

TOURISM TAX BILL 2017

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation

PART II

ADMINISTRATION

3. Functions and powers of Director General and other officers
4. Public servants
5. Authority cards, *etc.*, to be produced

PART III

IMPOSITION OF TOURISM TAX

6. Imposition of tourism tax
7. Duty of operator to collect tourism tax and pay tourism tax collected to Director General
8. Rate of tourism tax
9. Power of Minister to exempt

PART IV

REGISTRATION

10. Liability of operator to be registered
11. Liability of operator operating accommodation premises before commencement of the Act to be registered
12. Registration of operator
13. Cancellation of registration

PART V

INVOICES, RECORDS, RETURNS AND ASSESSMENT

Clause

14. Invoice, receipt or other document
15. Production of invoice, receipt or other document by computer
16. Credit note and debit note
17. Duty to keep records
18. Taxable period
19. Furnishing of returns and payment of tourism tax
20. Power to assess

PART VI

REMISSION, REFUND AND RECOVERY

21. Remission
22. Refund of tourism tax, *etc.*, overpaid or erroneously paid
23. Refund for bad debt
24. Deduction from return of refunded tourism tax
25. Power to collect tourism tax, *etc.*, from persons owing money to operator
26. Payment by instalments
27. Recovery of tourism tax, *etc.*, from persons leaving Malaysia
28. Recovery of tourism tax, *etc.*, erroneously refunded
29. Recovery of tourism tax, *etc.*, as civil debt
30. Recovery of tourism tax in other circumstances
31. Joint and several liability of partners, officials, committee members or directors

PART VII

ENFORCEMENT

32. Powers of enforcement, inspection and investigation
33. Access to place, premises, *etc.*
34. Access to recorded information or computerized data
35. Magistrate may issue search warrant
36. Search may be made without warrant
37. Seizure of books, documents, *etc.*
38. Power of arrest

PART VIII
OFFENCES AND PENALTIES

Clause

39. Penalty for obstructing, *etc.*, officer of customs
40. Penalty for incorrect return
41. Penalty for collecting tourism tax by person not liable to collect tourism tax
42. Penalty for evasion of tourism tax, fraud
43. Penalty for refusing to answer question or giving false information
44. Attempts and abetments
45. General penalty
46. Offence by body of person, *etc.*
47. Offence by employee or agent
48. Tourism tax, *etc.*, to be payable notwithstanding any proceedings, *etc.*

PART IX
TRIALS AND PROCEEDINGS

49. Prosecution
50. Jurisdiction to try offences
51. Conviction under other laws
52. Evidential provisions
53. Evidentiary value of copies of electronic notice
54. Imprisonment for non-payment of fine
55. No costs or damages arising from seizure to be recoverable unless seizure without reasonable or probable cause
56. Compounding of offences
57. Court order
58. Obligation of secrecy
59. Protection of informers from discovery

PART X
MISCELLANEOUS

60. Persons bound to produce books, *etc.*, or give information, *etc.*
61. Service of notices, *etc.*

Clause

62. Use of electronic service
63. Authentication of notices, *etc.*
64. Free postage
65. Transaction of business on behalf of operator
66. Forms to be used
67. Disputes and appeal
68. Liquidator of company to give notice of winding up, and set aside tourism tax
69. Appointment of receiver to be notified to the Director General
70. Power to make regulations

A BILL

i n t i t u l e d

An Act to provide for the imposition and collection of tourism tax and for matters connected therewith.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Tourism Tax Act 2017.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different Parts or different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“prescribed” means prescribed by regulations made under this Act;

“document” has the meaning assigned to it in section 3 of the Evidence Act 1950 [*Act 56*];

“electronic” has the meaning assigned to it in section 5 of the Electronic Government Activities Act 2007 [*Act 680*];

“Director General” means the Director General of Customs and Excise appointed under subsection 3(1) of the Customs Act 1967 [*Act 235*];

“computer” has the meaning assigned to it in section 3 of the Evidence Act 1950;

“Minister” means the Minister charged with the responsibility for finance;

“person” includes an individual, a firm, a society, an association, a company and other body of persons;

“senior officer of customs” has the meaning assigned to it in subsection 2(1) of the Customs Act 1967;

“officer of customs” has the meaning assigned to it in subsection 2(1) of the Customs Act 1967;

“tourist” has the meaning assigned to it in subsection 2(1) of the Tourism Industry Act 1992 [*Act 482*];

“operator” means any person who operates accommodation premises;

“accommodation premises” has the meaning assigned to it in subsection 2(1) of the Tourism Industry Act 1992;

“surcharge” means the surcharge imposed under section 26;

“taxable period” means the period as specified in section 18.

PART II
ADMINISTRATION

Functions and powers of Director General and other officers

3. (1) The Director General shall have the superintendence of all matters relating to tourism tax, subject to the direction and control of the Minister.

(2) Subject to the general direction and supervision of the Director General, all officers of customs appointed under section 3 of the Customs Act 1967 and holding the rank of Superintendent or any rank higher than that of Superintendent, shall have and exercise all powers conferred on the Director General under this Act other than those conferred by sections 21 and 66.

(3) It shall be the duty of any officer of customs to enforce and ensure due compliance with the provisions of this Act and to make all due enquiries in relation thereto.

(4) Every person employed on any duty or service relating to the tourism tax by the order or with the concurrence of the Director General, whether previously or subsequently expressed, shall be deemed to be the proper officer for that duty or service.

Public servants

4. All public officers while discharging any duty or service relating to the tourism tax shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

Authority cards, etc., to be produced

5. (1) Every officer of customs when discharging his duties shall, if not in uniform, on demand made by any person, declare his office and produce to the person the authority card or badge prescribed under section 8A of the Customs Act 1967.

(2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any officer of customs acting or purporting to act under this Act if such officer is not in uniform and refuses to declare his office and produce his authority card or badge on demand being made by the person.

PART III

IMPOSITION OF TOURISM TAX

Imposition of tourism tax

6. (1) A tax to be known as tourism tax shall be charged and levied on a tourist staying at any accommodation premises made available by an operator at the rate fixed by the Minister in accordance with section 8.

(2) Subject to subsection (3), it shall be the duty of the tourist to pay the tourism tax to the operator.

(3) Where more than one tourist are staying in the same accommodation at the same time and the tourism tax for that accommodation has been paid by any one of the tourists, the other tourists staying in the same accommodation at the same time shall not be liable to pay tourism tax for that accommodation.

Duty of operator to collect tourism tax and pay tourism tax collected to Director General

7. (1) Subject to subsection 6(2), it shall be the duty of every operator who provides accommodation to a tourist in an accommodation premises to collect the tourism tax from the tourist.

(2) Every operator shall pay the tourism tax collected or liable to be collected under this Act to the Director General.

Rate of tourism tax

8. (1) The Minister may, with the concurrence of the minister charged with the responsibility for tourism, by order published in the *Gazette*, fix the rate of the tourism tax to be charged and levied under this Act.

(2) For the purpose of subsection (1), “fix” includes “increase” or “reduce”.

(3) Any order made under subsection (1) shall be laid before the Dewan Rakyat at the next meeting of the Dewan Rakyat and shall, at the expiration of one hundred and twenty days of being so laid or of such extended period as the Dewan Rakyat may by resolution direct, cease to have effect if and insofar as it is not confirmed by resolution passed by the Dewan Rakyat within the said one hundred and twenty days or, if such period has been extended, within such extended period.

(4) Where an order ceases to have effect in whole or in part as provided in subsection (3), any tourism tax charged and levied in pursuance of the order or such part thereof, as the case may be, as ceases to have effect shall, subject to the provisions of subsection (5), be refundable to the persons by whom the tourism tax was paid.

(5) Unless the Minister otherwise directs, no tourism tax refundable under subsection (4) shall be refunded unless the person by whom the tourism tax was paid makes a claim in writing to the Director General within one year from the date on which the order ceases to have effect in whole or in part and the claim shall contain such particulars as the Director General may require.

Power of Minister to exempt

9. (1) The Minister may, by order published in the *Gazette*, in any particular case and subject to such conditions as he deems fit to impose—

- (a) exempt any tourist or class of tourists from the payment of the whole or any part of the tourism tax;
- (b) exempt any operator or class of operator from collecting the whole or any part of the tourism tax; or
- (c) exempt any operator or class of operator from the requirement to register under Part IV.

(2) The Minister may, in any particular case and subject to such conditions as he deems fit to impose, exempt any person from all or any of the provisions of this Act.

PART IV

REGISTRATION

Liability of operator to be registered

10. (1) Every operator shall be liable to be registered under this Act and for such purpose shall apply to the Director General to be registered, in the manner as may be prescribed.

(2) The application referred to in subsection (1) shall be made within thirty days from the date the operator operates the accommodation premises.

(3) Any operator who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Liability of operator operating accommodation premises before commencement of the Act to be registered

11. (1) Every operator who immediately before the coming into operation of this Part operates accommodation premises shall, within thirty days from the date of the coming into operation of this Part, apply to the Director General to be registered, in the manner as may be prescribed.

(2) Any operator who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Registration of operator

12. (1) The Director General shall register any operator who makes an application under section 10 or 11 with effect from the first day of the following month after the application is submitted to the Director General.

(2) Notwithstanding sections 10 and 11, the Director General shall have the power to register—

- (a) any operator who operates accommodation premises registered as tourist accommodation premises under section 31c of the Tourism Industry Act 1992; or
- (b) any operator who is not registered under subsection (1) or paragraph (a),

with effect from the first day of the following month after the information relating to paragraph (a) or (b) became known or made known to the Director General.

(3) The Director General shall notify the person registered under this section in the manner as he deems fit.

Cancellation of registration

13. (1) An operator who ceases to operate an accommodation premises or is exempted under section 9 shall notify the Director General in writing of the fact and the date thereof within thirty days from the date of cessation or exemption, as the case may be.

(2) Upon receipt of the notification under subsection (1), the Director General may cancel the operator's registration from such date as the Director General may determine.

PART V

INVOICES, RECORDS, RETURNS AND ASSESSMENT

Invoice, receipt or other document

14. (1) Every operator shall issue an invoice, receipt or other document in the national language or in the English language to a tourist in respect of the accommodation provided and shall state the rate and amount of tourism tax payable separately from the charges for the accommodation provided by the operator.

(2) No invoice, receipt or other document showing an amount which purports to be tourism tax shall be issued by a person who is not an operator.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(4) For the purposes of this section, and sections 15 and 30, the reference to “other document” includes local order and statement of account.

Production of invoice, receipt or other document by computer

15. For the purposes of any provision under this Act in relation to an invoice, receipt, or other document, an operator shall be treated as having issued an invoice, receipt or other document to a tourist if the requisite particulars are recorded in a computer and are—

- (a) transmitted or made available to the tourist by electronic means; or
- (b) produced on any material and the material is delivered to the tourist.

Credit note and debit note

16. Where an operator issues a credit note or debit note containing the prescribed particular under the prescribed circumstances and conditions, the operator shall make adjustments in his returns accordingly.

Duty to keep records

17. (1) Every operator shall keep full, true and up to date records of all transactions which affect or may affect his liability to collect tourism tax in such books of account or other records as the Director General may direct.

(2) Any record kept under this section shall be—

- (a) preserved for a period of seven years from the latest date to which the record relates;
- (b) in the national language or English language; and

(c) kept in Malaysia, except as otherwise approved by the Director General and subject to the conditions as he deems fit.

(3) Where the record is in an electronically readable form, the record shall be kept in such manner as to enable the record to be readily accessible and convertible into writing.

(4) Where the record is originally in a manual form and is subsequently converted into an electronic form, the record shall be retained in its original form prior to the conversion.

(5) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Taxable period

18. (1) The taxable period for tourism tax shall be a period of three months ending on the last day of any month of any calendar year.

(2) Notwithstanding subsection (1), an operator who has been assigned with a taxable period for the purposes of the Goods and Services Tax Act 2014 [Act 762] shall be assigned with the same taxable period for the purposes of this Act.

Furnishing of returns and payment of tourism tax

19. (1) Every operator shall, in respect of his taxable period, account for the tourism tax received in a return as may be prescribed and the return shall be furnished to the Director General in the prescribed manner not later than the last day of the month following after the end of the operator's taxable period to which the return relates.

(2) Where the whole or any part of the tourism tax is not received by the operator from the tourist within a period of twelve calendar months from the date of the invoice for the accommodation provided, the operator shall account for the tourism tax in the return in the taxable period following after the end of that period of twelve calendar months and the return shall be furnished to the Director General in the prescribed manner.

(3) Any operator who ceases to be registered under section 12 shall, not later than thirty days after so ceasing or such later date as the Director General may allow, furnish a return containing particulars as the Director General may determine in respect of that part of the last taxable period during which the operator was registered.

(4) Any operator who is required to furnish a return under this section shall pay to the Director General the amount of tourism tax due and payable by the operator in respect of the taxable period to which the return relates not later than the last day on which the operator is required to furnish the return.

(5) The return referred to in subsections (1), (2) and (3) shall be furnished whether or not there is tourism tax to be paid.

(6) Any operator who fails to furnish the return as required under subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(7) Any operator who fails to pay to the Director General the amount of tourism tax due and payable under subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(8) Where any tourism tax due and payable is not paid wholly or partly by any operator after the last day on which it is due and payable under subsection (4) and no prosecution is instituted, the operator shall pay—

(a) for the first thirty-day period that the tourism tax is not paid wholly or partly after the expiry of the period specified under subsection (4), a penalty of ten per cent of the amount of tourism tax remain unpaid;

(b) for the second thirty-day period that the tourism tax is not paid wholly or partly after the expiry of the period specified under subsection (4), an additional penalty of ten per cent of the amount of tourism tax remain unpaid; and

(c) for the third thirty-day period that the tourism tax is not paid wholly or partly after the expiry of the period specified under subsection (4), an additional penalty of ten per cent of the amount of tourism tax remain unpaid.

(9) Subject to subsection (11), prosecution for the offence under subsection (7) may be instituted after the expiry of the period specified in paragraph (8)(c).

(10) The court may order that any operator who is convicted for the offence under subsection (7) shall pay the penalty as specified in subsection (8).

(11) No prosecution for the offence under subsection (7) shall be instituted against the operator who has paid the amount of tourism tax due and payable and the penalty specified in subsection (8) within the period specified in subsection (8).

Power to assess

20. (1) Where any operator—

- (a) fails to apply for registration under section 10 or 11;
- (b) fails to furnish a return under section 19; or
- (c) furnishes a return which to the Director General appears incomplete or incorrect,

the Director General may assess to the best of the Director General's judgment the amount of tourism tax due from and payable by, and the penalty payable under subsection 19(8), if any, by, the operator and shall forthwith notify the operator of the assessment in writing.

(2) The assessment under subsection (1) shall not be made more than six years from the date on which the tourism tax was due and payable.

(3) Notwithstanding subsection (2), where in the opinion of the Director General any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to tourism tax, the Director General may, for the purposes of making good any loss of tourism tax attributable to the fraud or wilful default, make an assessment at any time.

(4) Where—

- (a) the Director General has made an assessment under subsection (1);
- (b) the tax assessed has been paid but no return has been furnished for the period to which the assessment relates; and
- (c) the operator fails to furnish a return for any subsequent taxable period,

the Director General may assess the tourism tax at such greater amount as he deems fit.

(5) Where the Director General assessed the tourism tax at such greater amount under subsection (4), the Director General may make a supplementary assessment and shall notify the operator in writing accordingly.

(6) Where the amount of tourism tax and penalty, if any, have been assessed and notified to any operator under subsection (1) or (5), the amount shall be deemed to be the amount of tourism tax due and payable and penalty, if any, payable and such amount shall be paid by the operator, except to the extent that the assessment has been withdrawn or reduced.

(7) The amount of tourism tax due and payable and penalty payable under subsection (6) shall be paid by the operator whether or not that operator appeals against the assessment.

(8) The Director General may make any alteration in or addition to the assessment made under this section as he deems fit to ensure the correctness of the assessment and shall forthwith notify the operator in writing.

PART VI

REMISSION, REFUND AND RECOVERY

Remission

21. (1) The Minister may remit the whole or any part of the tourism tax due and payable under this Act where he deems fit.

(2) The Director General may remit the whole or any part of the penalty, surcharge or other money payable under this Act where he deems fit.

(3) Where a person who has been granted remission under subsection (1) or (2) has paid any tourism tax, penalty, surcharge or other money to which the remission relates, he shall be entitled to a refund of the amount of the tourism tax, penalty, surcharge or other money paid.

Refund of tourism tax, etc., overpaid or erroneously paid

22. (1) Any person who has overpaid or erroneously paid any tourism tax, penalty, surcharge or any other money may make a claim thereof in the prescribed form to the Director General within six years from the time the overpayment or erroneous payment occurred.

(2) Upon receipt of the application under subsection (1), the Director General may refund the tourism tax, penalty, surcharge or any other money, as the case may be, after being satisfied that the person has properly established the claim.

(3) The Director General may reduce or disallow any refund claimed under this section to the extent that the refund would unjustly enrich the person referred to in subsection (1).

(4) A claim under this section shall be supported by such evidence as required by the Director General.

(5) This section shall not apply to a claim for refund under section 8.

Refund for bad debt

23. (1) Subject to subsection (2), any operator who ceases or has ceased to operate accommodation premises may make a claim to the Director General for a refund of the whole or any part of the tourism tax paid by the operator if—

- (a) the whole or any part of the payment for accommodation payable to such operator has been written off in the operator's accounts as bad debts; and

(b) the Director General is satisfied that all reasonable efforts have been made by such operator to recover the payment for accommodation.

(2) Subsection (1) shall not apply where part of payment for accommodation payable received by the operator is equal to or more than the tourism tax paid.

(3) Where the operator referred to in subsection (1) has not received any payment for accommodation payable to the operator, the Director General may allow such refund to be made to the operator.

(4) Where a claim for refund is made in relation to part of payment for accommodation being written off, the amount of tourism tax refundable shall be the difference between the tourism tax paid and the payment for accommodation received.

(5) Where a refund of tourism tax has been made under this section by the Director General to an operator and any payment in respect of the accommodation for which the tourism tax is payable is subsequently received by the operator, the operator shall repay to the Director General—

(a) the whole of the tourism tax refunded if the amount subsequently received in respect of the accommodation provided is equal to or more than the amount of the tourism tax refunded; or

(b) an amount equal to the amount subsequently received in respect of the accommodation provided if the amount received is less than the amount of the tourism tax refunded.

(6) Subsection (5) shall apply in respect of any part payment received after the repayment made pursuant to paragraph (5)(b) so long as the total payment subsequently received does not exceed the amount of tourism tax refunded and the reference to “the amount of the tourism tax refunded” in paragraphs (5)(a) and (b) shall be construed as the reference to “the remaining amount of the tourism tax refunded”.

(7) For the purpose of this section, “bad debt” means the outstanding amount for the payment for accommodation including tourism tax which is payable to the operator but has not been paid to, and is irrecoverable by, the operator.

Deduction from return of refunded tourism tax

24. (1) The Director General may approve, subject to such conditions as he deems fit to impose, an application by any operator to deduct from time to time from the operator's return referred to in subsection 19(1) the amount of tourism tax paid but subsequently refunded to the tourist by reason of—

- (a) cancellation of accommodation; or
- (b) such other reason as may be approved by the Director General.

(2) The operator shall make the deduction referred to in subsection (1) within one year after the refund of the tourism tax was made, or such extended period as may be approved by the Director General.

Power to collect tourism tax, etc., from persons owing money to operator

25. (1) Where any tourism tax is due and payable, or any penalty, surcharge or other money is payable, by an operator, the Director General may, by notice in writing, require—

- (a) any person by whom any money is due or accruing or may become due to the operator;
- (b) any person who holds or may subsequently hold money for or on account of the operator; or
- (c) any person having authority from some other person to pay money to the operator,

to pay to the Director General forthwith or within such period as the Director General may allow, the money not being salary or wages due to the operator or so much thereof as is sufficient to pay the tourism tax due and payable, and penalty, surcharge or other money payable, if any, by the operator.

(2) A copy of the notice referred to in subsection (1) shall be forwarded to the operator at his last known address.

(3) All payments made pursuant to a notice under this section shall be deemed to have been made on behalf of the operator and with the operator's authority and the authority of all other persons concerned.

Payment by instalments

26. (1) The Director General may allow any tourism tax or penalty to be paid by instalments, under the prescribed circumstances in such amounts and on such dates as the Director General may determine.

(2) Where tourism tax is allowed to be paid by instalments, the penalty under subsection 19(8) shall cease to be calculated from the date the Director General allows the payment by instalments.

(3) Where there is a default in the payment of any one instalment on its due date for the payment of the balance of the amount due and payable, the whole outstanding balance shall become due and payable on that date and shall, without any further notice being served on the person liable to pay the amount due, be subject to a surcharge equal to ten per cent of that balance and the surcharge shall be recoverable as if the surcharge were payable under this Act.

Recovery of tourism tax, etc., from persons leaving Malaysia

27. (1) Where the Director General has reason to believe that any person is about or is likely to leave Malaysia without paying—

- (a) any tourism tax payable by him;
- (b) any penalty payable by him under section 19;
- (c) any surcharge payable by him under section 26; or
- (d) any other money recoverable from him under this Act,

the Director General may issue to any Director of Immigration a certificate containing particulars of the tourism tax, penalty, surcharge or other money so payable with a request that such person be prevented from leaving Malaysia unless and until the person pays the tourism tax, penalty, surcharge or other money so payable, or furnishes security to the satisfaction of the Director General for its payment.

(2) Subject to any order issued or made under any written law for the time being in force relating to banishment or immigration, any Director of Immigration who receives a request under subsection (1) in respect of a person shall exercise all measures which may include the removal and retention of any certificate of identity, passport, exit permit or other travel documents in relation to that person as may be necessary to give effect to the request.

(3) The Director General shall cause a notice of the issue of a certificate under subsection (1) to be served personally or by registered post on the person to whom the certificate relates.

(4) The non-receipt of the notice referred to in subsection (3) shall not invalidate anything done under this section.

(5) Where the person in respect of whom a certificate has been issued under subsection (1) produces on or after the date of the certificate a written statement signed by the Director General stating that all the tourism tax, penalty, surcharge or other money specified in the certificate have been paid, or that security has been furnished for its payment, that statement shall be sufficient authority for allowing that person to leave Malaysia.

(6) No legal proceedings shall be instituted or maintained against the Federal Government, a State Government or any other public officer in respect of anything lawfully done under this section.

(7) In this section, "Director of Immigration" means the Director of Immigration appointed under subsection 3(1A) of the Immigration Act 1959/1963 [*Act 155*].

Recovery of tourism tax, etc., erroneously refunded

28. (1) Where any tourism tax, penalty, surcharge or any other money after having been paid has been erroneously refunded to any person, the person shall pay the tourism tax, penalty, surcharge or any other money erroneously refunded to him upon a demand made by the Director General.

(2) The demand referred to in subsection (1) shall be made by the Director General within six years from the date the refund was made.

Recovery of tourism tax, etc., as civil debt

29. (1) Without prejudice to any other remedy, any tourism tax due and payable, and any penalty, surcharge or any other money payable, by an operator under this Act may be recovered as a civil debt due to the Government.

(2) In any proceedings to recover the tourism tax, penalty, surcharge or other money, if any, under subsection (1), the production of a certificate signed by the Director General giving the name and address of the operator and the amount of the tourism tax due and payable, and penalty, surcharge or other money payable, if any, by the operator shall be sufficient evidence of the amount so due by him and sufficient authority for the court to give judgment for the said amount.

(3) Any penalty or surcharge payable under this Act shall, for the purposes of this Act and the Limitation Act 1953 [*Act 254*], the Limitation Ordinance of Sabah [*Sabah Cap. 72*] or the Limitation Ordinance of Sarawak [*Sarawak Cap. 49*], as the case may be, be recoverable as if the penalty or surcharge were tourism tax due and payable under this Act and accordingly subsection 6(4) of the Limitation Act 1953, section 3 of the Limitation Ordinance of Sabah or section 3 of the Limitation Ordinance of Sarawak, as the case may be, shall not apply to that penalty or surcharge.

Recovery of tourism tax in other circumstances

30. (1) Where an invoice, receipt or other document shows a provision of accommodation as having taken place with tourism tax chargeable on it, there shall be recoverable from the person who issued the invoice, receipt or other document an amount equal to that which is shown in the invoice, receipt or other document as tourism tax for the provision of such accommodation.

(2) Subsection (1) shall apply notwithstanding that—

- (a) the invoice, receipt or other document, in which is stated an amount which purports to be tourism tax as chargeable, is not an invoice, receipt or other document issued under section 14;
- (b) the invoice, receipt or other document was issued by a person who was not an operator and who had provided accommodation for which an amount which purports to be tourism tax was chargeable; or

- (c) the invoice, receipt or other document was issued by a person who had provided a product or service other than accommodation for which an amount which purports to be tourism tax was chargeable,

and any amount which purports to be tourism tax shall be paid immediately by that person to the Director General and, in default of payment, may be recovered as a civil debt due to the Government.

Joint and several liability of partners, officials, committee members or directors

31. (1) Notwithstanding anything to the contrary in this Act or in any other Act, where tourism tax is due and payable, and penalty, surcharge or other money is payable, by a firm, a society, an association, a company and every other body of persons, the partners of such firm, officials or committee members of such society or association, the directors of such company or such other body of persons, as the case may be, shall, together with such firm, society, association, company or other body of persons be jointly and severally liable for the tourism tax, penalty, surcharge or other money.

(2) In relation to a company that is being wound up, the directors of such company shall only be liable where the assets of the company are insufficient to meet the amount due, after paying any sum having priority under the Companies Act 2016 [Act 777] in relation to the application of the assets of the company in such winding up over the tourism tax, penalty, surcharge or other money.

PART VII

ENFORCEMENT

Powers of enforcement, inspection and investigation

32. For the purposes of this Act, a senior officer of customs shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] in relation to enforcement, inspection and investigation, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

Access to place, premises, etc.

33. (1) Any senior officer of customs shall for the purposes of this Act at all times have full and free access to any place or premises where any person carries on the business relating to the operation of accommodation premises.

(2) Where any senior officer of customs exercises his powers under subsection (1), the person who operates the accommodation premises or any other person present at such place or premises at that time of entry shall provide to the senior officer of customs all reasonable facilities and assistance for the exercise of his duties under this section.

(3) Where any senior officer of customs enters upon any place or premises in accordance with this section, he may—

- (a) require the operator or any other person to produce any book, data, document or other record or thing which relates to the operator's business and any record which is required to be kept under section 17;
- (b) examine any book, data, document or other record or thing;
- (c) seize and detain any book, data, document or other record or thing if in his opinion it may afford evidence of the commission of any offence under this Act;
- (d) require the person to answer any question relating to any book, data, document or other record or thing; or
- (e) make copies or extracts of any document, if he deems necessary.

(4) Any person who refuses to permit any senior officer of customs to enter upon any place or premises in accordance with this section commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Access to recorded information or computerized data

34. (1) Any officer of customs exercising his powers under this Part shall be given access to any recorded information or computerized data, whether stored in a computer or otherwise.

(2) In addition, an officer of customs exercising his powers under this Part—

(a) may inspect and check the operation of any computer and any associated apparatus or material which the officer of customs has reasonable cause to suspect is or has been used in connection with that information or data; and

(b) may require—

(i) the person by whom or on whose behalf the officer of customs has reasonable cause to suspect the computer is or has been so used; or

(ii) the person having charge of, or is otherwise concerned with, the operation of the computer, apparatus or material,

to provide the officer of customs with such reasonable assistance as he may require for the purposes of this section.

(3) For the purposes of subsection (1), “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of recorded information or computerized data.

Magistrate may issue search warrant

35. (1) Whenever it appears to any Magistrate, upon written information upon oath and after any inquiry which he may think necessary, that there is reasonable cause to believe that in any place or premises, there are concealed or deposited any books, data, documents or other records or thing which may afford evidence of the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any officer of customs named therein, at any time and with or without assistance—

(a) to enter the place or premises and to search for and seize the books, data, documents or other records or thing; or

(b) to arrest any person being in the place or premises in whose possession the books, data, documents or other records or thing are found or who may reasonably be suspected as having concealed or deposited such books, data, documents or other records or thing.

(2) The officer of customs authorized under subsection (1) may, if it is necessary so to do—

- (a) break open any outer or inner door of the place or premises and enter every part thereof, if necessary forcibly;
- (b) remove by force any obstruction to the entry to search or to seize as he is empowered to effect; and
- (c) detain every person found in the place or premises until the search has been completed.

Search may be made without warrant

36. Whenever it appears to the senior officer of customs that there is reasonable cause to believe that in any place or premises, there are concealed or deposited any books, data, documents or other records or thing which may afford evidence of commission of an offence under this Act and if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the books, data, documents or other records or thing are likely to be removed, he may exercise in, upon and in respect, of the place or premises all the powers under section 35 in the same manner as if he were empowered so to do by a warrant issued under that section.

Seizure of books, documents, etc.

37. (1) All books, data, documents or other records or thing in respect of which the officer of customs has reasonable cause to suspect that there has been committed any offence under this Act or any violation of any of the provisions of this Act and any receptacle, package or conveyance in which the books, data, documents or other records or thing may have been found or which has been used in connection with the offence or violation, and any other book, data, document or other record or thing which may reasonably be believed to have a bearing on the case, may be seized by any officer of customs.

(2) Whenever any books, data, documents or other records or thing are seized under this Act, the officer of customs shall forthwith give notice in writing of the seizure and the grounds thereof to the owner of the books, data, documents or other records or thing, if known, either by delivering the notice to him personally or by posting the notice at his place of abode, if known.

(3) The provision of this section relating to the seizure of any books, data, documents or other records or thing shall apply to all the contents of any receptacle, package or conveyance in which the books, data, documents or other records or thing are found and to any article used to conceal the books, data, documents or other records or thing.

Power of arrest

38. (1) Any officer of customs may arrest without warrant—

- (a) any person found committing or attempting to commit or employing or aiding any person to commit or abetting the commission of an offence under this Act;
- (b) any person whom he may reasonably suspect to have in his possession any books, data, documents or other records or things liable to seizure under this Act; or
- (c) any person whom he may reasonably suspect to have committed an offence under this Act,

and the officer of customs may search or cause to be searched any person so arrested.

(2) Notwithstanding subsection (1)—

- (a) any person so arrested by an officer of customs who requests that his person be searched in the presence of a senior officer of customs shall not be searched except in the presence of and under the supervision of the senior officer of customs, but that person may be detained until the arrival of the senior officer of customs, or taken to any office or police station where the senior officer of customs may be found;
- (b) the belonging of any person who requests to be present when it is searched and so presents himself within a reasonable time shall not be searched except in his presence; and
- (c) no person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(3) Any officer of customs making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force.

(4) If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time thereafter be arrested and dealt with as if he had been arrested at the time of committing the offence.

(5) Every person so arrested may be released from custody—

(a) on his depositing such reasonable sum of money as the senior officer of customs may require;

(b) on his executing a bond with such surety as the senior officer of customs may require; or

(c) on his depositing such reasonable sum of money as the senior officer of customs may require and his executing a bond with such surety as the senior officer of customs may require.

(6) Any person who has been released from custody under subsection (5) may be arrested without warrant by any officer of customs—

(a) if the officer of customs has reasonable grounds for believing that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be breached; or

(b) on being notified in writing by the surety of such person that such person is likely to breach any condition on or subject to which such person was released and that the surety wishes to be relieved of his obligation as surety.

PART VIII

OFFENCES AND PENALTIES

Penalty for obstructing, etc., officer of customs

39. Any person who—

- (a) in any way assaults, hinders or obstructs the officer of customs in the performance of his duties under this Act; or
- (b) fails to give reasonable facilities or assistance to any officer of customs in the performance of his duties under this Act,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding fifty thousand ringgit or to both.

Penalty for incorrect return

40. Any person who makes an incorrect return or gives any incorrect information in relation to any matter affecting his liability to collect tourism tax or the tourism tax collected commits an offence and shall, on conviction, be liable—

- (a) to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (b) where the offence relates to tourism tax undercharged, to a penalty equal to the amount of tourism tax which has been undercharged or would have been so undercharged if the return or information had been accepted as correct.

Penalty for collecting tourism tax by person not liable to collect tourism tax

41. (1) No person shall collect from any person any sum of money for the purpose of paying tourism tax charged and levied under this Act in respect of any accommodation provided by him or on his behalf unless he is liable under this Act to collect the tourism tax.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Penalty for evasion of tourism tax, fraud

42. (1) Any person who with intent to evade or to assist any other person to evade tourism tax—

- (a) omits from a return any information in relation to any matter affecting his liability to collect tourism tax or the amount of the tourism tax collected;
- (b) makes any false statement or false entry in any return furnished, or claim or application made, under this Act or the regulations made under this Act;
- (c) gives any false answer whether in writing or otherwise to any question asked or request for information made in accordance with the provisions of this Act or the regulations made under this Act;
- (d) prepares or maintains, or authorizes the preparation or maintenance of, any false books of accounts, false invoices or other false records, or falsifies or authorizes the falsification of any books of accounts, invoices or records; or
- (e) makes, uses or authorizes the use of any fraud, artifice or contrivance,

commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Where in any proceedings under this section it is proved that a false statement or false entry, whether by omission or otherwise, has been made in any return furnished, or claim or application made, under this Act or the regulations made under this Act, by or on behalf of any person or in any books of accounts, invoices or other records maintained by or on behalf of any person, that person shall be presumed until the contrary is proved to have made that false statement or false entry with intent to evade tourism tax.

(3) Any reference in this section to a person who makes, uses or authorizes the use of any fraud, artifice or contrivance to evade tourism tax includes a reference to a person who, without the authority of the Director General or a senior officer of customs—

- (a) destroys, damages, erases, alters or manipulates data stored in, or used in connection with, a computer;
- (b) introduces into, or records or stores in, a computer by any means data for the purpose of—
 - (i) destroying, damaging, erasing, altering or manipulating data stored in, or used in connection with, a computer; or
 - (ii) interfering with, interrupting or obstructing the lawful use of the computer, or the data stored in, or used in connection with, a computer; or
- (c) otherwise uses a computer,

the purpose or effect of which is to evade tourism tax.

(4) For the purposes of subsection (3), “data” includes any computer programme or part of a computer programme.

Penalty for refusing to answer question or giving false information

43. (1) Any person who, being required under this Act to give any information which may reasonably be required by the officer of customs which it is in his power to give, refuses to give the information or furnishes as true the information which he knows or has reason to believe to be false commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) When any of the information is proved to be untrue or incorrect in whole or in part, it shall be no defence to allege that the information or any part of the information was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

Attempts and abetments

44. Any person who attempts to commit an offence punishable under this Act, or abets the commission of the offence, shall be punishable with the punishment provided for the offence.

General penalty

45. Any person who commits an offence under this Act or the regulations made under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Offence by body of person, etc.

46. Where an offence under this Act or the regulations made under this Act has been committed by a company, a firm, a society, an association or other body of persons, any person who at the time of the commission of the offence was a director, partner, manager, secretary or other similar officer of the company, firm, society, association or other body of persons or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, firm, society, association or other body of persons or was assisting in such management, shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge, consent or connivance and that he had exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Offence by employee or agent

47. (1) Where any person would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his or of the employee of such agent, if such act, omission, neglect or default was committed by the employee of the person in the course of his employment, or by the agent when acting on behalf of the person, or by the employee of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

(2) Nothing under subsection (1) shall absolve an agent, officer or employee from any liability for an offence.

Tourism tax, etc., to be payable notwithstanding any proceedings, etc.

48. The institution of proceedings or the imposition of a penalty, fine or term of imprisonment under this Act or the compounding of an offence under section 56 shall not relieve any person from the liability to pay for tourism tax, penalty, surcharge or other money under this Act.

PART IX

TRIALS AND PROCEEDINGS

Prosecution

49. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Jurisdiction to try offences

50. Notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act and to impose the full punishment for the offence.

Conviction under other laws

51. Nothing in this Act shall prevent the prosecution, conviction and punishment of any person according to the provisions of any other written law for the time being in force.

Evidential provisions

52. (1) In any proceedings under this Act any statement purporting to be signed by the Director General or an officer authorized by the Director General which forms part of or is annexed to the information, complaint or statement of claim, shall be *prima facie* evidence of any fact stated therein.

(2) A transcript of any particulars contained in a return or other document relating to tourism tax, if it is certified under the hand of the Director General or an officer authorized by the Director General to be a true copy of the particulars, shall be *prima facie* evidence of the facts stated therein.

(3) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against the person in any proceedings against him to which this section applies, by reason only of the fact that he was or may have been induced to make the statement or produce the document by any inducement, promise or threat made by any person having any official duty under, or being appointed for the due administration of, this Act.

(4) Nothing in this Act shall affect the operation of Chapter IX of Part III of the Evidence Act 1950.

(5) Where in any proceedings it is proved that any false statement or entry has been made in any return furnished under this Act by or on behalf of any person or in any books of account or records of any person—

(a) the person shall be presumed, until the contrary is proved, to have made the false statement or entry, or to have caused the false statement or entry to be made, or to have allowed the false statement or entry to be made, with intent to evade the payment of tourism tax or to obtain a refund of tourism tax to which the person is not entitled, as the case may be; and

(b) any other person who made any false statement or entry shall be presumed, until the contrary is proved, to have made the false statement or entry with intent to assist the first-mentioned person to evade the payment of tourism tax or to obtain a refund of tourism tax to which he is not entitled, as the case may be.

(6) Where any officer of customs has obtained any document or other evidence in exercise of his powers under this Act, the document or copy of the document or other evidence, as the case may be, shall be *prima facie* evidence of the facts stated therein, notwithstanding anything to the contrary in any written law.

(7) Where any document which is to be used in any proceedings against any person for an offence under this Act is in a language other than the national language or English language, a translation of the document into the national language or English language shall be admissible in evidence where the translation is accompanied by a certificate of the person who translated the document setting out that the translation is an accurate, faithful and true translation and the translation had been done by the person at the instance of any officer of customs.

(8) Subsection (7) shall apply to a document which is translated, regardless of whether the document was made in or outside Malaysia, or whether the translation was done in or outside Malaysia, or whether possession of the document was obtained by any officer of customs in or outside Malaysia.

Evidentiary value of copies of electronic notice

53. (1) For the avoidance of doubt, any electronic notice or any electronic record of an electronic notice or any copy or print out thereof shall not be inadmissible in evidence merely on the basis that it was filed, lodged or transmitted through the electronic service, without the delivery of any equivalent document or counterpart in paper form.

(2) Notwithstanding any other written law, in any proceedings under this Act, any electronic notice or any electronic record of an electronic notice or any copy or print out thereof which is—

- (a) certified by the Director General to contain all or any information filed, lodged or transmitted through the electronic service in accordance with this Act; and
- (b) duly authenticated in the manner specified in section 63 or is otherwise authenticated in the manner provided in the Evidence Act 1950 for the authentication of document produced by computer,

shall be *prima facie* evidence of the facts stated therein.

Imprisonment for non-payment of fine

54. Notwithstanding the provisions of the Criminal Procedure Code, the period of imprisonment imposed by any court in respect of the non-payment of any fine under this Act, or in respect of the default of a sufficient distress to satisfy any such fine, shall be such period of such description, as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum period as follows:

- (a) where the fine does not exceed five thousand ringgit, the maximum period shall be two months;
- (b) where the fine exceeds five thousand ringgit but does not exceed ten thousand ringgit, the maximum period shall be four months; or
- (c) where the fine exceeds ten thousand ringgit but does not exceed twenty thousand ringgit, the maximum period shall be six months,

with two additional months for every ten thousand ringgit after the first twenty thousand ringgit of the fine.

No costs or damages arising from seizure to be recoverable unless seizure without reasonable or probable cause

55. No person shall, in any proceedings before any court in respect of the seizure of any thing seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the thing or the payment of the value unless the seizure was made without reasonable or probable cause.

Compounding of offences

56. (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

- (a) any offence under this Act and any regulations made under this Act that may be compounded;

- (b) the criteria for compounding such offence; and
- (c) the method and procedure for compounding such offence.

(2) The Director General or a senior officer of customs may, with the written consent of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected of committing the offence to compound the offence on payment to the Director General of an amount of money not exceeding fifty per cent of the amount of the maximum fine for that offence within the time specified in the offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within any extended period as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

Court order

57. (1) Where any person is found guilty of an offence under this Act, the court before which the person is found guilty shall order the person to pay to the Director General the amount of tourism tax or any penalty due and payable under this Act, if any, as certified by the Director General and the tourism tax or penalty shall be recoverable in the same manner as a fine as provided under section 283 of the Criminal Procedure Code.

(2) In addition to subsection (1), the court has civil jurisdiction to the extent of the amount and the order is enforceable in all respects as a final judgment of the court in favour of the Director General.

(3) Where any person is found not guilty of an offence under this Act, and if he has paid the amount of tourism tax due and payable or penalty payable under this Act pursuant to section 48, in respect of the offence charged, the court may order the amount paid to be refunded to such person unless a notice of appeal against the decision is filed within the specified time.

Obligation of secrecy

58. (1) Except as provided under section 59, the name, identification card number, passport number, address of an informer or any other information which can lead to identity of an informer and the substance of the information received from an informer shall be kept secret and shall not be disclosed by any officer of customs or any person who in the ordinary course of his duties comes into possession of or has control of or access to the information to any person except the officer of customs authorized by the Director General.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Protection of informers from discovery

59. (1) Except as hereinafter provided, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name, address or any information of an informer or the substance of the information received from him or to state any matter which might lead to his discovery.

(2) If any books, documents or papers which are produced in evidence or liable to inspection in any civil or criminal proceeding contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all the passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If in the trial for any offence under this Act, the court, after full enquiry into the case, believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure, concerning the informer.

PART X

MISCELLANEOUS

Persons bound to produce books, *etc.*, or give information, *etc.*

60. (1) Every person having information about any matter into which it is the duty of an officer of customs to inquire shall, upon being required by the officer of customs to do so, give the information.

(2) Every person required by an officer of customs to produce any books, data, documents or other records or thing which is within the power of the person to produce, and which are books, data, documents or other records or thing required under this Act or books, data, documents or other records or thing used in any transaction or other matter relating to tourism tax or books, data, documents or other records or thing into which it is the duty of the officer of customs to enquire under this Act, shall produce the books, data, documents or other records or thing.

(3) Where any information, books, data, documents or other records or thing are not in the national language or English language, the Director General or any officer of customs may by notice in writing require the operator or, on the operator's default, any other person, to produce, within a reasonable period, a translation thereof in the national language or English language as may be determined by the Director General or the officer of customs.

(4) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Service of notices, etc.

61. (1) Every notice, direction or any other document required by this Act to be served on any person may be served—

- (a) personally upon the person;
- (b) by sending it to the person by registered post; or
- (c) by electronic service.

(2) A notice, direction or other document sent to a person by registered post shall be deemed to have been served on that person at the time at which it would have been delivered to that person in the ordinary course of the post if the notice, direction or other document was addressed—

- (a) in the case of a company, firm, society, an association or other body of persons—
 - (i) to its registered office;
 - (ii) to its last-known address; or
 - (iii) to any person authorized by it to accept service of process; and
- (b) in the case of an individual, to his last-known address.

(3) Where a person has given his consent for a notice to be served on him through the electronic service, the notice shall be deemed to have been served at the time when the electronic notice is transmitted to his account through the electronic service.

Use of electronic service

62. (1) Notwithstanding any other provision of this Act and subject to regulations made under this Act, the Director General may provide an electronic service to any registered user for—

- (a) the filing or furnishing of any application, return, declaration or any other document; and
- (b) the service of any notice, direction, order, permit, receipt or any other document.

(2) Where an electronic notice is made and transmitted to the Director General, the Director General shall not be liable for any loss or damage suffered by the registered user by reason of any error or omission of whatever nature or however arising appearing in any electronic notice obtained by the registered user under the electronic service if the error or omission was made in good faith and in the ordinary course of the discharge of the duties of the Director General or occurred or arose as a result of any defect or breakdown in the service or in the equipment used for the provision of the service.

(3) Any electronic notice made and transmitted by the registered user shall be deemed to have been filed, furnished or served at the time the electronic notice is received by the Director General.

(4) For the purposes of this section, “registered user” means any person who is authorized in writing by the Director General to gain access to and use the electronic service.

Authentication of notices, etc.

63. (1) Subject to subsection (2), every notice or any other document served for the purposes of this Act by the Director General or an officer authorized by the Director General shall be sufficiently authenticated if the name and office of the Director General is printed, stamped or otherwise written thereon.

(2) Where this Act provides for a notice or any other document to be under the hand of any officer of customs, the notice or the other document shall be signed in manuscript by the officer of customs.

(3) A notice or any other document served for the purposes of this Act and purporting to be signed in manuscript by the Director General or an officer authorized by the Director General shall be presumed, until the contrary is proved, to have been so signed.

Free postage

64. All returns and remittances of tourism tax and any correspondence resulting from or connected with any return or remittance may, if posted in Malaysia, be sent free of postage to the Director General in an envelope marked “Tourism Tax”.

Transaction of business on behalf of operator

65. (1) No person shall transact any business in relation to this Act on behalf of an operator, except on matters with regard to—

- (a) refund;
- (b) remission;
- (c) exemption; or
- (d) any other matters as may be approved by the Director General.

(2) The person who transacts business on any of the matters stated in subsection (1) on behalf of an operator shall—

- (a) produce a letter of authorization from the operator whom the person represents; and
- (b) where any prescribed form is required to be submitted for the purposes of the matters being transacted, submit the form that has been signed by the operator, except where otherwise allowed by a senior officer of customs.

Forms to be used

66. (1) Where any form has been prescribed under this Act, no person shall, for the purposes of this Act, use any form which is not printed or issued by the authority of the Director General.

(2) The Director General may, at his discretion and subject to such conditions as he deems fit to impose, permit any person to use forms which are not printed or issued as aforesaid or the use of any form submitted through electronic service.

(3) Any person who contravenes subsection (1) commits an offence.

Disputes and appeal

67. Where any person disputes the decision of an officer of customs, he may appeal to the Director General whose decision on such dispute shall be final.

Liquidator of company to give notice of winding up, and set aside tourism tax

68. (1) Where after the passing of this Act an effective resolution is passed or an order is made for the winding up of a company registered under section 12, the liquidator of the company shall give notice thereof to the Director General within fourteen days after the passing of the resolution or the making of the order, and shall before disposing of any of the assets of the company set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any tourism tax that is or will thereafter become payable in respect of the accommodation that has been provided by the company, and shall pay such tourism tax.

(2) A liquidator of any such company who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the tourism tax as required under that subsection shall be personally liable for any tourism tax that is or becomes payable as aforesaid.

(3) Any liquidator who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(4) Where two or more persons are appointed as liquidators or are required by law to carry out the winding up of any such company, the obligations and liabilities attaching to a liquidator under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

Appointment of receiver to be notified to the Director General

69. (1) Where a receiver is appointed of the property of an operator registered under section 12, the receiver shall give notice thereof to the Director General within fourteen days after the appointment being made, and shall before disposing of any of the assets of that operator set aside such sum out of the assets as appears to the Director General to be sufficient to provide for any tourism tax that is or will thereafter become payable in respect of the accommodation that has been provided by that operator before the appointment of the receiver, and shall pay such tourism tax.

(2) A person appointed as receiver who fails to give notice to the Director General within the time specified in subsection (1) or fails to provide for payment of the tourism tax as required under that subsection shall be personally liable for any tourism tax that is or becomes payable as aforesaid.

(3) Any receiver who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(4) Where two or more persons are appointed as receivers, the obligations and liabilities attaching to a receiver under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

Power to make regulations

70. (1) The Minister may make regulations as may be necessary or expedient for the purposes of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for the following purposes:

- (a) to prescribe matters relating to registration of operator;
- (b) to prescribe the offices for the administration of the tourism tax and for the days and times during which the offices may be opened for business;
- (c) to prescribe the forms to be used under and for purposes connected with this Act;
- (d) to provide for offences and penalties not exceeding a fine of thirty thousand ringgit or imprisonment not exceeding one year or both for the contravention of any provision of the regulations; and
- (e) to prescribe matters relating to electronic service.

EXPLANATORY STATEMENT

This proposed Tourism Tax Bill 2017 (“the proposed Act”) seeks to provide for the imposition of tourism tax on tourists staying at accommodation premises and collection of tourism tax by persons operating the accommodation premises. The tourists and accommodation premises referred to in the proposed Act are defined in the Tourism Industry Act 1992 [Act 482].

PART I

2. Part I deals with preliminary matters.
3. *Clause 1* provides for the short title of the proposed Act and the power of the Minister to appoint different dates for the coming into operation of different Parts or different provisions of the proposed Act.
4. *Clause 2* contains the definition of certain words and expressions used in the proposed Act.

PART II

5. Part II contains provisions relating to administration.
6. *Clause 3* seeks to provide that the Director General has superintendence over all matters relating to tourism tax. It also seeks to empower the Director General and all the officers of customs to enforce all the provisions of the proposed Act. The powers conferred on the Director General may be exercised by officers of customs holding the rank of Superintendent or any rank higher than Superintendent except the powers conferred by sections 21 and 66.
7. *Clause 4* seeks to deem all public officers while discharging any duty or service relating to tourism tax to be public servants within the meaning of the Penal Code [Act 574].
8. *Clause 5* seeks to require every officer of customs to identify themselves when performing their duties and any person may refuse an order made by such officer of customs if they do not identify themselves.

PART III

9. Part III contains provisions relating to imposition of tourism tax on tourists.
10. *Clause 6* seeks to provide for the chargeability and levying of tourism tax on tourists staying at any accommodation premises made available by an operator. The rate of tourism tax shall be fixed by the Minister in accordance with *clause 8* of the proposed Act. The tourism tax shall be paid by any one of the tourists staying in the same accommodation at the same time and it shall be the duty of the tourist to pay the tourism tax to the operator.

11. *Clause 7* seeks to provide for the duty of the operator to collect the tourism tax from the tourist and every operator shall pay the tourism tax collected or liable to be collected to the Director General.

12. *Clause 8* seeks to empower the Minister to fix the rate of the tourism tax to be charged and levied on the tourists by an order published in the *Gazette*. The rate of the tourism tax is fixed with the concurrence of the minister charged with the responsibility for tourism. The order shall be laid in the Dewan Rakyat.

13. *Clause 9* seeks to empower the Minister to exempt any tourist or class of tourists from the payment of the whole or any part of the tourism tax, or to exempt any operator or any class of operator from collecting the whole or any part of the tourism tax, to exempt any operator or class of operator from the requirement to register under Part IV of the proposed Act, or exempt any person from all or any provision of the proposed Act.

PART IV

14. Part IV contains provisions relating to the registration of operator.

15. *Clauses 10* and *11* seek to provide for the liability of the operator to apply to the Director General to be registered. The application shall be made within thirty days from the date an operator operates the accommodation premises. As for an existing operator, the application shall be made within thirty days from the coming into operation of this Part. Any contravention to the requirement constituted an offence punishable with a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

16. *Clause 12* seeks to empower the Director General to register any operator who makes the application to be registered or any operator who does not make such application including operators operating accommodation premises registered as tourist accommodation premises under section 31c of the Tourism Industry Act 1992.

17. *Clause 13* seeks to require an operator to notify the Director General within thirty days if he ceases to operate an accommodation premises or is exempted under section 9 of the proposed Act. Upon receipt of the notification, the Director General may cancel the operator's registration from such date as the Director General may determine.

PART V

18. Part V contains provisions relating to invoices, records, returns and assessment.

19. *Clause 14* seeks to require an operator to issue an invoice, receipt or other document stating the rate and amount of tourism tax payable separately from the charges for the accommodation provided by the operator. This *clause* also seeks to prohibit a non-operator from issuing any invoice, receipt or other document showing an amount which purports to be tourism tax. This *clause* further provides for contravention of this *clause* to be an offence.

20. *Clause 15* seeks to allow an invoice, receipt or other document to be transmitted or made available by electronic means.

21. *Clause 16* seeks to require an operator to make adjustments in his returns if he issued a credit note or debit note.

22. *Clause 17* seeks to require an operator to keep records in relation to his tourism tax liability in Malaysia either in the national language or English language for seven years. This *clause* further provides for contravention of this *clause* to be an offence.

23. *Clause 18* seeks to assign the taxable period of an operator to be three months or a period similar to the taxable period assigned to him for the purposes of the Goods and Services Tax Act 2014 [Act 762], if the operator has been assigned with a taxable period for the purposes of the Goods and Services Tax Act 2014.

24. *Clause 19* seeks to require an operator to account for tourism tax in a return and furnish it within the stipulated time. This *clause* also requires an operator to pay for the tourism tax and to furnish a return whether or not there is a tourism tax to be paid. It also provides for contravention of this *clause* to be an offence. This *clause* also provides the penalty of up to 90 days to be paid by the operator who fails to pay wholly or partly of the tourism tax due within the stipulated time if no prosecution is instituted.

25. *Clause 20* seeks to allow the Director General to assess the amount of tourism tax and penalty payable if an operator fails to apply for registration, fails to furnish a return or furnishes an incomplete or incorrect return. This *clause* limits the time frame of not more than six years after the end of a taxable period for the Director General to make an assessment except in cases of fraud. It also allows the Director General to make an assessment where the tourism tax and penalty has been paid but no return has been furnished or the person fails to furnish a return for any subsequent taxable period. The Director General shall increase the amount of tourism tax assessed in the case where an operator pays tourism tax according to the assessed amount but continually fails to submit returns. This *clause* further deems the assessed amount to be the correct tourism tax and penalty that is due from the operator unless the assessment is subsequently withdrawn or reduced. This *clause* also allows the Director General to make a supplementary assessment in excess of an earlier assessment and amend the assessment to ensure the correctness of his assessment.

PART VI

26. Part VI contains provisions relating to remission, refund and recovery.

27. *Clause 21* seeks to allow the Minister to remit the whole or any part of the tourism tax and the Director General to remit the whole or any part of the penalty, surcharge or other money payable under the proposed Act. It also provides for the refund of the amount of tourism tax, penalty, surcharge or other money remitted if the person has paid the tourism tax, penalty, surcharge or other money.

28. *Clause 22* seeks to allow a person who has overpaid or erroneously paid any tourism tax, penalty, surcharge or any other money to claim for a refund within six years from the date the overpayment or erroneous payment occurred. The Director General may refund such tourism tax, penalty, surcharge or any other money if he is satisfied that such overpayment has occurred. This *clause* further empowers the Director General to reduce or disallow any refund if the refund may unjustly enrich the claimant. Any claim shall be supported by evidence as required by the Director General.

29. *Clause 23* seeks to provide for a person to be entitled for bad debt claim if he has not received payment within a stipulated time in relation to the accommodation provided by him and he has also made sufficient effort to recover the debt. A person who is entitled to a bad debt claim may make a claim for the refund of the whole amount of the tourism tax if he has not received any payment for the accommodation and for the difference between the tourism tax paid and the part payment received if he has received part payment for the accommodation which is less than the tourism tax paid. However, the person shall not be entitled to any refund if the part payment received is equal to or more than the amount of the tourism tax he has paid.

30. *Clause 24* seeks to allow the Director General to approve any application by an operator to deduct from time to time from his tourism tax return the amount of tourism tax paid but subsequently refunded to his customer by reason of cancellation of accommodation or other reason as may be approved by the Director General within one year after the payment was made or such extended period as may be approved by the Director General.

31. *Clause 25* seeks to require a person holding money for or owing money to an operator to pay to the Director General if the operator owes tourism tax, penalty, surcharge or other money upon a written notice been made to the person. The payment made by the person is deemed to be the payment made on behalf of the operator.

32. *Clause 26* empowers the Director General to allow any unpaid tourism tax or penalty to be paid in instalments and if tourism tax is allowed to be paid in instalments, penalty will not apply to the unpaid tourism tax. A surcharge of ten per cent shall be imposed on the outstanding amount if there is a default in the payment of any instalment and the outstanding amount together with the surcharge shall become due and payable or taxable on the date the default occurs.

33. *Clause 27* seeks to allow the Director General to request any Director of Immigration to prevent any person from leaving the country if the person owes tourism tax, penalty, surcharge or other moneys. The Director of Immigration may retain travel documents if a request has been made by the Director General. This *clause* requires the Director General to give a notice to the person informing him that he is prevented from leaving the country and any non-receipt of the notice does not prevent the Director of Immigration from performing his duties. A person is allowed to leave the country if he is able to show proof that the tourism tax, penalty, surcharge or other moneys owed have been paid or he has furnished a security sufficient to pay the tourism tax, penalty, surcharge or other moneys owed.

34. *Clause 28* seeks to allow the Director General to recover tourism tax, penalty, surcharge or other money which was erroneously refunded within six years from the date on which the refund was made.

35. *Clause 29* empowers the Minister to recover any tourism tax due and payable and any penalty, surcharge or other money payable as a civil debt to the Government. The issuance of a certificate signed by the Director General shall be taken as sufficient evidence for court proceedings. The *clause* treats penalty and surcharge as tourism tax and sets aside the time limit imposed on the collection of penalties under the Limitation Act 1953 [*Act 254*], Limitation Ordinance of Sabah [*Sabah Cap. 72*] and Limitation Ordinance of Sarawak [*Sarawak Cap. 49*].

36. *Clause 30* seeks to provide for the recovery of any amount which purports to be tourism tax even though the invoice, receipt or other document is not an invoice, a receipt or other document issued under section 14, or the person issuing the invoice, receipt or other document is not an operator or the invoice, receipt or other document was issued by an operator for a product or service other than accommodation.

37. *Clause 31* seeks to provide for the liability of directors of companies, partners of firms or committee members of societies to pay any unpaid tax, penalty or surcharge.

PART VII

38. Part VII contains provisions relating to enforcement.

39. *Clause 32* provides that a senior officer of customs shall have the powers of a police officer provided under the Criminal Procedure Code [*Act 593*] for the purpose of enforcement, inspection and investigation under the proposed Act.

40. *Clause 33* seeks to provide that the senior officer of customs shall have full and free access to any place or premises relating to the business of accommodation premises. This *clause* requires the operator and any other person present at the place or premises to assist the senior officer of customs in carrying out his duties.

41. *Clause 34* seeks to provide the officer of customs with access to any recorded information or computerized data whether stored in a computer or otherwise.

42. *Clause 35* seeks to allow the Magistrate to issue a search warrant if there is reasonable cause to believe that an offence has been committed.

43. *Clause 36* seeks to allow a search to be made without warrant where there are reasonable grounds to believe that any books, data, documents or other records or thing which may afford evidence of an offence may be removed by reason of delay in obtaining a search warrant.

44. *Clause 37* seeks to provide for the seizure of books, data, documents or other records or thing in relation to an offence. The officer of customs is required to give notice in writing of any seizure to the owner of the books, data, documents or other records or thing. This *clause* also specifies that provisions relating to seizure shall apply to anything contained in any receptacle, package or conveyance in which the books, data, documents or other records or thing are found and to any article used to conceal the same.

45. *Clause 38* seeks to provide for the power of any officer of customs to arrest without warrant any person found committing or attempting to commit or employing or aiding any person to commit or abetting the commission of an offence under the proposed Act, any person reasonably suspected to have in his possession any books, data, documents or other records or thing liable to seizure under the proposed Act or any person reasonably suspected to have committed an offence under the proposed Act. Any officer of customs making an arrest shall bring the person arrested to the nearest police station without unnecessary delay. This *clause* further provides for the power to arrest any person who is liable to be arrested but not arrested at the time of committing the offence or who escapes after being arrested as if he had been arrested at the time of committing the offence. The person arrested may be released from custody if he has deposited a reasonable sum of money or execute a bond with surety or deposits a reasonable sum of money and execute a bond with surety. A person who is released from custody may be arrested without warrant if there are reasonable grounds to believe that any condition for release of such person has been or is likely to be breached or on being notified by the surety that he wishes to be relieved from his obligation as surety.

PART VIII

46. Part VIII deals with various offences and penalties under the proposed Act.

47. *Clause 39* seeks to provide for the offence of obstructing an officer of customs.

48. *Clause 40* seeks to provide for the offence of making an incorrect return.

49. *Clause 41* seeks to provide for the offence and penalty for collecting tourism tax by any person not liable under the proposed Act to collect the tourism tax.

50. *Clause 42* seeks to provide for the offence of evading tourism tax.

51. *Clause 43* seeks to provide for the offence of refusing to answer questions or giving false information.

52. *Clause 44* seeks to provide that attempts to commit an offence or the abetment to the commission of an offence is punishable with the punishment provided for the offence.

53. *Clause 45* seeks to provide for general penalty.

54. *Clause 46* deals with offence by body of person, *etc.*
55. *Clause 47* seeks to provide for the liability of any person for the offence committed by his employee or agent or the employee of his agent.
56. *Clause 48* seeks to provide for the liability of a person to pay tourism tax, penalty, surcharge or other money notwithstanding the institution of any proceeding, imposition of a penalty, fine or imprisonment or the compounding of an offence.

PART IX

57. Part IX deals with provisions relating to trials and proceedings.
58. *Clause 49* provides that no prosecution for an offence under the proposed Act may be instituted except by or with the written consent of the Public Prosecutor.
59. *Clause 50* seeks to provide that a Sessions Court has the jurisdiction to try an offence under the proposed Act and to impose punishment for the offence.
60. *Clause 51* seeks to provide that the proposed Act does not prevent the prosecution, conviction and punishment of a person under any other written law.
61. *Clause 52* provides that any statement purporting to be signed by the Director General or any authorized officer, any transcript of particulars pertaining to tourism tax certified to be the true copy by the Director General or an authorized officer and any evidence obtained by an officer of customs in exercise of his powers under the proposed Act shall be *prima facie* evidence of any fact stated therein. *Clause 52* further provides for the admissibility in evidence of any statement made or document produced by inducement, promise or threat made by persons acting under the proposed Act and any translation of document into the national language or English language certified by the person who translated the document that it is accurate, faithful and true translation.
62. *Clause 53* deals with the evidentiary value of electronic notice. An electronic notice is admissible as evidence of facts stated in the notice if the electronic notice is certified by the Director General to contain all information transmitted through electronic service and is duly authenticated in the manner specified in the proposed Act or the Evidence Act 1950 [Act 56].
63. *Clause 54* seeks to provide for the period of imprisonment to be imposed by any court in respect of non-payment of fines.
64. *Clause 55* seeks to disallow any cost or damage to be awarded in respect of any thing seized unless the seizure is made without reasonable or probable cause.

65. *Clause 56* seeks to provide for the power of the Minister, with the approval of the Public Prosecutor, to prescribe by regulations compoundable offences, criteria for compound and procedure for compound. This *clause* further provides for the power of the Director General or senior officer of customs to compound offences with the written consent of the Public Prosecutor.

66. *Clause 57* seeks to provide for the power of the court to order a person to pay to the Director General the amount of tourism tax or penalty if he is guilty of an offence and the tourism tax or penalty is recoverable in the same manner as a fine as provided under section 283 of the Criminal Procedure Code.

67. *Clause 58* deals with the obligation of secrecy in relation to information which can lead to the identity of an informer and the substance of the information received from an informer except where such information is disclosed to officer of customs authorized by the Director General.

68. *Clause 59* seeks to require a witness not to disclose information relating to an informer which may lead to the discovery of the informer. It also provides for a passage in a book, document or paper to be concealed or obliterated to protect the informer from discovery during inspection of the books, documents or papers in proceedings and allows the court to require the production of the original complaint or full disclosure of the informer if the court finds that the informer has made a false material statement or that justice cannot be fully done without the discovery of the informer.

PART X

69. Part X deals with miscellaneous provisions.

70. *Clause 60* seeks to require a person to give information, produce books, data, documents or other records or thing and to provide translations as required by an officer of customs.

71. *Clause 61* seeks to provide for the manner of service of notices.

72. *Clause 62* seeks to enable the Director General to provide electronic service to any registered user for certain transactions and absolve the Director General of any liability for any loss or damage suffered by a registered user of electronic service.

73. *Clause 63* seeks to provide for the authentication of notices and other documents.

74. *Clause 64* seeks to provide for free postage for all returns and related documents sent to the Director General.

75. *Clause 65* deals with transaction of business in relation to the proposed Act on behalf of an operator except on refund, remission, exemption or other matters as approved by the Director General. This *clause* also requires the person who transact on behalf of an operator to produce a letter of authorization from the operator and submit prescribed forms duly signed by the operator unless otherwise allowed.

76. *Clause 66* seeks to require prescribed forms to be used unless permission is granted by the Director General to use forms other than the prescribed forms.

77. *Clause 67* seeks to allow any aggrieved person to appeal against the decision of the officer of customs to the Director General.

78. *Clause 68* seeks to require the liquidator of a company to give notice to the Director General of the winding up of the company within a specified period and to set aside such amount out of the assets of the company for tourism tax payable before disposing the assets of the company and thereafter, to pay such tourism tax. This *clause* provides for the liquidator to be personally liable for such tourism tax if he fails to give notice within specified period or fails to pay the tourism tax. This *clause* further provides for contravention of this *clause* to be an offence and in cases where there are two or more liquidators appointed, they shall be jointly and severally liable for the obligations and liabilities under this *clause*.

79. *Clause 69* seeks to allow the appointment of receiver to be notified to the Director General within specified period and to set aside such amount out of the assets of the operator for tourism tax payable before disposing the assets of the operator and thereafter, to pay such tourism tax. This *clause* provides for the receiver to be personally liable for such tourism tax if he fails to give notice within specified period or fails to pay the tourism tax. This *clause* further provides for contravention of this *clause* to be an offence and in cases where there are two or more receivers appointed, they shall be jointly and severally liable for the obligations and liabilities under this *clause*.

80. *Clause 70* seeks to empower the Minister to make regulations for the purposes of carrying into effect the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in extra financial expenditure.

[PN(U2)3061]