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Government Notice

OFFICE OF THE PRIME MINISTER

No. 203 2004

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. 12 of 2004: Value-Added Tax Amendment Act, 2004.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Value-Added Tax Act, 2000, so as to make provision for the time of supply of immovable property; to further provide for the determination of the value of a bet; to authorise the Commissioner to make arrangements with another person for making certain tax refunds on the Commissioner's behalf; to do away with the time limit for maintaining accounting records outside Namibia; to change the method of calculation of interest on amounts overdue in respect of tax, including amounts due and payable at the commencement of this Act; to change the rate and method of calculation of penalties for failure to pay tax when due; to redefine the expression "rental consideration" so as to exclude public transport services; to exclude improvements to buildings from zero-rated supplies; to specify livestock, certain goods to be used solely by handicapped persons and agricultural land acquired by the State solely for resettlement purposes as zero-rated supplies; to redefine the expression "public transport services" so as to limit its meaning; to exempt the import of certain goods to be used solely by handicapped persons or to be donated to the State and certain other bodies from tax; and to provide for matters connected therewith.

(Signed by the President on 7 September 2004)

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

Amendment of section 7 of Act No. 10 of 2000

1. Section 7 of the Value-Added Tax Act, 2000 (hereinafter referred to as the principal Act), is amended by the addition of the following subsection:

“(18) Where goods consisting of immovable property are supplied under a sale, that supply shall be deemed to take place on -

- (a) the date of registration of the transfer of such property in a deeds registry; or
- (b) the date on which any payment is made in respect of the consideration for that supply,

whichever date is earlier.”.

Amendment of section 8 of Act No. 10 of 2000, as amended by section 4 of Act No. 34 of 2000 and section 5 of Act No. 6 of 2002

2. Section 8 of the principal Act is amended by the substitution for subsection (16) of the following subsection:

“(16) The value of a supply of services referred to in section 3(10) shall be the [amount received in respect of the bet] nett income (gross income derived less winnings paid out) less the amount of any levy payable thereon in terms of

section 41 of the Casinos and Gambling Houses Act, 1994 (Act No. 32 of 1994), reduced by an amount equal to the tax fraction **[multiplied by the amount received in respect of the bet]**.”.

Amendment of section 38 of Act No. 10 of 2000, as amended by section 17 of Act No. 34 of 2000 and section 11 of Act No. 6 of 2002

3. Section 38 of the principal Act is amended by the addition of the following subsection:

“(12) Notwithstanding anything in section 73(1), the Commissioner may, if he or she considers it necessary, make arrangements with any other person to make, on such conditions as agreed upon between the Commissioner and that other person but subject to this Act, a refund on the Commissioner’s behalf of any amount of tax refundable in terms of subsection (10) or (11).”.

Amendment of section 48 of Act No. 10 of 2000, as amended by section 21 of Act No. 34 of 2000

4. Section 48 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding anything in subsection (2), the accounting records required to be maintained in terms of that subsection may **[, for a period ending on the last day of the month twenty-four months after the date of commencement of this Act,]** 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.

[and after the expiration of the said period of twenty-four months those accounting records shall be maintained in Namibia in accordance with the requirements of subsection (2).]”.

Amendment of section 53 of Act No. 10 of 2000, as amended by section 23 of Act No. 34 of 2000

5. Section 53 of the principal Act is amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Any person who fails to pay any tax by the due date for payment shall be liable for the payment of interest at the rate of 20 per cent per annum on the amount of unpaid tax in respect of the period reckoned from the first day after the date on which the payment was due to the date of payment of such unpaid amount.”;

- (b) by the insertion after subsection (1) of the following subsection:

“(1A) Notwithstanding anything in subsection (1), any amount which, on the date of commencement of the Value-Added Tax Amendment Act, 2004, is owing by any person in respect of any tax levied or accrued in terms of this Act before such date of commencement, shall with effect from that date bear interest at the rate of -

- (a) 20 per cent per annum, calculated daily and compounded monthly, in respect of the period reckoned from the first day after the date on which the payment was due to the date immediately before such date of commencement; and
- (b) 20 per cent per annum in respect of the period reckoned from such date of commencement to the date of payment of the amount so owing.”;

- (c) by the substitution for subsection (2) of the following subsection:

“(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.”; and

- (d) by the deletion of subsection (4).

Amendment of section 68 of Act No. 10 of 2000

6. Section 68 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(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 equal to 10 per cent of the amount of unpaid tax for each month or part thereof reckoned from the first day after the due date to the date of payment of such unpaid amount.”.

Amendment of Schedule I to Act No. 10 of 2000

7. Schedule I to the principal Act is amended by the substitution for subparagraph (b) of paragraph 4 of the following subparagraph:

“(b) any consideration payable in respect of the use of public transport services as defined in paragraph 1 of Schedule IV;”.

Amendment of Schedule III to Act No. 10 of 2000, as amended by section 30 of Act No. 34 of 2000 and section 14 of Act No. 6 of 2002

8. Schedule III to the principal Act is amended -

- (a) by the substitution for subparagraph (y) of paragraph 2 of the following subparagraph:

- “(y) a supply of goods or services comprising -
- (i) the sale of immovable property; or
 - (ii) the erection of or extension to a building,
used or to be used solely for residential purposes;”; and
- (b) by the addition to paragraph 2 of the following subparagraphs:
- “(aa) a supply of livestock (other than game);
- (bb) a supply of -
- (i) goods (excluding any vehicle other than an invalid carriage) designed, manufactured, adjusted or modified solely as aids or devices for the use of any physically handicapped person who is blind, deaf or crippled or is a chronic invalid; or
 - (ii) repair or maintenance services rendered in respect of goods referred to in subparagraph (bb)(i) and parts and materials required to effect such services; or
 - (iii) adjustment or modification services rendered in respect of any vehicle intended for the use of any physically handicapped person referred to in subparagraph (bb)(i) where such service is required solely to enable such person to operate such vehicle, and parts and materials required to effect such services;
- (cc) a supply of agricultural land to the State to be used solely for resettlement purposes.
- (dd) a supply of water to or by a local water committee approved by the Minister of Agriculture, Water and Rural Development.”

Amendment of Schedule IV to Act No. 10 of 2000, as amended by section 31 of Act No. 34 of 2000

9. Schedule IV to the principal Act is amended by the substitution in paragraph 1 for the definition of “public transport services” of the following definition:

“public transport services’ means the supply by any person (other than a tour operator) of transport by road, air, sea or railway provided directly by that person to fare-paying passengers and their personal effects;”

Amendment of Schedule V to Act No. 10 of 2000, as substituted by section 32 of Act No. 34 of 2000

10. Schedule V to the principal Act is amended by the addition to paragraph 2 of the following subparagraphs:

- “(m) an import of goods (excluding any vehicle other than an invalid carriage) by any person (other than a registered person) designed, manufactured, adjusted or modified solely as aids or devices for the use of any physically handicapped person who is blind, deaf or crippled or is a chronic invalid;
- (n) an import of goods which are donated to the State;
- (o) an import of goods or services by the State.”

Short title and commencement

11. (1) This Act shall be called the Value-Added Tax Amendment Act, 2004, and shall, subject to subsection (2), come into operation on the first day of the month following the month in which this Act is published in the *Gazette*.

- (2) (a) Sections 1 and 2 shall be deemed to have come into operation on 1 October 2002.
- (b) Section 4 shall be deemed to have come into operation on 28 November 2002.
- (c) Section 10, to the extent that it relates to the subparagraph (o) of paragraph 2 of Schedule V to the Value-Added Tax Act, 2000 (Act No. 10 of 2000), shall be deemed to have come into operation on 1 April 2004.
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