



ST. CHRISTOPHER AND NEVIS

CHAPTER 20.20

HOTEL ACCOMMODATION AND RESTAURANT TAX ACT

Revised Edition

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HOTEL ACCOMMODATION AND RESTAURANT TAX ACT

Page
3

Act 12 of 1976 ... in force 9th August 1976

Amended by: Act 6 of 1979
Act 11 of 1980
Act 1 of 1982
Act 8 of 1983
Act 9 of 1986
Act 1 of 1992
Act 2 of 1994
Act 16 of 1996
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CHAPTER 20.20

HOTEL ACCOMMODATION AND RESTAURANT TAX ACT

ARRANGEMENT OF SECTIONS

1. Short title
2. Interpretation
3. Application of Act
4. Functions of the Comptroller
5. Imposition of tax
6. Payment of tax.
7. Returns
8. Exemption by Minister
9. Further returns
10. Power to obtain information and evidence
11. Authorised person may enter
12. Bills to show tax payable and tax recoverable by operator
13. Comptroller may assess tax in default of return
14. Extension of time to pay
15. Penalty for late payment
16. Recovery of tax
17. Substituted service
18. Objections
19. Tax to be paid into Consolidated Fund
20. Offences
21. Penalties not to relieve from tax
22. Offence and penalty
23. Prosecution
24. Regulations

CHAPTER 20.20

HOTEL ACCOMMODATION AND RESTAURANT TAX ACT

AN ACT TO IMPOSE A HOTEL ACCOMMODATION TAX IN RESPECT OF SLEEPING ACCOMMODATION PROVIDED AT HOTELS AND GUEST HOUSES, AND TO IMPOSE A RESTAURANT TAX IN RESPECT OF MEALS AND DRINKS SERVED IN RESTAURANTS; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

Short title.

1. This Act may be cited as the Hotel Accommodation and Restaurant Tax Act.
(Substituted by Act 1 of 1992)

Interpretation.

2. In this Act—

“Company” means a body corporate, or an unincorporated association or a partnership;

“Comptroller” means the Comptroller of Inland Revenue;

“hotel” means a building or group of buildings in the State occupied together comprising not less than 5 bedrooms and used in connection with the trade or business of a hotel or guest house for the purpose of providing hotel accommodation for reward;

“hotel accommodation” means sleeping accommodation, food and beverage provided in a hotel, guest house, cottage or condominium or similar establishment for the resident guests, but does not include owners resident in any such condominium;

(Substituted by Act 1 of 1982)

“operator” means a person who either by himself or through an agent or servant carries on the trade or business of operating a hotel, a guest house, cottage, condominium or similar establishment, or a restaurant;

(Inserted by Act 1 of 1992)

“person” includes a company;

“restaurant” means any premises the proprietor of which is required to obtain a restaurant licence under the Liquor Licences Act, Cap. 18.21, or under the Licences on Businesses and Occupations Act, Cap. 18.20 or both or any other Act;

(Inserted by Act 1 of 1992)

“services” means hotel accommodation and food or beverage provided in a restaurant;

(Substituted by Act 1 of 1992)

“tax” means tax chargeable under this Act.

(Substituted by Act 1 of 1992)

Application of Act.

*3. (1) With effect from the 1st day of November, 2010, this Act shall only apply to an establishment which is required to collect hotel accommodation and restaurant tax in the South East Peninsular Resort District.

(2) The provisions of subsection (1) shall not have the effect of relinquishing the accrued tax liability of any person prior to the coming into force of this section by reason of the fact that such person is no longer required to pay such tax by virtue of the provisions of this section.

(3) For the purposes of subsection (2), the provisions of this Act, shall continue to apply to such person until the person discharges his or her tax obligations under this Act.

(Inserted by Act 12 of 2010)

Functions of the Comptroller.

4. (1) The Comptroller shall have the general administration of this Act and shall be responsible for the collection and recovery of the tax.

(2) Any function conferred by this Act on the Comptroller may be exercised as may be necessary by any officer authorised by him or her and references in this Act to the Comptroller shall be construed accordingly.

(3) The revenue from payments made under this section shall be paid into the Government/Hotel and Tourism Association Fund established for the purpose of marketing.

(Inserted by Act 16 of 1996)

Imposition of tax.

5. (1) There shall be charged, levied and collected on the proceeds of—

(a) charges for hotel accommodation;

(b) every restaurant from the sale of food or beverage, or both,

a tax at the rate of seven per centum of the charges for hotel accommodation and or restaurant or at such other rate as the Minister may prescribe by Order published in the *Gazette*.

(2) An Order made under subsection (1) shall be subject to the approval of the National Assembly.

(Substituted by Act 1 of 1992)

(Act 2 of 1994 inserted subsection (3) and Act 16 of 1996 deleted it)

Payment of tax.

6. (1) The tax shall be paid by an operator who provides services within the time that he or she is required to lodge a return under section 7.

(2) The tax shall be payable notwithstanding that a hotel is exempt from any other taxes, charges, or impositions by virtue of any other enactment.

(Amended by Acts 11 of 1980 and 1 of 1992)

* Inserted as section 2A by Act 12 of 2010 and renumbered as section 3 and the subsequent sections renumbered accordingly.

Returns.

7. (1) Where the tax becomes chargeable the operator shall account for it by means of the return prescribed by subsection (2) and pay it over to the Comptroller.

(2) Every operator shall, on or before the 15th day of the months of March, June, September and December of each year, furnish to the Comptroller, in accordance with the form and in the manner prescribed, a quarterly return of all services provided by him or her in respect of each quarter preceding those months and the amount of the tax payable thereon.

(Amended by Act 1 of 1992 and substituted by Act 2 of 2014)

Exemption by Minister.

8. (1) The Minister, upon an application made to him or her for the purpose by or on behalf of the operator of a restaurant in a form approved by the Minister, may, by Order, exempt that restaurant from the application of this Act for such period and upon such terms and conditions as may be specified in the Order.

(2) In considering any application under subsection (1), the Minister may take into account, *inter alia*, the following—

- (a) the location;
- (b) the nature of the business;
- (c) gross sales;
- (d) the floor area; and
- (e) the number of employees.

(Inserted by Act 1 of 1992)

Further returns.

9. In addition to any return required to be furnished by this Act, the Comptroller may, by notice in writing, call upon an operator or person to deliver to him or her, within the time specified in the notice, such return or such further or fuller return, as the Comptroller requires, whether on his or her own behalf or as agent.

(Amended by Act 1 of 1992)

Power to obtain information and evidence.

10. (1) The Comptroller may, by notice in writing require any operator or person—

- (a) to deliver to him or her such information as he or she requires; or
- (b) to attend and give evidence before him or her or before any officer authorised by him or her in that behalf,

for the purpose of inquiry or ascertaining his or her or any other person's liability or entitlement under this Act, and may require him or her to produce all books, documents and other papers whatsoever in his or her custody or under his or her control relating thereto.

(Amended by Act 1 of 1992)

(2) The Comptroller may require the information or evidence to be given an oath, either orally or in writing, and for that purpose he or she or the officer so authorised by him or her may administer an oath.

Authorised person may enter.

11. A person authorised by the Comptroller may for any purpose related to the administration or enforcement of this Act at any reasonable time on the production of his or her letter of authorisation enter any premises where services are provided and—

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document which relates or may relate to the information that is or should be in the books or records or to the amount of tax payable under this Act;
- (b) require the operator or manager and any employee on the premises to give him or her all reasonable assistance with his or her audit or examination either orally or in writing.

(Inserted by Act 1 of 1992)

Bills to show tax payable and tax recoverable by operator.

12. (1) An operator shall cause to be entered on every bill, the amount of the tax, specifying the rate of such tax that is chargeable.

(2) An operator shall be entitled to recover the amount of the tax from the person who has received the benefit of services as if the amount of the tax was part of the price payable for such services.

(3) A duplicate of every bill and the receipt of the bill shall be kept by every operator and shall be available at all times, and it shall be produced for inspection on demand by the Comptroller.

(Amended by Acts 11 of 1980 and 1 of 1992)

Comptroller may assess tax in default of return.

13. (1) Where an operator has failed to deliver a return in accordance with this Act, then, after consideration of any representation or information which the proprietor may make to him or her, the Comptroller shall assess the tax for any period and, subject to subsection (5) of this section and section 18, tax in relation to that period shall be paid within fifteen days from the day of service on the operator of the notice of assessment of the amount so assessed.

(2) Where the Comptroller is satisfied that a true account of services in respect of any period has not been given in the return—

- (a) because of the failure of the operator to keep the records and books of account required or to produce any records, books of account or other documents or information required to be produced pursuant to this Act; or
- (b) because of any information contained in any such records, books of account or other documents which the Comptroller may have obtained from any source,

then the provisions of subsection (1) shall apply, and the Comptroller shall cause an assessment to be made of the amount which in his or her judgment is due from the operator for tax for any period and, if the assessment results in the operator being charged with tax in excess of that shown in the return, the operator shall be liable to pay the excess by way of further tax:

Provided that the Comptroller may, in any particular case, for reasons which he or she thinks sufficient, remit the further tax or any part thereof.

(3) As soon as conveniently may be after an assessment, the Comptroller shall cause notice in writing of the assessment and of the tax or further tax to be given to the operator liable to pay the tax or further tax.

(4) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act but the omission to give a notice shall not invalidate the assessment.

(5) Where any operator disputes an assessment made under the provisions of subsection (1) or (2) he or she shall nevertheless, within the time limited by subsection (1) pay to the Comptroller the part of the tax or the further tax stated in the notice to be payable by him or her and any interest and any penalties then remaining unpaid that is not in dispute.

(Amended by Acts 11 of 1980 and 1 of 1992)

Extension of time to pay.

14. The Comptroller may, in such cases as he or she thinks fit extend the time for payment of any tax or further tax by such period as he or she considers the circumstances warrant.

Penalty for late payment.

15. If the tax, or further tax, is not paid before the expiration of the time specified in section 6 or 13 or such further time as may be allowed by the Comptroller under section 14, additional tax shall be payable at the rate of twelve per cent per annum upon the amount of tax unpaid to in section 6 or 13, or where further time has been allowed by the Comptroller under section 14, from the expiration of that further time:

Provided that the Comptroller may, in any particular case, for reasons which in his or her discretion he or she thinks sufficient, remit the additional tax imposed or any part thereof.

(Amended by Act 1 of 1992)

Recovery of tax.

16. (1) Tax shall be deemed, when it becomes due and payable, to be a debt due to the Crown on behalf of the Government of the State and payable to the Comptroller.

(2) Any tax or further tax unpaid, and any additional tax, may be sued for and recovered in any court of competent jurisdiction by the Comptroller suing in his or her official name.

Substituted service.

17. If, in any proceedings against an operator for the recovery of tax, further tax or additional tax, the defendant—

- (a) is absent from the State and has not, to the knowledge of the Comptroller after reasonable inquiry in that behalf, any attorney or agent in the State on whom service of process can be effected; or
- (b) cannot, after reasonable inquiry, be found,

it shall be sufficient for the service of any process of the court to be effected on him or her by posting the same or a sealed copy thereof in a letter addressed to him or her at his or her last known place of business or abode in the State.

(Amended by Act 1 of 1992)

Objections.

18. (1) An operator who is dissatisfied with an assessment made by the Comptroller under section 13, by which his or her liability to pay tax is affected, may, within fifteen days after service of notice of the assessment, post to or lodge with the Comptroller an objection in writing stating fully and in detail the grounds on which he or she relies.

(2) The Comptroller shall consider the objection, and may either disallow it, or allow it, either wholly or in part.

(3) The Comptroller shall give to the objector written notice of his decision on the objection.

(4) An operator who is dissatisfied with the decision of the Comptroller may, within fifteen days after the service by post of notice of that decision, request the Comptroller in writing to refer the decision to the Magistrate for the district in which the business is situate for review, and the Comptroller shall refer the decision to the Magistrate not later than 30 days after receipt of such request.

(Amended by Act 1 of 1992)

(5) An operator shall be limited on the review to the grounds stated in his or her objection.

(6) The Magistrate, on review, shall give a decision and may confirm, reduce, increase or vary the liability or assessment.

(7) The Comptroller or an operator may appeal to the High Court from any decision of the Magistrate under this section which, in the opinion of the Magistrate, involves a question of law and the Magistrate shall, upon the request of the Comptroller or operator, refer to the High Court any question of law arising before him or her and the decision of the High Court shall be final and conclusive.

(Amended by Act 1 of 1992)

Tax to be paid into Consolidated Fund.

19. All moneys collected pursuant to this Act shall be paid into the Consolidated Fund.

Offences.

20. (1) A person who—

- (a) fails or neglects duly to furnish a return or information, or to comply with a requirement of the Comptroller, as and when required by this Act or the regulations;
- (b) without just cause shown by him or her, refuses or neglects duly to attend and give evidence when required by the Comptroller or an officer authorised by him or her or to produce a book, document or paper required of him or her, by the Comptroller or any such officer;
- (c) furnishes a return that is false in a material particular;
- (d) contravenes a provision of this Act for the contravention of which no penalty is expressly provided,

commits an offence punishable, on conviction, by a fine not exceeding one thousand five hundred dollars.

(Amended by Act 9 of 1986)

(2) In any prosecution of a person for an offence against paragraph (c) of subsection (1), being a person who has not previously been convicted of an offence against this Act, it shall be a defence if the defendant proves—

- (a) that the return to which the prosecution relates was prepared or made personally by him or her; and
- (b) that the false particulars were given through ignorance or inadvertence.

Penalties not to relieve from tax.

21. Payment of penalties under this Act shall not relieve a person from liability to any tax for which he or she would be liable.

Offence and penalty.

22. (1) Any person who obstructs or hinders the Comptroller or any officer authorised by him or her in the discharge of his or her duty under this Act or the Regulations made under this Act commits an offence against this Act.

(Amended by Act 1 of 1992)

(2) Any person who commits an offence against this Act shall be liable, on summary conviction—

- (a) for a first offence, to a fine not exceeding one hundred and fifty dollars; and
- (b) for a second or subsequent offence, to a fine not exceeding three hundred dollars.

(Amended by Act 9 of 1986)

Prosecution.

23. (1) Proceedings by the Crown for the recovery of penalties under this Act may be instituted in the name of the Comptroller by action, information or other appropriate proceeding.

(2) Where any such prosecution or action has been instituted by an officer of the Inland Revenue Department in the name of the Comptroller, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Comptroller.

Regulations.

24. (1) The Minister of Finance may make regulations, prescribing all matters which by this Act are required to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act.

(2) Without limiting the generality of subsection (1) such regulations may make provision with respect to the accounts, books, and forms to be used.