



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 122 2000

PROMULGATION OF ACT OF PARLIAMENT

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

No. 10 of 2000: Value-Added Tax Act, 2000

Act No. 10, 2000

VALUE-ADDED TAX ACT, 2000

ACT

To provide for the imposition and collection of value-added tax and to provide for matters incidental thereto.

(Signed by the President on 10 May 2000)

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

**PART I
INTRODUCTORY PROVISIONS****Definitions**

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

“appealable decision” means -

- (a) any decision contemplated in section 12(7), 16(6), 17(11), 19(7), 23(10), 24(6), 25(10), 27(7), 28(7), 30(3), 32(5), 36 (6), 38(9), 71(6) or 80(3); or
- (b) any assessment made by the Commissioner under this Act;

“association not for gain” means -

- (a) any institution of religious worship; or
- (b) any other society, association or organisation, whether incorporated or not, which -
 - (i) is carried on otherwise than for the purposes of profit or gain to any proprietor, member or shareholder; and
 - (ii) is, in terms of its memorandum, articles of association, written rules or other document constituting or governing the activities of that society, association or organisation -
 - (aa) required to utilise any property or income solely in the furtherance of its aims and objects; and
 - (bb) prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by

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way of the payment in good faith of reasonable remuneration to any officer or employee of the society, association or organisation for any services actually rendered to such society, association or organisation; and

- (cc) upon the winding-up or liquidation of such society, association or organisation, obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other society, association or organisation with objects similar to those of the said society, association or organisation;

“capital goods” means any asset, or any component of any asset, which is of a character subject to a deduction of expenditures incurred as provided in sections 17(1)(e), 17(1)(f) and 18(1)(a) (to the extent that it is in lieu of sections 17(1)(e) and 17(1)(f) of the Income Tax Act, 1981 (Act No. 24 of 1981), and which is used in the course or furtherance of a taxable activity;

“cash value”, in relation to a supply of goods under a credit agreement, means-

- (a) where the seller or lessor is a bank or other financial institution, an amount equal to the sum of -
 - (i) the consideration paid by the bank or other financial institution for the goods or the open market value of the supply of the goods to the bank or other financial institution, whichever is the greater; and
 - (ii) any consideration for erection, construction, assembly or installation of the goods borne by the bank or other financial institution; or
- (b) where the seller or lessor is a dealer, an amount equal to the sum of -
 - (i) the consideration at which the goods are normally sold by the dealer for cash; and
 - (ii) any consideration for erection, construction, assembly or installation of the goods borne by the dealer;

“charitable organisation” means an organisation registered or recognised as such under the applicable laws of Namibia;

“children's home” means a children's home registered under the Children's Act, 1960 (Act No. 33 of 1960);

“close corporation” means a close corporation within the meaning of the Close Corporations Act, 1988 (Act No. 26 of 1988);

“Commissioner” means the Commissioner of Inland Revenue;

“company” means any association or body corporate or unincorporate, or a close corporation, whether created or recognised under a law in force in Namibia or elsewhere, and whether created for profit or non-profit purposes, but does not include a partnership or trust;

“connected persons” means -

- (a) any natural person and -

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- (i) any relative of that natural person; or
- (ii) any trust in respect of which any such relative is or may be a beneficiary; or
- (b) any trust and any person who is or may be a beneficiary in respect of that trust; or
- (c) any partnership, unincorporated association or body, or close corporation and -
 - (i) any member thereof; or
 - (ii) any other person where that person and a member of such partnership, unincorporated association or body, or close corporation, as the case may be, are connected persons in terms of this definition; or
- (d) any incorporated company (other than a close corporation) and -
 - (i) any person (other than an incorporated company), where that person or that person and any person connected to that person in terms of this definition controls ten per cent or more of -
 - (aa) the voting power in the company; or
 - (bb) the rights to distributions of capital or profits of the company, either directly or through one or more interposed companies, partnerships or trusts; or
 - (ii) any other incorporated company in which the person referred to in subparagraph (i) or that person and any person connected to that person in terms of this definition controls ten per cent or more of -
 - (aa) the voting power in the first-mentioned company; or
 - (bb) the rights to distributions of capital or profits of the first-mentioned company, either directly or through one or more interposed companies, partnerships or trusts; or
 - (iii) any person where that person and the person referred to in subparagraph (i) or the other incorporated company referred to in subparagraph (ii) are connected persons in terms of this definition; or
 - (iv) any person connected to the person referred to in subparagraph (iii) in terms of this definition;

“consideration”, in relation to a supply or import of goods or services, means the total amount in money or kind paid or payable (including any deposit on any returnable container) for the supply or import by any person, directly or indirectly, including any duties, levies, fees, and charges (other than tax) paid or payable on, or by reason of, the supply or import, reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import, but does not include -

- (a) any cash payment made by any person as an unconditional gift to any association not for gain; or

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- (b) a deposit (other than a deposit on a returnable container), whether refundable or not, given in connection with a supply of goods or services unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

“credit agreement” means an instalment sale transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980), or a financial lease;

“Customs and Excise Act” means the Customs and Excise Act, 1998 (Act No. 20 of 1998);

“dwelling” means a dwelling as defined in paragraph 1 of Schedule IV;

“employee” means any person (other than a company) who receives any remuneration or to whom any remuneration accrues and includes an office holder;

“exempt import” means an exempt import referred to in section 13;

“exempt supply” means an exempt supply referred to in section 10;

“export country” means any country other than Namibia and includes any place which is not situated in Namibia, but does not include any specific country or territory that the President by proclamation in the *Gazette* designates as one that is not an export country;

“export processing zone” means an export processing zone as defined in section 1 of the Export Processing Zones Act;

“export processing zone enterprise” means an export processing zone enterprise as defined in section 1 of the Export Processing Zones Act;

“export processing zone management company” means an export processing zone management company as defined in section 1 of the Export Processing Zones Act;

“Export Processing Zones Act” means the Export Processing Zones Act, 1995 (Act No. 9 of 1995);

“exported from Namibia”, in relation to any movable goods supplied by any registered person under a sale or a credit agreement, means –

- (a) consigned or delivered by the registered person to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner;
or
- (b) delivered by the registered person to the owner or charterer of any foreign-going ship contemplated in paragraph (a) of the definition of “foreign-going ship” or to a foreign-going aircraft when such ship or aircraft is going to a destination in an export country and such goods are for use or consumption in such ship or aircraft, as the case may be; or
- (c) delivered by the registered person to the owner or charterer of any foreign-going ship contemplated in paragraph (b) of the definition of “foreign-going ship” for use in such ship;

“financial lease” means a financial lease as defined in paragraph 1 of Schedule I;

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“foreign-going aircraft” means any aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in Namibia and airports in export countries or between airports in export countries;

“foreign-going ship” means –

- (a) any ship or other vessel engaged in the transportation for reward of passengers or goods wholly or mainly on voyages between ports in Namibia and ports in export countries or between ports in export countries; or
- (b) any ship or other vessel registered in an export country where such ship or vessel is utilised for the purposes of a commercial, fishing or other concern conducted outside Namibia by a non-resident person who is not a registered person;

“gaming establishment” includes any casino, gambling house or bookmaking business, as defined in section 1 of the Casinos and Gambling Houses Act, 1994 (Act No. 32 of 1994);

“goods” means all kinds of corporeal movable or immovable property, thermal or electrical energy, heat, gas, refrigeration, air conditioning and water, but does not include money;

“immovable property” means -

- (a) land (together with improvements affixed thereto); or
- (b) any unit as defined in section 1 of the Sectional Titles Act, 1971 (Act No. 66 of 1971); or
- (c) any real right in any such land or unit;

“import” means -

- (a) in relation to goods, to bring the goods, or cause the goods to be brought, into Namibia from a foreign country or place; and
- (b) in relation to services, a supply of services to a resident person -
 - (i) by a non-resident person; or
 - (ii) by a resident person from a business carried on by the resident person outside Namibia,

to the extent that such services are utilised or consumed in Namibia, other than to make taxable supplies;

“importer” means -

- (a) in relation to an import of goods on consignment, the consignor or the consignee; or
- (b) in relation to any other import of goods, any one of the following persons who at the time of the import -
 - (i) owns the goods; or
 - (ii) carries the risk of any goods imported; or

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- (iii) represents that, or acts as if, the person is the importer or owner of any goods imported; or
- (iv) actually brings any goods into Namibia; or
- (v) is beneficially interested in any way whatever in any goods imported; or
- (vi) in relation to an import of goods by pipeline, owns or leases the pipeline; or
- (vii) acts on behalf of any person referred to in subparagraph (i), (ii), (iii), (iv), (v) or (vi);

“income tax” means any tax imposed under the Income Tax Act, 1981 (Act No. 24 of 1981);

“input tax”, in relation to a registered person, means -

- (a) any tax charged under section 6(1)(a) on a taxable supply to the registered person; and
- (b) any tax charged under section 6(1)(b) on an import of goods by the registered person,

but does not include any penalty imposed under section 66, 67, 68, 69 or 70;

“invoice” means any document notifying an obligation to make a payment;

“lay-by agreement” means any purchase agreement in respect of movable property whereby -

- (a) the purchase price is payable by at least one additional payment after the payment of a deposit; and
- (b) delivery of the goods takes place at any time after payment of the deposit; and
- (c) ownership of the goods is transferred by delivery;

“life insurance contract” means any contract lawfully entered into to the extent that it places a sum or sums at risk upon the contingency of the termination or continuance of human life and includes optional benefits supplied with the contract;

“local authority” means any municipal council, town council or village council established under the Local Authorities Act, 1992 (Act No.23 of 1992);

“Minister” means the Minister of Finance;

“money” means -

- (a) any coins and notes that are legal tender in Namibia under the Bank of Namibia Act, 1997 (Act No. 15 of 1997); or
- (b) any coins and notes that are legal tender in any country other than Namibia; or
- (c) any bill of exchange, bank draft, promissory note, postal order or money order; or
- (d) any stamp, form or card that has a money value and has been sold or issued by the

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State for the payment of any fiscal charge levied under any law for the benefit of the State Revenue Fund,

except where the coin, note, stamp, form or card is disposed of as a collector's piece, an investment article or an item of numismatic interest;

“Namibia” means the Republic of Namibia and, when used in a geographical sense, includes the territorial sea as well as the exclusive economic zone and the continental shelf, over which Namibia exercises sovereign rights in accordance with its internal law and subject to international law, concerning the exploration and exploitation of the natural resources of the sea-bed and its subsoil and the superjacent waters, as defined respectively in sections 2, 4 and 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990);

“Namibia Post Limited” means Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992);

“non-resident person” means -

- (a) any person who is not a resident person; or
- (b) any person referred to in paragraph (d) of the definition of “resident person” to the extent that the person is not a resident person in terms of that paragraph;

“old-age home” means an institution registered or recognised as such under the applicable laws of Namibia;

“open market value”, in relation to a supply or import of goods or services, means the open market value thereof determined in terms of section 2;

“orphanage” means an institution registered or recognised as such under the applicable laws of Namibia;

“output tax”, in relation to a registered person, means the tax charged under section 6 on a taxable supply made by the registered person;

“person” includes the State, a regional authority or any local authority, natural person, company, partnership, board or trust;

“recipient”, in relation to a supply of goods or services, means the person to whom the supply is made;

“regional authority” means a regional council established under the Regional Councils Act, 1992 (Act No. 22 of 1992);

“registered person” means a person who is registered or deemed to be registered under this Act;

“registering authority” means any person or body appointed by or under any law of Namibia and charged with the responsibility to issue any licence, permit, certificate, concession or other authorisation under any such law;

“regulation” means a regulation made under section 84;

“relative”, in relation to any natural person, means -

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- (a) the spouse of that person; or
- (b) any person related to that person or his or her spouse within the third degree of consanguinity; or
- (c) any spouse of any person referred to in paragraph (b),

and for the purposes of this definition, any adopted child shall be deemed to be related to his or her adoptive parent within the first degree of consanguinity;

“remuneration” means remuneration as defined in Schedule 2 to the Income Tax Act, 1981 (Act No. 24 of 1981);

“rental agreement” means a rental agreement as defined in paragraph 3 of Schedule I;

“resident person” means -

- (a) the State, a regional authority or any local authority in Namibia; or
- (b) any natural person ordinarily resident in Namibia; or
- (c) any company, partnership, board or trust which is formed or established under the laws of Namibia or which is managed and controlled in Namibia; or
- (d) any other person to the extent that such person carries on in Namibia any taxable or other activity and has a fixed place in Namibia relating to such activity;

“returnable container” means any container belonging to a class of containers in relation to which, at the time of delivery of the contents thereof, ownership of that container is not transferred to the recipient of the contents and a specifically identified amount is usually charged as a deposit by the supplier of the contents upon the express undertaking of the supplier that upon the return of that container such deposit will be refunded or allowed as a credit to such recipient or any other person returning such container;

“sale” means an agreement of purchase and sale, and includes any other transaction or act whereby, or in consequence of which, ownership of goods passes or is to pass from one person to another;

“services” means anything that is not goods or money;

“short-term insurance contract” means any contract and the renewal of such contract of insurance or guarantee against loss, damage, injury or risk of any kind, whether pursuant to any contract or law, and includes reinsurance, but does not include a life insurance contract;

“short-term insurer” means a short-term insurer within the meaning of the Short-term Insurance Act, 1998 (Act No. 4 of 1998);

“supplier”, in relation to a supply of goods or services, means the person making the supply;

“supply” means a supply of goods or a supply of services referred to in section 3, and “supply of goods” and “supply of services” shall have a corresponding meaning;

“tax” or “VAT” means the tax chargeable under this Act, and includes any amount deemed to be tax for the purposes of this Act;

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“taxable activity” means a taxable activity as defined in section 4(1);

“taxable supply” means any supply of goods or services in the course or furtherance of a taxable activity, other than an exempt supply;

“taxation officer” means -

- (a) the Commissioner; or
- (b) any person employed in the directorate of -
 - (i) Inland Revenue; or
 - (ii) Customs and Excise; or
- (c) any member of the Namibian Police Force; or
- (d) any employee of Namibia Post Limited acting on behalf of the Commissioner for Customs and Excise in terms of section 14(5) of this Act,

carrying out the provisions of this Act;

“tax credit note” means a document provided as required by section 22(1);

“tax debit note” means a document provided as required by section 22(3);

“tax fraction” means the fraction calculated in accordance with the formula -

$$r/(100 + r),$$

in which formula “r” is the rate of tax applicable under section 6(1);

“tax invoice” means a document provided as required by section 21;

“tax period”, in relation to a registered person, means the period determined under section 23;

“this Act” includes the regulations made thereunder;

“tour operator” means any person who provides holiday tours with all arrangements made at an inclusive price;

“trust” means any relationship where property is under the control or management of a trustee;

“trustee” includes -

- (a) any executor, administrator, tutor or curator; or
- (b) any receiver as defined in section 37(1); or
- (c) any person having or taking on the administration or control of property subject to another person having a beneficial interest in the property; or
- (d) any person acting in a fiduciary capacity; or

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- (e) any person having possession, control or management of the property of a person under a legal disability; or
- (f) any person who manages assets under a private foundation or other similar arrangement;

“unconditional gift” means a payment voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment, but does not include any payment made by a public authority or a local authority;

“value” (other than “cash value” or “open market value”) means -

- (a) in relation to a supply of goods or services, the value thereof determined in terms of section 8; and
- (b) in relation to an import of goods or services, the value thereof determined in terms of section 12.

Open market value

2. (1) In this section -

“similar import”, in relation to an import of goods or services, means any other import of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that import of goods or services;

“similar supply”, in relation to a supply of goods or services, means any other supply of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services.

(2) For the purposes of this Act, the open market value of any supply or import of goods or services at any date shall be the consideration in money which that supply or import, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Namibia, being a supply or import freely offered and made between persons who are not connected persons.

(3) Where the open market value of any supply or import of goods or services at any date cannot be determined under subsection (2), the open market value shall be the consideration in money which a similar supply or a similar import, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Namibia, being a supply or import freely offered and made between persons who are not connected persons.

(4) Where the open market value of any supply or import of goods or services cannot be determined under subsection (2) or (3), the open market value shall be determined in accordance with any method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply or import had the supply or import been freely offered and made between persons who are not connected persons.

(5) For the purposes of this Act, the open market value of any consideration, not being consideration in money, for a supply or import of goods or services shall be determined in the same manner, with any necessary modifications, as the open market value of any supply or import of goods or services is determined in terms of the preceding provisions of this section.

(6) The open market value of any supply or import of goods or services shall be determined at the time of the supply or import as determined under this Act.

Supply

3. (1) Subject to this Act -

(a) any -

(i) sale of goods; or

(ii) grant of the use or right to use any goods (whether with or without a driver, pilot, crew or operator) under any rental agreement, credit agreement, freight contract, agreement for charter or any other agreement under which such use or right to use is granted; or

(iii) transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning or water,

shall be a supply of goods; and

(b) anything done which is not a supply of goods or money, including -

(i) the granting, assignment, cessation or surrender of any right; or

(ii) making available any facility or advantage; or

(iii) refraining from or tolerating any activity,

shall be a supply of services.

(2) The disposition of a taxable activity as a going concern, or a part of the taxable activity that is capable of separate operation, shall be deemed to be a supply of goods made in the course or furtherance of that taxable activity.

(3) For the purposes of subsection (2), a taxable activity, or a part of a taxable activity that is capable of separate operation, is disposed of as a going concern where -

(a) all the goods and services necessary for the continued operation of that taxable activity, or that part of a taxable activity, are supplied to the transferee; and

(b) the transferor carries on or is carrying on that taxable activity, or that part of a taxable activity, up to the time of its transfer to the transferee.

(4) A supply of goods for either goods or services shall be deemed to be a supply of goods.

(5) A supply of services for either goods or services shall be deemed to be a supply of services.

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- (6) (a) Subject to section 17(12), the application by a registered person of goods or services acquired for use in a taxable activity to a different use (including the provision of goods or services to an employee for personal use or the application of goods (including vehicles) for demonstration purposes) shall be deemed to be a supply of those goods or services by the registered person in the course or furtherance of that taxable activity, but only if the registered person has been allowed a deduction for input tax in respect of those goods or services.
- (b) The application by a registered person of goods or services acquired for the making of an exempt supply to a different use shall be deemed to be a taxable supply of those goods or services to the registered person at a value determined in accordance with section 8(4).
- (7) Where any goods are repossessed under a credit agreement, the repossession shall be deemed to be a supply of the goods by the debtor under the credit agreement to the person exercising the right of repossession, and where such debtor is a registered person the supply shall be deemed to be made in the course or furtherance of the debtor's taxable activity unless such goods did not form part of the assets held or used by the debtor in connection with the taxable activity.
- (8) Where a lay-by agreement is cancelled or terminates and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under such agreement, the cancellation or termination shall be deemed to be a supply of services by the seller in respect of such agreement.
- (9) Where a registered person receives a payment of a claim or is otherwise indemnified under a short-term insurance contract for a loss incurred in connection with the conduct of a taxable activity, the receipt of such payment or indemnification shall be deemed to be a supply of services by the registered person in the course or furtherance of a taxable activity, but with respect to a short-term insurance contract, only if the supply of that short-term insurance contract was taxable under section 6(1) (other than a supply charged with tax at the rate of zero per cent under section 9).
- (10) A bet placed by a person with another person operating a gaming establishment shall be deemed to be a supply of services by the person operating the gaming establishment to the first-mentioned person.
- (11) Where any registered person in carrying on a taxable activity in Namibia transfers goods or provides any services to, or for the purposes of, a branch or main business outside Namibia that comes within section 4(1)(iii), such transfer or provision shall be deemed to be a supply of goods or services, as the case may be, by the registered person in the course or furtherance of that taxable activity.
- (12) A supply of services incidental to a supply of goods shall form part of the supply of goods.
- (13) A supply of goods incidental to a supply of services shall form part of the supply of services.
- (14) A supply or import of services incidental to an import of goods shall form part of the import of goods.
- (15) Regulations made under section 84 may provide that a supply of goods and services shall be a supply of goods or a supply of services.

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(16) Where a supply consists both of a supply that is charged with tax at a positive rate and -

- (a) a supply that is charged with tax at the rate of zero per cent; or
- (b) a supply that is charged with tax at a different positive rate,

each part of the supply shall be deemed to be a separate supply.

(17) A supply of services by an employee to an employer by reason of employment shall be deemed not to be a supply for the purposes of this Act.

(18) The provision of goods on consignment and the transfer of goods to a person in a representative capacity shall be deemed not to be a supply for the purposes of this Act.

(19) Where a registered person supplies goods or services and a deduction for input tax paid on the acquisition of such goods or services was denied, the supply by the registered person shall be deemed to be a supply of goods or services made otherwise than in the course or furtherance of a taxable activity.

(20) Subject to subsection (21), where -

- (a) the disposition of a taxable activity (including a disposition of a part of a taxable activity that is capable of separate operation) by a registered person is a supply of goods under subsection (2); and
- (b) that supply was charged with tax at the rate of zero per cent under paragraph 2(q) of Schedule III; and
- (c) the goods or services comprising the taxable activity were acquired by the recipient in whole or in part for a purpose other than for consumption, use or supply in the course of making taxable supplies,

the acquisition of the taxable activity shall be deemed to be a supply by the recipient in the course or furtherance of a taxable activity carried on by the recipient to the extent that the goods or services comprising the taxable activity were acquired for a purpose other than consumption, use or supply in the course of making taxable supplies.

(21) Subsection (20) shall not apply where that part of the taxable activity referred to in paragraph (c) of that subsection is less than 10 per cent of the total taxable activity.

(22) Where any right to receive goods or services to the extent of a monetary value stated on any token, voucher or stamp (other than a postage stamp as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992)) is granted for a consideration in money, the issuance of such token, voucher or stamp shall be deemed not to be a supply, except to the extent (if any) that such consideration exceeds that monetary value.

(23) Subject to subsection (24), the removal of any goods from an export processing zone by any person shall be deemed to be a supply of those goods by such person in the course or furtherance of a taxable activity carried on by such person in Namibia.

(24) Subsection (23) shall not apply to the removal of goods from an export processing zone in Namibia where -

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- (a) the goods are in transit to another export processing zone in Namibia; or
- (b) the goods are temporarily removed from, or have temporarily been in, the export processing zone.

(25) The payment by the State of a subsidy under a drought-subsidy scheme to defray expenses, or the payment of a bursary, shall be deemed not to be a supply for the purposes of this Act.

(26) A supply of land or buildings, or both, shall be deemed not to be a supply for the purposes of this Act.

Taxable activity

4. (1) For the purposes of this Act "taxable activity" means -
- (a) any activity which is carried on continuously or regularly by any person in Namibia or partly in Namibia, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for consideration; or
 - (b) without limiting the generality of paragraph (a), any activity of a local authority or an unincorporated association or body that involves, in whole or in part, the supply of goods or services for consideration,

but does not include -

- (i) any activity carried on by a natural person essentially as a private recreational pursuit or hobby or any activity carried on by a person other than a natural person which would, if carried on by a natural person, be carried on essentially as a private recreational pursuit or hobby; or
- (ii) any activity to the extent that the activity involves the making of exempt supplies; or
- (iii) any activity carried on from any branch or main business permanently located on premises outside Namibia where -
 - (aa) the branch or main business can be separately identified; and
 - (bb) an independent system of accounting is maintained in respect of the branch or main business; or
- (iv) the registration of, or issuing of a licence in relation to, any goods or activities by a registering authority; or
- (v) the levying of taxes or levies under any Act of Parliament.

(2) Anything done in connection with the commencement or termination of a taxable activity shall be deemed to be carried out in the course or furtherance of that taxable activity.

(3) Subject to subsection (4), a supply is made for consideration if the supplier directly or indirectly receives any payment for the supply from the recipient or any other person, including any payment wholly or partly in money or kind.

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- (4) A supply made for consideration includes -
- (a) a supply made between connected persons for no consideration; or
 - (b) a supply of goods for use only as trade samples; or
 - (c) a supply referred to in section 3(6), (11), (20) or (23).

(5) In this section "licence", in relation to a registering authority, includes any permit, certificate, concession or other authorisation issued under any law of Namibia by the registering authority.

Act to bind State

5. This Act shall bind the State.

PART II
IMPOSITION OF VALUE-ADDED TAX

Imposition of value-added tax

6. (1) Subject to this Act, there shall be levied and paid, for the benefit of the State Revenue Fund, a tax (to be known as the value-added tax) -

- (a) on every taxable supply by a registered person; and
- (b) on every import of goods or import of services, other than an exempt import,

calculated at the rate of -

- (i) in the case of a supply or import of goods specified in paragraph 2 of Schedule II, 30 per cent on the value of that supply or import; and
- (ii) in any other case, 15 per cent on the value of the supply or import:

Provided that where goods referred to in paragraph (i), having been damaged and recovered under a short-term insurance contract, are subsequently supplied by a short-term insurer, the rate of tax specified in paragraph (ii) shall apply in respect of those goods.

(2) Except as otherwise provided in this Act, the tax payable under subsection (1) shall -

- (a) in the case of a supply to which subsection (1)(a) applies, be accounted for by the registered person making the supply; or
- (b) in the case of an import of goods, be paid by the importer; or
- (c) in the case of an import of services, be paid by the recipient of the services.

(3) An activity chargeable with tax under both paragraphs (a) and (b) of subsection (1) shall be deemed to be a supply chargeable under paragraph (a) of that subsection.

(4) Subsection (1)(a) shall not apply to a taxable supply of goods or services within an export processing zone by an export processing zone enterprise of a person or an export processing zone management company to the extent prescribed by the Minister by regulation.

PART III
PROVISIONS RELATING TO SUPPLIES

Time of supply

7. (1) For the purposes of this Act, a supply of goods or services shall, except as otherwise provided in this section, be deemed to take place at the time an invoice in respect of that supply is issued by the supplier or the time any payment in respect of that supply is received, whichever is the earlier.

(2) Subject to subsection (3), where the supplier and the recipient are connected persons, a supply of goods or services shall be deemed to take place -

- (a) in the case of a supply of goods which are to be removed, at the time of the removal; and
- (b) in the case of a supply of goods which are not to be removed, at the time when the goods are made available to the recipient; and
- (c) in the case of a supply of any services, at the time the services are performed; and
- (d) in the case of management or other similar services, at the end of each calendar month.

(3) Subsection (2)(a), (b) and (c) shall not apply to a supply of goods or services between connected persons to the extent that an invoice is issued in respect of that supply or any payment is received in respect of that supply on or before the earlier of -

- (a) the day on which the return is furnished for the tax period during which that supply would, but for this subsection, have been made; or
- (b) the last day prescribed by this Act for furnishing the return for the tax period during which that supply would, but for this subsection, have been made.

(4) Except as otherwise provided in subsection (5), a supply of goods under a credit agreement shall be deemed to take place at the time the goods are delivered or the time any payment in respect of that supply is received, whichever is the earlier.

(5) A supply subject to section 13 of the Credit Agreements Act, 1980 (Act No. 75 of 1980), shall be deemed to take place at the beginning of the day following the last day on which the credit receiver may exercise the right under the said Act to terminate the agreement.

(6) A supply under a lay-by agreement shall be deemed to take place at the time the goods are delivered to the purchaser.

(7) A supply of goods or services referred to in section 3(6) shall be deemed to take place at the time the goods or services are applied to a different use.

(8) A supply of goods referred to in section 3(7) shall be deemed to take place at the time the goods are repossessed or, where the debtor may under any law be reinstated in his or her rights and obligations under the credit agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.

(9) A supply of services referred to in section 3(8) shall be deemed to take place at the time the seller obtains the right to retain any amount paid by the purchaser or

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the time the seller recovers any amount owing by the purchaser under the lay-by agreement, as the case may be.

(10) A supply for a consideration in money received by the supplier by means of any machine, meter or other device operated by a coin, note or token shall be deemed to take place at the time any such coin, note or token is taken from that machine, meter or other device by or on behalf of the supplier.

(11) A supply of goods or services referred to in section 3(11) by a registered person shall be deemed to take place at the time the goods are delivered to, or the services are performed for, such branch or main business outside Namibia, as the case may be.

(12) Goods supplied under a rental agreement or services supplied under any agreement (including a short-term insurance contract) which provides for periodic payments shall be deemed to be successively supplied for successive parts of the period of the agreement, and each of the successive supplies shall be deemed to take place at the time a payment becomes due or is received, whichever is the earlier.

(13) Where -

(a) any goods referred to in section 3(1)(a)(iii) are supplied; or

(b) any goods or services are supplied directly in the construction, major reconstruction, manufacture or extension of a building or engineering work and the consideration becomes due and payable in instalments or periodically,

the goods or services shall be deemed to be successively supplied for each period to which a payment for the goods or services relates and each successive supply shall be deemed to take place at the time payment in respect of the supply becomes due or is received or any invoice relating only to that payment is issued, whichever is the earlier.

(14) A supply referred to in section 3(20) shall be deemed to take place at the time of the disposition of the supply under section 3(2) to which it relates.

(15) To the extent that the issuance of a token, voucher or stamp is a supply under section 3(22), the supply shall be deemed to take place at the time the token, voucher or stamp is issued.

(16) A supply referred to in section 3(23) shall be deemed to take place at the time the goods are removed from the export processing zone.

(17) A supply under a short-term insurance contract shall be deemed to take place at the time payment for the supply is received from the recipient or, where the short-term insurance contract is arranged by an intermediary, at the time the intermediary is in terms of the Short-term Insurance Act, 1998 (Act No. 4 of 1998), or any regulation made thereunder, required to pay the amount to the supplier.

Value of supply

8. (1) For the purposes of this Act, the value of any supply of goods or services shall, except as otherwise provided in this section or any regulation contemplated in subsection (5), be the amount of the consideration for that supply.

(2) Where a portion of the price of a supply represents tax imposed under this Act that is not accounted for separately, the value of the supply shall be that price reduced by an amount equal to the tax fraction multiplied by that price.

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- (3) Where -
- (a) a supply is made by a registered person for no consideration or for a consideration in money that is less than the open market value of that supply; and
- (b) in respect of that supply -
- (i) the supplier and the recipient are connected persons ; or
- (ii) the recipient is a charitable organisation, institution of religious worship, educational institution, old-age home, orphanage, children's home or institution of a similar nature,

the value of the supply shall be the open market value of that supply.

(4) Where a registered person makes a supply of goods or services referred to in section 3(6), the value of the supply shall be the lesser of -

- (a) the consideration paid or payable by the registered person for those goods or services; or
- (b) the open market value of that supply.

(5) The Minister may by regulation prescribe rules to determine the value of a supply contemplated in subsection (4) where the registered person applies less than the entire goods or services to a different use.

(6) The value of a supply of goods under a credit agreement shall be the cash value of that supply.

(7) Where a debtor makes a supply of goods by reason of the repossession of those goods from the debtor under a credit agreement, the value of the supply shall be an amount equal to the balance of the cash value of the supply of those goods to the debtor that has not been recovered at the time of the supply.

(8) For purposes of subsection (7), the balance of the cash value of a supply shall be the amount remaining after deducting from the cash value so much of the sum of the payments made by the debtor under the credit agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said agreement, may properly be regarded as having been made in respect of the cash value of that supply.

(9) The value of a supply of services referred to in section 3(8) shall be an amount equal to the amount referred to in that section that is retained or recoverable.

(10) Where the grant of any right to receive goods or services to the extent of a monetary value stated on any token, voucher or stamp is a supply under section 3(22), the value of the supply shall be an amount equal to the amount by which the consideration exceeds the monetary value of such token, voucher or stamp.

(11) Where any token, voucher or stamp is issued by a registered person for no consideration and the holder thereof is entitled on surrender thereof to another person, being a supplier of goods or services, to a discount on the price of goods or services supplied to the holder, the value of the supply of such goods or services by the supplier shall include the monetary value stated on such token, voucher or stamp, reduced by an amount equal to the tax fraction of such monetary value if the token, voucher or stamp is

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surrendered for a taxable supply.

(12) For the purposes of subsection (11), such monetary value shall be inclusive of tax.

(13) Where a taxable supply is not the only matter to which the consideration for the supply relates, the value of the supply shall be such part of the consideration as is properly attributable to it.

(14) The value of a supply of goods or services referred to in section 3(2) or (11) by a registered person shall be the lesser of -

(a) the cost (excluding tax) to the registered person of the acquisition, manufacture, assembly, construction or production of such goods or services (including, in respect of a supply referred to in section 3(11), the costs of transportation or delivery of the goods or services to such branch or main business); or

(b) the open market value of that supply.

(15) Except as otherwise provided in this section, if a supply is made for no consideration the value of the supply shall be nil.

(16) The value of a supply of services referred to in section 3(10) shall be the amount received in respect of the bet, reduced by an amount equal to the tax fraction multiplied by the amount received in respect of the bet.

(17) The value of a supply referred to in section 3(20) shall be the consideration for the acquisition of the taxable activity, reduced by an amount which bears to the amount of such consideration the same ratio as the intended use or application of the taxable activity for making taxable supplies bears to the total intended use or application of the taxable activity.

(18) The value of a supply of goods referred to in section 3(23) shall be the open market value of that supply.

(19) For the purposes of this Act, any consideration paid or payable in kind shall be the open market value of the consideration as determined in accordance with section 2(5).

Zero rating

9. (1) Where, but for this section, a supply of goods or services would be charged with tax imposed under section 6(1)(a), any such supply shall, subject to compliance with subsection (2), be charged with tax at the rate of zero per cent if that supply is specified in paragraph 2 of Schedule III as a zero-rated supply.

(2) Where the rate of zero per cent has been applied by a registered person to a supply under this section, the registered person shall obtain and retain such documentary proof acceptable to the Commissioner substantiating the registered person's entitlement to apply the zero rate to the supply.

Exempt supply

10. (1) Subject to subsection (2), a supply of goods or services shall be an exempt supply if that supply is specified in paragraph 2 of Schedule IV as an exempt supply.

(2) A supply of goods or services shall not be an exempt supply where, but for subsection (1), the supply would be charged with tax at the rate of zero per cent under section 9.

PART IV PROVISIONS RELATING TO IMPORTS

Time of import

11. (1) For the purposes of this Act, an import of goods shall be deemed to take place -

- (a) in the case of goods required to be entered for home consumption in terms of the Customs and Excise Act, at the time the goods are so entered; or
- (b) in any other case, at the time the goods are brought into Namibia.

(2) Where any goods have been imported and entered in a customs and excise warehouse licensed under the Customs and Excise Act, but have not been entered for home consumption, any supply of such goods before they are entered for home consumption shall be disregarded for the purposes of this Act.

(3) For the purposes of this Act, an import of services shall be deemed to take place at the time determined by applying section 7 to the import as if the import were a supply of services.

Value of import

12. (1) In this section "free-on-board value", in relation to an import of goods, means the price charged for the goods by the exporter, plus all costs and charges incidental to the sale and to placing the goods on board any ship or vehicle ready for exportation and any agent's commission (calculated on such price, costs and charges) in respect of the goods.

(2) For the purposes of this Act, the value of an import of goods shall be -

(a) in the case of goods required to be cleared in terms of the Customs and Excise Act, an amount equal to the sum of -

- (i) the value of the goods for customs duty purposes in terms of Chapter IX of the Customs and Excise Act; and
- (ii) the amount of any duty levied under the said Act in respect of the importation of such goods; and
- (iii) the value of any services which are not included in the value of the goods determined under subparagraph (i), including any services giving rise to commission, packaging, transportation, short-term insurance or warranty expenses payable on, or by reason of, the import; or

(b) in the case of goods not required to be so cleared, the greater of -

(i) an amount equal to the sum of -

(aa) the free-on-board value of the goods; and

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- (bb) an amount equal to 10 per cent of the amount under item (aa); or
- (ii) the open market value of that import.
- (3) Notwithstanding anything in subsection (2), if any motor vehicle is imported by a natural person for his or her own use and not for sale, the Commissioner may determine a value which shall be deemed to be the value of the import of such vehicle.
- (4) Subject to subsections (5) and (6), the value of an import of services shall for the purposes of this Act be the amount of the consideration for that import.
- (5) Where -
- (a) an import of services is made for no consideration or for a consideration in money that is less than the open market value of that import; and
- (b) the supplier and the recipient are connected persons,
- the value of the import shall be the open market value of that import.
- (6) Where a portion of the price of an import of services represents tax imposed under this Act that is not accounted for separately, the value of the import shall be that price reduced by an amount equal to the tax fraction multiplied by that price.
- (7) A natural person dissatisfied with a decision referred to in subsection (3) may challenge the decision only under Part VIII of this Act.

Exempt import

13. An import of goods or services shall be an exempt import if -
- (a) the import is specified in paragraph 2 of Schedule V as an exempt import; or
- (b) the import would be a zero-rated supply under section 9 or an exempt supply under section 10 if that import were a supply of goods or services in Namibia.

Import declaration and payment of tax

14. (1) Where tax is payable on an import of goods -
- (a) in the case of goods required to be entered for home consumption in terms of the Customs and Excise Act, the importer shall, upon such entry, furnish the Commissioner with an import declaration and pay the tax due in respect of that import in accordance with subsection (5) or any arrangements made thereunder; or
- (b) in the case of goods imported from Botswana, Lesotho, South Africa or Swaziland, the importer shall, upon such import, furnish the Commissioner with an import declaration and pay the tax due in respect of that import in accordance with that subsection or the said arrangements; or
- (c) in the case where goods, in circumstances contemplated in paragraph (a) or (b), are imported against a guarantee furnished as contemplated in subsection (5)(a)(ii)(bb), the importer shall, not later than the twentieth day of the month following the month of import, pay the tax due in respect of that import; or

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- (d) in any other case, the importer shall, at the time of the import, furnish the Commissioner with an import declaration and pay the tax due in respect of that import in accordance with subsection (5)(a)(i).

(2) Where tax is payable on an import of services and the import is not an import of services referred to in section 3(14), the person liable in terms of section 6(2)(c) for the payment of tax shall, within 30 days after the time of the import, furnish the Commissioner with an import declaration and pay the tax due in respect of that import to the Commissioner.

(3) An import declaration required to be furnished to the Commissioner in terms of subsection (1) or (2) –

- (a) shall be in such form as the Commissioner may prescribe; and
- (b) shall contain such information as may be necessary to calculate the tax payable in respect of the import; and
- (c) shall be furnished in such manner as the Commissioner may prescribe.
- (4) Where -
- (a) a person carries on activities outside Namibia which do not form part of any taxable activity of that person; and
- (b) in the course of carrying on those activities outside Namibia, services are rendered for the purposes of any taxable activity of that person; and
- (c) the rendering of those services, if rendered by any person other than the first-mentioned person, would be an import of services for the purposes of this Act,

those services shall be deemed to be an import of services received by the first-mentioned person at the time the services are rendered in respect of the taxable activity carried on by the first-mentioned person for an amount equal to the open market value of that import.

(5) The Commissioner for Customs and Excise -

- (a) shall -
- (i) collect, at the time of import and on behalf of the Commissioner, any tax due under this Act in respect of an import of goods and, at that time, obtain the name and the VAT registration number (if any) of the importer, and the invoice values in respect of the import; or
- (ii) where the importer is a registered person, and -
- (aa) has made payments in advance to the Commissioner, and at the time of the import a sufficient amount of the payments so made is available to cover the value of any tax due in respect of the import; or
- (bb) has furnished the Commissioner with a guarantee, and at the time of the import a sufficient amount of the guarantee so furnished is available to cover the value of any tax due in respect of the import,

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at the time of the import record, in such manner as the Commissioner may determine, any tax due under this Act, and the invoice values, in respect of the import of goods; and

- (b) shall make arrangements with Namibia Post Limited to perform such functions on his or her behalf in respect of imports through the postal services.

(6) Except where the contrary intention appears, the provisions of the Customs and Excise Act relating to the import, transit, coastwise carriage and clearance of goods and to the payment and recovery of duties shall, with such exceptions, modifications and adaptations as the Minister may by regulation prescribe, apply (so far as relevant) to any tax charged under this Act on an import of goods.

PART V REGISTRATION

Registration

15. (1) Subject to this Act, every person who, on or after the commencement of this Act, carries on any taxable activity and is not registered, becomes liable to be registered -

- (a) at the end of any period of 12 months, where during that period such person made taxable supplies the total value of which exceeded N\$200 000; or
- (b) at the beginning of any period of 12 months, where there are reasonable grounds for believing that the total value of taxable supplies to be made by such person during that period will exceed N\$200 000.

(2) In determining whether a person is liable to be registered in terms of subsection (1) -

- (a) the value of that person's taxable supplies shall be determined in accordance with section 8; and
- (b) the Commissioner may have regard to the value of taxable supplies made by another person where both persons are connected persons.

(3) A person shall not become liable to be registered in terms of subsection (1) where the Commissioner is satisfied that the total value of the taxable supplies of that person within the period of 12 months referred to in paragraph (a) or paragraph (b) of that subsection exceeded or is likely to exceed the amount of N\$200 000 solely as a consequence of -

- (a) any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or
- (b) the replacement of any capital goods used in the taxable activity carried on by that person.

(4) Any person who is making, or who intends to make, taxable supplies, but who is not liable to be registered in terms of subsection (1), may in accordance with section 16(1) apply to the Commissioner for registration under this Act.

(5) Notwithstanding anything in subsection (1), the State and every regional authority and local authority that carries on a taxable activity becomes liable to be registered from the date of commencement of that activity.

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(6) Every person liable to be registered in terms of this section shall in accordance with section 16(1) apply to the Commissioner for registration within 21 days of becoming so liable.

Application for registration

16. (1) An application for registration contemplated in section 15(4) or (6) shall be in such form as the Commissioner may prescribe, and the applicant shall provide the Commissioner with such further particulars and such documentation as the Commissioner may require for the purpose of registering that person.

(2) The Commissioner shall register any person who has applied for registration within 21 days from receipt of the application, unless the Commissioner is satisfied that such person is not liable to be registered in terms of section 15 or, in the case of an application under section 15(4) -

- (a) such person has no fixed place of abode or business; or
- (b) the Commissioner has reasonable grounds to believe that such person -
 - (i) will not keep proper records; or
 - (ii) will not submit regular and reliable tax returns,as required in terms of this Act.

(3) Subject to subsection (8), where any person liable to be registered under this Act fails to make an application for registration as required in terms of section 15(6), such person shall be deemed to be registered for the purposes of this Act from the date referred to in subsection (4)(a) or (4)(b), whichever may be applicable, or such later date as the Commissioner may determine.

- (4) Registration shall take effect -
- (a) in the case of any person referred to in section 15(1)(a), from the beginning of the second tax period immediately following the time at which the person concerned became liable to be registered in terms of that section; or
 - (b) in the case of -
 - (i) any person referred to in section 15(1)(b), from the beginning of the said period of 12 months; or
 - (ii) any person referred to in section 15(5) from the commencement of the said taxable activities; or
 - (c) in the case of an application under section 15(4), from the beginning of the second tax period immediately following the tax period in which the person concerned applied for registration.

(5) The Commissioner shall, within 21 days after receipt of an application under subsection (2), serve a notice in writing on the applicant for registration of the decision taken to register or to refuse to register the applicant.

(6) An applicant dissatisfied with a decision referred to in subsection (5) may challenge the decision only under Part VIII of this Act.

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- (7) Every registered person shall notify the Commissioner in writing of -
- (a) any change in the name, address, place of business, constitution or nature of the principal taxable activity or activities of the registered person; and
 - (b) any change of address from which, or name in which, any taxable activity is carried on by the registered person,

within 21 days of the change occurring.

(8) Nothing in subsection (3) contained shall be construed as relieving any person required to apply for registration in terms of section 15(6) from so applying for registration.

Cancellation of registration

17. (1) Subject to subsections (2) and (3), a registered person may apply in writing to the Commissioner to have such person's registration cancelled where, at any time, the value of such person's taxable supplies in the period of 12 months then beginning will not be more than the amount specified in section 15(1).

(2) Any person liable to be registered in terms of section 15(1), or who was registered as a result of an application under section 15(4), may apply for cancellation of the registration only after the expiration of a period of two years from the date the registration took effect.

(3) Subsection (1) shall not apply to a person who was liable to be registered in terms of section 15(5).

(4) Where the Commissioner is satisfied that a registered person who has made an application under subsection (1) ceases to be liable to be registered, the Commissioner shall cancel such person's registration with effect from the last day of the tax period during which the Commissioner became so satisfied, or from such other date as may be determined by the Commissioner.

(5) Every registered person who ceases to carry on all taxable activities shall notify the Commissioner of that fact within 21 days of the date of such cessation, and the Commissioner shall, subject to subsection (6), cancel the registration of such person with effect from the last day of the tax period during which all such taxable activities ceased, or from such other date as may be determined by the Commissioner.

(6) The Commissioner shall not cancel the registration of a registered person under subsection (5) where the Commissioner has reasonable grounds for believing that such person will carry on any taxable activity at any time within 12 months from that date of cessation.

(7) Any notification by a registered person in terms of subsection (5) shall be made in writing to the Commissioner and shall state the date upon which such person ceased to carry on all taxable activities and whether or not such person intends to carry on any taxable activity within 12 months from that date.

(8) Where the Commissioner is satisfied that a registered person is not carrying on any taxable activity, the Commissioner may cancel such person's registration with effect from the last day of the tax period during which the Commissioner became so satisfied, or from such other date as may be determined by the Commissioner, and shall, within 21 days of the date of such cancellation, notify such person in writing of the date on which the cancellation of the registration takes effect.

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(9) Any date determined by the Commissioner for the cancellation of registration under subsection (8) may be retrospective to a date not earlier than -

- (a) the last day of the tax period during which the taxable activity carried on by the registered person ceased; or
- (b) the date on which the person was registered under this Act, if the Commissioner is satisfied that the registered person did not, from that date, carry on any taxable activity.

(10) The Commissioner shall, within 21 days after receipt of an application under subsection (1) or a notification in terms of subsection (5), serve a notice in writing on the registered person concerned of the decision taken under this section to cancel or to refuse to cancel such person's registration.

(11) A person dissatisfied with a decision referred to in subsection (10) may challenge the decision only under Part VIII of this Act.

(12) A person whose registration is cancelled under this section shall be deemed -

- (a) as having made a taxable supply of any goods (including capital goods) on hand in respect of which that person has been allowed a deduction for input tax; and
- (b) as having made the taxable supply at the time the registration was cancelled; and
- (c) as having made the taxable supply for a value equal to the open market value of that supply.

(13) The obligations and liabilities under this Act (including the furnishing of returns) of any person in respect of anything done, or omitted to be done, by that person while that person is a registered person shall not be affected by the cancellation of that person's registration.

PART VI CALCULATION OF TAX PAYABLE

Calculation of tax payable by registered person for a tax period

18. (1) The tax payable by a registered person for a tax period shall be the total amount of output tax payable by the registered person in respect of taxable supplies made by the registered person during the tax period less -

- (a) subject to this section and section 19, the total amount of input tax -
 - (i) payable in respect of taxable supplies made to the registered person during the tax period, or during the preceding two tax periods (and has not been claimed under this subparagraph in those periods); and
 - (ii) paid in respect of any import of goods by the registered person during the tax period, or during the preceding two tax periods (and has not been claimed under this subparagraph in those periods), in the course or furtherance of a taxable activity carried on by the registered person; and
 - (iii) allowed under section 20 for the tax period; and

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- (b) any input tax to which subsection (3) applies for the tax period; and
 - (c) an amount equal to the tax fraction of any amount paid during the tax period by the registered person as a prize or winnings to the recipient of services contemplated in section 3(10); and
 - (d) an amount equal to the tax fraction of any amount paid during the tax period by the registered person to indemnify another person under any short-term insurance contract, provided -
 - (i) the supply of the short-term insurance contract is a taxable supply; and
 - (ii) the payment is not in respect of the supply of goods or services to the registered person or the importation of goods or services by the registered person; and
 - (iii) the supply of the short-term insurance contract is not a supply charged with tax at the rate of zero per cent under section 9 and, at the time the amount was paid, the other person was not a resident person and not a registered person; and
 - (iv) the payment does not result from a supply of goods or services to that other person where those goods are situated outside Namibia or those services are physically performed elsewhere than in Namibia at the time of the supply; and
 - (e) an amount equal to the tax fraction of any amount paid during the tax period by the registered person to a supplier in respect of the redemption of a token, voucher or stamp contemplated in section 8(11) by the supplier.
- (2) Notwithstanding anything in this Act, no deduction of input tax shall be made in respect of a supply or an import, unless -
- (a) a tax invoice or tax debit note or tax credit note, in relation to that supply, has been provided in accordance with section 21 or 22, as the case may be, or such other documentation as the Commissioner may allow, and is held by the registered person making the deduction at the time any return in respect of that supply is furnished, other than when a tax invoice is in terms of this Act not required to be provided; or
 - (b) a bill of entry as defined in section 1(1) of the Customs and Excise Act, in relation to that import, has been delivered in accordance with the said Act and is held by the registered person making the deduction at the time any return in respect of that import is furnished.
- (3) A deduction shall be allowed to a registered person in the first tax period in which such person is registered for input tax paid or payable by such person in respect of -
- (a) any taxable supplies of goods (other than capital goods) made to such person; and
 - (b) any imports of goods (other than capital goods) made by such person,
- before becoming registered, to the extent that the goods are for use or resupply in a taxable activity carried on by such person after registration, provided -

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- (i) the supply or import occurred not more than four months before the date of registration; and
- (ii) the goods are on hand at the date of registration.

(4) Where the total amount deductible by a registered person under subsection (1) for a tax period exceeds the total amount of output tax payable by the registered person for that period, the amount of the excess shall be dealt with in accordance with section 38.

Rules relating to input tax

19. (1) In this section -

“entertainment” means the provision of food, beverages, tobacco, accommodation, amusement, recreation or hospitality of any kind by a registered person, whether directly or indirectly, to any person in connection with a taxable activity carried on by the registered person;

“passenger vehicle” means a motor vehicle principally designed or adapted for the transport of nine or fewer seated persons and includes a double cab vehicle, but does not include an ambulance or a motorcycle with an engine capacity not exceeding 200 cc.

(2) No amount may be deducted under section 18(1) by a registered person for input tax paid in respect of -

- (a) a taxable supply to, or import by, the registered person of a passenger vehicle, unless -
 - (i) such person is in the business of -
 - (aa) dealing in, or hiring of, passenger vehicles; or
 - (bb) a tour operator,and that vehicle was acquired for the purposes of such business; or
 - (ii) that vehicle was acquired by a short-term insurer to indemnify an insured person under a short-term insurance contract; or
- (b) a taxable supply to, or import by, the registered person of goods or services acquired for the purposes of entertainment or providing entertainment, unless -
 - (i) the registered person is in the business of a tour operator or of providing entertainment and the taxable supply or import relates to the provision of taxable supplies of entertainment in the ordinary course of such business; or
 - (ii) the registered person is in the business of providing taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service; or
- (c) a taxable supply to, or import by, the registered person of petroleum products, unless those products are wholly for use in the business of such person; or
- (d) any fees or subscriptions paid by the registered person in respect of membership of any club, association, or society of a sporting, social or

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recreational nature; or

- (e) any goods (including vehicles) applied for demonstration purposes.

(3) Subject to subsection (4), where only a part of the supplies made by a registered person during a tax period are taxable supplies, the amount of the input tax to be allowed as a deduction under section 18(1)(a)(i) and (ii) for the tax period shall be determined as follows, namely -

- (a) in respect of a supply or import received which is directly connected with the making of taxable supplies, the full amount of input tax payable in respect of the supply or import shall be allowed as a deduction; or
- (b) in respect of a supply or import received which is directly connected with the making of exempt supplies, no amount of input tax payable in respect of the supply or import shall be allowed as a deduction ; or
- (c) in respect of a supply or import received which is used both for the making of taxable and exempt supplies, the amount calculated in accordance with the following formula -

$$A \times B/C,$$

in which formula -

“A” is the total amount of input tax payable in respect of supplies and imports received during the tax period in respect of which a deduction is allowed under section 18(1); and

“B” is the total amount of taxable supplies made by the registered person during the preceding year of assessment for income tax; and

“C” is the total amount of all supplies made by the registered person during the preceding year of assessment for income tax.

(4) Where the fraction “B/C” in paragraph (c) of subsection (3) is more than 0.90, the registered person may deduct the total amount of input tax on supplies and imports referred to in that paragraph.

(5) For purposes of the fraction “B/C” in subsection (3), for the remainder of the year of assessment for income tax during which a registered person is first registered for tax, the period referred to in “B” and “C” shall be the first tax period in which the registered person is registered and thereafter the total number of tax periods before the current tax period during which the registered person has been registered.

(6) Notwithstanding anything in subsection (3), the Commissioner may, on such other basis as the Commissioner considers reasonable, determine the amount of input tax to be allowed as a deduction for a tax period where a registered person makes both taxable and exempt supplies during the tax period.

(7) A person dissatisfied with a decision of the Commissioner under subsection (6) may challenge the decision only under Part VIII of this Act.

(8) Notwithstanding anything in this Act, input tax may only be claimed as a deduction under section 18(1) by a registered person who paid the input tax.

Post-sale adjustments

20. (1) This section shall apply where, in relation to a supply by a registered person -

- (a) the supply is cancelled; or
- (b) the taxation of the supply changes because the nature of the supply is fundamentally varied or altered; or
- (c) the previously agreed consideration for the supply is altered, whether due to an offer of a discount or for any other reason; or
- (d) the goods or services, or part thereof, are returned to the supplier,

and the registered person making the supply has -

- (i) provided a tax invoice in relation to the supply and the amount shown therein as the tax charged on the supply is incorrect as a result of the occurrence of one or more of the events mentioned in paragraphs (a), (b), (c) and (d); or
- (ii) furnished a return for the tax period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply as a result of the occurrence of one or more of the events mentioned in paragraphs (a), (b), (c) and (d).

(2) Where subsection (1) is applicable, the registered person making the supply shall make an adjustment in accordance with subsection (3) or (5), as the case may be.

(3) Where the output tax properly chargeable in respect of a supply exceeds the output tax actually accounted for by the supplier, the amount of the excess shall be deemed to be output tax charged by the supplier in relation to a taxable supply made in the tax period in which any of the events mentioned in subsection (1)(a), (b), (c) and (d) occurred.

(4) Where a supplier issues a tax debit note to rectify the output tax charged to a recipient in the circumstances contemplated in subsection (3), the recipient, if a registered person, shall for the purposes of section 18(1)(a)(iii) treat the additional tax specified in the tax debit note as tax payable by the recipient in the tax period in which the tax debit note is received.

(5) Subject to subsection (7), where the output tax actually accounted for by a supplier exceeds the output tax properly chargeable in respect of a supply, the supplier shall be allowed an input tax deduction for the amount of the excess in the tax period in which any of the events mentioned in subsection (1)(a), (b), (c) and (d) occurred.

(6) Where a supplier issues a tax credit note to rectify the output tax charged to a recipient in the circumstances contemplated in subsection (5), the recipient, if a registered person, shall treat the additional tax specified in the tax credit note as output tax payable by such person in respect of a taxable supply made by such person in the tax period in which the tax credit note is received.

(7) No deduction shall be allowed under subsection (5) where the supply has been made to a person who is not a registered person, unless the amount of the excess tax has been repaid to the recipient of the supply, whether in cash or as a credit against an amount owing to the registered person by the recipient.

Tax invoices

21. (1) Subject to subsections (2) and (9), a registered person (hereinafter in this section referred to as a registered supplier) making a supply to another person, whether a registered or non-registered recipient of supplies, shall provide such other person with a tax invoice for the supply containing such particulars as are specified in paragraph 1 of Schedule VI.

(2) A registered supplier shall not be required to provide a tax invoice if the total consideration for the taxable supply is in cash and does not exceed N\$20.

(3) A tax invoice shall not be provided by any person in any circumstances other than those contemplated in this section.

(4) A registered supplier shall issue only one tax invoice for each taxable supply.

(5) A registered recipient who has not received a tax invoice as required by subsection (1) may in writing request the registered supplier concerned to provide a tax invoice in respect of the taxable supply.

(6) A request for a tax invoice under subsection (5) shall be made within 60 days after the date of the supply.

(7) A registered supplier who receives a request under subsection (5) shall comply with the request within 14 days after receiving that request.

(8) Notwithstanding anything in subsection (4), where a registered recipient claims to have lost the original tax invoice for a taxable supply, the registered supplier concerned may provide a copy thereof clearly marked "copy".

(9) A recipient, being a registered person, may issue a tax invoice, containing such particulars as are specified in paragraph 1 of Schedule VI, in respect of a supply of goods or services made to the recipient by a supplier, being a registered person, provided -

- (a) the Commissioner has granted prior written approval for the issue of such tax invoices by a recipient or recipients of a specific class in relation to the taxable supplies or taxable supplies of a specific category to which the tax invoices relate; and
- (b) the recipient and the supplier have agreed that the supplier shall not issue a tax invoice in respect of any taxable supply to which this subsection applies; and
- (c) such tax invoice is provided to the supplier, and a copy thereof retained by the recipient:

Provided that where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this Act.

Tax credit notes and tax debit notes

22. (1) Where a tax invoice has been issued in the circumstances contemplated in section 20(1)(i) and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the registered person making the supply shall provide the recipient of the supply with a tax credit note containing such particulars as are specified in paragraph 2 of Schedule VI.

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(2) A tax credit note shall not be provided by any person in any circumstances other than those contemplated in subsection (1).

(3) Where a tax invoice has been issued in the circumstances contemplated in section 20(1)(i) and the tax properly chargeable in respect of the supply exceeds the amount shown as tax charged in that tax invoice, the registered person making the supply shall provide the recipient of the supply with a tax debit note containing such particulars as are specified in paragraph 3 of Schedule VI.

(4) A tax debit note shall not be provided by any person in any circumstances other than those contemplated in subsection (3).

(5) A registered person shall issue only one tax credit note or tax debit note for the amount of an excess referred to in subsections (1) and (3), respectively.

(6) Notwithstanding anything in this section, where a registered person claims to have lost the original tax credit note or tax debit note, the registered person who made the supply may provide a copy thereof clearly marked "copy".

PART VII TAX PERIOD, RETURNS AND ASSESSMENTS

Tax period

23. (1) In this section "farming activities" means agricultural, pastoral, horticultural or other farming activities.

(2) The tax period applicable to any registered person under this Act shall -

(a) in the case of a registered person whose only taxable activities are farming activities, be a period of two, four, six or twelve calendar months ending on the last day of the last month of each such period, and as elected by such registered person at the time of application for registration; and

(b) in any other case, subject to subsection (3), be a period of two calendar months divided in -

(i) Category A, being periods ending on the last day of January, March, May, July, September and November of the calendar year; and

(ii) Category B, being periods ending on the last day of February, April, June, August, October and December of the calendar year.

(3) The Commissioner shall determine whether a registered person falls within Category A or Category B, and such determination shall not be subject to objection and appeal.

(4) A registered person falling within subsection (2)(b) who subsequently satisfies the requirements of subsection (2)(a) may in writing apply to the Commissioner to change such person's tax period to that referred to in subsection (2)(a).

(5) Where the Commissioner is satisfied that a registered person making an application under subsection (4) satisfies the requirements of subsection (2)(a), the Commissioner shall by notice in writing grant the application with effect from a date, and subject to such conditions as, specified in the notice.

(6) Every registered person falling within subsection (2)(a) shall notify the Commissioner in writing of any change whereby the registered person ceases to satisfy

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the requirements of that subsection, and such notification shall be made within 21 days of the change occurring.

(7) Where the Commissioner is satisfied that a registered person falling within subsection (2)(a) ceases to satisfy the requirements of that subsection, the Commissioner shall by notice in writing direct that the tax period of the registered person be changed to that referred to in subsection (2)(b), with effect from a date, and subject to such conditions as, specified in the notice.

(8) Notwithstanding anything in this section, the Commissioner may, upon written application by a registered person, determine, by notice in writing, a day in substitution for the last day referred to in subsection (2)(b), not being a day more than ten days before that last day, and the determination shall take effect from a date, and subject to such conditions as, specified in the notice.

(9) The first return of a registered person after any change in tax period shall not include any period in respect of which the registered person has previously furnished a return.

(10) A registered person dissatisfied with a decision of the Commissioner under this section (except subsection (3)) relating to the tax period of the person may challenge the decision only under Part VIII of this Act.

Returns

24. (1) Every registered person shall furnish the Commissioner with a return in respect of each tax period relating to such person within 25 days after the end of the tax period, whether or not tax is payable in respect of such period.

(2) A return in terms of subsection (1) shall be in such form as the Commissioner may prescribe, shall state the information necessary to calculate the tax payable in accordance with section 18 for the tax period, and shall be furnished in such manner as the Commissioner may prescribe.

(3) In addition to any return required by or under this Act, the Commissioner may by notice in writing require any person, whether or not a registered person, to furnish (whether on that person's own behalf or as agent or trustee of another person) the Commissioner with such further or other return, in a form prescribed by the Commissioner, as and when required by the Commissioner for the purposes of this Act.

(4) Upon application in writing by any person, the Commissioner may, where good cause is shown by the person, extend the period within which any return required by this section is to be furnished.

(5) The granting of an extension of time under subsection (4) shall not alter the due date for payment of tax under section 30.

(6) A person dissatisfied with a decision of the Commissioner under subsection (3) or (4) relating to any return required to be furnished by the person may challenge the decision only under Part VIII of this Act.

Assessments

25. (1) Where -

(a) any person fails to furnish any return as required by section 24 or fails to

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- furnish any import declaration as required by section 14(1) or (2); or
- (b) the Commissioner is not satisfied with any return or import declaration which a person is required to furnish in terms of the applicable section referred to in paragraph (a); or
 - (c) the Commissioner has reason to believe that any person has become liable for the payment of an amount of tax but has not paid such amount; or
 - (d) any person, other than a registered person, supplies goods or services and represents that tax is charged on the supply; or
 - (e) any registered person supplies goods or services and the supply is not a taxable supply or the supply is a taxable supply charged with tax at the rate of zero per cent or an incorrect positive rate, and in either case the registered person represents that the correct positive rate of tax is charged on the supply; or
 - (f) the Commissioner has determined the liability of any person under section 80(2),

the Commissioner may make an assessment of the amount of tax payable by the person.

- (2) The person assessed under subsection (1) shall -
 - (a) in the case of an assessment under subsection (1)(d) or (e), be the person making the supply; and
 - (b) in the case of an assessment under subsection (1)(f), be the person whose liability has been determined under section 80(2); and
 - (c) in any other case, be the person required to account for the tax under this Act.
- (3) An assessment under subsection (1)(a), (c), (d), (e) or (f) may be made at any time.
- (4) An assessment under subsection (1)(b) may -
 - (a) where the default was due to fraud or gross or wilful neglect committed by, or on behalf of, the person who furnished the return or import declaration, be made at any time; or
 - (b) in any other case, be made within five years after the date the return or import declaration was furnished.
- (5) The Commissioner may, based on the information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).
- (6) Where an assessment has been made under this section, the Commissioner shall serve a notice of the assessment on the person assessed, which notice shall state -
 - (a) the tax payable; and
 - (b) the date the tax is due and payable; and

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(c) the time, place and manner of objecting to the assessment.

(7) The Commissioner may, within three years after service of a notice of assessment, amend the assessment by making such alterations or additions to the assessment as the Commissioner considers necessary, and the Commissioner shall serve a notice of the amended assessment on the person assessed.

(8) An amended assessment shall in all respects be deemed to be an assessment under this Act.

(9) An amount assessed under subsection (1)(d) or (f) shall for all purposes of this Act be deemed to be tax charged under this Act.

(10) A person dissatisfied with a decision of the Commissioner under subsection (7) may challenge the decision only under Part VIII of this Act.

General provisions relating to assessments

26. (1) The production of a notice of assessment or a certified copy of a notice of assessment shall be receivable in any proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings under Part VIII of this Act relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued or executed under this Act shall be -

- (a) quashed or deemed to be void or voidable for want of form; or
- (b) affected by reason of mistake, defect or omission therein,

if it is, in substance and effect, in conformity with this Act and the person assessed, or intended to be assessed, or affected by the document is designated in it according to common understanding.

**PART VIII
OBJECTIONS AND APPEALS****Objections**

27. (1) Any person who is dissatisfied with an appealable decision may lodge an objection to the appealable decision with the Commissioner within 90 days after the person was served with a notice of the decision or assessment in question.

(2) Upon application in writing by a person dissatisfied with an appealable decision, the Commissioner may, where satisfied that owing to absence from Namibia, sickness or other reasonable cause the person was prevented from lodging an objection to the appealable decision within the period referred to in subsection (1) and that there has been no unreasonable delay by the person in lodging the objection, accept an objection lodged with the Commissioner after the expiration of that period.

(3) Every objection to an appealable decision shall be in writing and shall specify in detail the grounds upon which it is made.

(4) In the case of an objection to an assessment, the Commissioner may consider the objection only if -

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- (a) the person assessed has paid the tax due under the assessment; or
 - (b) the Commissioner is satisfied that the person objecting is unable to pay the full amount of tax due and has given sufficient security for the amount of tax unpaid and any penalty that may become payable.
- (5) After considering the objection, the Commissioner may –
- (a) allow the objection in whole or in part and –
 - (i) alter any decision pursuant thereto; or
 - (ii) alter or reduce any assessment pursuant thereto; or
 - (b) disallow the objection.
- (6) The Commissioner shall serve the person objecting with a notice in writing of the objection decision under subsection (5).
- (7) A person dissatisfied with a decision of the Commissioner under subsection (2) may challenge the decision only under this Part.

Appeals

28. (1) In this section “objection decision” means a decision taken by the Commissioner under section 27(5).

(2) Any person dissatisfied with an objection decision may, within 60 days after the person was served with a notice of the objection decision, lodge with the Commissioner a notice of appeal to the special court for hearing income tax appeals constituted under section 73 of the Income Tax Act, 1981 (Act No. 24 of 1981).

(3) Upon application in writing by a person dissatisfied with an objection decision, the Commissioner may, where satisfied that owing to absence from Namibia, sickness or other reasonable cause the person was prevented from lodging a notice of appeal within the period referred to in subsection (2) and that there has been no unreasonable delay by the person in lodging the notice, accept a notice of appeal lodged with the Commissioner after the expiration of that period.

(4) In any appeal to the special court against an objection decision, the person appealing shall be limited to the grounds set out in the objection referred to in section 27(3), unless the court grants leave to the person to add new grounds.

(5) In deciding an appeal, the special court may make an order -

- (a) affirming or varying the objection decision, including (in the case of an appeal against an objection decision relating to an assessment) a decision to increase or decrease the assessment; or
- (b) remitting the objection decision for reconsideration by the Commissioner in accordance with the directions of the court.

(6) The provisions of section 73(8), (9), (10), (11), (12), (14), (15), (16) and (17) and of sections 74, 75 and 76 of the Income Tax Act, 1981 (Act No. 24 of 1981), and any regulation made under the said Act relating to any appeal to the special court and to any appeal in terms of the said section 76, shall with the necessary changes apply to any appeal under this section.

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(7) A person dissatisfied with a decision of the Commissioner under subsection (3) may challenge the decision only under this Part.

Burden of proof

29. The burden of proof that an assessment is excessive or that a decision of the Commissioner is wrong shall be on the person objecting to the assessment or decision.

**PART IX
COLLECTION AND RECOVERY****Due date for payment of tax**

30. (1) Tax payable under this Act shall be due and payable -

- (a) where the tax is payable by a registered person for a tax period, by the due date for furnishing the return in respect of the tax period; or
- (b) where the tax is payable by a person assessed under any assessment issued under this Act, on the date specified in the notice of assessment; or
- (c) where the tax is payable by an importer of goods or a recipient of an import of services, by the due date referred to in section 14 in respect of the import.

(2) Upon application in writing by a person liable for tax, the Commissioner may, where good cause is shown, extend the time for payment of tax by the person beyond the date on which it is due and payable in terms of this section, or make such other arrangements as appropriate to ensure the payment of the tax due.

(3) A person dissatisfied with a decision of the Commissioner under subsection (2) may challenge the decision only under Part VIII of this Act.

Tax as a debt due to the State

31. (1) Any amount of tax due and payable by any person under this Act shall be a debt due to the State and shall be recoverable by the Commissioner in the manner provided in this section.

(2) If any person fails to pay tax when it is due and payable, the Commissioner may file with the clerk or registrar of a court of competent jurisdiction a statement certified by the Commissioner setting out the amount of the tax due and payable by such person, and that statement shall for all purposes have the effect of a civil judgment of the court at which that statement has been so filed, in favour of the Commissioner for a liquid debt in the amount specified in that statement.

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

(4) The Commissioner may institute proceedings afresh under subsection (2) in respect of any tax to which a statement withdrawn under subsection (3) relates.

(5) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement referred to in subsection (2) for any amount whatsoever may be filed with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with this Act.

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(6) Where, in addition to any amount of tax which is due and payable by any person under this Act, any amount of interest or penalty is payable, any payment made by that person in respect of such tax, interest or penalty which is less than the total amount due shall be dealt with as made -

- (a) in respect of such penalty; and
- (b) to the extent that such payment exceeds the amount of such penalty, in respect of such interest; and
- (c) to the extent that such payment exceeds the sum of such penalty and interest, in respect of such tax.

(7) Where the Commissioner has reasonable grounds to believe that a person may leave Namibia permanently without paying all tax due or which may become due under this Act, the Commissioner may issue a certificate to the Permanent Secretary: Home Affairs containing particulars of the tax due and request the said Permanent Secretary to prevent such person from leaving Namibia until such person makes -

- (a) payment in full; or
- (b) an arrangement satisfactory to the Commissioner for the payment of the tax.

(8) A copy of the certificate issued under subsection (7) shall be served by the Commissioner on the person named in the certificate, if it is practicable to do so.

(9) Payment of the tax specified in a certificate issued under subsection (7) to a person employed in the directorate of Customs and Excise or to an immigration officer, as defined in section 1 of the Immigration Control Act, 1993 (Act No. 7 of 1993), or the production of a certificate purporting to be signed by the Commissioner stating that the tax has been paid or that satisfactory arrangements for the payment thereof have been made, shall be sufficient authority for allowing the person concerned to leave Namibia.

(10) Notwithstanding anything in this Act, an amount of tax due at the end of any calendar month which is N\$20 or less, shall not be recoverable by the Commissioner but shall be written off.

Security

32. (1) The Commissioner may, when reasonably necessary for securing the payment of tax, by notice in writing require any person to furnish security to the Commissioner for the payment of any tax that is or may become payable by the person under this Act.

(2) Security required under subsection (1) shall be for such amount and in such form, and shall be furnished within such period, as the Commissioner may specify in the notice.

(3) Where a registered person fails to comply with a notice under subsection (1), the Commissioner may recover the amount of the security as if the amount were an amount of tax due under this Act.

(4) Where security under subsection (1) is in cash and the Commissioner is satisfied that the security is no longer required, the amount of the security may be applied by the Commissioner in the manner provided in section 38(2).

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(5) A person dissatisfied with a decision of the Commissioner under subsection (1) may challenge the decision only under Part VIII of this Act.

Preferential claim to assets

33. From the date on which tax becomes due and payable under this Act, the Commissioner shall have a preferential claim as provided under the Insolvency Act, 1936 (Act No. 24 of 1936), upon the assets of the person liable to pay the tax, until the tax is paid.

Seizure of goods

34. (1) Where the Commissioner has reasonable grounds to believe that tax on a supply or import of goods has not been or will not be paid, the Commissioner may seize those goods.

(2) Goods that have been seized under subsection (1) shall be stored in a place approved by the Commissioner for the storage of such goods.

(3) Where goods have been seized under subsection (1), the Commissioner shall, as soon as practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing -

- (a) identifying the goods; and
- (b) stating that the goods have been seized under this section, and the reason for seizure; and
- (c) setting out the provisions of subsections (6), (7) and (8).

(4) The Commissioner shall not be required to serve a notice in terms of subsection (3) if, after making reasonable enquiries, the Commissioner does not have sufficient information to identify the person on whom such notice is to be served.

(5) Where subsection (4) is applicable, the Commissioner may serve a notice contemplated in subsection (3) on any person claiming the goods, provided such person has given the Commissioner sufficient information to enable such a notice to be served.

(6) The Commissioner may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice contemplated in subsection (3) has been served, but only if that person has paid, or gives security (in accordance with section 32) for the payment of, the tax due and payable or that will become due and payable in respect of the supply or import of the goods.

(7) Where subsection (6) is not applicable, the Commissioner shall detain the goods seized under subsection (1) -

- (a) in the case of perishable goods, for such period as the Commissioner considers reasonable having regard to the condition of the goods; or
- (b) in any other case, until the later of -
 - (i) 10 days after the seizure of the goods; or
 - (ii) 10 days after the due date for payment of the tax.

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(8) Where the period of detention referred to in subsection (7) has expired in respect of any goods seized under subsection (1), the goods so seized may be sold by public auction or in such other manner as the Commissioner may direct and, if the goods are sold, the proceeds of sale -

- (a) shall be applied -
 - (i) first towards all costs incurred in connection with the seizure, keeping and sale of the goods; and
 - (ii) then towards the tax due and payable; and
- (b) shall, to the extent that such proceeds exceed the sum of such costs and tax, be refunded to the person liable for the payment of such tax.

(9) Nothing in this section contained shall be construed as preventing the Commissioner from proceeding under section 31 with respect to any unpaid amount, if the proceeds of sale are not sufficient to meet all costs incurred in connection with the sale and the tax due.

Recovery of tax from recipient of supply

35. (1) Where, in respect of a taxable supply made by a registered person, the registered person has, in consequence of any fraudulent action or misrepresentation by the recipient of the supply, incorrectly treated the supply as an exempt supply or applied an incorrect rate of tax (including a zero rate) to the supply, the Commissioner may raise an assessment upon the recipient for the amount of unpaid tax in respect of the supply, together with any interest or penalty that has become payable in terms of sections 53 and 68, respectively.

(2) The Commissioner shall serve a notice of any assessment raised under subsection (1) on the recipient, specifying -

- (a) the tax payable; and
- (b) the date the tax is due and payable; and
- (c) the time, place and manner of objecting to the assessment.

(3) An assessment raised under subsection (1) shall be deemed to be an assessment for all purposes of this Act.

(4) Subsection (1) shall not be construed as preventing the Commissioner from recovering the amounts of unpaid tax, interest and penalty from the registered person making the supply, but -

- (a) any amount recovered from the recipient shall be credited against the liability of the registered person; and
- (b) any amount recovered from the registered person shall be credited against the liability of the recipient.

(5) Where an amount of tax, interest and penalty referred to in subsection (1) is paid by the registered person, the registered person may recover the amount paid from the recipient.

(6) An amount assessed under this section shall for all purposes of this Act be deemed to be tax charged under this Act.

Recovery of tax from third parties

36. (1) Where any person liable to pay tax under this Act (hereinafter in this section referred to as the person liable) fails to do so by the due date for such payment, the Commissioner may by notice in writing require any other person -

- (a) owing or who may owe money to the person liable; or
- (b) holding or who may subsequently hold money for, or on account of, the person liable; or
- (c) having authority from some other person to pay money to the person liable,

to pay from such money an amount equal to the amount of tax due to the Commissioner on or before a date specified in the notice.

(2) The date contemplated in subsection (1) shall not be before the date on which any such money becomes due to the person liable.

(3) A copy of a notice issued under subsection (1) shall be served on the person liable.

(4) Where a person served with a notice issued under subsection (1) is unable to comply with the notice, the person shall, before the date for payment specified in the notice, notify the Commissioner accordingly in writing, setting out the reasons for the inability to comply with the notice.

(5) Where a notice is served on the Commissioner under subsection (4), the Commissioner may by notice in writing -

- (a) accept the notification and cancel or amend the notice issued under subsection (1); or
- (b) reject the notification.

(6) Where a person who has served a notice on the Commissioner under subsection (4) is dissatisfied with the decision of the Commissioner under subsection (5), such person may challenge the decision only under Part VIII of this Act.

(7) A person making a payment pursuant to a notice issued under subsection (1) shall be deemed to have acted under the authority of the person liable and of all other persons concerned, and no liability shall attach to such first-mentioned person in respect of the making of such payment.

(8) The provisions of this Act relating to the collection and recovery of tax shall with the necessary changes apply to any amount due under this section as if such amount were tax due under this Act.

Duties of receivers

37. (1) In this section "receiver" means a person who, with respect to any asset in Namibia of a registered person, is -

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- (a) a liquidator of any company; or
- (b) a receiver appointed out of court or by a court; or
- (c) a trustee for an unrehabilitated insolvent; or
- (d) a mortgagee in possession; or
- (e) an executor of a deceased estate; or
- (f) any other person conducting the business of a person legally incapacitated.

(2) Any receiver shall in writing notify the Commissioner within 14 days after being appointed to that position or after taking possession of any asset in Namibia of a registered person, whichever occurs first.

(3) The Commissioner may in writing notify a receiver of the amount which appears to the Commissioner to be sufficient to provide for any tax which is or will become payable by the registered person whose asset or assets are in the possession of the receiver.

(4) A receiver -

- (a) shall set aside, out of the proceeds of sale of any asset referred to in subsection (3), the amount notified by the Commissioner under that subsection, or such lesser amount as is subsequently agreed on by the Commissioner; and
- (b) shall be liable to the extent of the amount so set aside for the tax payable by the registered person who owned such asset; and
- (c) may pay any debt that has priority over the tax referred to in subsection (3), notwithstanding anything in this section.

(5) A receiver shall be personally liable to the extent of any amount required to be set aside in terms of subsection (4) for the tax referred to in subsection (3) if, and to the extent that, the receiver fails to comply with the requirements of this section.

**PART X
REFUND OF TAX AND TAX RELIEF**

Refund of tax

38. (1) Where -

- (a) the total amount deductible by a registered person under section 18(1) for a tax period exceeds the person's output tax for that period; or
- (b) the amount of tax paid by a person (other than in circumstances contemplated in paragraph (a)) was in excess of the amount properly charged to tax under this Act,

the amount of the excess shall be dealt with in the manner provided in this section.

(2) Subject to this section, if, for any tax period, a registered person files a return reporting an excess referred to in subsection (1)(a), the return shall constitute a claim for a refund, and where the Commissioner is satisfied that a refund is due to the registered person -

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- (a) the Commissioner may apply the amount of the refund in reduction of any tax, levy, interest or penalty payable by the registered person in terms of this Act or the Income Tax Act, 1981 (Act No. 24 of 1981), and of any unpaid amount due in terms of the Sales Tax Act, 1992 (Act No. 5 of 1992), or the Additional Sales Levy Act, 1993 (Act No. 11 of 1993); and
- (b) any excess remaining shall be refunded to the registered person -
- (i) where -
- (aa) the Commissioner is satisfied that the excess is due to excess input tax deductions that arise from the regular export of goods or services from Namibia; or
- (bb) such excess does not exceed N\$10 000, at the end of the calendar month following the due date for the return reporting the excess; or
- (ii) in any other case, at the end of the second calendar month following the due date for the return reporting the excess.
- (3) Where a person has overpaid tax in the circumstances contemplated in subsection (1)(b), the person may in writing apply to the Commissioner for a refund of the excess amount of tax.
- (4) Subject to this section, where the Commissioner is satisfied that a person who has made an application under subsection (3) has overpaid tax, the Commissioner -
- (a) may first apply the amount of the excess in reduction of any tax, levy, interest, penalty or unpaid amount referred to in subsection (2)(a); and
- (b) shall then refund any amount remaining to that person.
- (5) The Commissioner shall not make a refund under subsection (4) unless -
- (a) the amount to be refunded is more than N\$20; and
- (b) the Commissioner is satisfied that any amount of output tax claimed to be refundable to a registered person will, if such amount has been borne by any other person, in turn be refunded by the registered person to that other person.
- (6) Where a registered person has failed to furnish a return for any tax period as required by this Act, the Commissioner may withhold payment of any amount refundable under this section until the registered person furnishes such return as required.
- (7) Any claim for a refund shall be made in writing and be accompanied by documentary proof of payment of the excess amounts within three years after the date the excess arose.
- (8) The Commissioner shall serve on a person claiming a refund, a notice in writing of the decision in respect of the claim.
- (9) A person claiming a refund under this section who is dissatisfied with a decision referred to in subsection (8) may challenge the decision only under Part VIII of this Act.

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(10) The Commissioner may make or authorise a refund of any amount of tax paid by any individual who does not hold a Namibian passport on goods purchased by such individual in Namibia and removed as personal accompanied baggage of such individual to any other country, but only on receipt of a claim supported by documentary proof of -

- (a) the payment of tax on all goods so purchased of a minimum value of N\$2 000; and
- (b) the export of the goods,

by such individual.

(11) Notwithstanding anything in this Act, any excess amount of tax of N\$20 or less, shall not be refunded but shall be forfeited to the State.

Interest on delayed refunds

39. Where the Commissioner does not refund any amount refundable on the due date for payment prescribed in section 38(2)(b)(i) or (ii), as the case may be, interest shall be paid on such amount at the rate of 11 per cent per annum, calculated -

- (a) in the case of a return reflecting an excess input tax deductions that arise from the regular export of goods or services from Namibia, received after the due date for such return, from the end of the calendar month following the date on which the return reporting the excess was received to the date of the payment of such refund; and
- (b) in the case of any return, other than a return contemplated in paragraph (a), received after the due date for such return, from the end of the second calendar month following the date on which the return reporting the excess was received to the date of payment of such refund; and
- (c) in any other case, from the due date for payment prescribed in section 38(2)(b)(i) or (ii), as the case may be, to the date of the payment of such refund:

Provided that where the Commissioner withholds a refund as contemplated in section 38(6), or where a tax audit on a refund is considered necessary by the Commissioner, no interest shall be so payable.

Tax relief allowable to certain diplomats, diplomatic and consular missions and public international organisations, and in respect of certain technical assistance agreements

40. (1) The Permanent Secretary: Foreign Affairs may issue a diplomatic exemption certificate enabling zero-rated purchases, in such form and upon such conditions and subject to such restrictions as he or she may prescribe -

- (a) to any person to the extent provided under the Diplomatic Privileges Act, 1951 (Act No. 71 of 1951), an international convention having force of law in Namibia or the recognised principles of international law; or
- (b) to any diplomatic or consular mission of a foreign country established in Namibia to the extent provided under the Diplomatic Privileges Act, 1951; or

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- (c) to any organisation established by international convention of which Namibia is a member to the extent provided under such convention.

(2) The Commissioner, in consultation with the Minister whose Ministry benefits from any technical assistance agreement entered into between the Government of Namibia and any organisation or the government of any other country, may issue an exemption certificate enabling zero-rated purchases, in such form and upon such conditions and subject to such restrictions as he or she may prescribe, to such organisation or government in terms of, and for the purpose of attaining the objects of, such technical assistance agreement in relation to every taxable supply of goods or services contemplated in section 6 of this Act.

(3) The Permanent Secretary: Foreign Affairs shall inform the Commissioner in such form as may be determined by the Commissioner of the issue of any exemption certificate under subsection (1), and the Commissioner shall keep and maintain a register of all such exemption certificates.

(4) The relief contemplated in subsections (1) and (2) shall not be granted to any citizen or permanent resident of Namibia.

(5) Where relief is claimed in terms of subsection (1) or (2), the person, mission, organisation or government claiming such relief, shall satisfy the supplier of goods or services that it holds a valid exemption certificate issued in terms of the relevant subsection by producing such exemption certificate at the time of the supply.

PART XI REPRESENTATIVES

Persons acting in a representative capacity

41. (1) In this section -

“public officer”, in relation to a company, means the person who is the public officer of the company under section 93 of the Income Tax Act, 1981 (Act No. 24 of 1981);

“representative”, in relation to a registered person, means -

- (a) in the case of a company (other than a company in liquidation) -
- (i) where the company has a public officer, that public officer; or
 - (ii) in any other case, any person who is responsible for accounting for the receipt and payment of moneys or funds on behalf of the company; or
- (b) in the case of a company in liquidation, the liquidator of the company; or
- (c) in the case of the State, any person responsible for accounting for the receipt and payment of moneys under any law of Namibia or for the receipt and payment of public funds or of funds voted by Parliament; or
- (d) in the case of a regional authority, a local authority or any board, any person who is responsible for accounting for the receipt and payment of moneys or funds on behalf of the regional authority, local authority or board; or
- (e) in the case of a partnership, any partner in the partnership; or

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- (f) in the case of a trust, any trustee of the trust; or
- (g) in the case of a non-resident person, or a person referred to in paragraph (d) of the definition of "resident person" in section 1, any person controlling such person's affairs in Namibia, including any manager of any taxable activity of such person in Namibia.

(2) Every representative of a registered person shall be responsible for performing any duties (including the payment of tax) imposed by or under this Act on the registered person.

(3) Subject to subsection (5), any tax that, by virtue of subsection (2), is payable by any representative of a registered person in his or her representative capacity shall only be recoverable from the representative to the extent of any assets of the registered person that are in the possession or under the control of the representative.

(4) Every representative who in that capacity pays any tax payable under this Act by a registered person shall be entitled to recover the amount so paid from the registered person or to retain the amount so paid out of any moneys of the registered person that are in the representative's possession or under his or her control.

(5) Every representative shall be personally liable for the payment of any tax payable by the representative in his or her representative capacity if, while the amount remains unpaid, the representative -

- (a) alienates, charges or disposes of any moneys received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any moneys or funds belonging to the registered person that are in the possession of the representative or that come to the representative after the tax is payable, if such tax could legally have been paid from or out of such moneys or funds.

(6) Nothing in this section contained shall be construed as relieving any registered person from performing any duties imposed by or under this Act on the registered person which the representative of the registered person has failed to perform.

Power to appoint agent

42. The Commissioner may, if he or she considers it necessary, declare any person to be an agent of a registered person, and the person so declared an agent shall for the purposes of section 41 be deemed to be a representative of the registered person concerned.

**PART XII
SPECIAL MATTERS****Branches and divisions**

43. For the purposes of this Act, where a registered person conducts -
- (a) a taxable activity or taxable activities in branches or divisions; or
- (b) more than one taxable activity that differs in nature,

the registered person shall be deemed to be a single person conducting a taxable activity, and shall be registered only in the name of such person.

Bodies of persons (other than incorporated companies)

44. (1) This Act shall apply to a partnership as if the partnership were a person separate from the partners of the partnership, but -

- (a) the obligations that would otherwise be imposed on the partnership shall instead be imposed on each partner, but may be discharged by any of the partners; and
- (b) each of the partners shall be jointly and severally liable to pay any amount due under this Act that would otherwise be payable by the partnership; and
- (c) any offence under this Act that would otherwise be committed by the partnership shall, in the absence of evidence to the contrary, be deemed to have been committed by each of the partners.

(2) This Act shall apply to an unincorporated association or body as if it were a person separate from the members of such association or body, but the obligations that would otherwise be imposed on such association or body shall instead be imposed on each member of the management committee or cadre of such association or body, but may be discharged by any of those members.

(3) Where -

- (a) any partnership or other unincorporated association or body is dissolved in consequence of -
 - (i) the retirement or withdrawal of one or more (but not all) of its partners or members; or
 - (ii) the admission of a new partner or member; and
- (b) a new partnership or unincorporated association or body comes into existence consisting of the remaining partners or members of the dissolved partnership or association or body, as the case may be, or such remaining partners or members and one or more new partners or members; and
- (c) the new partnership or unincorporated association or body continues to carry on the taxable activity of the dissolved partnership or association or body as a going concern,

the dissolved partnership or association or body and the new partnership or association or body, as the case may be, shall for the purposes of this Act be deemed to be one and the same partnership or association or body unless the Commissioner, having regard to the circumstances of the case, otherwise directs.

Death or insolvency of, or property mortgaged by, registered person

45. (1) Where, after the death of any registered person or the sequestration of his or her estate, any taxable activity previously carried on by the registered person is carried on by, or on behalf of, the executor or trustee of the registered person's estate or anything is done in connection with the termination of the taxable activity, the estate of the registered person, as represented by the executor or trustee, shall for the purposes of this Act be deemed to be the registered person in respect of the taxable activity.

(2) Where a mortgagee is in possession of any land or other property previously mortgaged by a mortgagor who is a registered person, and the mortgagee carries on any

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taxable activity in relation to that land or other property, the mortgagee shall, from the date on which the mortgagee took possession of that land or property until such time as the mortgagee ceases to be in possession of that land or property, be deemed to be the registered person carrying on the taxable activity.

Trustee

46. Any person who is a trustee in more than one capacity shall for the purposes of this Act be deemed to be a separate person in relation to each of those capacities.

**PART XIII
RECORDS AND INVESTIGATION POWERS****Interpretation**

47. In this Part -

“computer” means a computer as defined in section 1 of the Computer Evidence Act, 1985 (Act No. 32 of 1985);

“computer print-out” means a computer print-out as defined in section 1 of the Computer Evidence Act, 1985;

“computer-stored information” includes any computer print-out;

“records” means -

- (a) any records required to be maintained in terms of paragraphs (a), (b), (c) and (d) of section 48(1); or
- (b) any accounting records required to be maintained in terms of section 48(2); or
- (c) any accounts, books, computer-stored information, or any other documents or things relating to tax paid or payable under this Act;

“things” includes any corporeal or incorporeal thing and any document relating thereto;

“vehicle” includes any aircraft, ship or other vessel.

Record-keeping

48. (1) Every registered person and every person other than a registered person who is liable for the payment of tax under this Act shall, in particular, maintain the following records in Namibia in the English language, namely -

- (a) the original of all tax invoices, tax credit notes and tax debit notes received by any such person; and
- (b) a copy of all tax invoices, tax credit notes and tax debit notes issued by any such person; and
- (c) customs documentation relating to all imports and exports by any such person; and
- (d) such other records as the Commissioner may prescribe.

(2) Every registered person and every person other than a registered person who is liable for the payment of tax under this Act shall maintain accounting records in

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the English language -

- (a) in Namibia; or
 - (b) subject to compliance with the requirements of subsection (3), in any country other than Namibia.
- (3) The accounting records required to be maintained in terms of subsection (2) may be maintained in a country other than Namibia, provided -
- (a) those accounting records are maintained on a centralised computer system in the country where such registered or other person's main activities are located; and
 - (b) that centralised computer system is linked to such registered or other person's place or places of business in Namibia; and
 - (c) such registered or other person, if at any time requested thereto in writing by the Commissioner -
 - (i) furnishes the Commissioner with such computer print-outs as may be specified in that request; or
 - (ii) grants a taxation officer (employed in the directorate of Inland Revenue) access to that centralised computer system, within 24 hours from receiving that request.
- (4) Failure to comply with one or more of the requirements under subsection (3) shall constitute non-compliance with that subsection.
- (5) Records required to be maintained in terms of subsections (1) and (2) shall be retained for a period of at least five years after the end of the tax period to which they relate.

Access to records and computers

49. (1) For the purposes of the administration of this Act, any taxation officer who has been authorised thereto by the Commissioner in writing -
- (a) may, without previous notice and at any reasonable time, enter any premises or place where records are kept, and may on or in such premises or at such place search for any such records;
 - (b) may, in carrying out any search under paragraph (a), in any manner open, or cause to be opened or removed and opened, anything in which the taxation officer suspects that any records are kept;
 - (c) may seize any records which in the taxation officer's opinion may afford evidence that may be material in assessing the liability of any person for any tax payable under this Act;
 - (d) may retain any records seized under paragraph (c) for as long as such records may be required for determining a person's liability under this Act or for any criminal or other proceedings under this Act;
 - (e) may examine and make copies of or extracts from any records, and may require from any person an explanation of any entry therein;

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- (f) may, where a hard copy or computer disk of computer-stored information cannot be provided, seize and retain the computer in which the information is stored for as long as is necessary to copy the information required; and
- (g) may stop and board any vehicle which the taxation officer has reasonable cause to believe is importing goods into Namibia, and may search such vehicle or any person found on or in such vehicle for imported goods, and may question such person with respect to any matter dealt with in this Act.
- (2) Any search under subsection (1) of the person or the home of a person -
- (a) shall take place, with the necessary changes, in accordance with the provisions of section 22 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as if the taxation officer conducting the search were a police official as contemplated in the said Act; and
- (b) shall, in the event of a search of the person, be conducted by a taxation officer of the same gender as the person being searched.
- (3) Any taxation officer who attempts to exercise any power under subsection (1) on behalf of the Commissioner shall not be allowed to enter or remain on or in any premises or at any place if, upon being requested by the occupier of the premises or place, the taxation officer is unable to produce an authorisation in writing from the Commissioner to the effect that the taxation officer is authorised to exercise any such power under this section.
- (4) The owner, manager or any other person lawfully on or in the premises or at the place entered or proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise of the taxation officer's power under this section.
- (5) Any person whose computer or records have been seized and retained under subsection (1) may examine and make copies of, or extracts from, such records or any information stored in such computer during normal office hours under such supervision as the Commissioner may determine.
- (6) Any taxation officer exercising any power under subsection (1) may at any time request such assistance of any person employed in the directorate of Customs and Excise or of any member of the Namibian Police Force as the taxation officer may consider reasonably necessary to exercise such power, and any such person or member shall render such assistance as may be required by the taxation officer.
- (7) The provisions of subsection (1), in so far as they provide for a limitation on the fundamental right to privacy contemplated in Article 13 of the Namibian Constitution by authorising interference with such privacy, are enacted upon the authority conferred by the said Article.

Notice to obtain information or evidence

50. (1) For the purposes of the administration of this Act, the Commissioner may by notice in writing require any person, whether or not liable for tax under this Act -
- (a) to furnish the Commissioner with such information as may be required by the notice; or
- (b) to attend at the time and place designated in the notice for the purpose of being examined under oath or solemn affirmation before the Commissioner,

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or any taxation officer specifically authorised thereto by the Commissioner, concerning the tax affairs of that person or any other person, and for that purpose the Commissioner or such authorised officer may require the person who is to be examined to produce any records or computer in the possession or custody or under the control of that person.

(2) Where such notice requires the production of any records or computer, it shall be sufficient if such records or computer is described in the notice with reasonable certainty.

(3) A notice issued under this section shall be served by, or at the direction of, the Commissioner by a signed copy delivered by hand to the person to whom it is directed, or left at that person's usual or last known abode, and the certificate of service signed by the person serving the notice shall be evidence of the facts stated therein.

Records not in English language

51. Where any records referred to in section 49 or section 50 are not in the English language, the Commissioner may by notice in writing require the person keeping such records, or causing such records to be kept, to provide at that person's expense a translation thereof into the English language by a translator approved by the Commissioner for that purpose.

**PART XIV
VAT REGISTRATION NUMBER****VAT registration number**

52. The Commissioner may in writing require any person to include the VAT registration number issued by the Commissioner to that person in any return, notice or other document prescribed or used for the purposes of this Act.

**PART XV
INTEREST, OFFENCES AND PENALTIES****Interest**

53. (1) Any person who fails to pay any tax or penalty by the due date for payment shall be liable for the payment of interest at the rate of 20 per cent per annum, calculated daily and compounded monthly, on the amount unpaid, calculated from the date on which the payment was due until the date on which payment was made.

(2) Interest paid by a person under subsection (1) shall be refunded to such person to the extent that the tax or penalty to which it relates is subsequently determined not to have been due and payable.

(3) The provisions of this Act relating to the collection and recovery of tax shall with the necessary changes apply to any interest charged under this section as if the interest were tax due under this Act.

(4) Interest at the rate of 20 per cent per annum, calculated daily and compounded monthly, shall be levied on any import of goods contemplated in section 14(1)(c) from the date of import to the date the tax on such import is paid.

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VALUE-ADDED TAX ACT, 2000**Offences relating to registration and tax period****54.** Any person who fails -

- (a) to apply for registration as required by section 15(6); or
- (b) to notify the Commissioner of a change in circumstances as required by section 16(7); or
- (c) to notify the Commissioner as required by section 17(5); or
- (d) to notify the Commissioner of any change contemplated in section 23(6),

shall be guilty of an offence and liable on conviction -

- (i) where the failure was made knowingly or recklessly, to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (ii) in any other case, to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Offences relating to tax invoices, tax credit notes, tax debit notes and exemption certificates**55.** (1) Any registered person who -

- (a) fails to provide -
 - (i) a tax invoice as required by section 21(1); or
 - (ii) a tax credit note as required by section 22(1); or
 - (iii) a tax debit note as required by section 22(3); or
- (b) fails to comply with a request under section 21(7); or
- (c) knowingly issues any tax invoice, tax credit note or tax debit note required under this Act which is in any material respect erroneous or incomplete,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who provides or issues -

- (a) any tax invoice in contravention of section 21(3) or (4); or
- (b) any tax credit note in contravention of section 22(2) or (5); or
- (c) any tax debit note in contravention of section 22(4) or (5),

shall be guilty of an offence and liable on conviction -

- (i) where the contravention was made knowingly or recklessly, to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or

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- (ii) in any other case, to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Any person who improperly uses an exemption certificate issued under section 40 to that person or to another person shall be guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Failure to furnish returns, import declarations or other documents

56. (1) Any person who fails to furnish any return, import declaration or other document required by this Act shall be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Where any person convicted of an offence under subsection (1) fails to furnish the return, import declaration or other document within such period as the Commissioner may allow, that person shall be guilty of a further offence and liable on conviction to a fine of N\$50 for each day during which the failure continues and, in addition thereto, to imprisonment for three months without the option of a fine in lieu of imprisonment.

Failure to comply with recovery provisions

57. (1) Any person who fails to comply with -
- (a) a notice issued under section 36(1); or
 - (b) any requirement of section 37(2) or (4)(a),

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

- (2) Where -
- (a) any person is convicted of an offence under subsection (1)(a); or
 - (b) any person is convicted of an offence under subsection (1)(b) for failing to set aside an amount as required in terms of section 37(4)(a),

the court may, in addition to any sentence which it may impose on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding the amount which the convicted person failed to pay pursuant to the notice issued under section 36(1) or to set aside as required in terms of section 37(4)(a).

Failure to maintain proper records

58. Any person who fails to maintain proper records (including accounting records) in accordance with the requirements of this Act shall be guilty of an offence and liable on conviction -

- (a) where the failure was made knowingly or recklessly, to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (b) in any other case, to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Failure to provide reasonable assistance

59. Any person who fails to provide a taxation officer with reasonable facilities and assistance as required by section 49(4) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Failure to comply with a section 50 notice

60. Any person who fails to comply with a notice issued under section 50 shall be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Improper use of VAT registration number

61. (1) Any person who knowingly uses a false VAT registration number (including the VAT registration number of another person) on a return, notice or other document prescribed or used for the purposes of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Subsection (1) shall not apply to any person who has used the VAT registration number of another person with the permission of that other person on a return, notice or other document relating to the tax affairs of that other person.

False or misleading statements

62. (1) Any person who -

- (a) makes a statement to a taxation officer that is false or misleading in any material respect; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in any material respect,

shall be guilty of an offence and liable on conviction -

- (i) where the statement or omission was made knowingly or recklessly, to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (ii) in any other case, to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) A reference in this section to a statement made to a taxation officer shall be construed as a reference to a statement made orally or in writing or in any other form to the taxation officer acting in the performance of his or her duties under this Act, and includes a statement made -

- (a) in any application, certificate, declaration, notification, return, objection or other document made, prepared, given, filed or furnished under this Act; or
- (b) in any information required to be furnished under this Act; or
- (c) in any document furnished to a taxation officer otherwise than pursuant to this Act; or

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- (d) in any answer to a question asked of a person by a taxation officer acting in the performance of his or her duties under this Act; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

Obstructing taxation officers

63. Any person who hinders or obstructs any taxation officer in the performance of his or her duties under this Act shall be guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Offences by taxation officers

64. Any taxation officer engaged in carrying out the provisions of this Act who -
- (a) directly or indirectly asks for, or takes in connection with any of his or her duties, any payment or reward, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the taxation officer is lawfully entitled to receive; or
 - (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal or connive at any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution by the taxation officer of his or her duties,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and the court may, in addition to any sentence which it may impose on the convicted person in respect of the offence, order the convicted person to pay to the Commissioner any amount of tax that has not been paid as a result of the convicted person's wrongdoing and which cannot be recovered from the person liable for that tax.

Offences by companies

65. Where an offence under the preceding sections of this Part (except sections 53 and 64) has been committed by a company, every person who at the time of the commission of the offence -

- (a) was a representative officer, director, general manager, secretary or other similar officer of the company; or
- (b) was acting or purporting to act in such capacity,

shall, in the absence of evidence to the contrary, be deemed to have committed the offence.

Penalty for failure to register

66. Any person who fails to apply for registration as required by section 15(6) shall, subject to section 71(3), be liable for the payment of a penalty equal to double the amount of output tax payable from the time such person becomes liable to be registered until such person files an application for registration with the Commissioner.

Penalty for failure to furnish returns or import declarations

67. (1) Any person who fails to furnish any return or import declaration within the period required by this Act shall be liable for the payment of a penalty which is the

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greater of -

- (a) N\$100 for each day during which the return or import declaration remains outstanding; or
- (b) an amount equal to 10 per cent of the tax payable for the period of such return or import declaration, for each month or part thereof during which the return or import declaration remains outstanding.

(2) The penalty imposed under subsection (1) shall not exceed the amount of tax payable in respect of the return or import declaration.

Penalty for failure to pay tax when due

68. (1) Any person who fails to pay any tax payable under this Act on or before the due date for payment shall be liable for the payment of a penalty which is the greater of -

- (a) N\$100 for each day during which the tax payment remains outstanding; or
- (b) an amount -
 - (i) equal to 2,5 per cent of the tax outstanding, where payment is received not more than 7 days late; or
 - (ii) equal to 5 per cent of the tax outstanding, where payment is received more than 7, but not more than 14, days late; or
 - (iii) equal to 10 per cent of the tax outstanding, where payment is received more than 14, but not more than 30, days late; or
 - (iv) equal to 10 per cent of the tax outstanding, for each month or part thereof during which the tax payment remains outstanding, where payment is received more than 30 days late.

(2) The penalty imposed under subsection (1) shall not exceed the amount of unpaid tax.

(3) A penalty paid by a person under subsection (1) shall be refunded to such person to the extent that the tax to which it relates is subsequently determined not to have been due and payable.

(4) A penalty imposed under this section shall be in addition to any interest payable under section 53.

Penalty in relation to records

69. Any person who fails to maintain proper records (including accounting records) in respect of any tax period in accordance with the requirements of this Act shall, subject to section 71(3), be liable for the payment of a penalty of N\$3 000 for each day during which the failure continues.

Penalty for making false or misleading statements

- 70.** (1) Where any person knowingly or recklessly -

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- (a) makes a statement to a taxation officer that is false or misleading in any material respect; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in any material respect,

and the tax properly payable by that person exceeds the tax that would be payable if that person were assessed on the basis that the statement is true, that person shall, subject to section 71(3), be liable for the payment of a penalty equal to double the amount of the excess.

(2) Section 62(2) shall apply in determining whether a person has made a statement to a taxation officer.

Recovery of penalties

71. (1) Where good cause is shown, in writing, by the person liable for the payment of a penalty under section 66, 67, 68, 69 or 70, the Commissioner may remit in whole or in part any penalty so payable.

(2) Subject to subsection (3), the imposition of any penalty under this Part shall be in addition to any sentence which a court may impose on a convicted person in respect of any offence under this Act.

(3) No penalty shall be payable in terms of section 66, 69 or 70 where the person liable for such payment has been convicted of an offence under section 54, 58 or 62, respectively, in respect of the same act or omission.

(4) If a penalty payable in terms of section 66, 69 or 70 has been paid and the Commissioner institutes criminal proceedings under section 54, 58 or 62, respectively, in respect of the same act or omission, the Commissioner shall refund the amount of penalty so paid, and, unless and until the prosecution is stopped, no such penalty shall be payable.

(5) Penalties may be assessed and collected as if the amount of penalty were an amount of tax due under this Act.

(6) A person dissatisfied with a decision of the Commissioner under subsection (1) may challenge the decision only under Part VIII of this Act.

**PART XVI
ADMINISTRATION****Administration of Act**

72. The Commissioner shall be responsible for carrying out the provisions of this Act.

Exercise of powers and performance of duties

73. (1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act, or any amendment thereof, may be exercised or performed by the Commissioner personally, or by any taxation officer engaged in carrying out those provisions under the control, direction or supervision of the Commissioner.

(2) Subject to subsection (3), any decision made and any notice or communication issued or signed by any taxation officer referred to in subsection (1) may be withdrawn or amended by the Commissioner or by the taxation officer concerned,

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and shall for the purposes of the provisions referred to in subsection (1), until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner.

(3) Any decision made by any taxation officer in the exercise of any discretionary power under the provisions of this Act shall not be withdrawn or amended after the expiration of a period 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 taxation officer when the decision was made.

(4) Any written decision made by the Commissioner personally in the exercise of any discretionary power under the provisions of this Act shall not be withdrawn or amended by the Commissioner if all the material facts were known to the Commissioner when the decision was made.

(5) Where any decision has been given by the Commissioner to any person to the effect that such person is required or not required to be registered under the provisions of this Act or as to the nature of any transaction concluded by such 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 tax 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 that person and all the material facts were known to the Commissioner when the decision was given.

Secrecy

74. (1) A taxation officer carrying out the provisions of this Act shall not -
- (a) disclose to any person or his or her representative 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; or
 - (b) permit any person to have access to any records in the possession or custody of the Commissioner,

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.

(2) Nothing in this section contained shall be construed as preventing the Commissioner from disclosing -

- (a) any documents or information to -
 - (i) any person where the disclosure is necessary for the purposes of this Act or any other fiscal law of Namibia; or
 - (ii) the Auditor-General where the disclosure is necessary for the performance by the Auditor-General of his or her duties in terms of section 26 of the State Finance Act, 1991 (Act No. 31 of 1991); or
 - (iii) the competent authority of the government of another country with which Namibia has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under the agreement; or
- (b) any information which does not identify any specific person to any person in the employment of the State where such disclosure is necessary for the

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performance by that person of his or her official duties.

(3) A person who has obtained any documents or information from the Commissioner under subsection (2) shall not disclose such documents or information to any other person, except to the extent reasonably necessary to achieve the purpose for which the disclosure was made to such first-mentioned person.

(4) Any documents or information obtained by the Commissioner in the performance of his or her duties under this Act may be used by the Commissioner for the purposes of any other fiscal law administered by the Minister or the Commissioner.

(5) Any person who contravenes a provision of subsection (1) or (3) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**PART XVII
FORMS AND NOTICES**

Forms and notices, and authentication of documents

75. (1) (a) Any form, notice, return or other document required by this Act to be prescribed by the Commissioner shall be in such form as the Commissioner may consider appropriate for the efficient administration of this Act.

(b) Any form, notice, return or other document so prescribed by the Commissioner need not be published in the *Gazette*.

(2) The Commissioner shall make the documents referred to in subsection (1) available to the public at any revenue or magistrate's office or by mail, as the Commissioner may determine.

(3) Any form, notice or other document issued or served or given by or on behalf of the Commissioner under this Act shall be sufficiently authenticated if the name or official designation of the Commissioner or authorised taxation officer by whom the same is issued or served or given, is printed, stamped or written thereon.

Service of notices and other documents

76. Unless otherwise provided in this Act, any notice or other document required or authorised by or under this Act to be served -

(a) on any person being an individual other than in a representative capacity, shall be deemed to have been properly served on that person -

(i) if personally served on that person; or

(ii) if left at that person's usual or last known abode or office or place of business in Namibia; or

(iii) if sent by registered post to such abode or office or place of business, or to that person's usual or last known address in Namibia; or

(b) on any other person, shall be deemed to have been properly served on that person -

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- (i) if personally served on the representative of that person; or
- (ii) if left at the registered office of that person or at that person's address for service of notices under this Act; or
- (iii) where there is no such office or address, if it is left at or sent by registered post to any office or place of business of that person in Namibia.

**PART XVIII
GENERAL PROVISIONS****Tax-inclusive pricing**

77. (1) Any price charged by a registered person in respect of a taxable supply shall for the purposes of this Act be deemed to include the tax payable on the supply under section 6(1)(a), whether or not the registered person has included tax in such price.

(2) Subject to subsection (3), any price advertised or quoted by any registered person in respect of a taxable supply shall include tax, and the registered person shall in the advertisement or quotation state that the price includes tax.

(3) A registered person may advertise or quote a price in respect of a taxable supply as exclusive of tax, provided -

- (a) the advertisement or quotation also states the amount of tax chargeable on the supply under section 6(1)(a) and the price inclusive of tax; and
- (b) the price inclusive of tax and the price exclusive of tax are advertised or quoted with equal prominence and impact.

(4) Subject to subsection (5), price tickets on goods supplied by a registered person need not state that the price includes tax if this is stated by way of a notice prominently displayed at all entrances to the premises in which the registered person carries on a taxable activity and at all points in such premises where payments are effected.

(5) The Commissioner may in the case of any registered person or class of registered persons approve any other method of displaying prices of goods or services by such persons.

Variation of consideration on a change in rate of tax

78. (1) Where -

- (a) an agreement for a supply of goods or services by a registered person has been entered into; and
- (b) subsequent to entering into the agreement, tax is imposed on the supply or the rate of tax applicable to the supply is increased,

the supplier may, notwithstanding anything to the contrary contained in any agreement or law, recover from the recipient, in addition to the amounts payable by the recipient, an amount equal to the amount of tax imposed or the amount by which tax was increased, as the case may be.

(2) Where -

- (a) an agreement for a supply of goods or services by a registered person has

been entered into; and

- (b) subsequent to entering into the agreement, tax on the supply is withdrawn or the rate of tax applicable to the supply is decreased,

the supplier shall, notwithstanding anything to the contrary contained in any agreement or law, reduce the amount payable by the recipient by an amount equal to the amount of tax withdrawn or the amount by which tax was decreased, as the case may be.

(3) Subject to subsections (4) and (5), where subsection (1) or (2) is applicable in respect of a supply of goods or services subject to any fee, charge or other amount (whether a fixed, maximum or minimum fee or charge or other amount) prescribed by, or determined pursuant to, any Act, regulation or measure having the force of law, such fee, charge or other amount may be increased or shall be decreased, as the case may be, by the amount of tax or additional tax chargeable or the amount of tax no longer chargeable.

(4) Subsection (3) shall not apply where the fee, charge or other amount has been altered in any Act or regulation, or in any such measure, prescribing or determining such fee, charge or other amount to take account of any imposition, increase, decrease or withdrawal of tax.

(5) Nothing in subsection (3) contained shall be construed so as to permit any further increase or require any further decrease, as the case may be, in a fee, charge or other amount referred to in that subsection, where such fee, charge or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money for a taxable supply.

Application of increased or reduced tax rate

79. (1) Where goods (other than immovable property) are provided by a supplier before the date on which an increase or decrease in the rate of tax leviable under section 6(1)(a) becomes effective in respect of the supply of such goods or the date on which the tax is imposed or withdrawn in respect of the supply of such goods, and that supply is in terms of section 7 deemed to be made on or after the said date, then -

- (a) in the case of the increase or decrease in the rate of the tax on the said date, the rate of tax applicable to that supply shall be the rate applicable on the day immediately before the said date; or
- (b) in the case of the imposition of tax on the said date, that supply shall be deemed not to be subject to such tax; or
- (c) in the case of the withdrawal of the tax on the said date, that supply shall be deemed to be subject to such tax as if such tax had not been withdrawn.

(2) Where -

- (a) services are performed; or
- (b) goods (other than immovable property) are provided in respect of a successive supply contemplated in section 7(12) or (13),

during a period beginning and ending before the date on which an increase or decrease in the rate of tax leviable under section 6(1)(a) becomes effective in respect of the supply of such services or goods or the date on which the tax is imposed or withdrawn in respect of the supply of such services or goods, and that supply is in terms of section 7 deemed to be made on or after the said date, then -

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- (i) in the case of the increase or decrease in the rate of the tax on the said date, the rate of tax applicable to that supply shall be the rate applicable on the day immediately before the said date; or
 - (ii) in the case of the imposition of tax on the said date, that supply shall be deemed not to be subject to such tax; or
 - (iii) in the case of the withdrawal of the tax on the said date, that supply shall be deemed to be subject to such tax as if such tax had not been withdrawn.
- (3) Where -
- (a) services are performed; or
 - (b) goods (other than immovable property) are provided in respect of a successive supply contemplated in section 7(12) or (13),

during a period beginning before and ending on or after the date on which an increase or decrease in the rate of tax leviable under section 6(1)(a) becomes effective in respect of the supply of such services or goods or the date on which the tax is imposed or withdrawn in respect of the supply of such services or goods, and that supply is in terms of section 7 deemed to be made on or after the said date, the value of that supply shall, on the basis of a fair and reasonable apportionment, be deemed to consist of a part (hereinafter in this subsection referred to as the first part) relating to the performance of the services or the provision of the goods, as the case may be, before the said date and a part (hereinafter in this subsection referred to as the second part) relating to the performance of the services or the provision of the goods, as the case may be, on or after the said date, and -

- (i) in the case of the increase or decrease in the rate of the tax on the said date, the tax payable in respect of the first part shall be determined at the rate applicable to that supply on the day immediately before the said date and the tax payable in respect of the second part shall be determined at the rate applicable on the said date; or
- (ii) in the case of the imposition of tax on the said date, the first part shall be deemed not to be subject to such tax; or
- (iii) in the case of the withdrawal of the tax on the said date, the first part shall be deemed to be subject to such tax as if such tax had not been withdrawn.

(4) For the purposes of subsections (1), (2) and (3), goods shall be deemed to be provided by the supplier thereof when the goods are delivered to the recipient and goods supplied under a rental agreement shall be deemed to be provided to the recipient when the recipient takes possession or occupation of the goods.

(5) Subject to section 87, where, before the date on which an increase in the rate of tax becomes effective, a written agreement is concluded for -

- (a) the sale of immovable property consisting of -
 - (i) any dwelling, together with land on which it is erected, or of any real right conferring a right of occupation of a dwelling or of any unit as defined in section 1 of the Sectional Titles Act, 1971 (Act No. 66 of 1971), such unit being a dwelling; or
 - (ii) land, or of any real right conferring a right of occupation of land for the sole or principal purpose of the erection by or for the purchaser of

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a dwelling or dwellings on the land, as confirmed by the purchaser in writing; or

- (b) the construction of a new dwelling by any registered person carrying on a construction business,

and -

- (aa) the price of the sale or construction in question was determined and stated in the said agreement, as in force before the said date, and that agreement was signed by the parties thereto before the said date; and
- (bb) the supply of such immovable property or construction services under the said agreement is in terms of section 7 deemed to be made on or after the said date,

the rate at which tax is under section 6 leviable in respect of that supply shall be the rate at which tax would have been levied had the supply taken place on the date on which the said agreement was concluded.

Schemes for obtaining tax benefits

80. (1) In this section -

“scheme” includes any agreement, arrangement, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, and any plan, proposal, course of action or course of conduct;

“tax benefit” includes -

- (a) a reduction in the liability of any person to pay value-added tax; or
- (b) an increase in the entitlement of a person to any amount deductible under section 18(1) or to a refund of tax; or
- (c) any other avoidance or postponement of liability for the payment of value-added tax.

(2) Notwithstanding anything in this Act, if the Commissioner is satisfied that any scheme has been entered into or carried out where -

- (a) a person has obtained a tax benefit in connection with the scheme; and
- (b) having regard to the substance of the scheme, it could reasonably be concluded that such person or any other person or persons who entered into or carried out the scheme did so for the sole or main purpose of enabling such first-mentioned person to obtain the tax benefit,

the Commissioner may determine the liability (for the payment of tax) of the person who has obtained the tax benefit and of any other person or persons connected with the scheme as if the scheme had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner considers appropriate for the prevention or reduction of the tax benefit.

- (3) A person dissatisfied with a decision of the Commissioner under subsection (2) may challenge the decision only under Part VIII of this Act.

Currency conversion

81. (1) For the purposes of this Act, every amount of money shall be expressed in the currency of Namibia.

(2) Where any such amount is expressed in a currency other than that of Namibia the amount shall -

- (a) in the case of an import, be converted into the currency of Namibia at the exchange rate contemplated in section 81(1) of the Customs and Excise Act; and
- (b) in any other case, be so converted at the exchange rate applying between that other currency and the currency of Namibia at the time such amount is required to be taken into account under this Act.

International tax agreements

82. (1) The President may enter into an agreement with the government of any other country or territory (hereinafter in this section referred to as the other Contracting State) whereby arrangements are made with that government -

- (a) for the prevention, mitigation or discontinuance of the levying, under the laws of Namibia and the other Contracting State, of value-added tax or any similar tax where a supply of goods or services is subject to any such tax in both Namibia and the other Contracting State; or
- (b) for the refunding of value-added tax or any similar tax, or any portion of such value-added tax or similar tax, levied under the laws of Namibia and the other Contracting State in respect of the supply of goods or services in Namibia or the other Contracting State, as the case may be, where such goods or services are imported into Namibia or the other Contracting State, as the case may be; or
- (c) for regulating or co-ordinating any matter with regard to the levying and collection, under the laws of Namibia and the other Contracting State, of value-added tax or any similar tax; or
- (d) the rendering of reciprocal assistance in the administration and collection of value-added tax or any similar tax under the laws of Namibia and the other Contracting State, or in respect of the execution of the arrangements provided for in any agreement entered into under this section.

(2) As soon as may be possible after the approval by the National Assembly of any agreement entered into under subsection (1), as contemplated in Article 63(2)(e) of the Namibian Constitution, the agreement shall be published in the *Gazette*, whereupon, until such agreement is revoked, the arrangements notified therein shall, in relation to value-added tax in Namibia, have effect as if enacted by this Act.

- (3) (a) The fact of the revocation of an agreement, as contemplated in subsection (2), shall be published in the *Gazette*, and such agreement shall cease to have effect on a date specified in that notice.
- (b) The revocation of such an agreement shall not affect the validity of anything previously done thereunder.

Registration of certain goods prohibited in certain circumstances

83. Where any form of registration is required under any law of Namibia in respect of goods consisting of any aircraft, boat, fishing vessel, ship, yacht, caravan, trailer, motorcycle, or tractor or other vehicle (hereinafter in this section referred to as registrable goods), no registering authority responsible for such registration under any such law shall effect such registration upon any change of ownership or importation into Namibia of any such registrable goods unless the person applying for registration produces to that registering authority -

- (a) in the case of -
 - (i) any registrable goods which form the subject of any supply, or which are imported into Namibia and are not required to be cleared under the Customs and Excise Act, a receipt or certificate issued by the Commissioner or by the Commissioner for Customs and Excise showing that any tax which may be payable under this Act has been paid in respect of such supply or such importation into Namibia, or that no tax is payable under this Act in respect of such supply or such importation into Namibia, as the case may be, of the registrable goods in consequence of which the registration is required; or
 - (ii) any registrable goods imported into Namibia which are required to be cleared under the Customs and Excise Act, a customs document issued by the Commissioner for Customs and Excise showing that any tax which may be payable under this Act has been paid in respect of such importation into Namibia, or that no tax is payable under this Act in respect of such importation into Namibia, as the case may be, of the registrable goods in consequence of which the registration is required; or
- (b) a declaration, in such form as the Commissioner may prescribe, issued by any registered person who, in carrying on any taxable activity in the ordinary course of which registrable goods are dealt in, supplied such goods in consequence of which the registration is required, certifying that the tax payable under this Act has been, or will be, paid by such person; or
- (c) a certificate or other document issued by the Commissioner to the effect that the supply or import of the registrable goods in question is an exempt supply or an exempt import, as the case may be.

Regulations

84. (1) The Minister may make regulations in regard to any matter which is permitted or required by this Act and generally for the better carrying into effect of the objects and purposes of this Act.

- (2) Regulations made under subsection (1) may -
 - (a) contain provisions of a saving or transitional nature consequent on the enactment of this Act; and
 - (b) prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of N\$8 000 or imprisonment for a period of two years or not exceeding both such fine and such imprisonment.

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(3) Regulations made under this section that are of a transitional nature and which may adversely affect any person may provide that such regulations shall take effect from the date on which this Act comes into operation or from such later date as the Minister may specify therein, provided they are made within six months after the commencement of this Act.

Variation in rate of tax and amendment of penalties

85. (1) The Minister may from time to time (including when the National Assembly is not in session) by notice in the *Gazette* –

- (a) subject to subsection (2), increase or decrease any rate of tax specified in section 6(1) by not more than two per cent; or
- (b) amend any penalty imposed under section 66, 67, 68, 69 or 70.

(2) Where the Minister increases or decreases a rate of tax under subsection (1)(a) before the date on which the National Assembly meets for the first time for the dispatch of business in any session during which the Minister introduces the Appropriation Bill, the notice referred to in that subsection amending the rate of tax shall lapse on the date of the coming into operation of the said Appropriation Act, but without detracting from the validity of the amended rate of tax before it so lapses.

(3) Where the Minister during any session of the National Assembly tables a proposal to increase or decrease any rate of tax specified in section 6(1) to a rate set out in that proposal, and (for general information) gives notice of the tabling of that proposal and of the rate of such increase or decrease in the *Gazette*, the increased or decreased rate of tax shall, until an Act of Parliament, passed during that session, is promulgated whereby effect is given to that proposal or other provision is made, apply for the purposes of determining the amount of tax payable under this Act on any date on or after the date which the Minister has specified in that notice for the coming into operation of such increased or decreased rate, as the case may be.

(4) Where, in any legal proceedings, the question arises whether the Minister has tabled a proposal referred to in subsection (3), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as *prima facie* evidence that such proposal was tabled and of the particulars contained therein.

Repeal of laws, and interpretation

86. (1) Subject to subsection (2), the laws mentioned in Schedule VII are hereby repealed to the extent indicated in the third column thereof.

(2) No reference in any other law to sales tax or to additional sales levy shall be construed as a reference to tax under this Act.

Transitional arrangements

87. (1) In this section –

“additional sales levy” means the tax imposed under the Additional Sales Levy Act, 1993 (Act No. 11 of 1993);

“qualifying goods” means any goods for use in a business other than capital goods;

“registered vendor” means a registered vendor as defined in section 1 of the Sales Tax

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Act, 1992 (Act No. 5 of 1992);

“repealed laws” means the laws repealed by section 86(1);

“sales tax” means the tax imposed under the Sales Tax Act, 1992 (Act No. 5 of 1992).

(2) The repealed laws, including the rules governing the levy, payment, assessment, reporting and recovery of taxes imposed under those laws, shall continue to apply to a supply or import of goods or services taking place before the date of commencement of this Act.

(3) All forms and documents used in relation to the repealed laws may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed laws shall be construed as references to the corresponding provisions and expressions of this Act.

(4) Notwithstanding anything in section 18(3), in calculating the amount of tax payable by a registered person in respect of the first tax period after the date of commencement of this Act, the registered person may claim as an amount deductible under section 18, an amount equal to the sales tax and additional sales levy deduction calculated in accordance with subsection (5) and deductible as provided under subsection (6).

(5) For the purposes of subsection (4), where a registered person held, at the end of the last business day before the beginning of the first tax period after the date of commencement of this Act, qualifying goods being goods acquired not more than six months before the tax becomes effective, and the Commissioner is satisfied that sales tax or additional sales levy has been paid on the acquisition or import of those goods, the amount of the sales tax and additional sales levy deduction shall be the amount of such taxes paid on such goods, but with respect to each item qualifying for the deduction, the sales tax or additional sales levy shall not exceed the amount of tax which would have been payable had the goods been subject to tax chargeable under this Act.

(6) If, in any tax period, a registered person has sales tax or additional sales levy deductible under subsection (4), the amount deductible shall be deemed to be input tax deductible under section 18 and subject to the provisions of section 38 relating to the overpayment of tax.

(7) No deduction shall be allowed under subsection (4) for any sales tax or additional sales levy paid in respect of the acquisition of any goods if VAT imposed on a supply in acquisition of those goods after the date of commencement of this Act would not qualify for the deduction under section 18.

(8) Any person wishing to claim a deduction under subsection (4) for sales tax and additional sales levy paid on qualifying goods on hand on the date of commencement of this Act shall register on such date.

(9) A person claiming a deduction under subsection (4) shall submit with the return an inventory of all qualifying goods on hand at the beginning of the first day on which this Act comes into operation, supported by documentary evidence of the payment of sales tax and additional sales levy.

(10) A disallowance of a deduction for sales tax or additional sales levy imposed before the date of commencement of this Act shall be deemed not to be a disallowance for the purposes of section 3(19).

(11) (a) Where a contract or agreement was concluded between two or more parties before the date of commencement of this Act, whether in writing or

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not, and -

- (i) provision was made in such contract or agreement for the payment of sales tax, such provision shall be deemed to have been made for the payment of value-added tax under this Act; or
- (ii) no provision was made in such contract or agreement for the payment of sales tax, the supplier shall recover from the recipient tax due on any taxable supplies made under the contract or agreement after the date on which this Act came into operation.

- (b) Where a supply commenced before, and is completed after, the date of commencement of this Act, that supply shall be apportioned between the period before and the period after the date on which this Act came into operation.

(12) Where a contract concluded after the date of commencement of this Act does not include a provision relating to tax, the contract price shall be deemed to include tax, and the supplier under the contract shall account for the tax due.

- (13) A registered vendor for sales tax -

- (a) who is not liable to be registered in terms of this Act and who does not apply for registration under section 15(4); and
- (b) who holds stock in trade or goods held for resale on the date of commencement of this Act,

shall report the stock or goods referred to in paragraph (b) as taxable sales in such vendor's last sales tax return with a taxable amount equal to the consideration paid or payable by such vendor for those goods.

(14) Notwithstanding anything in section 7, where a supply has been made under any short-term insurance contract, or the arranging of such a contract -

- (a) any consideration for that supply received by the supplier before the date of commencement of this Act, shall be deemed not to be a consideration received for a taxable supply; and
- (b) any consideration for that supply received by the supplier after the date of commencement of this Act, shall be deemed to be a consideration received for a taxable supply; and
- (c) section 18(1)(d) shall apply to all amounts paid by a registered person in respect of that supply after the date of commencement of this Act; and
- (d) section 3(9) shall apply to all payments received by a registered person in respect of that supply after the date of commencement of this Act.

Short title and commencement

88. (1) This Act shall be called the Value-Added Tax Act, 2000, and shall, subject to subsection (2), come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

(2) This Act shall not come into operation before a date six months after the date of publication thereof in the *Gazette*.

SCHEDULE I

(Section 1, definition of "financial lease" and "rental agreements")

Financial Leases and Rental Agreements

1. Subject to paragraph 2, for the purposes of the definition of "financial lease" in section 1 of this Act, an agreement is a financial lease, if -
 - (a) the agreement is in writing and provides for the letting and hiring of any movable goods; and
 - (b) the lessor under such agreement is -
 - (i) a banker or financier carrying on a business in the ordinary course of which agreements conforming to the requirements of this paragraph are concluded; or
 - (ii) a dealer in goods, machinery or plant of the kind let under the said agreement,

and the agreement is concluded in the ordinary course of the business of such banker, financier or dealer carried on in Namibia; and
 - (c) the lessor is the owner of the leased property; and
 - (d) the lessee is entitled to the possession, use or enjoyment of the leased property for a period of at least 12 months; and
 - (e) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, the leased property and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of the leased property while the agreement remains in force.
2. Where the Commissioner is satisfied that any lease agreement entered into substantially conforms to the requirements or practice generally observed by bankers or financiers in regard to financial leases at the time such agreement was entered into, the Commissioner may treat such agreement as a financial lease for the purposes of this Act.
3. For the purposes of the definition of "rental agreement" in section 1 of this Act, an agreement (other than a financial lease) is a rental agreement if it provides for the payment of any rental consideration in respect of movable goods.
4. For the purposes of paragraph 3, "rental consideration", in relation to movable goods, means any rental or other consideration payable by any person in respect of the use of or the right to use such goods or the grant of permission to use such goods, including any consideration payable to the lessor of such goods in respect of the services of a driver or operator of such goods (whether such rental or other consideration is payable in or outside Namibia and whether the agreement under which such rental or other consideration is payable was entered into or concluded within or outside Namibia), but does not include -
 - (a) any rental or other consideration payable in respect of the hiring of goods under a financial lease;
 - (b) any rental or other consideration payable in respect of the use of or the right to use or the grant of permission to use any public means of transport in the form of any taxi, transport vehicle, aircraft, ship or other vessel or any means

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of transport in that form used by a transport contractor for the conveyance of goods, if any of those means of transport is supplied with a driver, pilot or crew, as the case may be;

- (c) any fee or other consideration payable in respect of the use of or the right to use or the grant of permission to use any book, sound recording, motion picture film or picture borrowed from a library which is supported by grants out of funds voted by Parliament or by any local authority or by a body which the Commissioner is satisfied is not conducted for the purposes of profit;
- (d) any rental or other consideration payable under a charter party in respect of a foreign-going ship or under any agreement for the chartering of a foreign-going aircraft;
- (e) any royalty paid for the right to reproduce copyright material or for the right to use any such material or any motion picture film or any film or video tape or disc used in connection with television or any sound recording or advertising matter in any public performance or in any radio or television broadcast;
- (f) any rental or other consideration payable in respect of the use of or the right to use or the grant of permission to use -
 - (i) any goods for the purposes of any sport, games or amusement activity; or
 - (ii) any goods in the form of any coin-operated laundry equipment,

for a continuous period of not longer than 12 hours at a charge not exceeding N\$5 and where the use of such goods is restricted to the premises or place of business of the person controlling the use of such goods.

SCHEDULE II

(Section 6)

Supplies and Imports Subject to Rate of 30%

1. This Schedule shall apply to all the goods specified in the tariff headings listed below, except those that are specifically excluded, the description of goods included in each tariff heading being illustrative only.
2. The supply or import of the following goods shall be subject to tax calculated at the rate of 30 per cent on the value of the supply or import:

<i>Tariff Heading</i>	<i>Description</i>
22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of tariff heading 20.09 of Schedule 1 to the Customs and Excise Act).
22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances.
22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages.
24.00	Tobacco and manufactured tobacco substitutes.
33.01	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils.
33.02	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages.
33.03	Perfumes and toilet waters.
33.04	Beauty or make-up preparations and preparations for the care of the skin (excluding medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations.
42.00	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (excluding silk-worm gut).
43.00	Furskins and artificial fur; manufactures thereof.
71.00	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coins (not being legal tender).
85.18	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone-speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets.
85.19	Turntables (record-decks), record-players, cassette-players and other sound reproducing apparatus, not incorporating a sound recording device.
85.20	Magnetic tape-recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device.
85.21	Video recording or reproducing apparatus, whether or not incorporating a video tuner.
85.22	Parts and accessories suitable for use solely or principally with the apparatus of tariff headings 85.19, 85.20 and 85.21.
85.27	Reception apparatus for radio-telephony, radio-telegraphy or radio-broadcasting, whether or not combined in the same housing, with sound recording or reproducing apparatus or a clock.

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- 85.28 Reception apparatus for television, whether or not incorporating radio-broadcasts receivers or sound or video recording or reproducing apparatus; video monitors and video projectors.
- 85.29 Parts suitable for use solely or principally with the apparatus of tariff headings 85.27 and 85.28.
- 87.03 Motorcars and other motor vehicles principally designed for the transport of persons (excluding those of tariff heading 87.02 of Schedule 1 to the Customs and Excise Act as well as ambulances, hearses and prison vans), including station wagons, racing cars, 2x4 double cab vehicles and 4x4 double cab vehicles, with a consideration (as defined in section 1 of this Act) exceeding N\$200 000, or such greater amount as the Minister may, subject to paragraph 3, determine, and also including motor homes (campers), vehicles for the transport of persons, specially equipped for habitation (with e.g. sleeping, cooking, toilet facilities, etc.), and golf cars, with a consideration of whatever amount.
- 87.11 Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without sidecars, with an engine capacity exceeding 200 cc; sidecars.
- 87.16 *Subheading* 8716.10: Trailers and sem-trailers of the caravan type, for housing or camping.
- 88.01 Balloons and dirigibles; gliders, hang gliders and other non-powered aircraft, including gliders fitted with or designed to be fitted with an engine and micro-light aircraft.
- 88.04 Parachutes (including dirigible parachutes and para-gliders) and rotochutes; parts thereof and accessories thereto.
- 89.03 Yachts and other vessels for pleasure or sports; rowing boats, canoes, outboard motorboats and sea-scooters.
- 91.01 Wrist-watches, pocket-watches and other watches, including stop-watches, with cases of precious metal or of metal clad with precious metal.
- 91.02 Wrist-watches, pocket-watches and other watches, including stop-watches (excluding clocks of tariff heading 91.04 of Schedule 1 to the Customs and Excise Act).
- 91.03 Clocks with watch movements (excluding clocks of tariff heading 91.04 of Schedule 1 to the Customs and Excise Act).
- 91.05 Other clocks.
- 93.02 Revolvers and pistols.
- 93.03 *Subheading:* 9303.10 Muzzle-loading firearms.
9303.20 Other sporting, hunting or target shooting shotguns, including combination shotgun-rifles.
9303.30 Other sporting, hunting or target-shooting rifles.
- 93.04 *Subheading:* 9304.20 Other spring, air or gas guns or pistols.
- 95.04 Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment.
- 96.01 Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by moulding).
- 96.02 Worked vegetable or mineral carving material and articles of these materials; moulding or carved articles of wax, of stearin, of natural gums or natural resins or of modelling pastes, and other moulded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (excluding gelatin of tariff heading 35.03 of Schedule 1 to the Customs and Excise Act) and articles of unhardened gelatin.
- 96.13 Cigarette lighters and other lighters, and parts thereof.
- 96.14 Smoking pipes (including pipe bowls) and cigar or cigarette holders, and parts thereof.

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- 96.16 Scent sprays and similar toilet sprays, and mounts and heads thereof; powder-puffs and pads for the application of cosmetics or toilet preparations.
- 97.00 Works of art, collectors' pieces and antiques.
3. The Minister shall, not later than 31 March 2001 and annually thereafter, review, with reference to the Interim Consumer Price Index - Windhoek (published by the Central Statistics Office), the amount specified in tariff heading 87.03 of this Schedule and, if necessary, increase the said amount accordingly by notice in the *Gazette*.

SCHEDULE III

(Section 9)

Zero-rated Supplies

1. In this Schedule -

“ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services and storage of transported goods or goods to be transported;

“intellectual property rights” means any patent, design, trade mark, copyright, know-how, confidential information, trade secret or similar rights;

“international transport services” means -

- (a) the services (other than ancillary transport services) of transporting passengers or goods by road, rail, water or air -
 - (i) from a place outside Namibia to another place outside Namibia where the transport or part of the transport is across the territory of Namibia; or
 - (ii) from a place outside Namibia to a place in Namibia; or
 - (iii) from a place in Namibia to a place outside Namibia; or
- (b) the services of transporting passengers from a place in Namibia to another place in Namibia to the extent that transport is by aircraft and constitutes “international carriage” as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act No. 17 of 1946); or
- (c) the services (including any ancillary transport services) of transporting goods from a place in Namibia to another place in Namibia to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or
- (d) the services of insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which paragraphs (a), (b) and (c) apply;

“maize meal” means -

- (a) maize meal graded as super maize meal, special maize meal, sifted maize meal, unsifted maize meal, samp or mealie rice; or
- (b) maize intended to be used for the production of maize meal contemplated in paragraph (a).

2. Subject to paragraph 3, the following supplies of goods or services are specified as zero-rated supplies for the purposes of section 9:

- (a) A supply of goods where the supplier has entered the goods for export pursuant to the Customs and Excise Act and the goods have been exported from Namibia by the supplier;

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- (b) a supply of goods where the Commissioner is satisfied that the goods have been exported from Namibia by the supplier;
- (c) a supply of goods where the goods are not situated in Namibia at the time of supply and are not to be entered into Namibia for home consumption pursuant to the Customs and Excise Act, by the supplier of the goods;
- (d) a supply of goods under a rental agreement, charter party or agreement for chartering, where the goods are used exclusively in an export country;
- (e) a supply of goods in the course of repairing, renovating, modifying or treating any goods to which subparagraph (j)(ii) or (iv) applies, and the goods supplied -
 - (i) are wrought into, affixed to, attached to, or otherwise form part of those other goods; or
 - (ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification or treatment process;
- (f) a supply of goods or services referred to in section 3(11) of this Act by a registered person where the branch or main business is situated in an export country;
- (g) a supply of goods or services to an export processing zone enterprise of a person or an export processing zone management company for use by the enterprise or company in an export processing zone;
- (h) a supply of international transport services;
- (i) a supply of services directly in connection with land, or any improvement thereto, situated outside Namibia;
- (j) a supply of services directly in respect of -
 - (i) movable property situated outside Namibia at the time the services are rendered; or
 - (ii) goods temporarily imported into Namibia under rebate item 470.01, 470.02, 470.03, 480.00 or 490.00 of Part 3 of Schedule 4 to the Customs and Excise Act; or
 - (iii) a supply of goods referred to in paragraph (b) or (c) of the definition of "exported from Namibia" in section 1 of this Act; or
 - (iv) the repair, maintenance, cleaning or reconditioning of a foreign-going aircraft or foreign-going ship;
- (k) a supply of services directly to a non-resident person not being a registered person (otherwise than through an agent or other person) -
 - (i) comprising the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while situated in Namibia; or
 - (ii) provided in connection with the operation or management of any foreign-going aircraft or foreign-going ship; or

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- (iii) comprising the storage, repair, maintenance, cleaning, management or arranging the provision of a container temporarily imported into Namibia under rebate item 480.05 of Part 3 of Schedule 4 to the Customs and Excise Act, or the arranging of such services;
- (l) a supply of services to a non-resident person who is not a registered person comprising the arranging for the person of -
 - (i) a supply of goods referred to in paragraph (b) or (c) of the definition of "exported from Namibia" in section 1 of this Act; or
 - (ii) a supply of services to which subparagraph (j)(iv) or (k) applies; or
 - (iii) the transport of goods (including ancillary transport services) within Namibia;
- (m) a supply of services comprising the repair, maintenance, cleaning or reconditioning of a railway train operated by a non-resident person who is not a registered person;
- (n) a supply of services physically rendered elsewhere than in Namibia;
- (o) a supply of services to a non-resident person who is outside Namibia at the time the services are supplied, other than a supply of services -
 - (i) directly in connection with immovable property situated in Namibia; or
 - (ii) directly in connection with movable property situated in Namibia at the time the services are supplied unless the movable property is exported from Namibia subsequent to the supply of services; or
 - (iii) comprising the refraining from undertaking any taxable activity in Namibia; or
 - (iv) comprising the tolerating of another person undertaking any taxable activity in Namibia;
- (p) a supply of services comprising -
 - (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of any intellectual property rights for use outside Namibia; or
 - (ii) incidental services necessary for the supply of services referred to in subparagraph (p)(i); or
 - (iii) the acceptance by any person of an obligation to refrain from pursuing or exercising in whole or in part any intellectual property rights for use outside Namibia;
- (q) a supply by a registered person to another registered person of a taxable activity, or a part of a taxable activity, as a going concern, provided a notice in writing signed by the transferor and transferee is furnished to the Commissioner within 21 days after the supply takes place and such notice includes the details of the supply;

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- (r) a supply of -
 - (i) petrol, leaded; or
 - (ii) petrol, unleaded; or
 - (iii) distillate fuels (for example gas oil and diesel oil); or
 - (iv) mixtures of illuminating or heating kerosene with lubricity agents,being goods subject to the fuel levy as defined in section 1 of the Customs and Excise Act;
 - (s) a supply of mahango, mahango meal or maize meal, but does not include these items when furnishing or served as a meal, or as cooked or prepared food;
 - (t) a supply of goods or services by any charitable organisation, children's home, old-age home or orphanage;
 - (u) a supply of telecommunication services to a foreign telecommunications operator where such services are utilised by a non-resident person who is outside Namibia at the time the services are supplied;
 - (v) a supply of postage stamps, but excluding postage stamps supplied as a collector's piece;
 - (w) a supply of electricity, water, refuse removal and sewerage to a residential account;
 - (x) a supply of parts or services, or both, rendered in pursuance of any guarantee given in respect of new goods.
3. Paragraph 2 shall not apply in respect of any supply of goods which have been or will be reimported to Namibia by the supplier.

SCHEDULE IV
(Section 10)

Exempt Supplies

1. In this Schedule -

“commercial rental establishment” means -

- (a) accommodation in any hotel, motel, inn, boarding house, hostel or similar establishment in which lodging is regularly or normally provided to five or more persons at a daily, weekly, monthly or other periodic charge; or
- (b) accommodation in any house, flat, apartment or room (other than accommodation in respect of which the provisions of paragraph (a) or (c) apply) which is regularly or systematically leased or held for lease as residential accommodation for continuous periods not exceeding 45 days in the case of each occupant of such house, flat, apartment or room, if the total annual receipts and accruals from the lease thereof exceeded N\$24 000 or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; or
- (c) accommodation in any house, flat, apartment, room, caravan, houseboat, tent, or caravan or camping site which constitutes an asset (including a leased asset) of a business undertaking or a separately identifiable part of a business undertaking carried on by any person who -
 - (i) leases or holds for lease as residential accommodation five or more houses, flats, apartments, rooms, caravans, houseboats, or caravan or camping sites in the course of such business undertaking; and
 - (ii) derives total annual receipts and accruals from the lease of all such houses, flats, apartments, rooms, caravans, houseboats, and caravan and camping sites which exceed N\$24 000 or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; and
 - (iii) regularly or normally leases or holds for lease as residential accommodation such houses, flats, apartments, rooms, caravans, houseboats, or caravan or camping sites for continuous periods not exceeding 45 days in the case of each occupant; or
- (d) any other accommodation designated by the Commissioner by notice in the *Gazette* to be a commercial rental establishment,

but does not include (unless within paragraph (d)) -

- (aa) accommodation in any boarding establishment or hostel operated by any employer solely or mainly for the benefit of the employees of such employer or of a connected person in relation to such employer or of their dependants, provided such establishment or hostel is not operated for the purpose of making profits from such establishment or hostel for the employer or such connected person; or
- (bb) accommodation in any boarding establishment or hostel operated by any local authority otherwise than for the purpose of making profits from such establishment or hostel; or

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- (cc) accommodation in any registered hospital, maternity home, nursing home, convalescent home, hospice or clinic;

“dwelling” means any building, premises, structure or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use as a place of residence or abode of any natural person, together with any appurtenances belonging thereto and enjoyed therewith, but does not include a commercial rental establishment;

“education services” means education and hostel facilities for students and scholars provided by -

- (a) a pre-primary, primary or secondary school; or
- (b) a technical college or university; or
- (c) an institution established for the promotion of adult education, vocational training, technical education or the education or training of physically or mentally handicapped persons;

“foreign State” means any State outside Namibia;

“fringe benefit” means a supply of goods or services by a registered person to an employee as part of the remuneration of such employee;

“intermediation services”, in relation to a supply by a buy-aid society or medical-aid fund, means any services for which a fee of whatever nature is levied;

“public transport services” means the supply by any person in the course of a transport business (other than the business of a tour operator) of any service comprising the transport by that person in a vehicle, ship or aircraft operated by him or her of fare-paying passengers and their personal effects by road, air, sea or railway;

“used goods” means any inanimate goods (including vehicles) which were previously owned and used.

2. Subject to paragraph 3, the following supplies of goods or services are specified as exempt supplies for the purposes of section 10:

- (a) A supply of interest and margin-based financial services or intermediation services by a buy-aid society or medical-aid fund;
- (b) a supply of medical or paramedical services by -
- (i) any person referred to in section 13(1)(a) of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993); or
- (ii) a person who holds a written authority under the Health Services Professions Proclamation, 1989 (Proclamation No. AG. 70 of 1989); or
- (iii) a nurse or midwife registered under the Nursing Professions Act, 1993 (Act No. 30 of 1993); or
- (iv) a practitioner or paramedic registered under the Allied Health Services Professions Act, 1993 (Act No. 20 of 1993);

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- (c) a supply of services and rooms by a person in the ordinary course of operating a registered hospital, maternity home, nursing home, convalescent home, hospice or clinic;
- (d) a supply of education services;
- (e) a supply of -
 - (i) accommodation in a dwelling -
 - (aa) under a lease or rental of the accommodation; or
 - (bb) where the supplier is the employer of the recipient, the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment and his or her right thereto is limited to the period of his or her employment or the term of his or her office or a period agreed upon by the supplier and the recipient; or
 - (ii) leasehold land by way of lease (not being a grant or sale of the lease of that land) to the extent that the subject land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land;
- (f) a supply of public transport services;
- (g) a supply of used goods (including vehicles);
- (h) a supply of any services to any of its members in the course of the management of a body corporate as defined in section 1 of the Sectional Titles Act, 1971 (Act No. 66 of 1971), where the cost of supplying such services is met out of contributions levied by such body corporate;
- (i) a supply of goods or services as a fringe benefit to an employee;
- (j) a supply of services by a trade union registered under section 54 of the Labour Act, 1992 (Act No. 6 of 1992), to or for the benefit of its members if the cost of such services is met out of contributions or dues levied by the trade union, but not supplies by a trade union of a commercial nature;
- (k) a supply of goods or services to Heads of State (including Vice-presidents and Prime Ministers) of foreign States.

SCHEDULE V

(Section 13)

Exempt Imports

1. In this Schedule -

“commencement date” means the date of the coming into operation of this Act;

“specified country” means Botswana, Lesotho, South Africa and Swaziland.

2. The following imports are specified as exempt imports for the purposes of section 13:

(a) An import of goods or services by an export processing zone enterprise or an export processing zone management company for use by that enterprise or company in an export processing zone;

(b) an import of services where the recipient of the services received the services in respect of a technical assistance agreement referred to in section 40(2);

(c) an import of goods which are entered or are required to be entered in terms of the Customs and Excise Act, where -

(i) the goods fall under any heading and description mentioned below, to the extent indicated and subject to the Notes set out in Schedule 4 to the Customs and Excise Act, and in respect of which either no customs duty is payable or a rebate of customs duty is granted in terms of the said Act:

Item No. Heading and Description

405.04 Goods for welfare or charitable purposes:

63.01 Used clothing purchased by or forwarded unsolicited and free to any church or any welfare organisation as defined in section 1 of the National Welfare Act, 1965 (Act No. 79 of 1965), for distribution free of charge by such church or organisation to indigent persons, subject to production at the time of importation of a written declaration by such church or organisation that the goods have been purchased or forwarded unsolicited and free and that they will be distributed free of charge to indigent persons.

406.00 Goods for Heads of State, Diplomatic and other Foreign Representatives.

407.01 Personal effects and sporting and recreational equipment, new or used:

(1) Imported either as accompanied or unaccompanied passengers' baggage by non-residents of Namibia for their own use during their stay in Namibia;

- (2) exported by residents of Namibia for their own use while abroad and subsequently reimported either as accompanied or unaccompanied passengers' baggage by such residents.
- 407.02 Goods imported as accompanied passengers' baggage either by non-residents or residents of Namibia and cleared at the place where such persons disembark or enter Namibia:
- (1) Per person, any of the following consumable products:
- (1.1) Wine, not exceeding 2 litres;
- (1.2) spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre;
- (1.3) manufactured tobacco, not exceeding 400 cigarettes and 50 cigars and 250 g of cigarette or pipe tobacco;
- (1.4) perfumery not exceeding 50 ml and toilet water not exceeding 250 ml.
- (2) Other new or used goods (excluding television receiving sets) of a total value not exceeding N\$1 250 per person.
- (3) Additional goods, new or used, of a total value not exceeding N\$10 000 per person (excluding goods of a class or kind specified in subitems (1.1) to (1.4), inclusive, of this item).
- 407.06 Household furniture, other household effects and other removable articles, including equipment necessary for the exercise of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the *bona fide* property of a natural person (including a returning resident of Namibia) and members of his or her family, imported for own use on change of his or her residence to Namibia.
- 409.01 Imported goods exported and thereafter returned to or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and without a permanent change of ownership: Provided that the exemption shall not apply if at the time of export of such goods -
- (1) the supply of the goods was charged with tax at the rate of zero per cent under section 9; or
- (2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero per cent

under section 9, if the supply had taken place on or after the commencement date.

- 409.02 Goods produced or manufactured in Namibia, exported therefrom and thereafter returned to or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and without a permanent change in ownership having taken place (excluding excisable goods exported ex a customs and excise warehouse): Provided that the exemption shall not apply if at the time of export of such goods -
- (1) the supply of the goods was charged with tax at the rate of zero per cent under section 9; or
 - (2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero per cent under section 9, if the supply had taken place on or after the commencement date.
- 409.03 Imported or locally manufactured returned empty packing containers: Pallets of wood, wooden casks, vats, tubs, sacks, bags and aluminium casks and drums.
- 409.04 Imported or locally manufactured articles sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place, and can be identified on reimportation: Provided that the exemption shall apply only to the extent of the value of the goods sent from Namibia on the day the goods left Namibia.
- 409.06 Excisable goods exported ex a customs and excise warehouse and thereafter returned or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and without a permanent change in ownership having taken place: Provided that the exemption shall not apply if at the time of export of such goods -
- (1) the supply of the goods was charged with tax at the rate of zero per cent under section 9; or
 - (2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero per cent under section 9, if the supply had taken place on or after the commencement date.
- 409.07 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Permanent Secretary: Trade and Industry, provided -

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- (1) the specific permit is obtained before the temporary exportation of the goods; and
 - (2) any additional conditions which may be stipulated in the said permit are complied with; and
 - (3) the exemption shall apply only to the extent of the value of the goods sent from Namibia on the day the goods left Namibia.
- 412.02 Urns and coffins containing human remains, together with flowers or wreaths.
- 412.03 Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in Namibia.
- 412.04 Used property of a person normally resident in Namibia who dies while temporarily outside Namibia.
- 412.10 *Bona fide* unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed N\$400 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars)) consigned by natural persons abroad to natural persons in Namibia.
- 412.11 Goods imported-
- (1) for the relief of distress of persons in cases of famine or other national disaster; or
 - (2) under any technical assistance agreement; or
 - (3) in terms of an obligation under any multilateral international agreement to which Namibia is a party.
- 412.12 Goods imported for any purpose agreed upon between the Governments of Namibia, Botswana, Lesotho, South Africa and Swaziland.
- 460.17 89.01 Ships, boats and other vessels (excluding yachts and other vessels for pleasure or sports, rowing boats and canoes), in such quantities and at such times and subject to such conditions as the Permanent Secretary: Trade and Industry may allow by specific permit.
- 460.23 Goods imported for use solely in operations in connection with the prospecting for, or the mining of, natural oil or natural gas.
- 470.01 Goods temporarily admitted for processing, provided such goods do not become the property of the importer.
- 470.02 Goods temporarily admitted for repair, cleaning or reconditioning.

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- 480.00 Goods temporarily admitted for specific purposes.
- 490.00 Goods temporarily admitted subject to exportation in the same state.

Heading No.

27.10 Petrol, leaded.
Petrol, unleaded.
Distillate fuels (for example gas oil and diesel oil).
Mixtures of illuminating or heating kerosene with lubricity agents.

27.16 Electrical energy.

4911.10.20 Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries.

87.11 Invalid carriages, whether or not motorised or otherwise mechanically propelled; or

- (ii) the goods are any of the following in respect of which the Controller of Customs and Excise has in terms of section 40(2) of the Customs and Excise Act granted permission that entry need not be made:
- (aa) Containers temporarily imported;
- (bb) human remains;
- (cc) goods which in the opinion of the Commissioner for Customs and Excise are of no commercial value;
- (dd) goods imported under an international carnet;
- (ee) goods of a value for customs duty purposes not exceeding N\$500, and on which no such duty is payable in terms of Schedule 1 to the said Act; or
- (iii) the goods are printed books, newspapers, journals and periodicals imported into Namibia by post of a value for duty purposes under the Customs and Excise Act not exceeding N\$100 per parcel;
- (d) an import of goods which are not entered or are not required to be entered in terms of the Customs and Excise Act, where the goods are imported into Namibia from any specified country and are-
- (i) goods referred to in paragraph (2)(c)(i) under Item Nos. 405.04, 406.00, 407.01, 407.02, 407.06, 412.02, 412.03, 412.04, 412.10, 412.11, 412.12, 470.01, 470.02, 480.00 and 490.00, and Heading Nos. 27.09.00 and 4911.10.20, to the extent indicated; or
- (ii) goods referred to in paragraph (2)(c)(ii) or (iii), to the extent indicated;
- (e) any motor vehicle constituting an asset of any enterprise or of any other *bona fide* commercial, financial, industrial, mining, quarrying, farming,

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- forestry or fishing concern or of any *bona fide* professional practice actively carried on in any specified country, and which is brought temporarily into Namibia from such country for the use during the course of employment by any employee of such enterprise, concern or practice where such an employee is ordinarily resident in Namibia and does not have any direct or indirect financial interest or share in such enterprise, concern or practice;
- (f) goods imported into or produced or manufactured in Namibia, exported therefrom to any specified country and thereafter directly returned to or brought back by the exporter without having been subjected to any manufacturing process, manipulation or modification and without a change in ownership, if such goods were acquired in Namibia before the commencement date or, where such goods were so acquired on or after that date, tax under this Act was paid in respect of the acquisition thereof;
 - (g) goods which are shipped or conveyed to Namibia for transshipment or conveyance to any other country;
 - (h) an import by a fishing enterprise of unprocessed catches of fish and crustaceans, molluscs and other aquatic invertebrates caught within Namibian and international waters.

SCHEDULE VI
(Sections 21 and 22)

Tax Invoices, Tax Credit Notes and Tax Debit Notes

1. Except as the Commissioner may otherwise allow, a tax invoice as required or permitted by section 21(1) and section 21(9), respectively, shall contain the following particulars:
 - (a) The words "tax invoice" in a prominent place;
 - (b) the name, address and VAT registration number of the registered person making the supply;
 - (c) the name and address of the recipient of the supply;
 - (d) the individualised serial number and the date on which the tax invoice is issued;
 - (e) a description of the goods or services supplied;
 - (f) the quantity or volume of the goods or services supplied;
 - (g) the total amount of the tax charged, the consideration for the supply, and the consideration including tax.

2. Except as the Commissioner may otherwise allow, a tax credit note as required by section 22(1) shall contain the following particulars:
 - (a) The words "tax credit note" in a prominent place;
 - (b) the name, address and VAT registration number of the registered person making the supply;
 - (c) the name and address of the recipient of the supply;
 - (d) the date on which the tax credit note was issued;
 - (e) the value of the supply shown on the tax invoice, the correct amount of the value of the supply, the difference between those two amounts, and the tax charged that relates to that difference;
 - (f) a brief explanation of the circumstances giving rise to the issuing of the tax credit note;
 - (g) information sufficient to identify the taxable supply to which the tax credit note relates.

3. Except as the Commissioner may otherwise allow, a tax debit note as required by section 22(3) shall contain the following particulars:
 - (a) The words "tax debit note" in a prominent place;
 - (b) the name, address and VAT registration number of the registered person making the supply;
 - (c) the name and address of the recipient of the supply;

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- (d) the date on which the tax debit note was issued;
- (e) the value of the supply shown on the tax invoice, the correct amount of the value of the supply, the difference between those two amounts, and the tax that relates to that difference;
- (f) a brief explanation of the circumstances giving rise to the issuing of the tax debit note;
- (g) information sufficient to identify the taxable supply to which the tax debit note relates.

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SCHEDULE VII
(Section 86)

Laws Repealed

Number and year of law	Short title	Extent of repeal
Act No. 5 of 1992	Sales Tax Act, 1992	The whole
Act No. 31 of 1992	Sales Tax Amendment Act, 1992	The whole
Act No. 11 of 1993	Additonal Sales Levy Act, 1993	The whole
Act No. 12 of 1993	Sales Tax Amendment Act, 1993	The whole
Act No. 13 of 1994	Sales Tax Amendment Act, 1994	The whole
Act No. 19 of 1995	Additional Sales Duties Amendment Act, 1995	The whole
Act No. 27 of 1995	Sales Tax Amendment Act, 1995	The whole
Act No. 13 of 1996	Sales Tax Amendment Act, 1996	The whole
Act No. 14 of 1996	Additional Sales Levy Amendment Act, 1996	The whole
Act No. 24 of 1996	Second Additional Sales Levy Amendment Act, 1996	The whole
Act No. 26 of 1996	Second Sales Tax Amendment Act, 1996	The whole
Act No. 11 of 1998	Sales Tax Amendment Act, 1998	The whole
Act No. 18 of 1998	Additional Sales Levy Amendment Act, 1998	The whole
Act No. 8 of 1999	Sales Tax Amendment Act, 1999	The whole