

INSURANCE PREMIUM SALES TAX ORDINANCE 2011

(Ordinance 23 of 2011)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Interpretation
3. Application of this Ordinance
4. Registration of insurance service providers
5. Imposition and rate of insurance premium sales tax
6. Variation of rate of insurance premium sales tax
7. Collection of tax by insurance service provider
8. Accounts to be kept by insurance service provider
9. Returns and payment of tax
10. Powers of Permanent Secretary, Finance
11. Assessment of insurance premium sales tax in cases of default
12. Appeal against assessment
13. Penalty in cases of default
14. Recovery of tax
15. Restriction on disclosure of information
16. Offences and penalties
17. Criminal liability of directors



TURKS AND CAICOS ISLANDS

INSURANCE PREMIUM SALES TAX ORDINANCE 2011

(Ordinance 23 of 2011)

AN ORDINANCE TO PROVIDE FOR THE IMPOSITION AND COLLECTION OF A SALES TAX ON INSURANCE PREMIUMS; AND FOR CONNECTED PURPOSES.

ENACTED by the Acting Governor of the Turks and Caicos Islands.

Short title and commencement

1. This Ordinance may be cited as the Insurance Premium Sales Tax Ordinance 2011 and comes into operation on 12th September 2011.

Interpretation

2. In this Ordinance—

“contract of insurance” includes a policy, certificate, interim receipt, renewal receipt or writing evidencing a contract of insurance whether sealed or not;

“domestic business” has the same meaning as in the Insurance Ordinance;

“health insurance” means insurance by which an insurer undertakes to pay insurance money in the event of sickness or injury of the person insured;

“insurance” means an undertaking by a person—

(a) to indemnify another person against loss or liability for loss with respect to certain risk or peril to which the object insurance may be exposed; or

(b) to pay a sum of money or thing of value upon the happening of certain events.

“insurance agent” has the same meaning as in the Insurance Ordinance;

“insurance broker” has the same meaning as in the Insurance Ordinance;

“insurance business” means the business of effecting and carrying out contracts—

(a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or

(b) to pay a sum of money or other thing of value upon the happening of an event, and includes reinsurance business and running-off business including the settlement of claims;

“insurance sub-agent” has the same meaning as in the Insurance Ordinance;

“insurance service provider” means an insurer, an insurance broker, an insurance agent or an insurance sub-agent;

“insurer” has the same meaning as in the Insurance Ordinance;

“Interhealth Canada” means the healthcare management firm that provides services on behalf of the Government;

“life insurance” means insurance by which the insurer undertakes to pay insurance money upon death of the insured person;

“policy holder” means the person with whom an insurance service provider has effected a contract of insurance;

“premium” means the single or periodic payment required for a contract of insurance and includes all dues, assessments, transaction fees and other consideration charges by the insurance service provider.

3. This Ordinance applies to all insurance service providers providing the types of insurance subject to insurance premium sales tax under this Ordinance.

Application of
this Ordinance

4. (1) An insurance service provider to whom this Ordinance applies shall, within one month of the commencement of this Ordinance apply to the Permanent Secretary, Finance in writing, in such form as the Permanent Secretary, Finance shall determine, for the registration of the insurance service provider as an insurance service provider to which this Ordinance applies, stating the name and address of the insurance service provider and such other particulars as the Permanent Secretary, Finance may require.

Registration of
insurance service
providers

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

(3) An entry in the register relating to any insurance service provider shall state the name and address of the insurance service provider and such other particulars as the Permanent Secretary,

Finance thinks fit or the Governor may direct to be included in the entry.

(4) Where there has been any change as respects any of the particulars contained in an entry in the register with respect to any insurance service provider, the insurance service provider shall, within 30 days of the change, serve on the Permanent Secretary, Finance a notice in writing giving particulars of the change, and the Permanent Secretary, Finance shall make such appropriate amendments to the entry as may be required.

(5) If the Permanent Secretary, Finance is satisfied that any insurance service provider has ceased to be an insurance service provider to which this Ordinance applies, he shall cancel the entry in the register relating to the insurance service provider.

Imposition and rate of insurance premium sales tax

5. (1) Subject to the provisions of this Ordinance, there shall be paid by each policy holder an insurance premium sales tax of two point five *per cent* (2.5%) of the premium paid or payable under a contract of insurance in respect of domestic business, other than insurance on life and health insurance.

(2) Insurance premium sales tax shall be payable at the time of the sale, purchase or renewal of a contract of insurance on the total premium charged for the contract of insurance.

(3) No insurance premium sales tax shall be paid by the Government or Interhealth Canada.

Variation of rate of insurance premium sales tax

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

Collection of insurance premium sales tax

7. (1) Insurance premium sales tax payable by a policy holder under this Ordinance shall be charged, collected and remitted by the insurance service provider in accordance with section 9.

(2) The insurance service provider shall levy the tax upon the full premium amount at the time of the sale, purchase or renewal of the contract of insurance, regardless of the payment terms extended by the insurance service provider.

Accounts to be kept by insurance service provider

8. (1) An insurance service provider shall—

(a) keep sufficiently detailed accounts to permit the calculation of the amount of insurance premium sales tax payable by or in respect of every policy holder who has effected a contract of insurance with that insurance service provider;

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

(2) If it appears to the Permanent Secretary, Finance or any person authorized by him in writing for the purposes of section 11 that the accounts required by subsection (1) to be kept by an insurance service provider are inaccurate or incomplete for the purpose of enabling the Permanent Secretary, Finance or that

person to calculate the amount of tax payable by or in respect of any policy holder, the insurance service provider shall furnish the Permanent Secretary, Finance or that person with such information and evidence as the Permanent Secretary, Finance or that person may require with a view to the correction of such inaccuracies and to those deficiencies being made good.

9. (1) An insurance service provider shall, within fifteen days of the end of each month—

Returns and
payment of tax

(a) furnish the Permanent Secretary, Finance with a return, in such form as the Permanent Secretary, Finance shall determine stating such particulars as the Permanent Secretary, Finance may require;

(b) deliver or send to the Permanent Secretary, Finance, together with that return, a remittance in payment of the total amount of tax paid or payable by or in respect of each of those persons.

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

(3) Where in any case an insurance service provider has been unable to recover the insurance premium tax it shall not be liable to pay the tax under this Ordinance.

10. (1) The Permanent Secretary, Finance or any person authorized by him in writing in that behalf may, for the purpose of ascertaining whether or not any of the provisions of this Ordinance are being complied with and, in particular, for the purpose of ascertaining whether or not the proper amount of tax is being paid by an insurance service provider require an insurance service provider—

Powers of
Permanent
Secretary,
Finance

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

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

(c) to permit the Permanent Secretary, Finance or that person to take extracts from, or make copies of, copies of statements, accounts, books or other documents referred to in sub-paragraph (ii) and to furnish the Permanent Secretary, Finance or that person with such extracts or copies.

(2) Any power conferred by subsection (1) to require the production of any copies of statements, accounts, books or other documents shall, if they are not produced, include the power to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

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

Assessment of
insurance
premium sales
tax in cases of
default

11. (1) Where an amount is due from an insurance service provider on account of insurance premium sales tax and the Permanent Secretary, Finance is unable to ascertain the amount of insurance premium sales tax properly due from the insurance service provider by reason of—

- (a) a failure of the insurance service provider to furnish the Permanent Secretary, Finance with any return under section 9 or to furnish the Permanent Secretary, Finance with a complete and correct return under that section;
- (b) a failure of the insurance service provider to keep or produce to the Permanent Secretary, Finance or any person authorized by the Permanent Secretary, Finance in writing for the purpose of section 10, any copies of statements, accounts, books or other documents required to be kept or produced by the insurance service provider by or under this Ordinance, or the loss or destruction of any such copies, accounts, books or other documents; or
- (c) any copies of statement, accounts, books or other documents being materially incomplete or inaccurate, the Permanent Secretary, Finance may, to the best of his judgment, make an assessment of the amount due on account of insurance premium sales tax by the insurance service provider and shall, on making such an assessment, serve on the insurance service provider a notice specifying that amount and the reason for the making of the assessment.

(2) Where an assessment of the amount of insurance premium sales tax due from an insurance service provider has been made under subsection (1), then, without prejudice to the recovery of the full amount due or to the making of a further assessment in that behalf, the amount assessed shall be recoverable, and payment of the same shall be enforceable, as tax properly due.

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

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

Appeal against
assessment

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

(2) Upon the hearing of the case the Court shall assess the insurance premium sales tax payable.

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

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

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

13. (1) Where insurance premium sales tax due and payable by an insurance service provider remains unpaid the insurance service provider shall also be liable to pay, by way of penalty, a sum calculated in terms of subsection (2); and such penalty shall be recoverable, and the payment of the same enforceable, as debt properly due and payable.

Penalty in cases of default

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

14. Without prejudice to any other remedy, any insurance premium sales tax due and payable and any penalty payable under this Ordinance may be recovered from the insurance service provider by the Government as a civil debt due to the Crown.

Recovery of tax

15. Information which is disclosed to the Permanent Secretary, Finance or any other person in connection with the operation of this Ordinance shall not be further disclosed except where—

Restriction on disclosure of information

- (a) the information is disclosed to any person authorized by the Permanent Secretary, Finance to carry out any duties in connection with the operation of this Ordinance; or
- (b) the information is disclosed for the purpose of civil or criminal proceedings in connection with the operation of this Ordinance or for the purpose of any other criminal proceedings in the Islands.

16. (1) A person who—

Offences and penalties

- (a) contravenes section 4 (1) or (4), section 8, section 9 (1) or section 15; or
- (b) makes default in complying with a requirement imposed under section 10 (1) (b),

commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for a term of six months or to both such fine and imprisonment.

(2) A person who is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion, by him or any other person, of insurance premium sales tax commits an offence and is liable on conviction on indictment to a fine or imprisonment for a term of two years or to both, and on summary conviction to a fine of \$20,000 or imprisonment for a term of two years or to both such fine and imprisonment.

(3) A person who—

(a) with intent to deceive, for the purposes of this Ordinance, produces, furnishes, sends or otherwise makes use of any register, return, books, accounts or other document which is false in a material particular; or

(b) in furnishing any information for those purposes, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular.

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

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

Criminal liability
of directors

17. (1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

MADE this 31st day of August 2011

MARTIN STANLEY
ACTING GOVERNOR