



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

GOVERNMENT NOTICE

	<i>Page</i>
No. 87 Promulgation of Additional Sales Duties Act, 1993 (Act 11 of 1993), of the National Assembly	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 87 1993

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 11 of 1993: Additional Sales Duties Act, 1993.

ACT

To provide for the imposition of an additional sales duty in respect of the sale of goods by manufacturers and the importation of goods by importers; and to provide for incidental matters.

(Signed by the President on 11 August 1993)

ARRANGEMENT OF SECTIONS

Introductory provisions

1. Definitions.

PART I

Administration

2. Act to be administered by the Permanent Secretary.
3. Exercise of powers and performance of duties.
4. Secrecy.

PART II

Additional sales duty

5. Levy of additional sales duty.
6. Exemptions.
7. Determination of gross value and dutiable value.
8. Date on which duty is deemed to have become payable.
9. Persons liable for duty.
10. Determination of duty payable in respect of importation of goods by registered importers.
11. Determination of duty payable in respect of goods sold by registered manufacturers.

PART III**Registration and duties of registered importers
and registered manufacturers**

12. Registration of registered importers and registered manufacturers.
13. Surrender of registration certificates for revision.
14. Validity of registration certificates.
15. Use of registration certificate for postponement purposes in respect of importation of goods.
16. Misuse of registration certificate.

PART IV**Returns, payments and assessments**

17. Duty period.
18. Returns, declarations and payments of duty.
19. Estimate of duty on failure of registered importers or registered manufacturers to furnish returns.
20. Assessments.

PART V**Objections and appeals**

21. Objections.
22. Appeals.
23. Burden of proof as to exemptions or non-liability.

PART VI**Payment and recovery of duty**

24. Manner in which duty shall be paid.
25. Penalty for failure to pay duty when due.
26. Recovery of duty.
27. Duty, interest or penalty not recoverable in respect of certain past transactions.
28. Correctness of estimate or assessment cannot be questioned.
29. Security for duty.

PART VII**Representatives**

30. Power to appoint agents.
31. Remedies of Permanent Secretary against agent or trustee.
32. Duties of persons acting in representative capacity.

PART VIII**Miscellaneous**

33. Refunds.
34. Registration of certain goods prohibited in certain circumstances.
35. Sale of goods by selling agents.
36. Arrangements for collection of duty on goods imported into Namibia.
37. Records.
38. Information.
39. Powers of entry and search.
40. Offences.
41. Reporting of unprofessional conduct.
42. Jurisdiction of courts.
43. Authentication and service of documents.
44. Arrangements to overcome difficulties or anomalies.
45. Regulations.
46. Amendments varying rates of duty or provisions of Schedule.
47. Notice during session of National Assembly of variation of rate of duty.
48. Act binding on State, and effect of certain exemptions from duties or taxes.
49. Short title and commencement.

SCHEDULE

Applicable additional sales duty rates

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Introductory provisions

Definitions.

1. In this Act, unless the context indicates otherwise -

“dutable value” means a dutiable value determined under section 7;

“duty” means the duty leviable under this Act;

“duty period” means a duty period contemplated in section 17;

“enterprise” means any enterprise of a continuing nature carried on in Namibia or partly in Namibia, in the ordinary course of which goods are imported into or manufactured in Namibia for sale;

“foreign-going aircraft” means any aircraft engaged in the transportation for reward of passengers or goods on any flight between an airport in Namibia and an airport in another country, and includes any aircraft engaged in such transportation on any intermediate flight between airports within Namibia if such intermediate flight is undertaken solely for the purpose of refuelling or taking on board passengers or goods or by reason of any emergency;

“foreign-going ship” means any ship or other vessel engaged in the transportation for reward of passengers or goods on any voyage between any port or ports in Namibia and -

(a) any port in another country; or

(b) any exploration or production platform which is situated outside the territorial waters of Namibia and which is used in the exploration for or the production of petroleum, as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991), if such ship or other vessel is stationed at such platform and is used solely in connection with such exploration or production;

“free-on-board value”, in relation to any imported goods, means the price charged in respect of such goods by the exporter plus all the costs and charges incidental to the sale in question and to placing such goods on board ship or on any vehicle ready for exportation and any agent’s commission, calculated on such price, costs and charges, in respect of such goods or, if in the opinion of the Permanent Secretary the free-on-board price charged in respect of any goods is not the normal free-on-board price at which such or similar goods would be sold by exporters in the same country of such or similar goods to any importer in Namibia under fully competitive conditions at the time of purchase of such goods, or, if no price is charged in respect of such goods, such value as the Permanent Secretary may, subject to any right of appeal provided in this Act, determine as the free-on-board value of those goods;

“goods” means corporeal movable things, including any share in the rights of ownership of any such thing, but excluding -

- (a) coins and notes which are under the Bank of Namibia Act, 1990 (Act 8 of 1990), legal tender;
- (b) any bill of exchange, bank draft, postal order, money order or marketable security;
- (c) any stamp, form or card which has a money value and has been sold or issued by the State for the payment of any tax or duty levied under any law for the benefit of the State Revenue Fund, except when, subsequent to its sale or issue, it is imported as a collector’s piece;
- (d) any coin, other than a gold coin, or note which is not legal tender in Namibia, except when imported as a collector’s piece;
- (e) gold coins minted outside Namibia of numismatic interest;
- (f) any postage stamp which has a money value and has been sold or issued for the payment of postage, except when, subsequent to its sale or issue, it is imported as a collector’s piece;

“Income Tax Act” means the Income Tax Act, 1981 (Act 24 of 1981);

“local authority” means the council of any area declared to be a municipality, town or village under section 3 of the Local Authorities Act, 1992 (Act 23 of 1992);

“manufacture” means the manufacture of goods through a process of manufacture, production or assembly whereby the format, appearance, content or composition of any product, material or item has been altered and whereby the value thereof has been enhanced, but excluding any such process which the Minister by notice in the *Gazette* may determine; and “manufacture” when used as a noun and “manufacturer” have corresponding meanings;

“Minister” means the Minister of Finance;

“Permanent Secretary” means the Permanent Secretary: Finance;

“person” includes the State, the estate of a deceased or insolvent person and any trust;

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);

“registered importer” means an importer who is the holder of a registration certificate;

“registered manufacturer” means a manufacturer who is the holder of a registration certificate;

“registration certificate” means a registration certificate issued under section 12;

“sale”, in relation to goods, means an agreement whereby a manufacturer agrees to sell, grant, donate or cede goods to another or exchange goods with another or otherwise to dispose of goods to another, including, without in any way limiting the scope of this definition, a sale subject to a suspensive condition and the sale of goods on credit, wheresoever such agreement is concluded;

“Sales Tax Act” means the Sales Tax Act, 1992 (Act 5 of 1992);

“this Act” includes the regulations.

PART I

Administration

Act to be administered by the Permanent Secretary.

2. The Permanent Secretary shall be responsible for carrying out the provisions of this Act.

Exercise of powers and performance of duties.

3. (1) The powers conferred and the duties imposed upon the Permanent Secretary by or under the provisions of this Act may be exercised or performed by the Permanent Secretary personally, or by any officer engaged in carrying out the said provisions under the control, direction or supervision of the Permanent Secretary.

(2) Any decision made and any notice or communication issued or signed by any such officer may be withdrawn or amended by the Permanent Secretary or by the officer concerned, but shall, until it has been so withdrawn, be deemed to have been made, issued or signed by the Permanent Secretary: Provided that a decision made by any such officer in the exercise of any discretionary power under the provisions of this Act shall not be withdrawn or amended after the expiration of two years from the date of the written notification of such decision or of a notice of assessment giving effect thereto, if all the material facts were known to the said officer when he or she made his or her decision.

(3) Any written decision made by the Permanent Secretary personally in the exercise of any discretionary power under the provisions of this Act shall not be withdrawn or amended by the Permanent Secretary if all the material facts were known to him or her when he or she made his or her decision.

(4) Where any decision has been given by the Permanent Secretary -

- (a) in respect of any person who has applied for registration under section 12 as a registered importer or registered manufacturer that such person shall or shall not be so registered; or
- (b) as to the nature of any transaction concluded by any person and such decision is subsequently withdrawn,

the withdrawal of the decision shall not affect the liability or non-liability of such person for the payment of any amount of duty payable or not payable in consequence of such decision in relation to any transaction concluded or event which occurred before the withdrawal of the decision, provided such decision was accepted by the said person and all the material facts were known to the Permanent Secretary when the decision was given.

Secrecy.

4. (1) A person employed in carrying out the provisions of this Act shall not -

- (a) disclose to any person any matter in respect of any other person that may in the exercise of his or her powers or the performance of his or her duties under the said provisions come to his or her knowledge;
- (b) permit any person to have access to any records in the possession or custody of the Permanent Secretary or the person so employed,

except in the exercise of his or her powers or the performance of his or her duties under this Act or by order of a competent court: Provided that the Auditor-General shall in the performance of his or her duties in terms of section 25 of the State Finance Act, 1991 (Act 31 of 1991), have access to all records and documents in the possession or custody of the Permanent Secretary or such person for the purposes of this Act.

(2) The provisions of subsection (1) shall not be construed as preventing the Permanent Secretary from -

- (a) using any information obtained by him or her in the exercise of his or her powers or the performance of his or her duties under this Act for the purposes of any other fiscal law administered by him or her;

ADDITIONAL SALES DUTIES ACT, 1993

(b) disclosing such information to the Commissioner for Customs and Excise if he or she is satisfied that it is required for the prevention or combating of the evasion of any duty, tax or levy imposed under any fiscal law administered by that Commissioner.

(3) The Commissioner for Customs and Excise or any other person employed in carrying out the provisions of any fiscal law administered by that Commissioner shall not disclose any information supplied to that Commissioner under subsection (2) to any person or permit any person to have access thereto, except in the exercise of his or her powers or the performance of his or her duties under such a law or by order of a competent court.

(4) Any person who contravenes the provisions of subsection (1) or (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART II**Additional sales duty**

Levy of additional sales duty.

5. Subject to the provisions of section 6, there shall be levied and paid, for the benefit of the State Revenue Fund, a duty (to be known as the additional sales duty) calculated at the rate applicable in terms of the Schedule on the dutiable value of -

- (a) goods imported into Namibia;
- (b) every sale of goods by a manufacturer who manufactured such goods in carrying on any manufacturing enterprise;
- (c) goods manufactured by any person in carrying on any manufacturing enterprise which are applied by such person -
 - (i) to his or her private use or consumption;

- (ii) for the use or consumption of any other person.

Exemptions.

6. The duty shall not be payable in respect of any dutiable value which, but for the provisions of this section, would be determinable in respect of the following, namely -

- (a) the sale or importation of electricity or gas when delivered to consumers -
 - (i) in the case of electricity, through mains, cables or lines;
 - (ii) in the case of gas, through mains or pipes;
- (b) the sale to or importation of fuel by -
 - (i) the S.W.A. Water and Electricity Corporation (Proprietary) Limited, TransNamib Limited, or any ministry of State or a local authority or a regional council if such fuel is to be used by the said Corporation, TransNamib, ministry, local authority or regional council directly in the generation of electricity; or
 - (ii) any producer of gas for consumption by the general public, if such fuel is to be used by such producer directly in the production of such gas;
- (c) the sale to or importation of specie or gold or silver bullion by the Bank of Namibia or any banking institution registered under the Banks Act, 1965 (Act 23 of 1965);
- (d) the sale of goods by the manufacturer thereof which constitute assets of his or her enterprise if, under the agreement whereby the sale is effected, such enterprise is, together with all the assets thereof disposed of to the purchaser as a going concern;

- (e) such goods imported into Namibia as are referred to in Schedule 5 of the Sales Tax Act, excluding goods as are referred to in paragraph I of Part A of that Schedule under item 405.04;
- (f) the sale or importation of any goods, excluding any vehicle other than any invalid carriage, designed, manufactured, adjusted or modified solely as aids or devices for the use of physically handicapped persons;
- (g) the sale to or the importation by -
 - (i) any person who is ordinarily resident in Namibia or to or by any company which is a domestic company for the purposes of the Income Tax Act, of -
 - (aa) any ship in respect of which the Permanent Secretary is satisfied that it will be a Namibian ship and will be used by such person or company solely as a foreign-going ship; or
 - (bb) any aircraft in respect of which the Permanent Secretary is satisfied that it will be used by such person or company solely as a foreign-going aircraft;
 - (ii) any organization, not formed for gain, of any boat in respect of which the Permanent Secretary is satisfied that it will be used by such organization solely for the purposes of rescue operations in or around the territorial waters or in the inland waters of Namibia;
- (h) the sale by the manufacturer of goods to any person or the importation of goods by any person which are to be used directly in a process of manufacture;
- (i) subject to the approval of the Minister granted in consultation with any other Minister whose ministry of State is concerned, the donation of goods by the manufacturer thereof or importation of goods donated to the State or any body approved by the Minister;

- (j) the sale by the manufacturer of goods -
 - (i) which are exported from Namibia by him or her;
 - (ii) to a person for direct export from Namibia of such goods by such person;
 - (iii) to be delivered by the manufacturer to the owner or charterer of any foreign-going ship or foreign-going aircraft for use in such ship or aircraft.

Determination of gross value and dutiable value.

7. (1) For the purposes of this Act a gross value shall, subject to the provisions of subsections (2) and (3), be placed on any sale of goods by a manufacturer or goods imported or applied as contemplated in section 5, and such gross value shall -

- (a) in relation to any such sale of goods, be the sum of all the amounts of the consideration accruing to the manufacturer in respect of such sale and any amount charged by him or her in respect of the delivery of such goods: Provided that where such sum includes any delivery charge which is charged by the manufacturer and shown as a separate item on any invoice, cash slip or other statement relating to the price charged for the goods under such sale, such sum shall be reduced by so much of the delivery charge so shown as is sufficient to reduce such sum to an amount equal to the full price which the manufacturer would normally have charged for the said goods if not delivered by him or her;
- (b) in relation to goods imported -
 - (i) where such goods are cleared or will be required to be cleared under the Customs and Excise Act, 1964 (Act 91 of 1964), and are cleared for home consumption, be the value thereof for customs duty purposes, plus any duty levied under the said Act in respect of the importation of such goods, plus 10 per cent of the said value; or

(ii) where such goods are not and will not be required to be so cleared, be the free-on-board value of the goods plus 10 per cent of the said value: Provided that if the price of such goods includes any delivery charge which is charged by the exporter and which is not shown as a separate item on any invoice, cash slip or other statement relating to the price so charged, the price of such goods as shown on such invoice, cash slip or other statement shall be deemed to be the free-on-board value of the goods; or

(c) in relation to goods referred to in paragraph (c) of section 5, be the market value of such goods.

(2) For the purposes of determining the amount of any consideration referred to in paragraph (a) of subsection (1) in respect of the sale of goods by a manufacturer -

(a) there shall be excluded from such consideration any finance charges charged by the manufacturer to a purchaser in respect of any outstanding balance owing by the purchaser under any agreement constituting a sale subject to a suspensive condition or a sale on credit;

(b) where any such consideration consists in whole or in part of -

(i) any asset other than money, the amount of such consideration shall, to the extent that it consists of such asset, be deemed to be the market value thereof; or

(ii) any benefit or advantage capable of being calculated in money, the amount of such consideration shall, to the extent that it consists of such benefit or advantage, be deemed to be the money value thereof; and

(c) no deduction shall be made in respect of any commission or other remuneration payable to an agent of the manufacturer or in respect of any expenditure incurred by the manufacturer.

(3) Where under any agreement or transaction treated as a sale of goods by a manufacturer for the purposes of this Act, goods, including goods consisting of catalogues or samples of goods offered for sale, are disposed of or the ownership therein passes or is to pass without the payment of any consideration to the manufacturer or for a consideration which is less than the market value of such goods, a consideration in respect of such sale shall be deemed to have accrued to the manufacturer equal in value to such market value.

(4) For the purposes of this Act the dutiable value of any sale, or goods imported or applied, as contemplated in section 5, shall be the gross value placed in accordance with the provisions of subsection (1) of this section on such sale, or goods, as the case may be.

Date on which duty is deemed to have become payable.

8. (1) For the purposes of this Act, the duty payable in respect of any dutiable value shall be deemed to have become payable -

(a) in the case of a sale of goods referred to in paragraph (b) of section 5, on the date of conclusion of the sale of such goods as contemplated in subsection (2);

(b) in the case of goods imported -

(i) which are not cleared or required to be cleared under the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964) -

(aa) if imported by rail, air, ship or post, on the date on which the goods are delivered to the addressee;

(bb) if imported by road, on the date on which the goods enter Namibia; or

(ii) which are cleared for home consumption under the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964), on the date on which they are so cleared; or

(c) in the case of goods referred to in paragraph (c) of section 5, on the date on which such goods are applied as contemplated in that paragraph.

(2) For the purposes of paragraph (a) of subsection (1) -

- (a) the date of conclusion of a sale of goods referred to in that paragraph shall be deemed to be the date on which delivery of the goods is effected under the sale or the date on which the consideration payable by the purchaser under the sale is paid in full, whichever date is earlier;
- (b) where any goods manufactured by a manufacturer are used by such manufacturer in the course of the erection, construction, assembly, installation or repair of any immovable or movable property referred to in paragraph 1(b) of Schedule 1 to the Sales Tax Act effected by such manufacturer for any other person, such goods shall be deemed to have been delivered to such person when such erection, construction, assembly, installation or repair has been completed or the contract price (disregarding any retention money) has become payable and the said person has taken possession of such property.

Persons liable for duty.

9. The duty shall be paid -

- (a) in the case of goods imported into Namibia, by the importer;
- (b) in the case of any sale of goods by a manufacturer, by such manufacturer; or
- (c) in the case of goods applied by a manufacturer for use or consumption as contemplated in section 5(c), by such manufacturer.

Determination of duty payable in respect of importation of goods by registered importers.

10. (1) Where duty in respect of the dutiable value of goods imported into Namibia has become payable by any registered importer during any duty period of that registered importer in respect of any enterprise carried on by him or her, his or her liability for such duty shall be calculated for such period and in relation to such enterprise in accordance with the formula -

$$\frac{r}{100} \times t,$$

in which formula -

“r” is the rate of additional sales duty, expressed as a percentage, which in terms of section 5 was in force on the last day of the said period; and

“t” is the amount determined under subsection (2).

(2) The amount represented by “t” in the formula referred to in subsection (1) shall be the aggregate of the dutiable values referred to in section 7(4) in respect of which duty has become payable by the registered importer during the duty period in connection with his or her enterprise.

Determination of duty payable in respect of goods sold by registered manufacturers.

11. (1) Where duty has become payable by any registered manufacturer during any duty period of that registered manufacturer in respect of any goods sold in the carrying on of any enterprise, his or her liability for such duty shall be calculated for such period and in relation to such enterprise in accordance with the formula -

$$\frac{r}{100 + r} \times t,$$

in which formula -

“r” is the rate of additional sales duty, expressed as a percentage, which in terms of section 5 was in force on the last day of the said period; and

“t” is the amount determined under subsection (2).

(2) The amount represented by “t” in the formula referred to in subsection (1) shall be the aggregate of -

- (a) the dutiable values referred to in section 7(4) in respect of which duty has become payable by the registered manufacturer during the duty period in connection with his or her enterprise; and
- (b) any amount recovered by him or her during the duty period in respect of any amount allowed as a deduction under paragraph (ii) in respect of an irrecoverable debt or under paragraph (iii) in respect of a cash counter shortage, whether the amount so allowed as a deduction was allowed in respect of the duty period or any previous duty period,

less the sum of -

(i) any amount which has in relation to the registered manufacturer's enterprise become repayable by, or no longer payable to, him or her during the duty period -

(aa) in respect of the cancellation or termination of any sale of goods by the registered manufacturer to the purchaser, if the consideration payable by the purchaser in respect of such sale;

(bb) by way of a reduction of the consideration payable by the purchaser in respect of any sale of goods in consequence of any defect in the goods so sold if the full amount of such consideration;

(cc) by way of a reduction of the consideration payable by the purchaser in consequence of a discount granted by the registered manufacturer, if a credit note or other documentary evidence satisfactory to the Permanent Secretary in respect of such discount is issued by such registered manufacturer and the full amount of such consideration; or

(dd) in consequence of a calculation or accounting error, if such amount,

has been included in any dutiable value taken into account under this subsection in respect of the said enterprise, whether for the duty period or any previous duty period;

(ii) the amount of any debt due to the registered manufacturer in relation to his or her enterprise, to the extent to which it is proved to the satisfaction of the Permanent Secretary to have become irrecoverable and has been written off during the duty period, provided such amount has been included in any dutiable value taken into account under this subsection in respect of the said enterprise, whether for the duty period or any previous duty period; and

- (iii) the amount of any cash counter shortage occurring during the duty period as a result of pilferage or the giving of incorrect change, if that amount has been included in the dutiable values taken into account under this subsection.

(3) Where the duty period in relation to an enterprise is a period referred to in the proviso to paragraph (a) of subsection (1) of section 17 ending on the date of the registered manufacturer's death or on the day before the date on which the disposal of a part interest in the enterprise takes effect or on the day before the date from which a partnership in respect of the enterprise is dissolved and the Permanent Secretary is satisfied that the enterprise has been or will be continued by the registered manufacturer's heir or by a beneficiary in his or her estate to whom such enterprise is transferred or is to be transferred or by the person or persons who take over the enterprise by reason of the said disposal or dissolution of partnership, the Permanent Secretary may, if requested by such heir, beneficiary, person or persons, as the case may be, direct that, subject to any conditions which the Permanent Secretary may impose, the provisions of this section shall be applied in respect of the said enterprise as though no change in ownership of the enterprise had occurred.

PART III

Registration and duties of registered importers and registered manufacturers

Registration of importers
and manufacturers.

12. (1) Every person who on or at any time after the date of commencement of this Act carries on or commences to carry on an enterprise and who wishes to be registered as a registered importer or registered manufacturer for the purposes of this Act, may apply in writing to the Permanent Secretary for such registration and furnish the Permanent Secretary with a declaration, in such form as the Permanent Secretary may prescribe, which shall contain such information relating to the enterprise as may be required by the Permanent Secretary for the purposes of such registration.

(2) Where it appears to the Permanent Secretary that a person should be registered in respect of any enterprise or

ADDITIONAL SALES DUTIES ACT, 1993

business carried on by him or her, the Permanent Secretary shall, subject to subsection (3), upon receipt of a declaration furnished to him or her in terms of subsection (1), register the person in question as a registered importer or registered manufacturer in respect of his or her enterprise and issue to such person a registration certificate, in such form as the Permanent Secretary may determine.

(3) The Permanent Secretary may refuse to register a person in accordance with subsection (2) if he or she has reason to believe that the person concerned -

- (a) is not registered as a vendor in respect of the enterprise concerned under section 12 of the Sales Tax Act;
- (b) has no fixed place of abode or business in Namibia;
- (c) does not, in accordance with section 37, keep proper accounting records in Namibia relating to the enterprise carried on by him or her;
- (d) has not opened a banking account with any bank, building society or other similar institution for the purposes of the enterprise carried on by him or her; or
- (e) has previously been registered as a registered importer or registered manufacturer in respect of any enterprise but failed to perform his or her duties under this Act in relation to such enterprise.

(4) If the Permanent Secretary under subsection (3) refuses to register a person as a registered importer or registered manufacturer he or she shall give such person written notice of such refusal.

(5) Any registration certificate which is issued under subsection (2) on the strength of a declaration in the name of an enterprise shall, for the purposes of this Act, be deemed to have been issued to the person stated in the declaration to be the owner of the enterprise.

(6) Every person who has furnished a declaration referred to in subsection (1) and has subsequently -

- (a) changed his or her address;
- (b) changed the name of any enterprise in respect of which he or she was registered under subsection (2);
- (c) ceased to carry on any enterprise in respect of which he or she was registered under subsection (2); or
- (d) ceased to be registered as contemplated in paragraph (a) of subsection (3),

shall within 14 days after the occurrence of such event notify the Permanent Secretary in writing of such event and furnish particulars in regard thereto.

(7) For the purposes of paragraph (c) of subsection (3), no person shall be deemed to keep proper accounting records unless such records discern between goods acquired by such person in Namibia and goods imported by him or her.

(8) Any person who -

- (a) fails to notify the Permanent Secretary of any event as contemplated in subsection (6); or
- (b) in any declaration furnished by him or her under subsection (1) makes any statement or gives any information knowing the same to be incorrect,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Surrender of registration certificates for revision.

13. (1) Whenever it appears to the Permanent Secretary that the particulars reflected on any registration certificate ought to be revised -

- (a) the Permanent Secretary may by a notice in writing request the person to whom such certificate has been issued to furnish the Permanent Secretary, within the period specified in the notice or such further period as the Permanent Secretary may allow, with such information as the Perma-

ment Secretary may require for the purposes of the revision of such certificate and the issue of a new certificate;

- (b) the Permanent Secretary shall, if such information has not been so furnished within the required period or upon the issue of the new certificate, by a like notice request that person to surrender, within the period specified in the notice or such further period as the Permanent Secretary may allow, the first-mentioned certificate.

(2) Any person who fails to furnish any information or surrender any registration certificate in accordance with a request by the Permanent Secretary under subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Validity of registration certificates.

14. (1) Any registration certificate issued to any person in respect of any enterprise shall be valid only in respect of that enterprise and shall, subject to cancellation thereof under this section, remain valid -

- (a) for so long as that person continues to carry on such enterprise;
- (b) until the certificate is cancelled; or
- (c) until the expiration of the period referred to in section 13(1) allowed for the surrender of the certificate under that section.

(2) Where -

- (a) an enterprise is ceased to be carried on;
- (b) unless the provisions of subsection (3) apply, an enterprise is disposed of by the owner thereof or the owner of an enterprise has died or his or her estate has been sequestrated;
- (c) the owner of an enterprise ceases to be registered as contemplated in paragraph (a) of section 12(3),

any registration certificate in respect of such enterprise shall, within 14 days after any event contemplated in paragraph (a), (b) or (c), be surrendered to the Permanent Secretary for cancellation.

(3) Where -

- (a) the owner of an enterprise has died and the executor of his or her estate continues to carry on the enterprise while the estate is being administered;
- (b) the estate of the owner of an enterprise has been sequestrated and the trustee of the insolvent estate continues to carry on the enterprise while the estate is being liquidated;
- (c) the owner of any enterprise becomes subject to a legal disability preventing him or her from managing his or her affairs and the guardian or curator of such owner continues to carry on such enterprise; or
- (d) the owner of an enterprise enters into a partnership in respect of the enterprise or, if the owner is a partnership, such partnership is dissolved and a new partnership which includes a member of the dissolved partnership takes over the enterprise,

such executor, trustee, guardian or curator or the partnership so entered into or such new partnership, as the case may be, shall in respect of the enterprise in question furnish the Permanent Secretary with a declaration in the form of the declaration referred to in section 12(1), and in such event the registration certificate issued by the Permanent Secretary to the said owner in respect of such enterprise shall, until it is cancelled by the Permanent Secretary, be deemed to have been issued to such executor, trustee, guardian or curator, in his or her capacity as such, or to such partnership or new partnership, as the case may be, in respect of the said enterprise.

(4) Where any registered importer or registered manufacturer -

- (a) repeatedly fails or neglects to pay any duty due by him or her as and when required by this Act;

(b) repeatedly fails or neglects to furnish any declaration or return as and when required by this Act or fails to surrender in terms of subsection (2) a registration certificate; or

(c) is found guilty of an offence under section 16(2),

the Permanent Secretary may, after giving written notice of at least 10 days to the registered importer or registered manufacturer of his or her intention to cancel any registration certificate issued to the registered importer or registered manufacturer, cancel such certificate, and in such case such certificate shall on demand by the Permanent Secretary be surrendered by any person in possession thereof to the Permanent Secretary, and, if the certificate is not so surrendered, the Permanent Secretary may seize the certificate.

(5) The cancellation or seizure of any registration certificate in terms of subsection (4) shall not absolve the person concerned from the performance of his or her duties under this Act.

(6) Where the Permanent Secretary -

(a) has cancelled any registration certificate as contemplated in subsection (4) of this section or section 29(3) held by any person; or

(b) has subsequent to such cancellation reinstated the registration of the person concerned,

the Permanent Secretary shall, notwithstanding the provisions of section 4, by notice in the *Gazette*, publish the name and address of such person or of his or her enterprise, the registration number appearing on such registration certificate and the fact that such certificate has been cancelled or that such registration has been reinstated, as the case may be.

(7) Notwithstanding section 4, where the Permanent Secretary is in terms of subsection (6) required to publish a notice in the *Gazette*, he or she may before or after publishing such notice issue a written advice containing the information published or to be published in the said notice to any person whom he or she has reason to believe transacts business with the person to whom such notice relates, and such person receiving such advice shall have regard thereto and be entitled to rely thereon.

Use of registration certificate for postponement purposes in respect of importation of goods.

15. (1) Where any registered importer claims that the payment of duty is to be postponed under section 18(1) in respect of the importation of any goods -

- (a) the Controller of Customs and Excise concerned or any person concerned who is an officer as defined in the Customs and Excise Act, 1964 (Act 91 of 1964), shall satisfy himself or herself that the said importer holds a valid registration certificate;
- (b) in relation to such importation, the said Controller or officer shall endorse, or request the importer to endorse, such additional sales duty registration number on a customs document relating to such importation.

(2) Where any importer claims any postponement as contemplated in subsection (1), he or she shall satisfy the Controller or officer referred to in paragraph (a) of that subsection that he or she holds a valid registration certificate -

- (a) by producing such registration certificate; or
- (b) by giving to such Controller or officer a copy of such registration certificate,

and where such importer acts in terms of the provisions of paragraph (b), he or she shall be deemed to have utilized a registration certificate for the purposes of section 16(2).

Misuse of registration certificate.

16. (1) Where any person has imported into Namibia without payment of duty goods the dutiable value of which was subject to duty which should have been borne by him or her, the duty which became payable and any interest and any penalty payable in respect of the late payment of such duty shall be recoverable from that person.

(2) Any person who with intent to avoid bearing duty payable in respect of goods which are or may be imported by him or her -

- (a) falsely represents that he or she is a registered importer;
- (b) falsely represents that he or she is the holder of a registration certificate which was issued to any other person;

- (c) alters or writes on any registration certificate issued to him or her;
- (d) utilizes any registration certificate issued to him or her in respect of any enterprise for any purposes other than the purposes of such enterprise; or
- (e) makes use of any registration certificate issued to him or her which is no longer valid,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART IV

Returns, payments and assessments

Duty period.

17. (1) The duty periods applicable under this Act to any enterprise carried on by a registered importer or registered manufacturer shall be -

- (a) the periods ending on the last day of each month or on a day within seven days before or after such last day or on such other day as the Permanent Secretary, having regard to the circumstances of the case, may approve: Provided that where a registered importer or registered manufacturer dies or his or her estate is sequestrated or he or she ceases to carry on the enterprise or he or she disposes of the enterprise as a whole or any part interest therein or, where the registered importer or registered manufacturer is a partnership, the partnership is dissolved, whether by operation of law or otherwise, or his or her registration certificate has been surrendered for cancellation under section 14(4) or (8), there shall, unless the Permanent Secretary otherwise directs, be a duty period ending on the date of the registered importer's or registered manufacturer's death or the date of the sequestration of the registered importer's or registered manufacturer's estate or the date on which the registered importer or registered manufacturer ceases to carry on the

enterprise or on the day before the date on which the disposal of the enterprise or the interest therein takes effect or on the day before the date from which the partnership is dissolved or the date on which the registered importer's or registered manufacturer's registration certificate is surrendered for cancellation; or

(b) such other period as the Permanent Secretary, having regard to the circumstances of the case, may determine.

(2) For the purposes of subsection (1) "month" means any of the 12 portions into which any calendar year is divided.

Returns, declarations and payments of duty.

18. (1) Every registered importer or registered manufacturer who carries on any enterprise in relation to which duty is required to be calculated in the manner prescribed by section 10 or 11 shall, within the period ending on the twentieth day of the first month commencing after the end of a duty period relating to such enterprise or, where such duty period ends on or after the first day and before the twentieth day of a month, within the period ending on such twentieth day -

- (a) furnish the Permanent Secretary with a return, in such form as the Permanent Secretary may prescribe, of the dutiable values in respect of which duty has become payable by the registered importer or registered manufacturer during such duty period and containing such information as may be required; and
- (b) calculate such duty in accordance with the said sections and pay such duty to the Permanent Secretary:

Provided that the Permanent Secretary may, having regard to the circumstances of any case, extend the period within which such duty is to be paid.

(2) The return referred to in subsection (1) shall be furnished in respect of each duty period, whether or not duty is payable in respect of such period.

(3) Where duty in respect of any dutiable value has become payable and such duty is not required to be

calculated in the manner prescribed by section 10 or 11, the person liable for the payment of such duty shall, not later than the date on which the duty is payable in terms of section 8 -

- (a) furnish the Permanent Secretary with a declaration (in such form as the Permanent Secretary may prescribe) containing such information as may be required; and
- (b) calculate the duty on such dutiable value at the rate of duty in force and pay such duty to the Permanent Secretary:

Provided that the Permanent Secretary may, having regard to the circumstances of any case, and on such conditions as may be determined by him or her, fix a later date on which such duty is to be paid.

(4) For the purposes of subsection (1) "month" means any of the 12 portions into which any calendar year is divided.

(5) Any registered importer or registered manufacturer who fails to comply with the provisions of subsection (1) or (2), or any person liable for the payment of duty under the provisions of subsection (3) who fails to comply with the provisions of that subsection, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Estimate of duty on failure of registered importers or registered manufacturers to furnish returns.

19. (1) Where any registered importer or registered manufacturer has failed to furnish a return which he or she is required to furnish for any duty period in terms of section 18(1) or (2), the Permanent Secretary may estimate the duty which, in his or her opinion, is probably payable by such registered importer or registered manufacturer in respect of the said period.

(2) The Permanent Secretary shall notify the said registered importer or registered manufacturer of the amount of duty so estimated and the registered importer or registered manufacturer shall within such period as the Permanent Secretary may stipulate, pay such amount to the Permanent Secretary or furnish the said return and pay to the Permanent Secretary the correct amount of duty and any penalty that has become payable under section 25.

(3) If the said registered importer or registered manufacturer fails to comply with the provisions of subsection (2) the amount of duty estimated by the Permanent Secretary in terms of subsection (1) shall be deemed to be a debt due to the State and shall be recoverable from the registered importer or registered manufacturer in the manner provided in section 26.

(4) In the event of the registered importer or registered manufacturer furnishing the said return or an assessment of the duty payable having been made under section 20 the estimate made by the Permanent Secretary in terms of subsection (1) of this section shall lapse and any amount of duty paid or recovered in respect of the duty period shall be deducted from the amount of duty finally determined by the Permanent Secretary to be payable in respect of the duty period in question, any amount paid in excess being refundable to the registered importer or registered manufacturer and any amount shortpaid being recoverable from him or her.

Assessments.

20. (1) Where -

- (a) any person fails to furnish any return or declaration which he or she is required to furnish under section 18;
- (b) the Permanent Secretary is not satisfied with any return or declaration furnished by any person under that section; or
- (c) the Permanent Secretary has reason to believe that any person has become liable for the payment of any amount of duty but has not paid such amount,

the Permanent Secretary may make an assessment of the amount of duty payable by such person notwithstanding the fact that the Permanent Secretary may have made an estimate of such duty under section 19.

(2) Subject to the provisions of subsection (3), the Permanent Secretary -

- (a) may in making an assessment under subsection (1), estimate the amount upon which the duty is payable; and

(b) shall give the person concerned written notice of such assessment stating the amount upon which duty is payable, the amount of duty payable and the amount of any penalty payable on such duty in terms of section 25.

(3) Where the Permanent Secretary is satisfied that a failure by the person concerned or any other person under the control of that person to furnish an accurate return or declaration or to pay any amount of duty due was not due to an intent to avoid or postpone liability for the payment of duty or the Permanent Secretary is partly so satisfied, he or she may in such assessment remit such penalty in whole or in part.

(4) The Permanent Secretary shall, in the notice of assessment referred to in subsection (2), give notice to the person upon whom it has been made that any objection to such assessment shall be lodged or be sent so as to reach the Permanent Secretary within 21 days after the date of such notice.

PART V

Objections and appeals

Objections.

21. (1) Any person who is dissatisfied with any assessment made upon him or her by the Permanent Secretary under the provisions of section 20 or of the Permanent Secretary's refusal to authorize a refund under the provisions of section 33(1), may lodge an objection with the Permanent Secretary.

(2) Every objection shall be in writing and shall specify in detail the grounds upon which it is made.

(3) No objection shall be considered by the Permanent Secretary which is not delivered at his or her office or posted to him or her in sufficient time to reach him or her within 21 days after the date of the notice of the assessment or of the Permanent Secretary's refusal to authorize a refund under the provisions of section 33(1) against which the objection is lodged, unless the Permanent Secretary is satisfied that reasonable grounds exist for delay in lodging the objection.

(4) After having considered the objection, the Permanent Secretary may -

- (a) alter or reduce the assessment;
- (b) authorize a refund of any duty, penalty or interest paid; or
- (c) disallow the objection,

and shall send the person who made the objection written notice of such alteration, reduction or disallowance, as the case may be.

(5) Where no objection is made to any assessment or the Permanent Secretary's refusal to authorize a refund under the provisions of section 33(1) or where any objection has been disallowed or withdrawn or an assessment has been altered or reduced, such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

Appeals.

22. (1) Any person entitled to make an objection in terms of subsection (1) of section 21, who is dissatisfied with any decision of the Permanent Secretary as notified to him or her in terms of subsection (4) of that section, may appeal against such decision to the special court constituted under the provisions of section 73 of the Income Tax Act.

(2) Every notice of appeal shall be in writing and be lodged with the Permanent Secretary within a period of 30 days after the date of the notice mentioned in section 21(4).

(3) No notice of appeal shall be of any force or effect unless it is delivered at the office of the Permanent Secretary, or posted to the Permanent Secretary in sufficient time to reach him or her, on or before the last day of the period allowed for the lodging of such notice, except if the Permanent Secretary is satisfied that reasonable grounds exist for any delay in lodging such notice: Provided that any decision of the Permanent Secretary in the exercise of his or her discretion under this subsection shall be subject to objection and appeal.

(4) At the hearing of any appeal under this section -

- (a) the appellant shall be limited to the grounds stated in the notice of objection referred to in section 21(2), unless the Permanent Secretary agrees to the amendment of such grounds, but the special court may, on good cause shown at the hearing of the appeal, permit the appellant to amend such notice of objection within a reasonable period, subject to such conditions with regard to any postponement of the hearing of the appeal and costs as the special court may deem fit;
- (b) the special court shall inquire into and consider the matter and may direct the Permanent Secretary to authorize a refund or order the assessment under appeal to be altered, reduced or confirmed, or, if it thinks fit, in the case of an assessment, refer such assessment back to the Permanent Secretary for further investigation and assessment.

(5) The provisions of subsections (8), (9), (10), (11), (12), (14), (15), (16) and (17) of section 73, and of sections 74, 75 and 76 of the Income Tax Act and any regulation made under that Act relating to any appeal to the special court referred to in subsection (1) of this section and to any appeal in terms of the said section 76, shall *mutatis mutandis* apply with reference to any appeal under this section.

(6) The obligation to pay and the right to receive and recover any duty chargeable under this Act shall not, unless the Permanent Secretary so directs, be suspended by any appeal or pending the decision of a court of law under section 76 of the Income Tax Act, as applied by subsection (5) of this section, but if any assessment is altered on appeal or in conformity with any such decision or any decision by the Permanent Secretary to concede the appeal to the special court or such court of law a due adjustment shall be made, amounts paid in excess being refunded with interest at the rate of 15 per cent per annum calculated from the date proved to the satisfaction of the Permanent Secretary to be the date on which such excess was received and amounts shortpaid being recoverable with penalty calculated as provided in section 25(1).

Burden of proof as to exemptions or non-liability.

23. The burden of proof that any person is in respect of any amount exempt from or not liable to the duty chargeable under this Act shall be upon the person claiming such exemption or non-liability, and upon the hearing of any appeal against any decision of the Permanent Secretary, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

PART VI

Payment and recovery of duty

Manner in which duty shall be paid.

24. (1) Subject to the provisions of subsections (2), (3) and (4) of this section and the provisions of section 36, the duty payable under this Act shall be paid in full within the time allowed in terms of, or on the date contemplated in, section 18, as the case may be.

(2) Where the Permanent Secretary is satisfied that due to circumstances beyond the control of the person liable for the payment of the duty the amount of duty due cannot be accurately calculated within the time allowed in terms of, or at the date contemplated in, section 18, as the case may be, the Permanent Secretary may in his or her discretion and subject to such conditions as he or she may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such duty.

(3) Such payment shall be deemed to be a provisional payment in respect of the liability of the said person for such duty, as finally determined, and when such liability is so determined any amount paid in excess shall be refundable to such person and any amount shortpaid shall be recoverable from him or her.

(4) Interest shall -

(a) be paid by such person at the rate of 15 per cent per annum on any such shortpaid amount in respect of the period reckoned from the day after the date by which the duty should have been paid in full to the date of payment of such shortpaid amount;

ADDITIONAL SALES DUTIES ACT, 1993

- (b) in addition to any penalty payable in terms of the provisions of section 25, be paid by the person referred to in that section on any amount in respect of which he or she failed to make the payment referred to in that section reckoned from the day after the date by which such amount should have been paid in full to the date of payment of such amount.

Penalty for failure to pay
duty when due.

25. (1) (a) If any person who is liable for the payment of duty and is required to make such payment in the manner prescribed in subsection (1) of section 18, fails to pay any amount of such duty within the period allowed for the payment of such duty under the said subsection, or within such extended period as the Permanent Secretary may allow in terms of the proviso to that subsection, he or she shall, in addition to such amount of duty and any interest payable on such amount in terms of section 24(4), pay a penalty equal to 10 per cent of such amount for each month or part thereof reckoned from the first day of the month during which the first-mentioned period ended to the date of payment of the said amount, but such penalty shall not exceed such amount of duty.

- (b) For the purposes of paragraph (a) "month" means any of the 12 portions into which any calendar year is divided.

(2) If any person who is liable for the payment of duty and is required to make such payment in the manner prescribed in subsection (3) of section 18, fails to pay any amount of such duty on the date contemplated in that subsection, he or she shall, in addition to such amount of duty and any interest payable on such amount in terms of section 24(4), pay a penalty equal to 10 per cent of such amount for each month or part thereof reckoned from the said date to the date of payment of the said amount, but such penalty shall not exceed such amount of duty.

(3) Where the Permanent Secretary is satisfied that the failure on the part of any person to make payment of duty when required to do so by this Act was not due to an intent to avoid or postpone liability for the payment of duty, he or she may remit in whole any penalty payable in terms of this section.

(4) The penalty referred to in subsection (1) or (2) shall not be payable in any case where the Permanent Secretary has in terms of section 24(2) agreed to accept payment of a deposit by any person of an amount equal to the estimated liability of such person for the duty in question.

Recovery of duty.

26. (1) Any amount of duty, interest or penalty payable in terms of this Act shall, when it becomes due or is payable, be a debt due to the State and shall be recoverable by the Permanent Secretary in accordance with the provisions of subsections (2), (3) and (4).

(2) If any person fails to pay any duty, interest or penalty payable in terms of this Act, when it becomes due or is payable by him or her, the Permanent Secretary may file with the clerk or registrar of any competent court a statement certified by him or her as correct and setting forth the amount thereof so due or payable by that person, and such statement shall thereupon have the effect of, and any proceedings may be taken thereon as if it were a civil judgement given in that court in favour of the Permanent Secretary for a liquid debt of the amount specified in the statement.

(3) The Permanent Secretary may by notice in writing addressed to such clerk or registrar, withdraw the statement referred to in subsection (2) and such statement shall thereupon cease to have any effect.

(4) The Permanent Secretary may institute proceedings for the sequestration of the estate of any person and shall for the purposes of such proceedings be deemed to be the creditor in respect of any duty, interest or penalty payable by such person under the provisions of this Act.

(5) Notwithstanding anything contained in the Magistrate's Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(6) Notwithstanding the withdrawal of a statement by the Permanent Secretary under subsection (3), the Permanent Secretary may institute proceedings afresh under subsection (2) in respect of any duty, interest or penalty referred to in the withdrawn statement.

Duty, interest or penalty not recoverable in respect of certain past transactions.

27. Notwithstanding anything to the contrary in this Act -

- (a) no amount of duty, interest or penalty otherwise properly chargeable under this Act, shall be recoverable by the Permanent Secretary in respect of any past transaction or event if, in terms of a general ruling by the Permanent Secretary which had not been withdrawn by him or her at the time of the conclusion of such transaction or the happening of such event, no duty, interest or penalty was payable in respect of such transaction or event;
- (b) where the Permanent Secretary has, in any case of doubt and at a time when there was no applicable general ruling, given a particular ruling to the effect that any exemption provided for in this Act is not applicable in respect of or in relation to any transaction of a particular nature concluded by a particular person, no amount of duty, interest or penalty otherwise properly chargeable under this Act against that person in respect of or in relation to any other transaction of the said nature concluded by that person prior to the date of such particular ruling, shall be recoverable by the Permanent Secretary from that person if the Permanent Secretary is satisfied -
 - (i) that the failure by the said person to pay the said duty was not due to an intent on his or her part to avoid payment of the duty;
 - (ii) that the said person, in failing to pay the said duty, acted in good faith and on the assumption that an exemption was in fact applicable; and
 - (iii) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person;
- (c) no amount of duty, interest or penalty otherwise properly chargeable under this Act, shall be recoverable by the Permanent Secretary in respect of or in relation to any past transaction or event after the expiration of a period of five years from the date of conclusion of the transaction or

the happening of the event in relation to which the said amount was payable, if the Permanent Secretary is satisfied -

- (i) that the failure to pay the said duty was not due to an intent to avoid payment of the duty;
- (ii) that the person responsible for payment of the said duty acted in good faith and on an assumption that an exemption was in fact applicable; and
- (iii) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person.

Correctness of estimate or assessment cannot be questioned.

28. It shall not be competent for any person in proceedings in connection with any statement filed in terms of section 26(2) to question the correctness of any estimate or assessment upon which such statement is based, notwithstanding that the amount of such estimate is disputed or that objection and appeal may have been lodged against such assessment.

Security for duty.

29. (1) The Permanent Secretary may, in the case of any registered importer or registered manufacturer who has been convicted of any offence under this Act or who has repeatedly failed to pay amounts of duty due by him or her or to carry out other obligations imposed upon him or her by this Act, by written notice to such registered importer or registered manufacturer require him or her, within such period as the Permanent Secretary may allow, to furnish to or deposit with the Permanent Secretary security for the payment of any duty or penalty which has or may become payable by the registered importer or registered manufacturer under this Act.

(2) Such security shall be of such nature, for such amount and in such form as the Permanent Secretary may direct.

(3) If such registered importer or registered manufacturer refuses or neglects to comply with such notice the Permanent Secretary may, in the manner provided in section 14, cancel any registration certificate issued to the registered importer or registered manufacturer.

(4) Where the Permanent Secretary has directed that such security shall be in the form of a cash deposit and the registered importer or registered manufacturer fails to make such deposit within the period allowed by the Permanent Secretary, the amount of such deposit shall be recoverable from the registered importer or registered manufacturer under the provisions of section 26 as though such amount were an amount of duty due by the registered importer or registered manufacturer.

(5) Where such security is in the form of a cash deposit, the amount deposited may be set off in whole or in part by the Permanent Secretary against any liability of the registered importer or registered manufacturer for any duty, penalty or interest under this Act or such amount, or the balance thereof remaining after deducting any portion thereof which has been set off as aforesaid, may be repaid by the Permanent Secretary to the registered importer or registered manufacturer when the Permanent Secretary is satisfied that the security is no longer required.

PART VII

Representatives

Power to appoint agents.

30. The Permanent Secretary may, if he or she thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest or penalty payable by such other person under this Act and may be required to make payment of such amount from any moneys which may be held by him or her for or be due by him or her to the person whose agent he or she has been declared to be.

Remedies of Permanent Secretary against agent or trustee.

31. The Permanent Secretary shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as fully and effectually as he or she would have against the property of any person liable to pay any duty, interest or penalty chargeable under this Act.

Duties of persons acting in representative capacity.

32. (1) The person responsible for performing the duties imposed by this Act -

- (a) on any company shall be the public officer thereof contemplated in section 93 of the Income Tax Act or, in the case of any company which is placed in liquidation, the liquidator thereof;
- (b) on the State shall be any person responsible for accounting for the receipt and payment of moneys under the provisions of any law or for the receipt and payment of public funds or of funds appropriated by Parliament;
- (c) on a local authority or a regional council or any corporate or unincorporated body (other than a company), shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such local authority, regional council or body;
- (d) on a person under legal disability shall be his or her guardian, curator or administrator or the other person having the management or control of his or her affairs;
- (e) on any person who is not ordinarily resident in Namibia shall be any agent of such person controlling such person's affairs in Namibia and any manager of any enterprise of such person in Namibia;
- (f) on the estate of a deceased person shall be the executor or administrator of such estate;
- (g) on the estate of an insolvent person, shall be the trustee or administrator of such estate;
- (h) on any person who acts through an agent shall be such agent, including an agent appointed under section 30;
- (i) on any person acting in a fiduciary capacity shall be such person:

Provided that nothing in this subsection contained shall be construed as relieving any such company, local authority, regional council, body or person from having to perform any duties imposed by this Act upon such company, local authority, regional council, body or person which the first-mentioned person (hereinafter referred to as the representative) has failed to perform.

ADDITIONAL SALES DUTIES ACT, 1993

(2) Every representative shall as respects moneys controlled or transactions concluded by him or her in his or her representative capacity be liable for the payment of any duty, interest or penalty chargeable under this Act in relation to such moneys or transactions as though such liability had been incurred by him or her personally, but such liability shall be deemed to have been incurred by him or her in his or her representative capacity only.

(3) Any duty, interest or penalty payable by any representative in his or her representative capacity shall be recoverable from him or her, but to the extent only of any assets belonging to the person whom he or she represents which may be in his or her possession or under his or her management, disposal or control: Provided that any duty, interest or penalty payable by a company shall not be recoverable from the public officer of the company but shall be recoverable from the company.

(4) Every representative who, as such, pays any duty, interest or penalty due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in, or may come into, his or her possession in his or her representative capacity, an amount equal to the amount so paid.

(5) Every representative referred to in paragraph (f) of subsection (1) who, as such, pays any duty, interest or penalty due under this Act by any deceased person shall be entitled to recover the amount so paid from the estate of such deceased person or to retain out of any moneys of the estate of such deceased person that may be in, or may come into, his or her possession in his or her capacity as executor or administrator of such estate, an amount equal to the amount so paid.

(6) Every representative shall be personally liable for the payment of any duty, interest or penalty payable by him or her in his or her representative capacity, if, while the amount thereof remains unpaid -

- (a) he or she alienates, charges or disposes of any money received or accrued in respect of which the duty is chargeable; or
- (b) he or she disposes of or parts with any fund or money belonging to the person whom he or she represents which is in, or may come into, his or

(4) After having considered the objection, the Permanent Secretary may -

- (a) alter or reduce the assessment;
- (b) authorize a refund of any duty, penalty or interest paid; or
- (c) disallow the objection,

and shall send the person who made the objection written notice of such alteration, reduction or disallowance, as the case may be.

(5) Where no objection is made to any assessment or the Permanent Secretary's refusal to authorize a refund under the provisions of section 33(1) or where any objection has been disallowed or withdrawn or an assessment has been altered or reduced, such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

Appeals.

22. (1) Any person entitled to make an objection in terms of subsection (1) of section 21, who is dissatisfied with any decision of the Permanent Secretary as notified to him or her in terms of subsection (4) of that section, may appeal against such decision to the special court constituted under the provisions of section 73 of the Income Tax Act.

(2) Every notice of appeal shall be in writing and be lodged with the Permanent Secretary within a period of 30 days after the date of the notice mentioned in section 21(4).

(3) No notice of appeal shall be of any force or effect unless it is delivered at the office of the Permanent Secretary, or posted to the Permanent Secretary in sufficient time to reach him or her, on or before the last day of the period allowed for the lodging of such notice, except if the Permanent Secretary is satisfied that reasonable grounds exist for any delay in lodging such notice: Provided that any decision of the Permanent Secretary in the exercise of his or her discretion under this subsection shall be subject to objection and appeal.

ADDITIONAL SALES DUTIES ACT, 1993

(4) At the hearing of any appeal under this section -

- (a) the appellant shall be limited to the grounds stated in the notice of objection referred to in section 21(2), unless the Permanent Secretary agrees to the amendment of such grounds, but the special court may, on good cause shown at the hearing of the appeal, permit the appellant to amend such notice of objection within a reasonable period, subject to such conditions with regard to any postponement of the hearing of the appeal and costs as the special court may deem fit;
- (b) the special court shall inquire into and consider the matter and may direct the Permanent Secretary to authorize a refund or order the assessment under appeal to be altered, reduced or confirmed, or, if it thinks fit, in the case of an assessment, refer such assessment back to the Permanent Secretary for further investigation and assessment.

(5) The provisions of subsections (8), (9), (10), (11), (12), (14), (15), (16) and (17) of section 73, and of sections 74, 75 and 76 of the Income Tax Act and any regulation made under that Act relating to any appeal to the special court referred to in subsection (1) of this section and to any appeal in terms of the said section 76, shall *mutatis mutandis* apply with reference to any appeal under this section.

(6) The obligation to pay and the right to receive and recover any duty chargeable under this Act shall not, unless the Permanent Secretary so directs, be suspended by any appeal or pending the decision of a court of law under section 76 of the Income Tax Act, as applied by subsection (5) of this section, but if any assessment is altered on appeal or in conformity with any such decision or any decision by the Permanent Secretary to concede the appeal to the special court or such court of law a due adjustment shall be made, amounts paid in excess being refunded with interest at the rate of 15 per cent per annum calculated from the date proved to the satisfaction of the Permanent Secretary to be the date on which such excess was received and amounts shortpaid being recoverable with penalty calculated as provided in section 25(1).

Burden of proof as to exemptions or non-liability.

23. The burden of proof that any person is in respect of any amount exempt from or not liable to the duty chargeable under this Act shall be upon the person claiming such exemption or non-liability, and upon the hearing of any appeal against any decision of the Permanent Secretary, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

PART VI

Payment and recovery of duty

Manner in which duty shall be paid.

24. (1) Subject to the provisions of subsections (2), (3) and (4) of this section and the provisions of section 36, the duty payable under this Act shall be paid in full within the time allowed in terms of, or on the date contemplated in, section 18, as the case may be.

(2) Where the Permanent Secretary is satisfied that due to circumstances beyond the control of the person liable for the payment of the duty the amount of duty due cannot be accurately calculated within the time allowed in terms of, or at the date contemplated in, section 18, as the case may be, the Permanent Secretary may in his or her discretion and subject to such conditions as he or she may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such duty.

(3) Such payment shall be deemed to be a provisional payment in respect of the liability of the said person for such duty, as finally determined, and when such liability is so determined any amount paid in excess shall be refundable to such person and any amount shortpaid shall be recoverable from him or her.

(4) Interest shall -

(a) be paid by such person at the rate of 15 per cent per annum on any such shortpaid amount in respect of the period reckoned from the day after the date by which the duty should have been paid in full to the date of payment of such shortpaid amount;

ADDITIONAL SALES DUTIES ACT, 1993

Penalty for failure to pay
duty when due.

(b) in addition to any penalty payable in terms of the provisions of section 25, be paid by the person referred to in that section on any amount in respect of which he or she failed to make the payment referred to in that section reckoned from the day after the date by which such amount should have been paid in full to the date of payment of such amount.

25. (1) (a) If any person who is liable for the payment of duty and is required to make such payment in the manner prescribed in subsection (1) of section 18, fails to pay any amount of such duty within the period allowed for the payment of such duty under the said subsection, or within such extended period as the Permanent Secretary may allow in terms of the proviso to that subsection, he or she shall, in addition to such amount of duty and any interest payable on such amount in terms of section 24(4), pay a penalty equal to 10 per cent of such amount for each month or part thereof reckoned from the first day of the month during which the first-mentioned period ended to the date of payment of the said amount, but such penalty shall not exceed such amount of duty.

(b) For the purposes of paragraph (a) "month" means any of the 12 portions into which any calendar year is divided.

(2) If any person who is liable for the payment of duty and is required to make such payment in the manner prescribed in subsection (3) of section 18, fails to pay any amount of such duty on the date contemplated in that subsection, he or she shall, in addition to such amount of duty and any interest payable on such amount in terms of section 24(4), pay a penalty equal to 10 per cent of such amount for each month or part thereof reckoned from the said date to the date of payment of the said amount, but such penalty shall not exceed such amount of duty.

(3) Where the Permanent Secretary is satisfied that the failure on the part of any person to make payment of duty when required to do so by this Act was not due to an intent to avoid or postpone liability for the payment of duty, he or she may remit in whole any penalty payable in terms of this section.

(4) The penalty referred to in subsection (1) or (2) shall not be payable in any case where the Permanent Secretary has in terms of section 24(2) agreed to accept payment of a deposit by any person of an amount equal to the estimated liability of such person for the duty in question.

Recovery of duty.

26. (1) Any amount of duty, interest or penalty payable in terms of this Act shall, when it becomes due or is payable, be a debt due to the State and shall be recoverable by the Permanent Secretary in accordance with the provisions of subsections (2), (3) and (4).

(2) If any person fails to pay any duty, interest or penalty payable in terms of this Act, when it becomes due or is payable by him or her, the Permanent Secretary may file with the clerk or registrar of any competent court a statement certified by him or her as correct and setting forth the amount thereof so due or payable by that person, and such statement shall thereupon have the effect of, and any proceedings may be taken thereon as if it were a civil judgement given in that court in favour of the Permanent Secretary for a liquid debt of the amount specified in the statement.

(3) The Permanent Secretary may by notice in writing addressed to such clerk or registrar, withdraw the statement referred to in subsection (2) and such statement shall thereupon cease to have any effect.

(4) The Permanent Secretary may institute proceedings for the sequestration of the estate of any person and shall for the purposes of such proceedings be deemed to be the creditor in respect of any duty, interest or penalty payable by such person under the provisions of this Act.

(5) Notwithstanding anything contained in the Magistrate's Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(6) Notwithstanding the withdrawal of a statement by the Permanent Secretary under subsection (3), the Permanent Secretary may institute proceedings afresh under subsection (2) in respect of any duty, interest or penalty referred to in the withdrawn statement.

Duty, interest or penalty not recoverable in respect of certain past transactions.

27. Notwithstanding anything to the contrary in this Act -

- (a) no amount of duty, interest or penalty otherwise properly chargeable under this Act, shall be recoverable by the Permanent Secretary in respect of any past transaction or event if, in terms of a general ruling by the Permanent Secretary which had not been withdrawn by him or her at the time of the conclusion of such transaction or the happening of such event, no duty, interest or penalty was payable in respect of such transaction or event;
- (b) where the Permanent Secretary has, in any case of doubt and at a time when there was no applicable general ruling, given a particular ruling to the effect that any exemption provided for in this Act is not applicable in respect of or in relation to any transaction of a particular nature concluded by a particular person, no amount of duty, interest or penalty otherwise properly chargeable under this Act against that person in respect of or in relation to any other transaction of the said nature concluded by that person prior to the date of such particular ruling, shall be recoverable by the Permanent Secretary from that person if the Permanent Secretary is satisfied -
 - (i) that the failure by the said person to pay the said duty was not due to an intent on his or her part to avoid payment of the duty;
 - (ii) that the said person, in failing to pay the said duty, acted in good faith and on the assumption that an exemption was in fact applicable; and
 - (iii) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person;
- (c) no amount of duty, interest or penalty otherwise properly chargeable under this Act, shall be recoverable by the Permanent Secretary in respect of or in relation to any past transaction or event after the expiration of a period of five years from the date of conclusion of the transaction or

the happening of the event in relation to which the said amount was payable, if the Permanent Secretary is satisfied -

- (i) that the failure to pay the said duty was not due to an intent to avoid payment of the duty;
- (ii) that the person responsible for payment of the said duty acted in good faith and on an assumption that an exemption was in fact applicable; and
- (iii) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person.

Correctness of estimate or assessment cannot be questioned.

28. It shall not be competent for any person in proceedings in connection with any statement filed in terms of section 26(2) to question the correctness of any estimate or assessment upon which such statement is based, notwithstanding that the amount of such estimate is disputed or that objection and appeal may have been lodged against such assessment.

Security for duty.

29. (1) The Permanent Secretary may, in the case of any registered importer or registered manufacturer who has been convicted of any offence under this Act or who has repeatedly failed to pay amounts of duty due by him or her or to carry out other obligations imposed upon him or her by this Act, by written notice to such registered importer or registered manufacturer require him or her, within such period as the Permanent Secretary may allow, to furnish to or deposit with the Permanent Secretary security for the payment of any duty or penalty which has or may become payable by the registered importer or registered manufacturer under this Act.

(2) Such security shall be of such nature, for such amount and in such form as the Permanent Secretary may direct.

(3) If such registered importer or registered manufacturer refuses or neglects to comply with such notice the Permanent Secretary may, in the manner provided in section 14, cancel any registration certificate issued to the registered importer or registered manufacturer.

(4) Where the Permanent Secretary has directed that such security shall be in the form of a cash deposit and the registered importer or registered manufacturer fails to make such deposit within the period allowed by the Permanent Secretary, the amount of such deposit shall be recoverable from the registered importer or registered manufacturer under the provisions of section 26 as though such amount were an amount of duty due by the registered importer or registered manufacturer.

(5) Where such security is in the form of a cash deposit, the amount deposited may be set off in whole or in part by the Permanent Secretary against any liability of the registered importer or registered manufacturer for any duty, penalty or interest under this Act or such amount, or the balance thereof remaining after deducting any portion thereof which has been set off as aforesaid, may be repaid by the Permanent Secretary to the registered importer or registered manufacturer when the Permanent Secretary is satisfied that the security is no longer required.

PART VII

Representatives

Power to appoint agents.

30. The Permanent Secretary may, if he or she thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest or penalty payable by such other person under this Act and may be required to make payment of such amount from any moneys which may be held by him or her for or be due by him or her to the person whose agent he or she has been declared to be.

Remedies of Permanent Secretary against agent or trustee.

31. The Permanent Secretary shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as fully and effectually as he or she would have against the property of any person liable to pay any duty, interest or penalty chargeable under this Act.

Duties of persons acting in representative capacity.

32. (1) The person responsible for performing the duties imposed by this Act -

- (a) on any company shall be the public officer thereof contemplated in section 93 of the Income Tax Act or, in the case of any company which is placed in liquidation, the liquidator thereof;
- (b) on the State shall be any person responsible for accounting for the receipt and payment of moneys under the provisions of any law or for the receipt and payment of public funds or of funds appropriated by Parliament;
- (c) on a local authority or a regional council or any corporate or unincorporated body (other than a company), shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such local authority, regional council or body;
- (d) on a person under legal disability shall be his or her guardian, curator or administrator or the other person having the management or control of his or her affairs;
- (e) on any person who is not ordinarily resident in Namibia shall be any agent of such person controlling such person's affairs in Namibia and any manager of any enterprise of such person in Namibia;
- (f) on the estate of a deceased person shall be the executor or administrator of such estate;
- (g) on the estate of an insolvent person, shall be the trustee or administrator of such estate;
- (h) on any person who acts through an agent shall be such agent, including an agent appointed under section 30;
- (i) on any person acting in a fiduciary capacity shall be such person:

Provided that nothing in this subsection contained shall be construed as relieving any such company, local authority, regional council, body or person from having to perform any duties imposed by this Act upon such company, local authority, regional council, body or person which the first-mentioned person (hereinafter referred to as the representative) has failed to perform.

ADDITIONAL SALES DUTIES ACT, 1993

(2) Every representative shall as respects moneys controlled or transactions concluded by him or her in his or her representative capacity be liable for the payment of any duty, interest or penalty chargeable under this Act in relation to such moneys or transactions as though such liability had been incurred by him or her personally, but such liability shall be deemed to have been incurred by him or her in his or her representative capacity only.

(3) Any duty, interest or penalty payable by any representative in his or her representative capacity shall be recoverable from him or her, but to the extent only of any assets belonging to the person whom he or she represents which may be in his or her possession or under his or her management, disposal or control: Provided that any duty, interest or penalty payable by a company shall not be recoverable from the public officer of the company but shall be recoverable from the company.

(4) Every representative who, as such, pays any duty, interest or penalty due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in, or may come into, his or her possession in his or her representative capacity, an amount equal to the amount so paid.

(5) Every representative referred to in paragraph (f) of subsection (1) who, as such, pays any duty, interest or penalty due under this Act by any deceased person shall be entitled to recover the amount so paid from the estate of such deceased person or to retain out of any moneys of the estate of such deceased person that may be in, or may come into, his or her possession in his or her capacity as executor or administrator of such estate, an amount equal to the amount so paid.

(6) Every representative shall be personally liable for the payment of any duty, interest or penalty payable by him or her in his or her representative capacity, if, while the amount thereof remains unpaid -

- (a) he or she alienates, charges or disposes of any money received or accrued in respect of which the duty is chargeable; or
- (b) he or she disposes of or parts with any fund or money belonging to the person whom he or she represents which is in, or may come into, his or

her possession after the duty, interest or penalty has become payable, if such duty, interest or penalty could legally have been paid from or out of such fund or money.

PART VIII

Miscellaneous

Refunds.

33. (1) Where it is proved to the satisfaction of the Permanent Secretary that any amount of -

- (a) duty, penalty or interest paid by any person was in excess of the amount of duty, penalty or interest which should properly have been charged under this Act;
- (b) duty has been paid by an importer in respect of the importation of goods which are thereafter exported from Namibia by him or her,

the Permanent Secretary may authorize a refund of such amount to the person who paid such amount, or where such person has ceased to carry on any enterprise, to the person by whom such amount was paid.

(2) Where the Permanent Secretary refuses to authorize a refund under subsection (1) he or she shall give the person concerned written notice of such refusal.

(3) The Permanent Secretary shall not authorize any refund under subsection (1) unless -

- (a) a claim for any refund under the provisions of that subsection is made within three years after the date upon which payment of the amount claimed to be refundable was made: Provided that if the Permanent Secretary is satisfied that such payment was made in accordance with the practice generally prevailing at the said date, no refund may be authorized unless the claim for any refund is made within six months after such date;
- (b) the amount to be refunded is R5 or more.

Registration of certain goods prohibited in certain circumstances.

34. Where any form of registration is required under any law in respect of goods consisting of any aircraft, boat, fishing vessel, ship, yacht, motor cycle, tractor or vehicle, caravan or trailer (hereinafter referred to as registrable goods, and which has been sold by the manufacturer or importer thereof to any other person) no registering authority responsible for such registration under such law shall effect the registration consequent upon such change of ownership of such registrable goods unless the person applying for registration produces to such registering authority -

- (a) a receipt or certificate issued by the Permanent Secretary or a customs document issued by the Commissioner for Customs and Excise showing that any duty which may be payable under this Act has been paid in respect of such goods by the manufacturer or importer concerned; or
- (b) an exemption certificate issued by the Permanent Secretary to the effect that no duty is payable under this Act by the manufacturer in respect of the sale of such goods or by the importer in respect of the importation of such goods.

Sale of goods by selling agents.

35. For the purposes of this Act, where -

- (a) any person (hereinafter referred to as the selling agent) sells goods at prices fixed or recommended by the manufacturer of the goods;
- (b) the selling agent is entitled to a commission or other remuneration calculated on the selling price of the goods;
- (c) such goods are supplied by the manufacturer on the order of the selling agent placed in consequence of orders received by the selling agent from customers,

the manufacturer shall be deemed to be the seller of such goods.

Arrangements for collection of duty on goods imported into Namibia.

36. (1) Notwithstanding the provisions of section 18, the Permanent Secretary, the Commissioner for Customs and Excise and the postal company established by section 2 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992), may make such arrangements as they may deem necessary -

- (a) for the collection by them on behalf of the Permanent Secretary, in such manner as they may determine, of the duty payable under this Act in respect of the dutiable value of any goods imported into Namibia and which are required to be cleared under the Customs and Excise Act, 1964 (Act 91 of 1964); and
- (b) for the exchange of such information as is necessary for the carrying out of such arrangements.

(2) The provisions of the Customs and Excise Act, 1964, relating to the importation, transit, coastwise carriage and entry of goods shall *mutatis mutandis* have effect as if enacted in this Act.

(3) The duty imposed by this Act or any other law to preserve secrecy shall not prevent the disclosure of any information which is necessary for the proper carrying out of any arrangements made under the provisions of subsection (1).

Records.

37. (1) Every importer or manufacturer shall in respect of any enterprise carried on by him or her keep such books of account or other records as may enable him or her to observe the requirements of this Act and enable the Permanent Secretary to satisfy himself or herself that the importer or manufacturer has observed such requirements.

(2) Such books of account or other records shall reflect separately such goods acquired by him or her from a source within Namibia, and such goods which have been imported.

(3) Such books of account or other records and any invoices or other documents relating to entries in such books or records shall at all reasonable times during the period of five years referred to in subsection (4) be open for inspection by any person acting under the authority of the Permanent Secretary.

(4) All such books of account, records and other documents required to be kept in terms of subsection (1) shall -

- (a) where kept in book form, be retained and carefully preserved by the importer or manufacturer

for a period of five years from the date of the last entry in any book; or

- (b) where consisting of bank statements, deposit slips, invoices, stock lists, paid cheques or other documents not in book form, be retained and carefully preserved by the importer or manufacturer for a period of five years after the completion of the transactions, acts or operations to which they relate.

(5) The Permanent Secretary may, subject to such conditions as he or she may determine, and in respect of any documents referred to in paragraph (b) of subsection (4), authorize the retention of a microfilm copy or computer tape record of such documents in lieu of the originals thereof.

(6) Any person who fails to keep or to preserve any books of account, records and other documents as provided in subsections (1), (2) and (4), shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(7) Where the Permanent Secretary has under subsection (5) authorized the retention of a microfilm copy or computer tape record of any documents referred to in paragraph (b) of subsection (4), any person who fails to preserve -

- (a) such documents as provided in subsection (4); or
- (b) such microfilm copy or computer tape record of such documents in lieu of the originals thereof for a period of five years after the completion of the transactions, acts or operations to which such originals relate,

shall be guilty of an offence and liable on conviction to the penalties prescribed by subsection (6).

Information.

38. (1) The Permanent Secretary may by notice in writing require any person to furnish the Permanent Secretary, within such period as he or she may determine, with such information at such person's disposal as the Permanent Secretary may require for the purposes of this Act.

(2) For the purpose of obtaining full information in carrying out the provisions of this Act, the Permanent Secretary may require any person to produce for examination by the Permanent Secretary, or by any person appointed by him or her for the purpose, at such time and place as may be appointed by the Permanent Secretary, any books, accounts, trade lists, stock lists or other records or documents which the Permanent Secretary may deem necessary for the purposes of this Act.

(3) The Permanent Secretary may by notice in writing require any person whom the Permanent Secretary considers able to furnish information, to attend at a time and place specified by the Permanent Secretary for the purpose of being examined on oath or affirmation regarding any transactions or matters related to the carrying out of the provisions of this Act.

(4) Any person required under subsection (3) to attend for the purpose of being examined, shall be compensated by the Permanent Secretary for any reasonable expenses necessarily incurred by him or her in so attending.

(5) Any person who fails to comply with any requirement of the Permanent Secretary under subsection (1), (2) or (3), shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Powers of entry and search.

39. (1) The provisions of this section, in so far as they provide for a limitation on the fundamental rights contemplated in subarticle (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of a person's home, correspondence or communications, are enacted on the authority conferred by that subarticle.

(2) Any officer engaged in carrying out the provisions of this Act who has been authorized thereto by the Permanent Secretary by any instrument in writing, may, for the purposes of the administration of this Act -

- (a) without previous notice, at any time enter any premises and on such premises search for any accounts, books, moneys, records or other documents or articles;

ADDITIONAL SALES DUTIES ACT, 1993

- (b) in carrying out any such search, in any manner open or cause to be opened or removed and opened, any article in which he or she suspects any accounts, books, moneys, records or other documents or articles are kept;
 - (c) seize any such accounts, books, records or other documents or articles which in his or her opinion may afford evidence which may be material in assessing the liability of any person for any duty payable under the provisions of this Act;
 - (d) retain any such accounts, books, records or other documents or articles for as long as they may be required for any assessment or for any criminal or other proceedings under this Act;
 - (e) examine and make extracts from and copies of such accounts, books, records or other documents or articles and may require from any person an explanation of any entry therein;
 - (f) stop and board any vehicle which he or she has reasonable cause to believe is importing goods into Namibia, and may search any such vehicle or any person found thereon or therein for imported goods the dutiable value of which is liable to duty and may question any such person with respect to any matter dealt with in this Act.
- (3) A search of a person or home in terms of a power conferred by subsection (1), shall not be carried out without a search warrant, unless -
- (a) the person or owner or occupier of the dwelling, as the case may be, has consented to the search; or
 - (b) the officer on reasonable grounds believes -
 - (i) that the warrant will be granted if applied for; and
 - (ii) that the delay in obtaining such warrant would defeat the objects of the search.
- (4) The provisions of sections 21 and 29 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply with reference to the obtaining

and execution of a search warrant referred to in subsection (3), and, in the application of those provisions, a reference to a police official shall be construed as including a reference to an officer.

(5) Any officer referred to in subsection (2) shall on demand produce the written authority issued to him or her by the Permanent Secretary.

(6) The person to whose affairs any accounts, books, records or other documents seized under the provisions of subsection (2) relate, shall be entitled to examine and make copies thereof or extracts therefrom during office hours under such supervision as the Permanent Secretary may determine.

(7) Any person who -

- (a) hinders, obstructs or assaults an officer referred to in subsection (2); or
- (b) wilfully fails to comply with any lawful demand made by such officer in the performance of his or her duties or the exercise of his or her powers,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months.

(8) Any officer referred to in subsection (2) in carrying out his or her duties in terms of this Act may at any time request the assistance of any person or member of the Namibian Police he or she may deem necessary and such person or such member shall be obliged to render such assistance as may be required by that officer.

Offences.

40. (1) Any person who -

- (a) holds himself or herself out as an officer engaged in carrying out the provisions of this Act;
- (b) holds himself or herself out as an officer authorized by the Permanent Secretary for the purposes of entry and search as contemplated in section 39(5);
- (c) fails to surrender for cancellation any registration certificate as contemplated in section 14(2) or (4);

ADDITIONAL SALES DUTIES ACT, 1993

- (d) with intent to evade or to assist any other person to evade the payment of the duty under this Act -
- (i) makes or causes or allows to be made any false statement or entry in any return or declaration rendered in terms of this Act, or signs any statement, return or declaration so rendered without reasonable grounds for believing the same to be true;
 - (ii) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Permanent Secretary or any person duly authorized by the Permanent Secretary or any officer referred to in section 3(1);
 - (iii) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or authorizes the falsification of any books of account or other records;
 - (iv) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of such fraud, art or contrivance; or
 - (v) makes any false statement for the purposes of obtaining any refund of or exemption from the duty,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(2) A conviction for an offence in terms of this Act shall not exempt the person convicted from the payment of any duty, interest or penalty payable in accordance with the provisions of this Act.

Reporting of unprofessional conduct.

41. (1) For the purposes of this section "controlling body" means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession,

calling or occupation fails to comply with or contravenes any rule or code of conduct laid down by such association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any other person (hereinafter referred to as a client), done or omitted to do anything which in the opinion of the Permanent Secretary -

- (a) was intended to enable or assist the client to avoid or unduly postpone the performance of any duty or obligation imposed on such client by or under this Act, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation; and
- (b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by that body,

the Permanent Secretary may lodge a complaint with the said controlling body.

- (3) (a) Notwithstanding the provisions of section 4 of this Act, the Permanent Secretary may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Permanent Secretary is necessary to lay before the controlling body to which the complaint is made.
- (b) Before lodging any such complaint or disclosing such information the Permanent Secretary shall deliver or send to the client and the person against whom the complaint is to be made a written notification of his or her intended action setting forth particulars of the said information.
- (c) The client or the said person may within 30 days after the date of such written notification lodge in writing with the Permanent Secretary any objection he or she may have to the lodging of the said complaint.

ADDITIONAL SALES DUTIES ACT, 1993

(d) If on the expiry of the said period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Permanent Secretary is not satisfied that the objection should be sustained, the Permanent Secretary may thereupon lodge the complaint as contemplated in subsection (2).

(4) The complaint shall be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit: Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

(5) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the client as may be conveyed to them by the Permanent Secretary or as may otherwise come to their notice in the investigation of the Permanent Secretary's complaint and shall not communicate such information to any person other than the client concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.

Jurisdiction of courts.

42. Any person charged with an offence under this Act may, notwithstanding anything to the contrary contained in any law, be tried in respect of that offence by any magistrate's court having jurisdiction within any area in which he or she resides or carries on business.

Authentication and service of documents.

43. (1) Any form, notice, demand or other document issued or given by or on behalf of the Permanent Secretary or any other officer under this Act shall be sufficiently authenticated if the name or official designation of the Permanent Secretary or officer by whom the same is issued or given is stamped or printed thereon.

(2) Any form, notice, demand, document or other communication required or authorized under this Act to be issued, given or sent to or served upon any person by the Permanent Secretary or any other officer under this Act shall, except where otherwise provided in this Act, be deemed to have been effectually issued, given, sent or served -