effect, without prejudice to the power of the Permanent Secretary, Finance to make a further assessment by virtue of this subsection; and subsection (2) shall have effect in relation to an assessment by virtue of this subsection as it has effect in relation to an original assessment under subsection (1).

(5) The Permanent Secretary, Finance may, by notice served on a proprietor, cancel an assessment under this section with effect on and after the date specified in the notice.

Accounts to be kept by proprietor

22. (1) A proprietor shall—

(a) keep sufficiently detailed accounts to permit the calculation of the amount of tax payable by or in respect of every guest accommodated in his premises;

(b) keep those accounts for a period of seven years from the date of the last entry made in the accounts.

(2) For the purposes of subsection (1), a proprietor shall keep or cause to be kept—

(a) all original return forms;

(b) statements giving particulars of services provided to guests;

(c) statements showing—

(i) all deposits paid for reservation for services;

(ii) all cancellations of reservations for services; and

(iii) the amount of the forfeited deposit collected by the proprietor due to the cancellation of reservation for services.

(d) statements giving all the charges in respect of each guest;

(e) statement showing the amount of tax payable by each guest in respect of all services during their stay in his premises;

(f) financial statements;

(g) bank deposit statements;

(h) any notes to clarify any transaction between the proprietor and guest;

(i) sales books and general ledgers;

(j) such other record as may be required from time to time.

(3) The records required to be kept by a proprietor under subsection (1) shall be maintained in the currency of the Islands and in the English language and shall be kept in the Islands.

(4) If it appears to the Permanent Secretary, Finance or any person authorised by him in writing for the purposes of section 21 that the accounts required by subsection (1) to be kept by a proprietor are inaccurate or incomplete for the purpose of enabling the Permanent Secretary, Finance or that person to calculate the amount of tax payable by or in respect of any guest accommodated in the premises of the proprietor, the proprietor shall furnish the Permanent Secretary, Finance or that person with such information and evidence as the Permanent Secretary, Finance or that person may require with a view to the correction of such inaccuracies and to those deficiencies being made good.

Treatment of deposits for reservation for services

23.(1) A proprietor who collects a deposit for the reservation for services in respect of his premises, shall collect the tax imposed under section 6 and section 11 on the amount of deposit paid.

(2) The proprietor shall remit the amount of tax collected under subsection (1) to the Permanent Secretary, Finance.

(3) A proprietor who fails to remit to the Permanent Secretary, Finance any tax collected on any deposit paid and such deposit was forfeited to the proprietor for cancellation of a reservation for services, commits an offence, and is liable—

(a) on conviction on indictment to a fine of $100 000 or imprisonment for a term of three years, or to both; or

(b) on summary conviction to a fine of $50 000 or imprisonment for a term of two years, or both.

Returns and payment of tax

24. (1) Subject to subsection (2), a proprietor shall, within twenty-one days of the end of each month—

(a) furnish the Permanent Secretary, Finance with a return, in such form as the Permanent Secretary, Finance shall determine stating—

(i) the number of guests who have departed from his premises during that month on the expiration of the respective periods for which they were accommodated in the premises; and

(ii) such other particulars as the Permanent Secretary, Finance may require;

(b) deliver or send to the Permanent Secretary, Finance, together with that return, a remittance in payment of the total amount of tax paid or payable by or in respect of each of those guests.

(2) The Permanent Secretary, Finance may in exceptional cases—

(a) extend the time for the payment of tax under subsection (1) for such period as he thinks fit; or

(b) allow the payment of any tax due and payable under that subsection to be made by instalments of such amounts and payable at such intervals as he thinks fit.

(3) Where the Permanent Secretary, Finance has extended the time for the payment of tax for any period under subsection (2), the payment shall be made on or before the expiration of that period.

(4) Where the Permanent Secretary, Finance has allowed the payment of tax to be made by instalments under subsection (2)—

(a) subject to paragraph *(b)*, each instalment shall be paid on or before the date fixed by the Permanent Secretary, Finance for the payment of that instalment;

(b) in default of the payment of any instalment on or before that date, the whole of the amount of tax outstanding shall be payable on that date.

(5) If no guests have been accommodated in his premises during any month, the proprietor shall, within twenty-one days of the end of that month, furnish to the Permanent Secretary, Finance a return stating that no guests have been accommodated in his premises during that month.

(6) If no guest is booked for accommodation in his premises during any month, the proprietor shall, within seven days of the beginning of that month, notify the Permanent Secretary, Finance, in writing, that no guest is to be accommodated in his premises during that month.

(7) Tax shall be recoverable by the Permanent Secretary, Finance as a debt due to the Crown.

(8) Where tax paid by a proprietor was excessive by reason of some error or mistake in a return made by him under this section, he may by notice in writing served on the Permanent Secretary, Finance, at any time within the two years next following the date on which the return was furnished to the Permanent Secretary, Finance, make a claim for a refund of the amount claimed to be in excess of the amount of tax properly due and payable, and the Permanent Secretary, Finance, if it appears to him that the claim is well founded, may—

(a) refund the excess amount to the proprietor; or

(b) appropriate that amount in payment of any debt due by the proprietor to the Crown.

Power to obtain information

25. (1) The Permanent Secretary, Finance may, for the purpose of ascertaining whether or not this Ordinance is being complied with and, in particular, for the purpose of ascertaining whether or not the proper amount of tax is being paid by a proprietor, by notice in writing require the proprietor or any person (whether or not liable to pay tax under this Ordinance)—

(a) to furnish such information concerning the proprietor or any other person as specified in the notice;

(b) to attend at such time and place as specified in the notice for the purpose of being examined on oath before the Permanent Secretary, Finance for the purpose concerning the affairs of the proprietor or any other person;

(c) for the purpose of paragraph *(b)* to produce any record or computer in the control of that person that the Permanent Secretary, Finance may require him to produce;

(d) to provide access to the premises where any business is carried on by the person or where records or books of account are kept in respect of that business in order to examine the records or books of account and any other documents that relate to the activities of the business.

(2) Where the notice requires the provision of access to a business to which subsection (1*)(d)* refers, the Permanent Secretary, Finance may request the proprietor or any employee or agent to give him such reasonable assistance in connection with the examination or inspection as may be necessary and to answer orally or in writing any questions relating to the examination or inspection.

(3) Where the notice requires the production of a record or computer, it is sufficient if such record or computer is described in the notice with reasonable certainty.

(4) Where during the course of any examination or inspection it appears to the Permanent Secretary, Finance that there may not have been a correct disclosure of liability to tax, he may take possession of any books of account, other documents or computer records for further examination and after examination may retain or make copies of or take extracts from the books, documents or computer records for any of the purposes of this Ordinance.

(5) Without prejudice to the generality of subsection (1), the Permanent Secretary, Finance may by a notice in writing—

(a) require a bank or other financial institution to furnish the Permanent Secretary, Finance with the details of any banking account or other assets that may be held on behalf of a person specified in the notice, or to furnish a copy of bank statements or statement of assets of any such banking account or other asset;

(b) require a bank to permit the Permanent Secretary, Finance to inspect the records of the bank or other financial institution with respect to the banking account of a person specified in the notice; and

(c) require the attendance of an officer of a bank or other financial institution before the Permanent Secretary, Finance, to give evidence respecting bank accounts or other assets that may be held by

the bank or other financial institution on behalf of a person specified in the notice.

(6) This section shall have effect despite any rule of law relating to privilege or the public interest in respect of the furnishing of information or the production of records or documents.

(7) The information furnished or the records or documents produced under this section shall be used only for the purposes for which they are furnished or produced.

(8) Any power conferred by subsection (1) to require the production of any register, copies of statements, accounts, books or other documents shall, if they are not produced, include the power to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(9) The Permanent Secretary, Finance may delegate in writing to any person any powers conferred or imposed on the Permanent Secretary, Finance by this section other than the power of delegation.

(10) The Permanent Secretary, Finance may at any time revoke a delegation made under subsection (9).

(11) A delegation under subsection (9) does not prevent the exercise by the Permanent Secretary, Finance himself of a power so delegated.

Access to records, computers and documents

26. (1) Where the Permanent Secretary, Finance has reasonable grounds to believe that an offence in connection with the tax is being, or is about to be committed on any premises, or that evidence of the commission of such an offence is to be found on the premises, the Permanent Secretary, Finance shall apply to a Magistrate for a warrant to allow the Permanent Secretary, Finance —

(a) without prior notice and at any time, to enter any premises or place where records and documents are kept and on such premises search for any records and documents;

(b) in carrying out a search referred to in paragraph *(a)* and in any manner, to open or cause to be opened or removed and opened, any article in which the officer suspects that any records are kept;

(c) to seize any records and documents which in the Permanent Secretary, Finance opinion may afford

evidence that may be material in determining the liability of any person for tax payable under this Ordinance;

(d) to retain any records and documents seized under paragraph *(c)* for as long as the records and documents may be required for determining a person's liability under this Ordinance or for any proceeding under this Ordinance;

(e) to examine and make extracts from, and copies of, any records, and require from any person an explanation of any entry in the records and access to records, documents and computers;

(f) where a hard copy or computer disk of computer-stored information is not provided, to seize and retain the computer in which the information is stored for as long as is reasonable to copy the information required.

(2) The Permanent Secretary, Finance who attempts to exercise a power under subsection (1), is not entitled to enter or remain on any premises or at any place, if, upon being requested by the occupier of the premises or place, the Permanent Secretary, Finance does not produce the warrant issued under subsection (1).

(3) The proprietor, manager or other person lawfully on the premises proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise of the power under this section.

(4) A proprietor whose records, documents or computer have been removed may examine or make copies or extracts from any records, documents or computers which are removed and retained under subsection (1) during regular office hours under such supervision as the Permanent Secretary, Finance may determine.

(5) The Permanent Secretary, Finance exercising a power under subsection (1) may request the assistance of a police officer as the Permanent Secretary, Finance may consider reasonably necessary and any police officer shall render assistance as may be required by the Permanent Secretary, Finance.

(6) A proprietor, manager or other person who contravenes subsection (3) commits an offence and is liable on conviction to a fine of $25,000 or imprisonment for a term of two years or to both.

(7) The Permanent Secretary, Finance may delegate in writing to any person any powers conferred or imposed on the

Permanent Secretary, Finance by this section other than the power of delegation.

(8) The Permanent Secretary, Finance may at any time in writing revoke a delegation made under subsection (7).

(9) A delegation under subsection (7) does not prevent the exercise by the Permanent Secretary, Finance himself of a power so delegated.

PART VI

ASSESSMENT, DEFAULT AND ENFORCEMENT

Assessment of tax in cases of default

27. (1) Where an amount is due from a proprietor on account of tax and the Permanent Secretary, Finance is unable to ascertain the amount of tax properly due from the proprietor by reason of—

(a) a failure of the proprietor to furnish the Permanent Secretary, Finance with any return under section 24 or to furnish the Permanent Secretary, Finance with a complete and correct return under that section;

(b) a failure of the proprietor to keep or produce to the Permanent Secretary, Finance or any person authorised by the Permanent Secretary, Finance in writing for the purpose of section 25, any register, copies of statements, accounts, books or other documents required to be kept or produced by the proprietor by or under this Ordinance, or the loss or destruction of any such register, copies, accounts, books or other documents; or

(c) such register, copies, accounts, books or other documents being materially incomplete or inaccurate,

the Permanent Secretary, Finance may, to the best of his judgment, make an assessment of the amount due on account of tax by the proprietor and shall, on making such an assessment, serve on the proprietor a notice specifying that amount and the reason for the making of the assessment.

(2) Where an assessment of the amount of tax due from a proprietor has been made under subsection (1), then, without prejudice to the recovery of the full amount due or to the making of a further assessment in that behalf, the amount assessed shall

be recoverable, and payment of the same shall be enforceable, as tax properly due, unless the Magistrate has determined on a reference under section 38 that the amount of tax properly due is less than the amount assessed.

(3) Without prejudice to the power of the Permanent Secretary, Finance to make a further assessment under subsection (1), where notice of an assessment has been served on a proprietor under that subsection, the Permanent Secretary, Finance may, except pending the determination under section 38 of any question as to the tax assessed, withdraw that assessment.

(4) The Permanent Secretary, Finance may delegate in writing to any person any powers conferred or imposed on the Permanent Secretary, Finance by this section other than the power of delegation.

(5) The Permanent Secretary, Finance may at any time in writing revoke a delegation made under subsection (4).

(6) A delegation under subsection (4) does not prevent the exercise by the Permanent Secretary, Finance himself of a power so delegated.

Penalty and interest in cases of default

28. (1) Where any tax due and payable by a proprietor under this Ordinance, including any tax assessed under section 21 or 27, remains unpaid the proprietor shall also be liable to pay, by way of penalty, a sum equal to 20% of the amount of the outstanding tax.

(2) In addition to the tax and the penalty imposed by subsection (1), any proprietor who is in default shall pay an amount as interest at the rate of 1.5% for each month or part thereof during which the tax remains unpaid.

(3) Such penalty shall be recoverable, and the payment of the same enforceable, as tax properly due and payable.

Application of payments where proprietor in default

29. Where a proprietor is in default of any taxes due and payable under this Ordinance or has entered into an agreement to pay taxes due and payable by instalments under section 24, any payments made shall be applied as follows—

(a) firstly, 50% of every dollar shall be applied to the penalty and interest payable under section 28; and

(b) secondly, 50% of every dollar shall be applied to the outstanding tax due and payable."

Withdrawal of payments for services

30 Where a proprietor is in default, of the remittance of any taxes due and payable under this Ordinance for a period of six months,—

(a) the Permanent Secretary, Finance may list such a proprietor on a list of defaulters which shall be published on the website of the Revenue Control Unit; or

(b) the Permanent Secretary, Finance may withhold payments for services rendered on behalf of the government by the proprietor and may apply the said payment to the outstanding remittance of the tax due and payable by the proprietor .

Revocation of licence

31 Where a proprietor is in default of any taxes due and payable for a period of one year and the proprietor has made no payment in satisfaction of the outstanding tax due and payable together with the penalty and interest, the Permanent Secretary, Finance on the advice of the Revenue Commissioner, may revoke the licence issued under the Business Licensing Ordinance, under which the proprietor carries on business.

Notice of revocation

32. Before revoking a licence under section 31, the Permanent Secretary, Finance shall give the proprietor notice in writing of his intention to revoke his licence and the reasons for it.

Opportunity for representation

33. A notice given under section 32 shall state that within thirty days of service, the proprietor may make representations in writing to the Permanent Secretary, Finance concerning the matter, and the Permanent Secretary, Finance shall not determine the matter without considering any representations received within that period of thirty days.

Appeal against decision of the Permanent Secretary, Finance

34. A person aggrieved by a decision of the Permanent Secretary, Finance, revoking a licence may appeal to the Supreme Court] within a period of thirty days following notification to him of the decision appealed against.

Suspension of Permanent Secretary, Finance's decision

35. An appeal to the Supreme Court under section 34 shall have effect of suspending the execution of the decision of the Permanent Secretary, Finance until the Supreme Court gives its decision on the appeal.

Power of the court on appeal

36. The Supreme Court may confirm the decision appealed or may direct the Permanent Secretary, Finance to restore the revoked licence or to restore it on such terms and conditions as it may determine.

Enforcement of payment of tax

37. (1) Without prejudice to any other remedy, where any tax is due and payable by a proprietor, the Permanent Secretary, Finance may serve a notice on the proprietor specifying the amount of tax due and payable by the proprietor, and stating that if payment of that amount is not made to the Permanent Secretary, Finance within seven days of the date of the service of the notice, the Permanent Secretary, Finance may apply to the Magistrate under subsection (2) for the issue of a writ of execution against the proprietor.

(2) Subject to subsection (3), if payment of tax specified in a notice served under subsection (1) on a proprietor is not paid within seven days of the date of the service of the notice, the Permanent Secretary, Finance may apply to the Magistrate for the issue of a writ of execution against the proprietor, and the Magistrate may issue the writ in all respects as if the tax in respect of which the application is made were a judgment debt; and sections 145 and 146 of the Magistrate's Court Ordinance shall apply accordingly.

(3) An application under subsection (2) shall not be made in respect of any tax pending the determination of any reference under section 38 of any question as to that tax.

(4) The Permanent Secretary, Finance may delegate in writing to any person any powers conferred or imposed on the Permanent Secretary, Finance by this section other than the power of delegation.

(5) The Permanent Secretary, Finance may at any time revoke a delegation made under subsection (4).

(6) A delegation under subsection (4) does not prevent the exercise by the Permanent Secretary, Finance himself of a power so delegated.

Determination of disputes as to tax

38. (1) Subject to subsections (2) and (3), any question arising as to the liability of any person to pay tax may be referred by him to the Magistrate for determination.

(2) The reference under subsection (1) of any question as to any tax shall not be made where an action for the recovery of that tax has been instituted.

(3) Where a notice has been served on any person under section 27(1) with respect to any tax, the reference under subsection (1) of any question as to that tax shall not be made later than the seven days next following the date of the service of the notice.

(4) The Permanent Secretary, Finance and the person by whom a question has been referred for determination by the Magistrate under subsection (1), or any other person representing the Permanent Secretary, Finance or that person, shall be entitled to be present and to be heard at the hearing of the reference, may call witnesses and shall be given the opportunity of putting questions directly to any witnesses called at the hearing.

(5) The Magistrate may summon any person to attend and give evidence or produce any documents at a hearing of a reference under subsection (1) and any witnesses called at the hearing may be examined on oath or affirmation.

(6) Subject to section 72, the determination of the Magistrate on a reference made under subsection (1) shall be final.

(7) Subject to the provisions of this section, the procedure in respect of a reference made under subsection (1) shall be such as the Magistrate shall determine; and the Magistrate may, with the approval of the Governor, make rules prescribing the fees to be payable in respect of such a reference.

Evidence

39. (1) Where tax is in arrear, a certificate of the Permanent Secretary, Finance that tax is due and that payment of the tax has not been made to him, or to any person acting on his behalf, shall be sufficient evidence in any proceedings that the sum mentioned in the certificate is unpaid and is due to the Crown; and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(2) A copy of, or extract from—

(a) any return furnished to the Permanent Secretary, Finance under this Ordinance;

(b) any notice of assessment served under section 21 or section 27(1);

(c) any register, copies of statements, accounts, books or other documents, where that copy or extract was made or taken in the exercise of the powers conferred by section 25 and 26 on the Permanent Secretary, Finance or any other person,

shall, if that copy or extract bears the certificate of the Permanent Secretary, Finance that it is such a copy or extract, be sufficient evidence in any proceedings of the contents of that copy or extract to the same extent as if this original return, notice of assessment, register, statements, accounts, books or other documents would be if they were produced in those proceedings; and a document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

Proprietor's lien and right to recover tax from guests

40. (1) A proprietor shall have—

(a) a lien on a property brought into his premises by a guest, whether belonging to the guest or not, in respect of tax due and payable by the guest to the proprietor; and

(b) the right to recover tax due and payable to the proprietor by a guest as a debt due to the proprietor by the guest for accommodation provided by the proprietor for the guest.

(2) For the purposes of subsection (1) tax due and payable by a guest who is under the age of eighteen years and who is accompanied as a guest by his parent or guardian shall be deemed to be due and payable by his parent or guardian, and any property brought into any premises by such a guest shall be deemed to have been brought into the premises by his parent or guardian.

PART VII

RESTAURANT SERVICES

Designation of restaurants

41. (1) Where the Governor is satisfied that any premises are used for the purpose of habitually providing meals for reward he may, by Order, designate those premises as a restaurant to which this section and Schedule 1 apply (hereinafter in this section referred to as a "designated restaurant").

(2) The designation of any premises as a restaurant under subsection (1) may be made based on any of the following criteria, as may be specified in the Order—

(a) the size of the business;

(b) the location of the business;

(c) the seating capacity; or

(d) whether the premises are used principally for providing meals for consumption by persons who are tourists.

(3) Where any premises, pursuant to subsection (1) and (2) meets the criteria under the Order made by the Governor, the Permanent Secretary, Finance shall in writing notify the proprietor of the designation and the proprietor may within fourteen days of receipt of the notification make representation to the Permanent Secretary, Finance against the designation.

(4) Any person aggrieved by a decision of the Permanent Secretary, Finance under subsection (3) may appeal to the Magistrate, within fourteen days of the decision.

(5) The Permanent Secretary, Finance may delegate in writing to any person any powers conferred or imposed on the Permanent Secretary, Finance by this section other than the power of delegation.

(6) The Permanent Secretary, Finance may at any time revoke a delegation made under subsection (4).

(7) A delegation under subsection (4) does not prevent the exercise by the Permanent Secretary, Finance himself of a power so delegated.

Duty to keep records for restaurant services

42. A proprietor shall —

(a) keep a record of the sale of every meal provided for reward at his premises that are used for the purpose of habitually providing meals for reward;

(b) keep the books and records in sufficient detail to permit the assessment of the monthly or annual turnover of his premises that are used for the purpose of habitually providing meals for reward by the Permanent Secretary, Finance ; and

keep those records for a period of seven years from the date of last entry made in the books and records.

Inspection of books and records

43. For the purpose of designating any premises that are used for the purpose of habitually providing meals for reward, as a restaurant, under section 41(1) and pursuant to the criteria in section 41 (2), the proprietor shall —

(a) permit the Permanent Secretary, Finance to enter into any premises that habitually provide meals for reward and to inspect, and to make copies of entries, in any books, records or other documents which relate or appear to relate to that premises;

(b) if required to do so by the Permanent Secretary, Finance, produce, at the time and place as the Permanent Secretary, Finance may specify, any books, records or other documents relating to that premises; and

(c) at the times as the Permanent Secretary, Finance may specify, make such returns as may be prescribed and give such other information relating to that premises as the Permanent Secretary, Finance may require.

Failure to make records etc.

44. (1) Where the proprietor fails to make available proper books, records, or other documents under section 43, the Permanent Secretary, Finance, may make a best judgment assessment of the monthly or annual turnover of the premises.

(2) A proprietor who contravenes any of the provisions of section 43 is guilty of an offence and is liable on summary conviction to a fine of $50 000 or imprisonment for a term of two years, or both.

Imposition of tax

45. (1) There shall be paid by any person liable to pay for any meal provided for reward at a designated restaurant, whether the meal is provided for consumption by him or any other person, a tax at the rate of 12% of the charge paid or payable in respect of that meal:

(2) No tax shall be payable in respect of a meal in respect of which a guest is liable to pay tax under section 6(1).

Variation of tax rate for restaurant services

46. The Governor may by regulations vary the rate of tax.

Remittance of tax

47. Tax payable in respect of any meal provided at a designated restaurant shall be accounted for and paid by the proprietor of the restaurant in accordance with section 51 (1).

Collection of tax by proprietor or agent

48. (1) Where the proprietor of a designated restaurant is not resident in the Islands, any agent of his who is resident in the Islands and who has acted on his behalf in connection with the business carried on at the restaurant of providing meals for reward shall be accountable for, and liable to pay, tax in substitution for the proprietor for so long as the proprietor is not resident in the Islands.

(2) A proprietor of a designated restaurant who is not resident in the Islands shall file with the Permanent Secretary, Finance the name and address of any person who will act or is acting on his behalf in connection with the business carried on at the restaurant of providing meals for reward.

Statement of receipt

49. The proprietor of a designated restaurant shall, as soon as may be, deliver to the person liable to pay for any meal provided for reward at the restaurant a statement giving—

(a) particulars of the meal and of the charge made for the meal; and

(b) as a separate item, the amount of tax payable by that person in respect of the meal,

and shall keep a copy of every statement delivered to any person in accordance with this subsection for a period of not less than seven years from the date on which the statement was delivered.

Returns for restaurant services

50.(1) Subject to section 51, the proprietor of a designated restaurant shall, within twenty-one days of the end of each month—

(a) furnish the Permanent Secretary, Finance with a return in such form as the Permanent Secretary, Finance shall determine and containing such particulars as the Permanent Secretary, Finance may require; and

(b) deliver or send to the Permanent Secretary, Finance together with that return, a remittance in payment of the total amount of tax paid or payable

in respect of all meals provided for reward at the restaurant during that month.

(2) If no meals have been provided for reward at a designated restaurant during any month, the proprietor of the restaurant shall, within twenty-one days of the end of that month, furnish to the Permanent Secretary, Finance a return stating that no such meals have been provided at the restaurant during that month.

Application of Schedule 1

51. The provisions of this Ordinance specified in the first column of the Schedule 1 shall have effect in relation to the tax imposed by section 45 as they have effect in relation to the tax imposed by section 6(1), subject to the modifications set out in the second column of the Schedule 1; and accordingly in those provisions, as having effect by virtue of this subsection, any reference to a proprietor shall include a reference to a proprietor of a designated restaurant and any reference to any tax shall include a reference to the tax imposed by section 45.

Interpretation

52. In this Part and in the Schedule 1—

(a) "bar" means a premises where intoxicating liquor or other beverage by the individual drink is sold;

(b) "meal" includes any intoxicating liquor or other beverage whether supplied with, as an ancillary to, separately from or accompanied by, a meal;

(c) "proprietor", in relation to a designated restaurant, means the person who carries on at the restaurant the business of providing meals for reward, whether on his own behalf or on behalf of another as manager or otherwise;

(d) "restaurant" includes a bar;

(e) "tax" means the tax imposed by section 41.

PART VIII

TOURISM SERVICES

Registration of tourism service providers

53. (1) A tourism service provider shall, by 1 December 2014 or within one month of becoming a tourism service provider, apply to the Permanent Secretary, Finance in writing, in such form as the Permanent Secretary, Finance shall determine, for the

registration as a tourism service provider, stating such particulars as the Permanent Secretary, Finance may require.

(2) On receipt of an application for the registration as a tourism service provider under subsection (1), the Permanent Secretary, Finance shall register the tourism service provider in a register called "The Register of Tourism Services Providers" (in this section referred to as "the register").

(3) An entry in the register relating to a tourism service provider shall state the name and address of the tourism service provider and such other particulars as the Permanent Secretary, Finance thinks fit or that the Governor may direct to be included in the entry.

(4) Where there has been any change as respects any of the particulars contained in an entry in the register with respect to any tourism service provider, the tourism service provider shall, within thirty days of the change, serve on the Permanent Secretary, Finance a notice in writing giving particulars of the change, and the Permanent Secretary, Finance shall make such appropriate amendments to the entry as may be required.

(5) If the Permanent Secretary, Finance is satisfied that any tourism service provider has ceased to be a tourism service provider, he shall cancel the entry in the register relating to that tourism service provider.

(6) A tourism service provider whose turnover does not exceed $50,000 in any year or $4,000 in three consecutive months may, at the time of lodging an application for registration or at any other time, apply to the Permanent Secretary, Finance to be exempt from the requirement to collect tax.

(7) The Permanent Secretary, Finance may exempt a tourism service provider from the requirement to collect tax if the Permanent Secretary, Finance, having regard to the evidence submitted by the tourism service provider, is satisfied that the provider's annual or monthly turnover, as the case may be, does not exceed the amounts stated under subsection (6), and that the tourism service provider will not be required to collect, or should not continue to be required to collect tax.

(8) The amounts specified in subsection (6) may be varied by the Governor by Order published in the *Gazette*.

Imposition of tax for tourism services

54. (1) There shall be paid by any person liable to pay for any tourism service provided by a designated tourism service provider, a tax at the rate of 12% of the charge paid or payable in respect of that service:

(2) No tax shall be payable in respect of a tourism service in respect of which a guest is liable to pay a tax under section 6.

Variation of rate for tourism services

55. The Governor may by regulations vary the rate of tax.

Collection of tax for tourism services by proprietor or agent

56. (1) Tax payable in respect of any tourism service provided by a designated tourism service provider shall be accounted for and paid by the designated tourism service provider in accordance with subsection (6).

(2) Where a designated tourism service provider is not resident in the Islands, any agent of his who is resident in the Islands and who has acted on his behalf in connection with the tourism service carried on by him shall be accountable for, and liable to pay, tax in substitution for the tourism service provider for so long as the tourism service provider is not resident in the Islands.

Returns for tourism services

57. (1) A designated tourism service provider shall, as soon as may be, deliver to the person liable to pay for any tourism service provided for reward by him a statement giving—

(a) particulars of the tourism service and of the charge made for that service; and

(b) as a separate item, the amount of tax payable by that person in respect of that service,

and shall keep a copy of every statement delivered to any person in accordance with this subsection for a period of not less than seven years from the date on which the statement was delivered.

(2) Subject to section 60, a designated tourism service provider shall, within twenty-one days of the end of each month—

(a) furnish the Permanent Secretary, Finance with a return in such form as the Permanent Secretary, Finance shall determine and containing such particulars as the Permanent Secretary, Finance may require; and

(b) deliver or send to the Permanent Secretary, Finance together with that return, a remittance in payment of the total amount of tax paid or payable

in respect of all tourism services provided by him during that month.

(3) If no tourism services have been provided during any month by a designated tourism service provider, the tourism service provider shall, within twenty-one days of the end of that month, furnish to the Permanent Secretary, Finance a return stating that no tourism services have been provided by him during that month.

Failure to submit returns

58. Where any non-designated tourism service provider which collects any tax payable in respect of any tourism service under this section and who fails—

(a) to furnish to the Permanent Secretary, Finance a return stating that the tax was collected; and

(b) to remit payment of the total amount of the tax collected,

commits an offence.

Duty to keep records for tourism services

59. (1) Notwithstanding that a tourism service provider is exempt from the collection of tax, such tourism service provider shall—

(a) keep sufficiently detailed accounts of tourism services provided by him; and

(b) keep those accounts for a period of seven years from the date of the last entry made in the accounts.

(2) For the purposes of subsection (1), a tourism services provider shall keep or cause to be kept—

(a) statements giving particulars of tourism services provided;

(b) statements giving all the charges in respect of tourism service;

(c) financial statements;

(d) bank deposit statements;

(e) any notes to clarify any transaction between the tourism service provider and customer;

(f) sales books and general ledgers; and

(g) such other record as may be required from time to time.

(3) The records required to be kept by a tourism service provider under subsection (2) shall be maintained in the currency of the Islands and in the English language and shall be kept in the Islands.

Application of Schedule 2

60. (1) The provisions of this Ordinance specified in the first column of Schedule 2 shall have effect in relation to the tax imposed by section 54 as they have effect in relation to the tax imposed by section 6(1), subject to the modifications set out in the second column of that Schedule.

(2) In those provisions, which have effect by virtue of subsection (1), any reference to a proprietor shall include a reference to a tourism service provider and any reference to any tax shall include a reference to the tax imposed by section 54.

Interpretation

61. In this Part and in Schedule 2—

"designated tourism service provider" means a tourism service provider whose turnover exceeds the amounts stated under section 53(6) and is liable to collect and account for tax under this section;

"tax" means the tax imposed by section 54;

"tourism service" means a service provided in support for tourism for the purpose of providing entertainment and attractions as listed in Schedule 3;

"tourism service provider" means a person who provides a tourism service.

PART IX

OFFENCES AND PENALTIES

Offences and penalties

62. (1) A person who—

(a) contravenes—

(i) section 4(1) (registration of premises);

(ii) section 4(4) (notice of change of particulars in register);

(iii) section 5(1) (keeping of guest register);

(iv) section 5(4) (information to be entered in guest register);

(v) section 9(4) (delivery of statement to guest before departure);

(vi) section 9(6) (keeping a copy of statement delivered to guest);

(vii) section 17(1) (issuing statement to all inclusive guest);

(viii) section 17(3) (making statement and receipt available);

(ix) section 22(1) (accounts to be kept by proprietor);

(x) section 24(1) (filing of returns and payment of tax);

(xi) section 24(4) (payment of tax by instalments);

(xii) section 25(6) (filing of nil return);or

(xiii) section 70(restriction on disclosure of information);

(b) makes default in complying with a requirement imposed under section 25 (production and examination of documents, etc upon request); or

(c) makes default in complying with a requirement imposed by regulations under section 69,

commits an offence and is liable on conviction to a fine of $25,000 or imprisonment for a term of two years or to both.

(2) A person who is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion, by him or any other person, of tax commits an offence and is liable—

(a) on conviction on indictment to a fine of $100,000 or imprisonment for a term of three years or to both; or

(b) on summary conviction to a fine of $50,000 or imprisonment for a term of two years or to both.

(3) A person who—

(a) with intent to deceive, for the purposes of this Ordinance, produces, furnishes, sends or otherwise makes use of any register, return, books, accounts or other document which is false in a material particular; or

(b) in furnishing any information for those purposes, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

commits an offence and is liable on conviction on indictment to a fine of $100,000 or imprisonment for a term of three years or to both, or on summary conviction to a fine of $50,000 or imprisonment for a term of two years or to both.

(4) A person who contravenes section 5(2) (obligation of guest to provide information) commits an offence and is liable on summary conviction to a fine of $1,000.

Obstruction of Permanent Secretary, Finance

63. (1) A person who wilfully obstructs or attempts to obstruct the Permanent Secretary, Finance or any person authorised by him in the exercise of his function under this Ordinance commits an offence and is liable on summary conviction to a fine of $25,000 or imprisonment for a term of six months or to both.

(2) For the purpose of this section, a person obstructs the Permanent Secretary, Finance or any person authorised by him if he—

(a) impedes the lawful entry on to any premises;

(b) otherwise impedes the determination, assessment, or collection of tax.

Taxes collected unlawfully by proprietor

64. (1) Where any tax is collected contrary to the provisions of this Ordinance, the proprietor commits an offence and is liable—

(a) on conviction on indictment, to a fine of $100 000 or imprisonment for a term of three years or to both; or

(b) on summary conviction, to a fine of $50 000 or imprisonment for a term of two years or both.

(2) Where the Permanent Secretary, Finance, finds that the proprietor collected any tax contrary to subsection (1), the proprietor shall take all reasonable steps to remit the amount of the tax collected unlawfully to the guest by—

(a) debiting the account of the guest affected by the unlawful collection;

(b) issuing a notice on their website and in a newspaper in general circulation in the Islands that a guest may make a claim for the refund of the amount of the tax in the prescribed form within two years of the service of the notice.

(3) Where a proprietor fails to remit or a guest fails to make a claim under subsection (3) within two years of the service of the notice under subsection (3)*(b)*, the unclaimed amount shall be paid into the custody of the Permanent Secretary, Finance by the proprietor.

Amounts not reimbursed to vest in Crown

65. Where any unclaimed amounts are deposited into the custody of the Permanent Secretary, Finance under section 64(3), it shall vest in the Crown on the date on which it was paid into the custody of the Permanent Secretary, Finance.

Handling of the amounts not reimbursed

66. (1) There is hereby established the Hotel, Restaurant and Tourism Taxation Fund under the administration and control of the Permanent Secretary, Finance.

(2) Payments out of the Fund may be made for —

(a) the conservation of the environment in the Islands; or

(b) community tourism enhancement projects.

PART X

MISCELLANEOUS PROVISIONS

Application of Ordinance to vessels used for accommodation

67. This Ordinance shall also apply to vessels used for accommodating persons for reward, subject to the following modifications—

(a) references to premises and buildings shall, unless the context otherwise requires, and subject to paragraph *(b)*, be construed as references to a vessel or vessels;

(b) in section 3(1), the reference to premises comprising one or more buildings shall be construed as a reference to a single vessel or a group of vessels operating in combination, but not necessarily in convoy.

Criminal liability of directors

68. (1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

Regulations

69. (1) The Governor may make regulations for prescribing anything which may be prescribed under this Ordinance and otherwise for the purpose of carrying this Ordinance into effect.

(2) Regulations under subsection (1) may, in particular, make provision, in relation to any case or class of case—

(a) for facilitating the calculation of the amount of any charges made for any service in respect of which tax is payable or for facilitating the calculation or collection of tax;

(b) for the purposes mentioned in paragraph *(a)*, prescribing such modifications of this Ordinance as the Governor considers expedient.

(3) Where the Governor is satisfied as to the existence of any arrangement or practice by which the incidence of tax is avoided or reduced, he may, by regulations under subsection (1), make provision for securing that tax is payable as if that arrangement or practice were not followed.

(4) In this section "modifications" includes additions, omissions and amendments.

Restriction on disclosure of information

70. Information which is disclosed to the Permanent Secretary, Finance or any other person in connection with the operation of this Ordinance shall not be further disclosed except where—

(a) the Governor has required or authorised the information to be disclosed;

(b) the information is disclosed to any person authorised by the Permanent Secretary, Finance to

carry out any duties in connection with the operation of this Ordinance; or

(c) the information is disclosed for the purpose of civil or criminal proceedings in connection with the operation of this Ordinance or for the purpose of any other criminal proceedings in the Islands.

Service of notices

71. (1) Any notice or other document to be served or given by or on behalf of the Permanent Secretary, Finance under this Ordinance may be served or given—

(a) on or to a body corporate or any other body by sending it by post addressed to that body at its last known place of business in the Islands; or

(b) on or to any other person, by delivering it to that person, or by leaving it, or sending it by post addressed to that person, at his usual or last known place of residence, or last known place of business, in the Islands.

(2) Notices or other documents to be furnished under this Ordinance to the Permanent Secretary, Finance, or to any other person authorised by the Permanent Secretary, Finance in writing for the purposes of section 24, may be delivered to, or sent by post addressed to, the Permanent Secretary, Finance or that person at the office of the Permanent Secretary, Finance.

Appeals and references

72. (1) The Magistrate may refer to the Supreme Court for decision any question of law arising on a reference made to the Magistrate under section 38.

(2) An appeal on a question of law shall lie to the Supreme Court from a determination of the Magistrate on a reference made to the Magistrate under section 38, unless that question has been referred to the Supreme Court for decision under subsection (1).

(3) On an appeal under subsection (2), the Supreme Court may quash or confirm the determination against which the appeal is brought, and may make such order as to costs as the Court thinks fit.

(4) The decision of the Supreme Court on a reference or appeal under this section shall be final.

(5) The jurisdiction conferred on the Supreme Court by this section shall be exercised in accordance with such directions as the Chief Justice may give in any particular case.

Governor may amend Schedule 3

73. The Governor may by Order amend Schedule 3.

Repeal

74. The Hotel, Restaurant and Tourism (Taxation) Ordinance 1985 is repealed.

Savings

75. Any Regulation or Order or other subsidiary legislation made pursuant to the Hotel, Restaurant and Tourism(Taxation) Ordinance 1985, in force at the time of the commencement of this Ordinance, shall continue in force until replaced by any Regulation, Order or other subsidiary legislation made under this Ordinance.

SCHEDULE 1

(Section 69))

PROVISIONS APPLYING TO TAX IMPOSED BY SECTION 45

Section	Modifications
22	*(a)* In subsection (1)*(a),* for the words "by or in respect of every guest accommodated in his premises" substitute "in respect of meals provided at his restaurant". *(b)* In subsection (4), for the words "by or in respect of any guest accommodated in the premises of the proprietor" substitute "in respect of meals provided in the restaurant of the proprietor".
24(2),(3), (4),(7) and (8)	In subsection (2)*(a),* for "subsection (1)" substitute "section 50(1)".
25	*(a)* In subsection (1) *(b),* for sub-paragraph (ii) substitute the following sub-paragraph— "(ii) to produce, at such place and at such time as the Permanent Secretary, Finance or that person may specify, any copies of statements delivered in accordance with section 49 in respect of meals provided for reward at the restaurant of the proprietor, any accounts kept in accordance with section 22(1), and any books or other documents relating to the business of providing meals for reward carried on at the restaurant of the proprietor;". *(b)* In subsection (1)(*b)*(iii) and in subsection(8), delete "register" wherever it occurs.
27	*(a)* In subsection (1)(*a)*, for "section 24" substitute "section 50(1)" and for "under that section" substitute "under that subsection". *(b)* In subsection (1)(*b)* and *(c),* delete "register" wherever it occurs.
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39	In subsection (2), delete "register" wherever it occurs, and in subsection (2)*(b)*, delete "section 21 or".
69	In subsection (2)*(a),* for "any service" substitute "any meal".
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52(1),(2), (3) and (5)	*(a)* In subsection(1), for paragraph*(a)* substitute the following paragraph— "*(a)* contravenes section 22(1), section 24(4), section 70 or any of sections 49, 50(1) or 50(2);". *(b)* In subsection (3)*(a)*, delete "register".
58	

SCHEDULE 2

(Section 60)

PROVISIONS APPLYING TO TAX IMPOSED BY SECTION 54

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Section	Modifications
22	*(a)* In subsection (1)*(a)*,— (i) for the word "proprietor" substitute "designated tourism service provider"; (ii) for the words "by or in respect of every guest accommodated in his premises" substitute "in respect of tourism services provided by him". *(b)* In subsection (4), for the words "by or in respect of any guest accommodated in the premises of the proprietor, the proprietor" substitute "in respect of tourism services provided by the designated tourism service provider, the tourism service provider".
24(2),(3), (4),(7) and (8)	In subsection (2)*(a)*, for "subsection (1)" substitute "section 50(6)".
26	
27	*(a)* In subsection (1)*(a)*, for "section 24" substitute "section 50(6)" and for "under that section" substitute "under that subsection". *(b)* In subsection (1)(*b)* and *(c)*, delete "register" wherever it occurs.
28	
37	
38	
39	In subsection (2), delete "register" wherever it occurs, and in subsection (2)*(b)*, delete "section 21 or".
69	In subsection (2)*(a)*, for "any service" substitute "any tourism service".
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72	
52(1),(2),	*(a)* In subsection(1), for paragraph*(a)* substitute the following

(3) and (4)		paragraph—
		"*(a)* contravenes section 22(1), section 24(4), section 70 section 53(1) or 53(4) or any of sections 57 to 59;".
	(b)	In subsection (3)*(a)*, delete "register".
58		

SCHEDULE 3

(Section 61)

TOURISM SERVICES

1. Tour operator services
2. Tourist guide services
3. Camping and caravanning site services
4. Camping equipment leasing or rental services
5. Water sports
6. Water sports or beach equipment leasing or rental services
7. Sports fishing
8. Sightseeing excursion services
9. Sightseeing services, aircraft or helicopter
10. Non-motorised land transport equipment leasing or rental services - e.g. bicycles
11. Non-motorized air transport equipment leasing or rental services
12. Parasailing, parachuting, zip lining
13. Horse-back riding and related services
14. Photography and photographic camera rental services
15. Museum services except for historical sites and buildings
17. Spa Services
18. Destination wedding and planning services
19. Concierge services.
