

## **Regulation on Tourist and Accommodation Taxes of the Commune of (name of the Commune). *N.B. Commune = Municipality***

→ Also refer to additional comments on each Article from page 5 on

The Primary Assembly (the General Council) of the Commune of (name of the Commune)

- having regard to Articles 75, 78 (3) and 79 (2) and (3) of the Cantonal Constitution;
- having regard to Articles 2, 17, 146 and 147 of the Communal Act of February 5<sup>th</sup> 2004;
- having regard to the Law on Tourism of February 9<sup>th</sup> 1996;
- having regard to the Ordinance on the Tourism Act of December 10<sup>th</sup> 2014;
- having regard to the guidelines of the local tourism policy of the Commune of (name of the Commune), drawn up in collaboration with the tourism stakeholders and adopted by the Communal Council on (date);

As put forward by the Communal Council, decides:

### **Chapter 1: TOURIST TAX**

#### **Art. 1** *Principle and Assignment*

1. The Commune (name of the Commune) collects a Tourist Tax.
2. The proceeds of the Tourist Tax must be used in the interest of taxable persons. They shall contribute in particular to the financing of an information and booking service, of local animation as well as of the creation and running of tourist, cultural or sports facilities.
3. It should not be used for the promotion of tourism, nor to finance the Commune's ordinary tasks.

#### **Art. 2** *Entities Subjected to the Tourist and Accommodation Tax*

1. Taxable persons are guests who spend the night in the Commune (name of the Commune) without being domiciled there.
2. The person who hosts taxable persons is responsible for the collection of the Tourist Tax from the latter and its payment to the Collecting Body, under penalty of being personally liable for its payment.

#### **Art. 3** *Exemptions*

Are exempt from the Tourist Tax:

- a. persons domiciled in the territory of the Commune (name of the Commune) in which the tax is collected.
- b. persons staying free of charge with a family member not him/herself subject to tax payment. The term of "family member", should be interpreted here as any direct descendants from live grandparents, plus any spouses still married to said descendants.
- c. children under 6 years of age.
- d. pupils, apprentices and students attending institutions recognized and subsidized by the State of Valais during the school term.
- e. patients and residents of hospitals, homes for the elderly, institutions for the disabled or of an officially recognized social nature (by the State of Valais).
- f. Persons enrolled in the Armed Forces or in Civil Defense, firefighters and persons enrolled in services of similar nature as long as they are considered to be on active duty.
- g. persons engaged in activities recognised and subsidised by the Youth and Sports movement.

**Art. 4** *Method of Charging the Tax*

1. The Tourist Tax is charged per overnight stay.
2. The taxable owner and user of the holiday home who him/herself occupies the dwelling, as well as the long-term tenant, pay the tax in the form of an annual flat rate.
3. Commercially rented holiday homes are not concerned by the annual flat rate.
4. All overnight stays subject to the Tourist Tax are included in the annual flat rate of the object, including occasional rentals.

**Art. 5** *Amount*

1. The amount of the Tourist Tax is set per overnight stay:
  - a. for hotels, at CHF (amount)
  - b. for holiday homes, guest rooms, AirBnB, at CHF (amount)
  - c. for mountain huts and refuges at CHF (amount)
  - d. for campsites at CHF (amount)
2. Children aged 6 to 16 pay half of the regular amount

**Art. 6** *Annual Flat Fee for Holiday Homes not Rented or Rented only Occasionally*

1. The annual flat fee is set per dwelling and according to its size.
2. It is set on the basis of the amount of the Tourist Tax in accordance with Art. 5 and in accordance with the average occupancy rate of (number of days) days in any of the categories below:
  - a. accommodation of up to 3- 3 ½ rooms CHF (amount)
  - b. accommodation of 3-3 ½ rooms CHF (amount)
  - c. accommodation of more than 3-3 ½ rooms CHF (amount)
3. The average occupancy rate is reduced to x days for dwellings which are only occasionally rented out by a domiciled owner.

**Art. 7** *Payment*

1. The Tourist Taxes payable must be paid at the same time as a final statement specifying the number of days spent at the dwelling has been transmitted to the visiting person, or within 30 days of the receipt of the invoice.
2. The transmission of the statement specifying the number of days spent (arrival form or other proof thereof) must in all cases be made available at the latest by (date for the winter season and date for summer season).

**Art. 8** *Ex officio Taxation*

1. Where the Payor of a Tax due does not provide on time the necessary information to determine the amount payable, then the Commune's Council proceeds to, after unsuccessful summons, to an automatic *ex officio* taxation. This taxation is equivalent to an enforceable judgment within the meaning of Article 80 of the Federal Debt Enforcement and Bankruptcy Act.
2. Automatic *ex officio* taxation must reflect as closely as possible the likely amount of the actual Tourist Tax due.
3. The payment of a fine does not exempt the Payor from any Tourist Taxes due.

## Chapter 2: ACCOMMODATION TAX

### Art. 9 *Principle and Assignment*

1. The Commune (name of the Commune) levies an Accommodation Tax.
2. The Accommodation Tax is used to finance the promotion of tourism.

### Art. 10 *Subject*

1. Is subject to the accommodation tax, any Landlord who hosts, for a fee, guests who are themselves subject to the Tourist Tax.
2. Anyone who does not rent his/her dwelling is required to notify the Collection Agency.

### Art. 11 *Method of Collection*

1. The Accommodation Tax is charged per overnight stay
2. The owner and user of a holiday home who uses his/her dwelling for him/herself and who occasionally rents out his/her dwelling pays the Accommodation Tax in the form of an annual flat tax (lump sum).

### Art. 12 *Amount*

1. The amount of the tax is CHF (amount).
2. It is reduced by half:
  - a. for children aged 6 to 16 years,
  - b. for guests to whom Article 20 of the Tourism Act applies.

### Art. 13 *Annual Flat Fee for Rented Holiday Homes*

1. The annual fee is charged per object and according to its size
2. It is calculated on the basis of the daily rate of the Accommodation Tax and on the average occasional rental of (number of overnight stays) in the category of accommodation as specified below:
  - a. accommodation of up to 3-3 ½ rooms CHF (amount)
  - b. accommodation of 3-3 ½ rooms CHF (amount)
  - c. accommodation of more than 3-3 ½ rooms CHF (amount)

## Chapter 3: MISCELLANEOUS PROVISIONS

### Art. 14 *Collection Agency*

The collection of Tourist and Accommodation Taxes is carried out by the Commune's Tourist Development Company.

### Art. 15 *Control*

The Collection Agency is empowered to carry out checks as to whether payments of the Tourist Tax and the Accommodation Tax are being made according to the established rules.

### Art. 16 *Statistics of Overnight Stays*

1. Holiday home owners who occasionally rent their home must notify the Collection Agency of the number of taxable overnight stays using a form provided by said Collection Agency. Notifications are to be provided to the Collection Agency on a semi-annual basis, by May 10<sup>th</sup> and by November 10<sup>th</sup> of each year.
2. All other hosts communicate the number of taxable overnight stays to the Collection Agency on a monthly basis, by the 10<sup>th</sup> of each subsequent month.

**Art. 17 Referral**

The provisions of the Cantonal Law on Tourism as well as the Ordinance regarding the Tourism Act also apply.

**Chapter 4: FINAL PROVISION****Art. 18 Entry into Force**

This Regulation shall enter into force on (date).

Thus decided by the Communal Council of the Commune of (name of the Commune) at the meeting of (date of meeting).

Thus adopted by the Primary Assembly of the Commune of (name of the Commune) on (date).

Thus approved by the Council of State on (date).

Commune (name of the Commune)

The President

The Secretary

## Comments Relating to the Directives on Pages 1 to 4

### Preamble

The content of this document is a recommendation from the Canton. It is based on a flat-rate collection of the tourist tax for holiday accommodation. The proposed model regulation is not binding, and Communes may also decide to apply different solutions.

In accordance with the transitional provisions of the Tourism Act of 8 May 2014, the new legal provisions are applicable in the event of a change in financing. The Commune must also prepare regulations to be decided by the Primary Assembly or the General Council.

### Chapter 1

#### Art 1 & 2

The proceeds of the Tourist Tax are used to finance tourist facilities and infrastructure that primarily benefit guests. It should be stated that the Tourist Tax is essentially a cost allocation tax. It constitutes a special tax, which is payable only by a specific group of persons, either to make that group contribute to particular costs they have caused, or thereby to take into account a particular advantage which has been granted to that particular group. There is an essential distinction in this with the rest of the community. It is a sufficient condition that those individuals deemed taxable derive some benefit from the services and touristic infrastructure provided by the Commune or even that an individual may potentially benefit from such services or touristic infrastructure. Ideally, in the case of a cost allocation tax, the circle of taxable persons is exactly the same as that of its beneficiaries (who caused the cost). However, a perfect identity is not possible in practice. From a legal point of view, the two circles must overlap to a justifiable degree. It is permissible to collect tourist taxes only on overnight guests, although the facilities financed by them actually also benefit excursionists and permanent residents. A system is unconstitutional only if a large proportion of taxable persons neither cause the incurred cost, nor benefit from the resulting services.

It is the guest spending the night in the Commune who is subject to this obligation and not the landlord (art. 17 Ltour). By “host” within the meaning of the Law, one refers to any natural person who, without being domiciled in the Commune, resides in the territory subjected to the authority of a recognised development company and has the opportunity to benefit from the local services for tourists. Not all weekly and short-term residents are considered as guests within the meaning of the law. Weekly residents are people who live in another Commune and who must stay in another Commune during the week for professional or training reasons. Short-term residents are foreign nationals who have been granted a professional permit by the Aliens Police for a specified period of time. With regard to one’s legal domicile, reference is made to its definition in the Civil Code.

The landlord (who is always the host) is not the taxable person, but he has the obligation to collect the tax from the host and to pay it to the designated Collection Agency. If the landlord does not do so, he becomes personally liable for the payment of the tourist tax.

This is called the substitute tax. Joint and several liability is therefore applicable (art. 21 STA).

**Art. 3**

These are the exemptions provided for by Cantonal legislation (Art. 18 Ltour) as well as the exemption provided for by the ordinance of November 6<sup>th</sup> 1996 concerning an exemption from the Tourist Tax. These exemptions apply throughout the Canton. The Commune may provide for other cases of exemptions (Art. 18 al. 2 Ltour)

**Art. 4**

It is proposed that the Commune introduce a generalised flat fee for holiday accommodations. Art. 21 para. 3 of the Tourism Act grants this possibility to Communes. It is recommended to collect this flat fee on holiday homes that are not rented, or which, in addition to personal use by its owner, are rented only occasionally (occasional renter).

The fixed price is charged per object. In the event of occasional rental, the lessor keeps the tourist taxes he/she collects from his/her guests. For commercially rented holiday homes, flat fees are not recommended.

We recommend to use the flat fee taking into account all the overnight stays which are subject to the Tourist Tax of a given dwelling, because this considerably simplifies the application of the tax. Thus, in addition to one's own use, occasional rental is also included in the computation.

Still valid, as in the past, but not recommended, is the solution of restricting the flat fee to one's own use (family flat fee package), i.e. to people living in the same household and financially dependent children or to one's own use and that of one's parents (relatives flat fee package). The circle of "parents" concerned by the flat fee must be set out in the regulation. For nights not included in the flat fee, the ordinary Tourist Taxes must be calculated in addition (collection per overnight stay), which causes an additional charge.

*Possible formulation of a "family flat fee" package:*

The annual package includes the overnight stays of the following persons:

- a. spouses and persons living in the same household as those mentioned in paragraph 2,
- b. other persons staying at the same time and in the same holiday accommodation as the persons mentioned in paragraph 2.

For nights not included in the package, the ordinary Tourist Tax must be paid.

*Possible formulation of a "relatives flat fee" package:*

The annual package includes the nights of the following persons:

- a. parents in direct lineage;
- b. half or direct siblings, biological or adopted children;
- c. spouses and persons living in the same household as those mentioned in paragraph 2,
- d. other persons staying at the same time and in the same holiday accommodation as the persons mentioned in paragraph 2.

For nights not included in the package, the ordinary tourist tax must be paid.

**Art. 5**

The amount of the Tourist Tax must be determined on the basis of the Commune's overall offer in terms of touristic services and infrastructure. The amount is to be fixed in such a way that the income generated can be used in a targeted way. A maximum rate cannot be set in absolute terms and in isolation from the actual conditions under which it is applied. Ultimately, it results from the general rules concerning the eligibility of a cost allocation tax. It is essential in this respect that the income is allocated in such a way that it primarily (ideally even exclusively) benefits the taxable persons, and therefore the guests, who benefit from the touristic services on offer. A second limitation results from inter-Cantonal double taxation agreements. The prohibition of double taxation does not apply to the Tourist Tax, provided that it respects the principle of "modicity", which is not precisely quantified in Federal Case Law. The prohibition of double taxation should not be in conflict if the infrastructure financed through the Tourist Tax is in fact limited to the infrastructure available to guests, which is also the result of the principle of cost recovery.

1. The Law allows for the geographical location of the housing to be taken into account. For this reason, we recommend fixing a lower amount for mountain huts and refuges. A lower amount may also be set for campsites, if their location justifies it.
2. Children aged 6 to 16 pay half of the amount. The Tourism Act provides that children between the ages of 6 and 16 pay only half of the expected amounts, for all specified amounts.

The Law allows for seasonal reductions. Communes can therefore decide to opt for different amounts for the winter and summer seasons, as well as for the off-season for the different types of accommodations. The start and end dates of the different seasons must be clearly specified in the regulations.

**Art. 6**

We recommend that the annual flat fee be used only for unlet or occasionally rented holiday homes, and not for commercially rented holiday homes. This is the reason for the restriction in the title of Article 6.

The mandatory annual flat fee is charged per dwelling. Its calculation takes into account the average occupancy rate of the corresponding type of accommodation in the holiday destination and according to objective criteria. Also in the case of a flat fee, the (actual or average statistical) overnight stay remains at the core of any computation. The computation of a flat fee needs to take into account the number of nights available in a given dwelling. These depend on the number of beds available. Since the latter can only be determined in fact with an excessive administrative burden and are subject to rapid change, a simple factor must be set that best reflects the potential occupation. It should be noted here that the beds are not always occupied by adults, but also partly by children under 6 years of age, who do not pay any tourist tax or by young people between 6 and 16 years of age who only have to pay half the tax. Similarly, some beds may sometimes remain unoccupied for a period of time. To take these circumstances into account fairly, it is proposed to lower the factor and not to choose a factor of 4 for a four-bed dwelling but a factor of 3. The following calculation method can be recommended:

- i. dwellings for up to 3 - 3 ½ rooms: generally 2 beds (Factor of 2)
- ii. dwellings of 3 - 3 ½ rooms: generally 4 beds (Factor of 3)
- iii. dwellings with more than 3 - 3 ½ rooms: generally 6 beds (Factor of 4)

The flat fee is calculated according to the following formula: amount of the tourist tax for an overnight stay x factor related to the number of bedrooms x number of nights. The Commune may also decide on other subdivisions or on other bases of calculation. However, the calculation basis chosen must be sufficiently related to the number of nights spent in the holiday accommodation.

For the calculation, the unit amount of the Tourist Tax retained is the same as that applied for the Tourist Tax per overnight stay. If this is not the same for all months, the average annual tourist tax per overnight stay is taken into account.

The average occupancy rate differs from one Commune to another and must be determined specifically by each Commune.

The Federal Court ruled in a decision that 37 nights per bed per annum in Arosa is not considered excessive, even though the Commune of Arosa does not use all of the allowed statistical overnight stays in the computation of its flat fee for the Tourist Tax (2P.194/2006).

In principle, a finer subdivision should be avoided, as in large dwellings with more than 4 rooms, the additional space is often used only to improve comfort and not to provide additional sleeping facilities. In some Communes, however, this may not be the case, which is why another subdivision may be justified in the latter.

With this wording, one takes into account that a domiciled holiday home owner is not subject to the Tourist Tax for his own stay in his holiday home.

#### **Art. 7**

It is the responsibility of a Commune's Tourism Company, or of the Commune itself, to determine at what time of the year the invoicing is done, and when the count of overnight stays must be transmitted. The Commune must develop a collection concept.

#### **Art. 8**

(Art. 43 Ltour and art. 16 Otour)

### **Chapter 2**

This chapter only concerns Communes that have not introduced a Tourism Promotion Tax. The Tourism Promotion Tax replaces the Accommodation Tax (art. 27 al.1 Ltour).

#### **Art. 9**

The person liable for the Accommodation Tax is the landlord who hosts guests for a fee.

#### **Art. 11**

The Law allows the introduction of an annual flat fee for the Accommodation Tax levied on rented holiday homes.

#### **Art. 12**

A maximum amount is set here, and amounts to CHF 1.-

**Art. 13**

It is appropriate to determine here the average number of days on which a holiday home in the given place is occasionally rented. There are holiday resorts where the share of occasional rentals compared to one's own occupancy is higher than in others. This number must be harmonized with the overall average occupancy rate of holiday homes (see art. 6 al. 2 of these standard regulations).

**Chapter 3****Art. 14**

The Commune can apply the regulation itself. However, as a general rule, there is an Office of Tourism (Development Company) or (this is new) potentially also a Tourism Limited Liability Company (in French, referred to as an "SA") in the Commune. We recommend that the Commune delegate the task of collecting the tax to the Development Company or, where it exists, to the Tourism Limited Liability Company.

**Art. 16**

This includes, for example, hotels or private individuals and agencies that commercially rent second homes.

**Chapter 4****Art. 18**

As a general rule, the Regulation shall enter into force at the time of approval. However, the Commune may also expressly provide in the regulation a specific date from which the regulation enters into force. Retroactive entry into force is only permitted in certain narrowly defined cases.