



TURKS AND CAICOS ISLANDS

CHAPTER 19.16
DOMESTIC FINANCIAL SERVICES
SALES TAX ORDINANCE

Revised Edition
showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

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CHAPTER 19.16

**DOMESTIC FINANCIAL SERVICES
SALES TAX ORDINANCE**

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CHAPTER 19.16

DOMESTIC FINANCIAL SERVICES SALES TAX ORDINANCE

*(Ordinances 22 of 2011, 25 of 2011 and
Legal Notice 65/2012,)*

AN ORDINANCE TO PROVIDE FOR THE IMPOSITION AND COLLECTION OF A TAX ON SERVICE FEES CHARGED BY FINANCIAL INSTITUTIONS; AND FOR CONNECTED PURPOSES.

Commencement

[12 September 2011]

Short title

1. This Ordinance may be cited as the Domestic Financial Services Sales Tax Ordinance.

Interpretation

2. In this Ordinance—

“customer” means any person using the service of a financial institution;

“financial institution” means a person holding a license granted under—

- (a) the Banking Ordinance;
- (b) the Investment Dealers (Licensing) Ordinance;
- (c) the Money Transmitters Ordinance;

(Amended by Ord. 25 of 2011)

“financial services sales tax” means the tax imposed by section 4;

“service fees” means the fees charged by a financial institution for services provided to a customer.

Registration of financial institution to which this Ordinance applies

3. (1) A financial institution shall, on or before 12 October 2011, apply to the Permanent Secretary, Finance in writing, in such form as the Permanent Secretary, Finance shall determine, for the registration of the financial institution under this Ordinance, stating the name and address of the financial institution and such other particulars as the Permanent Secretary, Finance may require.

(2) On receipt of an application for the registration of any financial institution under subsection (1), the Permanent Secretary, Finance, if he is satisfied that the financial institution is a financial institution to which this Ordinance applies, shall register the financial institution in a register kept solely for the purpose (in this section referred to as “the register”).

(3) An entry in the register relating to any financial institution shall state the name and address of the financial institution 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 financial institution, the financial institution shall, within 30 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 financial institution has ceased to be a financial institution to which this Ordinance applies, he shall cancel the entry in the register relating to the financial institution.

Imposition and rate of financial services sales tax

4. (1) Subject to this Ordinance, there shall be paid by each customer a financial services sales tax at the rate of ten *per cent* of the service fees paid or payable by the customer to the financial institution in respect of any service.

(2) Financial services sales tax shall be payable in respect of the actual amount of the service fees referred to in subsection (1) or, where those fees have been assessed by the Permanent Secretary, Finance in accordance with this Ordinance, in respect of those fees as so assessed.

Exemption

5. The following are exempt from the tax imposed by this Ordinance—

- (a) a company registered as an exempted company under the Companies Ordinance;
- (b) a person not resident in the Islands;
- (c) the service fee charged by financial institutions relating to the inward transfer of money.

Variation of rate of financial services sales tax

6. The Governor may, by Order, vary the rate of financial services sales tax, and may so vary the rate of tax as to provide for the imposition of tax at different rates in respect of financial services of different classes or descriptions or in respect of different financial services.

Collection of financial services sales tax

7. Financial services sales tax payable by a customer under this Ordinance shall be accounted for and paid by the financial institution in accordance with section 9.

Accounts to be kept by financial institution

8. (1) A financial institution shall—

(a) keep sufficiently detailed accounts to permit the calculation of the amount of financial services sales tax payable by or in respect of every customer who has made a financial transaction;

(b) keep those accounts for a period of five years.

(2) If it appears to the Permanent Secretary, Finance or any person authorised by him in writing for the purposes of section 10 that the accounts required by subsection (1) to be kept by a financial institution 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 customer, the financial institution 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.

Returns and payment of tax

9. (1) A financial institution shall, within 15 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 such 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 customers.

(2) Financial services sales tax shall be recoverable by the Permanent Secretary, Finance as a debt due to the Crown.

(3) Where in any case a financial institution has been unable to recover the service fee due to him for financial services provided by him he shall not be liable to pay the tax in respect of the financial services so provided.

Powers of Permanent Secretary, Finance

10. (1) The Permanent Secretary, Finance or any person authorised by him in writing in that behalf 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 financial institution require a financial institution—

(a) to furnish the Permanent Secretary, Finance or that person with such information as he may require for those purposes;

(b) to produce, at such place and at such time as the Permanent Secretary, Finance or that person may specify, any accounts kept in accordance with section 8;

(c) to permit the Permanent Secretary, Finance or that person to take extracts from, or make copies of statements, accounts, books or other documents referred to in paragraph (b) and to furnish the Permanent Secretary, Finance or that person with such extracts or copies. (*Amended by L.N. 65/2012*)

(2) Any power conferred by subsection (1) to require the production of any 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.

(3) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

Assessment of financial services sales tax in cases of default

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

- (a) a failure of the financial institution to furnish the Permanent Secretary, Finance with any return under section 9 or to furnish the Permanent Secretary, Finance with a complete and correct return under that section;
- (b) a failure of the financial institution 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 10, any copies of statements, accounts, books or other documents required to be kept or produced by the financial institution by or under this Ordinance, or the loss or destruction of any such copies, accounts, books or other documents; or
- (c) any copies of statement, 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 financial services sales tax by the financial institution and shall, on making such an assessment, serve on the financial institution a notice specifying that amount and the reason for the making of the assessment.

(2) Where an assessment of the amount of financial services sales tax due from a financial institution 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.

(3) A financial institution shall pay the amount of tax assessed under subsection (1) within 15 days after service of the notice of assessment whether or not an appeal from the assessment is pending.

(4) No assessment under this section shall be made after the expiry of five years.

Appeal against assessment

12. (1) A financial institution aggrieved by an assessment of the Permanent Secretary, Finance under section 11 may, within a period of one month from the date on which that assessment was made and on payment of tax in conformity therewith, appeal against the assessment to the Supreme Court.

(2) Upon the hearing of the case the Court shall assess the financial services sales tax payable.

(3) If the amount of tax assessed by the Court is less than the amount assessed by the Permanent Secretary, Finance, the excess of tax paid shall be ordered by the Court to be repaid.

(4) If in the opinion of the Court the assessment of the Permanent Secretary, Finance is not excessive, the Court shall make an order confirming that assessment and dismissing the appeal.

(5) Costs upon any such appeal shall be in the discretion of the Court.

Penalty in cases of default

13. (1) Where financial services sales tax due and payable by a financial institution remains unpaid the financial institution shall also be liable to pay, by way of a penalty, a sum calculated under subsection (2) and such penalty shall be recoverable, and the payment of the same enforceable, as a debt properly due and payable.

(2) The financial services sales tax or that part of the tax remaining unpaid, as the case may be, shall be increased by 10 *per cent* for each month or part thereof during which the tax remains unpaid.

Recovery of tax

14. Without prejudice to any other remedy, any financial services sales tax due and payable and any penalty payable under this Ordinance may be recovered from the financial institution by the Government as a civil debt due to the Crown. (*Amended by L.N. 65/2012*)

Financial institution's lien and right to recover tax from customer

15. A financial institution shall have—

- (a) a lien on funds of a customer in respect of financial services sales tax due and payable by the customer to the financial institution; and
- (b) the right to recover financial services sales tax due and payable to the financial institution by a customer as a debt due to the financial institution by the customer for services provided by the financial institution for the customer.

Restriction on disclosure of information

16. 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 the information is disclosed —

- (a) to any person authorised by the Permanent Secretary, Finance to carry out any duties in connection with the operation of this Ordinance; or
- (b) 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.

Offences and penalties

17. (1) A person who—

(a) contravenes section 3(1) or (4), 8, 9(1) or 16; or

(b) fails to comply with a requirement imposed under section 10(1),

commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for a term of six months or to both. (*Amended by L.N. 65/2012*)

(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 financial services sales tax commits an offence and is liable on conviction on indictment to a fine or imprisonment for a term of two years or to both, and on summary conviction to a fine of \$20,000 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 or imprisonment for a term of two years or to both, and on summary conviction to a fine of \$20,000 or imprisonment for a term of two years or to both.

(4) A person who continues to make default in complying with any requirement imposed by or under this Ordinance after being convicted of that default commits a further offence and is liable on summary conviction to a fine of \$200 for each day on which the default continues.

Criminal liability of directors

18. (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

19. The Governor may make Regulations providing for the exemption of any person or class of persons from this Ordinance. (*Amended by Ord. 25 of 2011*)

