

A BILL

i n t i t u l e d

An Act to amend the Tourism Tax Act 2017.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Tourism Tax (Amendment) Act 2020.

(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.

(3) Notwithstanding subsection (2), the Minister may, by notification in the *Gazette*, appoint the effective date for the charging and levying of tourism tax on accommodation premises made available through service relating to online booking accommodation premises under this Act.

New section 1A

2. The Tourism Tax Act 2017 [*Act 791*], which is referred to as the “principal Act” in this Act, is amended by inserting after section 1 the following section:

“Territorial and extra-territorial application

1A. (1) This Act and its subsidiary legislation shall apply both within and outside Malaysia.

(2) Notwithstanding subsection (1), this Act and its subsidiary legislation shall apply to any person of whatever nationality or citizenship, beyond the geographical limits of Malaysia and the territorial waters of Malaysia, if the person is a digital platform service provider registered under section 20D.”.

Amendment of section 2

3. Section 2 of the principal Act is amended—

(a) by inserting after the definition of “operator” the following definition:

‘ “digital platform service provider” means any person who provides service relating to online booking accommodation premises to a tourist whether such person is in Malaysia or outside Malaysia;’; and

(b) by inserting after the definition of “accommodation premises” the following definition:

‘ “service relating to online booking accommodation premises” means any online service relating to the booking of accommodation premises that is delivered automatically over the internet or any other electronic network;’.

Amendment of section 9

4. Subsection 9(1) of the principal Act is amended—

(a) in paragraph (b), by substituting for the words “or class of operator” the words “, class of operator, digital platform service provider or class of digital platform service provider”; and

(b) in paragraph (c)—

(i) by substituting for the words “or class of operator” the words “, class of operator, digital platform service provider or class of digital platform service provider”; and

(ii) by inserting after the words “Part IV” the words “or Part VA”.

Amendment of section 13

5. Section 13 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Where there is no notification made under subsection (1) and the Director General is satisfied that the operator has ceased to operate an accommodation premises or is exempted under section 9, the Director General may cancel the operator’s registration from the date the operator ceased to operate the accommodation premises or from the date the operator is exempted or from such later date as the Director General may determine, as the case may be.”.

Amendment of section 14

6. Subsection 14(1) of the principal Act is amended by inserting after the words “operator shall” the words “, within thirty days from the date the accommodation is provided or such extended period as may be approved by the Director General,”.

Amendment of section 15

7. Section 15 of the principal Act is amended by inserting after the word “operator” the words “or a digital platform service provider”.

Amendment of section 18

8. Section 18 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) Notwithstanding subsection (1), an operator may apply in writing to the Director General for another taxable period.

(4) The Director General may, upon receiving any application under subsection (3)—

(a) allow the application and the taxable period shall be the period as applied for;

(b) refuse the application and the taxable period shall remain as determined under subsection (1); or

(c) vary the length of the taxable period or the date on which the taxable period begins or ends.

(5) Notwithstanding subsection (1) or (4), the Director General may, as he deems fit, reassign any other taxable period for the operator.”.

Amendment of section 20

9. Section 20 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a), by substituting for the words “or 11” the words “, 11 or 20c”;

(ii) in paragraph (b), by inserting after the word “19” the words “or 20r”; and

(iii) by inserting after the words “19(8)” the words “or 20i(6)”; and

(b) by inserting after the word “operator” wherever appearing the words “or digital platform service provider”.

New Part VA

10. The principal Act is amended by inserting after Part V the following part:

“PART VA

DIGITAL PLATFORM SERVICE PROVIDER

Imposition of tourism tax

20A. (1) Notwithstanding section 6, tourism tax shall be charged and levied on a tourist staying at any accommodation premises made available through service relating to online booking accommodation premises provided by a digital platform service provider at the rate fixed in accordance with section 8.

(2) It shall be the duty of the tourist to pay the tourism tax to the digital platform service provider.

(3) Where tourism tax for an accommodation premises made available through service relating to online booking accommodation premises has been paid by the tourist to the digital platform service provider, the operator shall not collect the tourism tax from the tourist, provided that the tourist shall submit proof of such payment.

Duty of digital platform service provider to collect tourism tax and pay tourism tax collected to Director General

20B. (1) Every digital platform service provider who made available an accommodation premises through service relating to online booking accommodation premises shall collect the tourism tax from the tourist.

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

Liability of digital platform service provider to be registered

20c. (1) Every digital platform service provider shall be liable to be registered under this Part and for such purpose shall apply to the Director General to be registered, in the manner as may be prescribed.

(2) The application for registration referred to in subsection (1) shall be made within thirty days from the date the digital platform service provider provides the service relating to online booking accommodation premises in which the accommodation premises is in Malaysia.

(3) Every digital platform service provider who provides service relating to online booking accommodation premises in which the accommodation premises is in Malaysia before the coming into operation of this Part, shall not later than three months before 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.

(4) Every digital platform service provider who contravenes subsection (1) 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.

Registration of digital platform service provider

20d. (1) The Director General shall register any digital platform service provider who makes an application for registration under subsection 20c(1) or (3) with effect from the first day of the following month after the application is submitted to the Director General.

(2) Notwithstanding subsection (1), the Director General shall have the power to register any digital platform service provider who is not registered under subsection (1) with effect from the first day of the following month after the information relating to the operation of the digital platform service provider became known or is made known to the Director General.

Cancellation of registration

20E. (1) Any digital platform service provider who ceases to provide service relating to online booking accommodation premises in Malaysia or is exempted under section 9 from the requirement to register under Part VA shall notify the Director General in writing of the fact and the date thereof within thirty days from the date of cessation.

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

(3) Where there is no notification made under subsection (1) and the Director General is satisfied that a digital platform service provider has ceased to provide service relating to online booking accommodation premises in Malaysia or is exempted under section 9 from the requirement to register under Part VA, the Director General may cancel his registration from the date the digital platform service provider ceased to provide service relating to online booking accommodation premises in Malaysia or from the date the digital platform service provider is exempted from the requirement to register or from such later date as the Director General may determine, as the case may be.

Invoice, receipt or other document

20F. (1) Every digital platform service provider shall, within thirty days from the date the accommodation premises is made available or such extended period as may be approved by the Director General, issue an invoice, a receipt or other document in the national language or in the English language to a tourist

in respect of the accommodation premises made available through service relating to online booking accommodation premises and shall state the amount of tourism tax payable separately from any other charges imposed on the tourist.

(2) The invoice, receipt or other document referred to in subsection (1) may be issued electronically or in physical form.

(3) Any digital platform service provider 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.

Credit note and debit note

20G. Where a digital platform service provider issues a credit note or debit note containing the prescribed particulars under the prescribed circumstances and conditions, the digital platform service provider shall make adjustment in his returns accordingly.

Taxable period

20H. (1) The taxable period for a digital platform service provider shall be a period of three months ending on the last day of any month of any calendar year.

(2) The digital platform service provider may apply in writing to the Director General for a taxable period other than a period as determined under subsection (1).

(3) The Director General may, upon receiving any application under subsection (2)—

- (a) allow the application and the taxable period shall be the period as applied for;
- (b) refuse the application and the taxable period shall remain as determined under subsection (1); or
- (c) vary the length of the taxable period or the date on which the taxable period begins or ends.

(4) The Director General may, as he deems fit, reassign the digital platform service provider to any taxable period other than the period to which has been previously determined under subsection (1) or (3).

Furnishing of returns and payment of tourism tax

20i. (1) Every digital platform service provider 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 digital platform service provider's taxable period to which the return relates.

(2) Every digital platform service provider 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 digital platform service provider in respect of the taxable period to which the return relates not later than the last day on which the digital platform service provider is required to furnish the return.

(3) Any digital platform service provider who ceases to be registered under section 20D 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 digital platform service provider was registered.

(4) The return referred to in subsection (1) shall be furnished whether or not there is tourism tax to be paid.

(5) Any digital platform service provider who fails to furnish the return as required under 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.

(6) Any digital platform service provider who fails to pay to the Director General the amount of tourism tax due and payable under subsection (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.

(7) Where any tourism tax due and payable is not paid wholly or partly by any digital platform service provider after the last day on which it is due and payable under subsection (2) and no prosecution is instituted, the digital platform service provider 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 (2), a penalty of ten percent 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 (2), an additional penalty of ten percent 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 in subsection (2), an additional penalty of ten per cent of the amount of tourism tax remain unpaid.

(8) Subject to subsection (10), prosecution for an offence under subsection (6) may be instituted after the expiry of the period specified in paragraph (7)(c).

(9) The court may order a digital platform service provider who is convicted for an offence under subsection (6) to pay the penalty as specified in subsection (7).

(10) No prosecution for an offence under subsection (6) shall be instituted against the digital platform service provider who has paid the amount of tourism tax due and payable and the penalty specified in subsection (7) within the period specified in subsection (7).

Duty to keep record

20j. (1) Every digital platform service provider shall keep full, true and up-to-date records of all transaction 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 preserved for a period of seven years from the latest date to which the records relates and shall be made available for inspection by any senior officer of customs.

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

(4) Any digital platform service provider 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.

Service of notices, etc

20k. Every notice, direction or any other document required by this Act to be served on a digital platform service provider may be served by electronic service under section 62.”.

Amendment of section 24

11. Section 24 of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting after the word “operator” the words “or digital platform service provider”;
- (ii) by inserting after the words “operator’s return” the words “or digital platform service provider’s return”; and
- (iii) by inserting after the words “subsection 19(1)” the words “or subsection 20i(1)”; and

- (b) in subsection (2), by inserting after the word “operator” the words “or digital platform service provider”.

Amendment of section 25

12. Section 25 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**operator**” the words “**or digital platform service provider**”;
- (b) in the English language text, in subsection (1), by inserting after the words “an operator” the words “or a digital platform service provider”;
- (c) in subsection (3), by substituting for the words “operator’s authority” the words “operator or digital platform service provider’s authority”;
- (d) in the national language text, in subsections (1), (2) and (3), by inserting after the word “pengendali” wherever appearing the words “atau pemberi perkhidmatan platform digital”; and
- (e) in the English language text, by inserting after the words “the operator” wherever appearing the words “or digital platform service provider”.

Amendment of section 29

13. Section 29 of the principal Act is amended—

- (a) in the English language text, in subsection (1), by inserting after the words “an operator” the words “or a digital platform service provider”;
- (b) in the national language text, by inserting after the word “pengendali” wherever appearing the words “atau pemberi perkhidmatan platform digital”; and
- (c) in the English language text, in subsection (2), by inserting after the words “the operator” wherever appearing the words “or digital platform service provider”.

Amendment of section 30

14. Subsection 30(2) of the principal Act is amended—

(a) in paragraph (a), by inserting after the words “section 14” the words “or section 20F”; and

(b) by substituting for paragraph (b) the following paragraph:

“(b) the invoice, receipt and other document was issued by a person who was not—

(i) an operator registered under section 12;
or

(ii) a digital platform service provider registered under section 20D,

for which an amount which purports to be tourism tax was chargeable; or”.

Amendment of section 33

15. Section 33 of the principal Act is amended—

(a) in subsection (1), by inserting after the words “accommodation premises” the words “or the provision of service relating to online booking accommodation premises”;

(b) in subsection (2), by inserting after the words “accommodation premises” the words “, provides service relating to online booking accommodation premises”; and

(c) in paragraph (3)(a)—

(i) by inserting after the word “operator” the words “, digital platform service provider”;

(ii) by substituting for the words “operator’s business” the words “operator or digital platform service provider’s business”; and

(iii) by inserting after the words “section 17” the words “or 20J”.

Amendment of section 41

16. Subsection 41(1) of the principal Act is amended by inserting after the words “on his behalf” the words “or any accommodation made available through service relating to online booking accommodation premises”.

Deletion of section 64

17. The principal Act is amended by deleting section 64.

Amendment of section 65

18. Section 65 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**operator**” the words “**or digital platform service provider**”;
- (b) in the English language text, by inserting after the words “an operator” wherever appearing the words “or a digital platform service provider”;
- (c) in the English language text, in subsection (2), by inserting after the words “the operator” wherever appearing the words “or digital platform service provider”; and
- (d) in the national language text, in subsections (1) and (2), by inserting after the word “pengendali” wherever appearing the words “pemberi perkhidmatan platform digital”.

Amendment of section 69

19. Subsection 69(1) of the principal Act is amended—

- (a) by inserting after the words “under section 12” the words “or a digital platform service provider registered under section 20D”; and
- (b) by inserting after the words “that operator” wherever appearing the words “or digital platform service provider”.

Amendment of section 70

20. Subsection 70(2) of the principal Act is amended—

- (a) in paragraph (d), by deleting the word “and” at the end of the paragraph;
- (b) in paragraph (e), by substituting for the full stop at the end of the paragraph the word “; and”; and
- (c) by inserting after paragraph (e) the following paragraph:
 - “(f) to prescribe matters relating to digital platform service provider.”.

Online booking of accommodation premises before effective date

21. Where any booking of accommodation premises is made by a tourist with a digital platform service provider through the service relating to online booking accommodation premises before the effective date mentioned in subsection 1(3) and the tourist stays at such accommodation premises on or after the effective date, no tourism tax shall be charged on the tourist.

EXPLANATORY STATEMENT

This Bill seeks to amend the Tourism Tax Act 2017 (“Act 791”).

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act. *Clause 1* also empowers the Minister to appoint the effective date for the charging and levying of tourism tax on accommodation premises made available through service relating to online booking accommodation premises under the proposed Act.

3. *Clause 2* seeks to introduce a new section 1A into Act 791 to provide for the application of the proposed Act and its subsidiary legislation within and outside Malaysia including on a digital platform service provider whatever his nationality or citizenship.

4. *Clause 3* seeks to provide for new definitions of “digital platform service provider” and “service relating to online booking accommodation premises”.

5. *Clause 4* seeks to amend section 9 of Act 791 to empower the Minister to exempt any digital platform service provider or class of digital platform service provider from collecting the whole or any part of the tourism tax or the requirement to register under the a new Part VA of Act 791.
6. *Clause 5* seeks to amend section 13 of Act 791 to introduce a new subsection (3) to empower the Director General to cancel the registration of an operator if the Director General is satisfied that the operator has ceased to operate an accommodation premises or is exempted under section 9.
7. *Clause 6* seeks to amend section 14 of Act 791 to provide that the operator shall issue an invoice, receipt or other document to a tourist within thirty days from the date the accommodation is provided to the tourist or such extended period approved by the Director General.
8. *Clause 7* seeks to amend section 15 of Act 791 to provide that a digital platform service provider 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 provided to the tourist.
9. *Clause 8* seeks to amend section 18 of Act 791 to introduce new subsections (3), (4) and (5) to empower the Director General to change the taxable period as requested by an operator. This clause also empowers the Director General to determine any other taxable period for the operator.
10. *Clause 9* seeks to amend section 20 of Act 791 to empower the Director General to assess the amount of tourism tax due from and payable by and the penalty payable by a digital platform service provider and to notify the digital platform service provider of the assessment in writing.
11. *Clause 10* seeks to introduce a new Part VA into Act 791 containing new sections 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J and 20K.

The proposed section 20A seeks to provide that tourism tax shall be charged and levied on a tourist staying at any accommodation premises made available through service relating to online booking accommodation premises provided by a digital platform service provider.

The proposed section 20B seeks to provide that the digital platform service provider who made available an accommodation premises through service relating to online booking accommodation premises shall collect the tourism tax from a tourist and pay the tourism tax collected to the Director General.

The proposed section 20C seeks to require that every digital platform service provider who provides the service relating to online booking accommodation premises in which the accommodation premises is in Malaysia has to apply for registration to the Director General in the prescribed form. The proposed section also seeks to require such digital platform service provider to apply to Director General to be registered within thirty days from the date the digital platform service provider provides such service. The proposed section further seeks to require a digital platform service provider who provides the service relating to online booking accommodation premises in which the accommodation premises is in Malaysia before the coming into operation of a new Part VA to apply to Director General to be registered not later than three months before the date of the coming into operation of the Part.

The proposed section 20D seeks to provide that the Director General shall register any digital platform service provider who makes an application to be registered under subsection 20c(1) or (3). The proposed section also empowers the Director General to register any digital platform service provider who is not registered under subsection (1) after the information relating to the operation of the digital platform service provider became known or is made known to the Director General.

The proposed section 20E deals with cancellation of registration of a digital platform provider and the effective date of such cancellation as determined by the Director General.

The proposed section 20F seeks to require any digital platform service provider who provides service relating to online booking accommodation premises to issue an invoice, a receipt or other document to a tourist in respect of the transaction.

The proposed section 20G seeks to provides that where a digital platform service provider issue a credit note or debit note, the digital platform service provider shall make adjustment in his return accordingly.

The proposed section 20H seeks to provide for a taxable period for a digital platform service provider and the power of the Director General to vary the taxable period.

The proposed section 20I seeks to require the digital platform service provider to account for tourism tax received in a return as may be prescribed. The proposed section also requires the digital platform service provider to pay to the Director General the amount of tourism tax due and payable in respect of the taxable period to which a return relates.

The proposed section 20J seeks to impose a duty on a digital platform service provider to keep full, true and up-to date records of all transactions which affect or may affect his liability to collect tourism tax.

The proposed section 20K seeks to provide for the electronic service of notices, directions or other documents required under Act 791 to a digital platform service provider.

12. *Clause 11* seeks to amend section 24 of Act 791 to provide that the Director General may approve an application made by a digital platform service provider to deduct from time to time from his return the amount of tourism tax paid but subsequently refunded to the tourist.

13. *Clause 12* seeks to amend section 25 of Act 791 to empower the Director General to collect tourism tax, penalty, surcharge or other money from any person owing money to a digital platform service provider.

14. *Clause 13* seeks to amend section 29 of Act 791 to provide that any tourism tax, penalty, surcharge or other money payable by a digital platform service provider may be recovered as a civil debt due to the Government.

15. *Clause 14* seeks to amend section 30 of Act 791 to provide for the recovery of the tourism tax in other circumstances where an invoice, receipt or other document shows a provision of accommodation as having taken place with tourism tax chargeable on it and the invoice, receipt or other document was issued by the person who was not a digital platform service provider.

16. *Clause 15* seeks to amend section 33 of Act 791 to empower any senior officer of customs at all times to have full and free access to any place or premises where a digital platform service provider provides service relating to online booking accommodation premises and require the digital platform service provider to produce any book, data, document or other record or thing which is required to be kept under a new section 20j.

17. *Clause 16* seeks to amend section 41 of Act 791 to provide that no person shall collect from any person any sum of money for the purpose of paying tourism tax charged and levied under the Act 791 in respect of any accommodation provided by him or his behalf or any accommodation made available through service relating to online booking accommodation premises unless he is liable to collect the tourism tax.

18. *Clause 17* seeks to delete section 64.

19. *Clause 18* seeks to amend section 65 of Act 791 to provide that no person shall transact any business in relation to Act 791 on behalf of a digital platform service provider, except on matters with regards to refund, remission, exemption or any other matters as may be approved by the Director General.

20. *Clause 19* seeks to amend section 69 of Act 791 to provide that where a receiver is appointed of the property of a digital platform service provider registered under a new section 20b, the receiver shall give notice to the Director General within fourteen days after the appointment.

21. *Clause 20* seeks to amend section 70 of Act 791 to empower the Minister to prescribe any matters relating to digital platform service provider.

22. *Clause 21* deals with transitional provisions consequential to the implementation of tourism tax on accommodation made available through service relating to online booking accommodation premises.

23. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3241]