

HOTEL AND RESTAURANT TAX ACT

Act 11 of 1986 – 1 June 1986

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HOTEL AND RESTAURANT TAX ACT

EDITORIAL NOTE: The word “Commissioner” has been deleted and replaced by the word “Director-General” wherever it appears, by section 27 (9) (b) of Act 33 of 2004 w.e.f. 1 July 2006.

1. Short title

This Act may be cited as the Hotel and Restaurant Tax Act.

2. Interpretation

In this Act—

“Authority” means the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act;

“business” includes—

- (a) any trade, commerce or manufacture; and
- (b) any activity in the nature of trade, commerce or manufacture;

“Director-General” means the Director-General of the Authority;

“designated establishment” means premises or a set of premises—

- (a) used in connection with the carrying on of any of the businesses specified in the First Schedule; and

(b) designated as such by the Minister, by regulations;

“financial year” means the period extending from 1 July in any year to 30 June in the following year;

“manager”, in relation to a designated establishment, means the person who is in charge of or carries on business at the designated establishment and includes its owner;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“month” includes part of a month;

“officer” has the same meaning as in the Value Added Tax Act;

“qualified auditor” has the same meaning as in the Income Tax Act;

“record” means the record specified in section 6;

“return” means the return specified in section 7;

“tax” —

(a) means the tax payable under section 3; and

(b) includes any penalty under section 12;

“taxable receipts” —

(a) means the gross receipts in respect of all goods and services supplied by a designated establishment; but

(b) does not include the tax recoverable under section 3 (4).

[S. 2 amended by Act 25 of 1994; Act 13 of 1996; Act 2 of 1998; s. 27 (9) (a) of Act 33 of 2004 w.e.f. 1 July 2006.]

3. Liability to tax

(1) The manager of every designated establishment shall be liable to a tax on the taxable receipts of that establishment.

(2) The tax shall be calculated at the rate specified in the Third Schedule.

(3) The liability to tax shall accrue daily but shall be discharged monthly.

(4) The manager may recover from customers the tax payable on the taxable receipts.

4. —

5. Serially numbered bill

(1) The manager of every designated establishment shall issue a serially numbered bill in respect of every receipt of that establishment and keep a legible copy of the bills in numerical order.

(2) A bill issued under subsection (1) shall contain such particulars as may be required by the Director-General.

(3) No person shall issue any bill or other document indicating an amount which purports to be tax on the receipts of an establishment unless—

- (a) the establishment is a designated establishment; and
- (b) the receipts are taxable receipts.

6. Record

(1) Every person shall, for the purposes of this Act, keep in the course of his business, a full and true written record in the English or French language of every transaction he makes.

(2) Every record under subsection (1) and a legible copy of every bill issued under section 5 shall be kept for a period of at least 6 years after the completion of the transaction to which it relates.

7. Return and payment of tax

(1) The manager of every designated establishment shall, not later than the last day of every month—

- (a) submit to the Director-General in respect of the previous month a return specifying the taxable receipts of the establishment; and
- (b) pay the tax due.

(2) The return under subsection (1) shall be in the form approved by the Director-General and shall contain such other information as he may require.

(3) Where a designated establishment has no taxable receipts during a month, the manager shall submit a return in such form as the Director-General may approve.

8. Audited annual statement

(1) The manager of every designated establishment shall, in respect of every financial year, submit to the Director-General, not later than 4 months after the end of that year a statement, certified by a qualified auditor, of the taxable receipts of the establishment.

(2) Where the amount of the taxable receipts shown in the statement under subsection (1) exceeds the total amount of the taxable receipts shown in the returns under section 7 in respect of that financial year, the manager shall pay any tax underpaid together with any appropriate penalty.

9. Assessment of tax

(1) Subject to subsection (4), where the Director-General is of the opinion that the manager of a designated establishment has not paid the tax due by reason of—

- (a) his failure to submit or delay in submitting a return;
- (b) the incorrectness or inadequacy of his return;
- (c) his failure to keep a proper record;

- (d) the incorrectness or inadequacy of his record; or
- (e) any other cause,

he may, on such information as is available to him, make an assessment of the tax due and payable by the manager and give him a written notice of the assessment.

(2) Where the Director-General has given written notice to the manager under subsection (1), the manager shall pay the tax within such period as may be specified in the notice.

(3) Subject to subsection (4), the Director-General may amend an assessment made under subsection (1).

(4) An assessment under subsection (1) shall not be made or amended after 6 years from the end of the month in which the liability to pay tax arose.

(5) The manager of a designated establishment who is aggrieved by an assessment under subsection (1) may lodge written representations with the Secretary, Assessment Review Committee, in accordance with section 8E of the Unified Revenue Act.

[S. 9 amended by s. 10 of Act 23 of 2001 w.e.f. 11 August 2001.]

10. Change of name and address of establishment

Where the name or address of a designated establishment is changed, the manager shall immediately give written notice thereof to the Director-General and the establishment shall be deemed to be a designated establishment under the new name or at the new address, as the case may be.

11. Cessation of business

(1) Subject to subsection (2) where the manager of a designated establishment ceases to carry on business at that establishment, he shall—

- (a) immediately give written notice thereof to the Director-General; and
- (b) not later than the last day of the month following the month in which he ceased to carry on business, submit—
 - (i) in respect of that part of the financial year ending on the date of cessation of the business, the statement specified in section 8 (1); and
 - (ii) in respect of the last month in which he carried on business, a return which shall include any amount owing to the establishment as taxable receipts at the date of the cessation of business adjusted in the manner provided for under section 8 (2) and pay the tax specified in that section.

(2) Where the manager of a designated establishment, who ceases to carry on business at that establishment, sells or otherwise transfers the business together with the amount owing to the establishment as taxable

receipts at the date of the cessation of business, he shall not pay tax on those taxable receipts but the purchaser or transferee shall be liable to pay the tax on those taxable receipts and the establishment shall continue to be a designated establishment.

12. Penalty for late payment

(1) Where the manager of a designated establishment fails to pay any tax due on or before the last day on which it is payable under this Act, he shall be liable to pay to the Director-General, in addition to the tax, a penalty representing—

- (a) 10 per cent of the tax for the first month during which the tax remains unpaid; and
- (b) 2 per cent of the tax excluding the penalty for each subsequent month during which the tax remains unpaid,

up to a maximum of 100 per cent of the tax.

(2) —

[S. 12 amended by Act 25 of 1994.]

13. Liability of appointed persons

(1) Where an administrator, executor, receiver or liquidator is appointed to manage or wind up the business carried on at any designated establishment, the appointed person shall—

- (a) give notice of his appointment to the Director-General within 14 days of the appointment;
- (b) before disposing of any asset of the business set aside such sum out of the asset as appears to the Director-General to be sufficient to provide for any tax that is or may become due and payable by the manager; and
- (c) do everything that is required to be done by the manager of a designated establishment under this Act.

(2) Any person specified in subsection (1) who, without reasonable cause or justification, fails to comply with that subsection shall be liable to pay any tax that is or may become due and payable, and shall commit an offence.

14. Recovery of tax

The Director-General may, without prejudice to any other remedy which he may have, recover any tax payable under this Act in the same manner as income tax is recoverable under the Income Tax Act.

15. Production of documents

The Director-General may, for the purposes of this Act, order any person to—

- (a) produce to the Director-General or any officer authorised by him in writing any record, book of account, statement of assets and liabilities or other document relating to any business carried on at a designated establishment; and

- (b) attend at such time and place as he may specify for the purpose of being examined in respect of any transaction or matter relating to such business.

16. Powers of Director-General

(1) The Director-General may, for the purposes of this Act, give to the manager of a designated establishment such written directions as he thinks fit and the manager shall comply with those directions.

(2) The Director-General or any officer authorised by him in writing may, for the purposes of this Act, enter any designated establishment and inspect any record or other document relating to the business at such time as he thinks fit.

17. Notice and service by post

Any notice or direction required by this Act to be given by the Director-General to any person may be given to him personally or to his authorised agent or sent by post to his last known address or that of his authorised agent.

18. Disclosure of information

No officer shall—

- (a) except for the purposes of this Act or any other revenue law; or
- (b) except where he is authorised in writing to do so by the Minister, communicate to any person any matter relating to this Act.

19. Offences

(1) Any person who, for the purposes of this Act—

- (a) fails to keep any record;
- (b) fails to comply with any direction given by the Director-General under this Act;
- (c) obstructs any officer in the performance of his duties; or
- (d) contravenes this Act or any regulations made under it,

shall commit an offence.

(2) The manager of a designated establishment who fails to submit—

- (a) a return;
- (b) the statement specified in section 8; or
- (c) any other document required,

shall commit an offence.

(3) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to penal servitude for a term not exceeding 5 years.

(4) Where a person is convicted under subsection (2), he shall, in addition to any fine imposed under subsection (3), be ordered by the Court to furnish the return, statement or other document within such time as the Court may determine.

20. Jurisdiction

(1) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any fine or term of imprisonment provided by this Act.

(2) Notwithstanding any other enactment, any criminal proceedings instituted under this Act shall be entered in the District Court of Port Louis.

21. Burden of proof

Notwithstanding any other enactment, the burden of proof that any decision taken by the Director-General under this Act is incorrect shall lie on the person claiming that the decision is incorrect.

22. Regulations

(1) The Minister may—

- (a) make such regulations as he thinks fit for the purposes of this Act; and
- (b) by regulations, amend the Schedules.

(2) Any regulations made under subsection (1) (a) may provide for the levying of fees and the taking of charges.

23. – 25. —

FIRST SCHEDULE

[Section 2]

1. Hotel or other similar premises.
2. Boarding house, bungalow or group of bungalows, apartments, guest house or other similar premises with more than 4 bedrooms for letting.
3. Restaurant.
4. Sale of cooked food to be consumed on or off premises.

[First Sch. amended by Act 13 of 1996; GN 16 of 1988; GN 19 of 1997.]

SECOND SCHEDULE

[Section 2]

1. Accommodation including the letting of a hall.
2. Food and drink.
3. Catering.

[Second Sch. amended by GN 19 of 1997.]

THIRD SCHEDULE

[Section 3]

Rate of tax zero per cent

[Third Sch. amended by Act 13 of 1996; Act 10 of 1998.]

FOURTH SCHEDULE

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