

# **THE MINISTRY OF FINANCE, INVESTMENT & TRADE**



## **TURKS & CAICOS ISLANDS**

### **ADVISORY ON THE AMENDMENTS TO THE HOTEL, RESTAURANT AND TOURISM (TAXATION) ORDINANCE**

**RELEASE DATE: FEBRUARY, 2024**

This advisory paper is being issued to provide information to businesses, taxpayers, stakeholders, consumers, industry associations, practitioners and any other interested parties in regard to the amendments to the Hotel, Restaurant and Tourism (Taxation) Ordinance (the “Proposal”).

The Inland Revenue Department is seeking feedback, comments and suggestions on the Proposal.

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# INTRODUCTION

A comprehensive overview of all tax ordinances has not taken place since the proposed value added tax (VAT) in 2012. There have been amendments to the Ordinances on a need to basis and several amendments have been made to the Hotel, Restaurant and Tourism (Taxation) (“HRTT”) Ordinance since 2011, including a comprehensive overhaul of the Ordinance in 2019 and the introduction of the Hotel, Restaurant & Tourism (Taxation) (Rate Variation for All Inclusive Premises) Regulations 2019.

The HRTT is the main revenue stream that is administered by the Inland Revenue Department. Monies collected under HRTT account for roughly eighty-five percent (85%) of the annual tax revenue. Revenue is generated by the tax imposed on board and lodging provided by hotels and vacation rentals, and food services provided by restaurants and tourism services.

The Government of the Turks & Caicos Islands continue to be instrumental in progressing the process of a comprehensive review and amendment to the HRTT. An in-depth in-house administrative review was able to identify areas of the legislation for revision to the provisions therein.

Unlike previous amendments, the amendment also seeks to implement new provisions. In keeping with this Government’s commitment and obligation in regard to transparency, the Ministry of Finance, Investment & Trade in collaboration with the Inland Revenue Department is pleased to present this Proposal.

## **PURPOSE OF THE ADVISORY**

The Turks & Caicos Islands Government is seeking feedback, comments and suggestions on the amendments contained within this advisory document.

This Advisory is designed to seek feedback on the outline proposal to inform on the proposed changes to the business licensing regime and the relevant laws and allow Government to ensure a smooth transition for companies carrying on relevant activities.

The concerns of the Government which consists of three distinct stages, will be explored in this paper:

- ❖ Stage one: identify Businesses carrying on the relevant activities;
- ❖ Stage two: garner feedback on how these changes will impact them; and
- ❖ Stage three: enforcement and effective administration of the requirements in the Ordinance.

Further details of each of these stages and associated questions in this Paper.

## **DEVELOPMENT OF THE PROPOSAL**

The Inland Revenue Department tabled the Hotel, Restaurant and Tourism (Taxation) Ordinance amendments for review with the Ministry of Finance, Investment & Trade in 2021 (insert date). During the workshop justifications for amendments and insertions to the Ordinance which are the subject of the proposal was submitted to the Permanent Secretary of Finance, the Minister for Finance, and finally Cabinet for consideration.

Cabinet conditionally approved the final proposals and insertions made by the Ministry of Finance, Investment & Trade and in its instructions ordered the undertaking of an Advisory to inform the public, crystallize national dialogue and feedback before final deliberation on the proposed amendments and insertions.

To that end, this Proposal was developed in accordance with the mandate set out in Cabinet instructions which involved a collaborative and consultative manner to engage stakeholders' participation in its development. This process provided avenues for expression as well as information dissemination that allows for smoother policy implementation.

## **CONCLUSION**

The amendments were comprehensively reviewed with the Inland Revenue Department's Administration, the Ministry of Finance, Cabinet and business community of the Turks & Caicos Islands through this consultation period. The current view is that the proposed amendments are seen as an opportunity to provide updates on changes that would impact businesses' tax accounting and address compliance limitations in the administration of the HRTT. It is envisioned that it will simplify and improve business license compliance efficiencies thereby encouraging voluntary compliance amongst licensees. We look forward to educating the general public and assisting the Business Community of the Turks & Caicos Islands.

# PROPOSED AMENDMENTS

## *New Provisions*

### *Tax Fraction Formula*

- ❖ The definition for all-inclusive premises in the Ordinance recognizes that package rate is tax inclusive. It is advisable that the Turks & Caicos Islands Government (TCIG) legislates the application of the tax fraction formula in determining tax payable where rates are inclusive of the tax or revenues are accounted for tax inclusive. This will facilitate proper calculation of tax payable by all-inclusive premises and other vacation accommodation providers that transact with online travel agents and are unable to issue receipts. This will prevent the incidence of tax being calculated and paid on tax.

- $r/(r+100)$
- R=tax rate
- Proposed to be placed after section 6

### *Vehicle Hire*

The provisions in regards to vehicle hire are contained in Head 1 Schedule 1 of the Stamp Duty Ordinance. The Ordinance is administered by the Ministry of Finance, however, it does not contain the requisite provision like that of the HRTT, Business Licensing and other Tax Ordinances that relate to assessment and penalties as such it is difficult to administer. It has been proposed therefore that the provisions in regards to vehicle hire be placed in the HRTT and governed under that Ordinance.

## *Amendments to Existing Provision*

| Provisions of the Ordinance              | Section | Comment   | Proposed Amendment   |
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| Premises to which this Ordinance applies | 3(2)    | The Ordinance under this section currently provides the classification of individuals whom should not be subject of the tax. On examination, it was determined that the scope is seemingly too wide and additionally, there is no evidence based on audits conducted that the premises which are the subject of the Ordinance excludes those groups as required by law, as such the scope was narrowed and the proposed amendment appears to the right. | A person who is lawfully engaged in gainful occupation in the Islands. This is limited to: <ul style="list-style-type: none"><li>• Investors</li><li>• Government business (IMF, EU, CARTAC)</li><li>• Diplomats</li><li>• Owners (the person whose name appears on the deed) or the beneficial owner of the Company who is the registered proprietor of the property.</li></ul> |

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|  | Section 3(3)     | Currently this provision excludes premises which are unfurnished from being subject to the tax.   | Removed   |
| Registration of premises to which the Ordinance Applies    | Section 4(1)     |   | Insert requirement that the proprietor should be in possession of a valid business license  |
| Imposition and rate of tax in respect of board and lodging | Section 6(1)& 56 | These amendments are to clear up any doubt that complimentary services provided to guests are to be treated as taxable.   | Insert complimentary services.  |
| Amount of Charges  | Section 12       | Section 12 provides for only all-inclusive premises. In addition to the list of services taxable under this section. The proposal is to amend it to include treatment of cancellation fees and deposits.  | <p>The law should be amended to require the Proprietor to 1) keep record of any charges on cancellation whether remitted to them or not by the third party booking agent and 2) to ensure that the tax is charged on the cancellation fee and deposits and 3) taxes charged on no-show revenue that is retained by the Proprietor.</p> <p>These provisions to be imposed on all proprietors, not exclusive to all-inclusive properties.</p> |
| Other Non-Packaged Services                                | Section 14       | <p>This obligation is only imposed on all-inclusive hotels.</p> <p>The HRTT is currently imposed on services only and gift shop sales. Gift shop sales are retail and ordinarily not subject to the tax. Is it the intent to tax retail sales and only those done by all-inclusive premises? If yes, then the application must be consistent and across the board as there are other retail sales done at the premises for example at the spa and dive shop and there are other gift shops around the Islands.</p> <p>TCIG may either opt to remove gift shop sales from the list of other non-packaged services, which is the ideal option; or</p> | <ol style="list-style-type: none"> <li>1. Remove gift shop sales</li> <li>2. Expand the base to capture it across all the HRTT registered taxpayers</li> </ol>  |

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|                                   |               | expand the tax base to include other retail sales.   |  |
| Statement & Receipts              | Section 17    | Amended to include Booking ID reports as an acceptable record to verify package revenue for tax and audit purposes in the absence of receipts. | Insert Booking ID Reports as (j)   |
| Accounts to be kept by proprietor | Section 22    |  | <p>Proprietors should provide requested documents within seven (7) working days from the date of request.</p> <p>Inserted as section 22(4).</p> <p>Where a proprietor fails to comply with a request under section 22(4) a best of judgement assessment will be undertaken.</p> <p>Section 62(1)(ix) to be amended to read section 22.</p>   |
| Returns and payment of tax        | Section 24(8) |  | <p>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—</p> <ul style="list-style-type: none"> <li>• (a) refund the excess amount to the proprietor if there is reasonable grounds that the inserted section c may be not be feasible;</li> <li>• (b) appropriate that amount in payment of any debt due by the proprietor to the Crown.</li> <li>• Insert that as (c) the excess amount can be offset against payments for future tax periods.</li> </ul> |

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|  |               |   | <ul style="list-style-type: none"> <li>Insert where the excess of tax has been identified by the Department or the tax payer, then a request can be made for refund in accordance with Section a or c.</li> </ul>   |
| Assessment of tax in cases of default  | Section 27    | Insert the word paid or accounted and a new subsection which deals with audit strategy. | <p>Amend section 27 (1) as follows:</p> <p>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 and accounted for from the proprietor by reason of—</p> <p>(a) Selection via the approved annual audit strategy, coverage or plan;</p> <p>(b) 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;</p> <p>(c) a failure of the proprietor to keep or produce to the Permanent Secretary, Finance or any person authorized 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</p> <p>(d) such register, copies, accounts, books or other documents being materially incomplete or inaccurate.</p> |
| Penalty & Interest in cases of default | Section 28(2) | Currently there are no powers conferred on the Minister or Permanent Secretary, Finance | <p>Amend section 28(2) as follows:</p> <p>In addition to the tax and the penalty imposed by subsection (1), any</p>   |



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|   |                 | to waive penalty and/or interest incurred. Presently the outstanding liabilities owed to TCIG as a result of uncollectable penalties/interest continue to amass because of the lengthy write procedures which requires debate by the House of Assembly (HOA). Under the Stamp Duty Ordinance, the P/S Finance has the authority to consider the waiver of penalties and they are considered based on established Policy. Similar provisions should be inserted into the HRTT. | <p>proprietor who is in default shall pay an amount as interest at the rate of 1.5% for each month/tax period or part thereof on the outstanding.</p> <p>Provisions dealing with remission of penalty and/or interest:</p> <p>“The Permanent Secretary, Finance may, for good cause shown, remit the whole or any part of any penalty and/or interest payable under subsection (1)”.</p> |
| Revocation of License & Notice of Revocation of License | Section 31 & 32 | As these provisions deal with the revocation of business licensing, it was agreed that it would be more appropriately placed under that Ordinance and removed from the HRTT.  | Repeal.  |
| Determination of disputes as to tax                     | Section 38      | <b>38.</b> (1) Subject to subsections (2) and (3), Any person who is aggrieved by an assessment may, within a period of fourteen (14) days from the date on which that assessment was made and on payment of the assessed amount in conformity therewith, appeal against the assessment to the Magistrate Court for a determination   | Any person who is aggrieved by an assessment may, within a period of one month from the date on which that assessment was made and on payment of the assessed amount in conformity therewith, appeal against the assessment to the Magistrates Court.  |
| Designation of Restaurant                               | Section 41      | Currently the Ordinance prescribes that Restaurants are to be designated by the Governor via Order, however since implementation the practice has been that designations have been done automatically by the Department and has been effective. In order to continue with this practice an amendment in line with this has been proposed and it should be made retroactive to cover those   | To be amended to read where the Permanent Secretary, Finance is satisfied she may designate a restaurant. Replacing Governor with P/S Finance and removing need for Order.   |

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|                             |            | establishments that were previously designated in this manner.  |   |
| Service of notices          | Section 71 | There are currently no provisions to deal with the method of service. It is proposed to insert the foregoing.   | Amended to include delivery via email or publication in the newspaper and Gazette   |
| Tourism Services            | Schedule 3 | All tourism services are deemed to be taxable unless specifically excluded under the exemption provisions.<br><br>Include in the Schedule VIP Transport and Personal Chef   | Provide that the following services are exempt: <ul style="list-style-type: none"> <li>• Museum services including those in historical sites and buildings</li> <li>• Educational institutions</li> </ul>   |
| Tourism Services Definition |            |   | Means services that work to support the development of tourism and the delivery of guest experiences. Consequently, it entails services provided to persons to whom this Ordinance applies, by hotels and restaurants (including catering), travel agencies and tour operator services, tourist guide services and other related services in regards to services that appear in the schedule to this Ordinance.   |
| Transitional provision      |            | Currently there is not a transitional provision under the Ordinance to deal with the treatment of penalties under the previous Ordinance and how it is to be dealt with under the provisions of the current Ordinance. For avoidance of doubt and on the advice of the Attorney Generals' Chambers draft transitional provision has been drafted. | The repealed provisions in respect of the rate of penalty that is applicable to unpaid tax liabilities that arose before the commencement date of this Ordinance will continue to be calculated at that rate up to the commencement date of this Ordinance. Once the tax remains unpaid after the commencement date of this Ordinance the proprietor will be responsible for the penalty accrued under the previous Ordinance, in addition to the applicable penalty under this Ordinance.<br><br>Tax liabilities that arose before the commencement date of this Ordinance can be recovered by fresh proceedings without prejudice to any action taken for recovery prior to the date of commencement. |

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| Designated Restaurant Order | Hotel, Restaurant and Tourism (Taxation) (Designated Restaurant) Order | Currently the provisions under the Order does not explicitly capture bakery's, cafés and restaurants that provide meals and are in the tourist areas which should be designated. | <ol style="list-style-type: none"> <li>1) Where the business premises are used principally to provide meals for consumption by persons who are tourists. These premises to include those that may be attached to or part of a premises where groceries are sold.</li> <li>2) Meals to include food of any kind including but not limited to baked goods and coffee.</li> </ol> |
| Definition of tax payable   |  |  | Payable or tax payable – in relation to the HRTT indicates the amount that an organization/taxpayer/proprietor expects to pay on tax taxable charge or service irrespective of whether the taxes is paid or collected. For avoidance of doubt, all taxes related to a taxable charge/service/ activity will have to accounted for and remit to Government.                     |
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## RESPONDING TO THE PROPOSAL

The Proposal and HRTT Ordinance can be found on [www.gov.tc](http://www.gov.tc) . Responses or queries can be provided by email to [irdpr@gov.tc](mailto:irdpr@gov.tc)

All responses or queries must be submitted by February 29<sup>th</sup>, 2024.