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Government Notice

OFFICE OF THE PRIME MINISTER

No. 164

2002

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. 6 of 2002: Value-Added Tax Amendment Act, 2002.

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 redefine the expressions "charitable organisation" and "life insurance contract"; to exclude passenger vehicles used for demonstration purposes from tax; to provide that a registered person does not have to declare an output tax when indemnified under a short-term insurance contract, where input tax was denied; to exclude all subsidies, grants and bursaries from tax; to make the erection or extension of or improvements to buildings and the sale of land and buildings taxable; to provide that certain levies become taxable; to abolish the 30% tax rate; to further provide for the determination of the value of a supply between connected persons; to allow for a certain levy to be deducted from the value of a bet; to provide that open market values may be used where goods are imported and required to be cleared; to compel importers who arranged VAT import accounts to also submit import declarations in cases where no goods were imported; to require that export declarations be obtained in respect of imports; to provide that registration may by agreement take effect from an earlier date; to provide that a registered person may claim input tax on used goods where the seller was not entitled to a deduction; to provide that charitable organisations, children's homes, old-age homes and orphanages may claim input tax on the acquisition of passenger vehicles; to extend the basis of the apportionment formula; to establish a new value on tax refunds to non-citizens who purchased goods in Namibia; to provide that certain financial assistance agreements be deemed to be technical assistance agreements to qualify for tax refunds; to repeal the Schedule of goods subject to the 30% tax rate; to include the erection or extension of or improvements to buildings and the sale of land and buildings for residential purposes and telecommunication services to residential accounts in the Schedule of zero-rated supplies; and to provide for matters connected therewith.

(Signed by the President on 18 September 2002)

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

Amendment of section 1 of Act No. 10 of 2000, as amended by section 1 of Act No. 34 of 2000

1. Section 1 of the Value-Added Tax Act, 2000 (hereinafter referred to as the principal Act), is amended -
 - (a) by the substitution for the definition of "charitable organisation" of the following definition:

"charitable organisation" means any organisation or institution of a public character and of a permanent nature which is registered or recognised under any law of Namibia and which -

- (a) carries on or intends to carry on charitable activities consisting of the provision of -
- (i) food, meals, board, lodging, clothing or other necessities, comforts or amenities; or
 - (ii) rehabilitation services, to the extent that those services do not constitute exempt medical services,
- to aged or indigent persons, children or physically or mentally handicapped persons; and
- (b) is in terms of its constitution required to utilise any property or income solely in the furtherance of its aims and objects and is prohibited from transferring any portion thereof, directly or indirectly, in any manner whatsoever so as to profit any person other than by way of the payment in good faith of reasonable remuneration to any officer or employee of the organisation or institution for any services actually rendered to such organisation or institution;” and
- (b) by the substitution for the definition of “life insurance contract” of the following definition:

“‘life insurance contract’ means any long-term policy within the meaning of the Long-term Insurance Act, 1998 (Act No. 5 of 1998) **[but does not include a sinking fund policy or any policy of a nature similar to a sinking fund policy (as defined in section 1(1) of that Act) or a credit guarantee policy]**.”

Amendment of section 3 of Act No. 10 of 2000, as amended by section 2 of Act No. 34 of 2000

2. Section 3 of the principal Act is amended -
- (a) by the substitution for paragraph (a) of subsection (6) of the following paragraph:
- “(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 passenger vehicles, as defined in section 19(1), 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) by the substitution for subsection (9) of the following subsection:
- “(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

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with tax at the rate of zero per cent under section 9): Provided that this subsection shall not apply in respect of any payment received by a registered person under a short-term insurance contract, to the extent that such payment relates to the total reinstatement of goods, stolen or damaged beyond economic repair, in respect of the acquisition of which by the registered person a deduction for input tax under section 18(1) was denied in terms of section 19(2), or would have been denied had those sections been applicable before the date of commencement of this Act.”;

(c) by the substitution for subsection (25) of the following subsection:

“(25) The payment [by the State] of a subsidy [under a drought-subsidy scheme to defray expenses, or the payment of a], grant or bursary by any person shall be deemed not to be a supply for the purposes of this Act.”; and

(d) by the deletion of subsection (26).

Amendment of section 4 of Act No. 10 of 2000, as amended by section 3 of Act No. 34 of 2000

3. Section 4 of the principal Act is amended by the substitution for paragraph (v) of subsection (1) of the following paragraph:

“(v) the levying of taxes or levies by the State or a regional authority or local authority under any Act of Parliament; or”.

Amendment of section 6 of Act No. 10 of 2000

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

“(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 15 per cent on the value of the supply or import.”.

Amendment of section 8 of Act No. 10 of 2000, as amended by section 4 of Act No. 34 of 2000

5. Section 8 of the principal Act is amended -

(a) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) the recipient and supplier are connected persons, the value of the supply shall -

- (i) if the recipient is a registered person, be the amount of such consideration; or
- (ii) if the recipient is not a registered person, be the open market value of that supply.”; and

- (b) 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 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 12 of Act No.10 of 2000, as amended by section 5 of Act No. 34 of 2000

6. Section 12 of the principal Act is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) in the case of goods required to be cleared in terms of the Customs and Excise Act, the greater of -

- (i) an amount equal to the sum of -

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

(bb) an amount equal to 10 per cent of the amount under item (aa);
or

- (ii) the open market value of that import; or”.

Amendment of section 14 of Act No.10 of 2000, as amended by section 6 of Act No. 34 of 2000

7. Section 14 of the principal Act is amended -

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

“(c) in the case where goods, in circumstances contemplated in paragraph (a) or (b), are imported on a VAT import account arranged as contemplated in subsection (5)(a)(ii)(aa) or (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 the import of those goods: Provided that where during any particular month no goods were imported on a VAT import account, the importer shall, not later than the twentieth day of the month following that month, furnish the Commissioner with an import declaration reflecting that no goods were imported during that month; or”; and

- (b) by the substitution for subparagraph (i) of paragraph (a) of subsection (5) of the following subparagraph:

“(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 and the export declaration of the export country reflecting the values declared in the export country in respect of the goods being imported or a copy of that export declaration; or”.

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Amendment of section 16 of Act No. 10 of 2000, as amended by section 8 of Act No. 34 of 2000

8. Section 16 of the principal Act is amended -
- (a) by the substitution for subparagraph (ii) of paragraph (a) of subsection (4) of the following subparagraph:
- “(ii) any person referred to in section 15(1)(b)(i) or (ii), from the beginning of the second month immediately following the month during which such person’s application for registration was approved by the Commissioner: Provided that the Commissioner and such person may agree that the registration shall take effect from the beginning of the month following the month during which such person’s application for registration was so approved; or”; and
- (b) by the substitution for paragraph (c) of subsection (4) of the following paragraph:
- “(c) in the case of an application under section 15(4), from the beginning of the second month immediately following the [date of approval of] month during which such application was approved by the Commissioner: Provided that the Commissioner and the person who applied under that section for registration may agree that the registration shall take effect from the beginning of the month following the month during which such person’s application for registration was so approved.”.

Amendment of section 18 of Act No. 10 of 2000, as amended by section 9 of Act No. 34 of 2000

9. Section 18 of the principal Act is amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:
- “(f) an amount equal to the tax fraction of any amount paid during the tax period by the registered person for used goods acquired from [a non-registered] any person who at the time of acquisition was not entitled to claim input tax on those used goods: Provided that a signed receipt reflecting [the non-registered] that other person’s name and address, the description (including, where available, serial or other identifying numbers) of the used goods so acquired and the consideration received for those used goods, is obtained from [the non-registered] that other person; and”.

Amendment of section 19 of Act No. 10 of 2000, as amended by section 10 of Act No. 34 of 2000

10. Section 19 of the principal Act is amended -
- (a) by the addition to paragraph (a) of subsection (2) of the following subparagraph:
- “(iii) that vehicle was acquired by any charitable organisation, children’s home, old-age home or orphanage: Provided that the subsequent sale of that vehicle shall be subject to tax; or”; and
- (b) by the deletion of paragraph (e) of subsection (2); and
- (c) by the substitution for subsection (5) of the following subsection:

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“(5) For purposes of the fraction ‘B/C’ in subsection (3) -

- (a) in the case where a registered person is registered for income tax, for the remainder of the year of assessment for income tax; or
- (b) in any other case, for the remainder of the financial year of the registered person,

during which the 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, including the current tax period, during which the registered person has been registered.”

Amendment of section 38 of Act No. 10 of 2000, as amended by section 17 of Act No. 34 of 2000

11. Section 38 of the principal Act is amended by the substitution for subsection (10) of the following subsection:

“(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 -

- (a) original tax invoices or certified copies thereof or, where section 21(2) is applicable, any other invoices in respect of all goods so purchased of a minimum value exceeding N\$250 (tax inclusive value); and
- (b) documentary proof of the export of the goods by such individual.”

Amendment of section 40 of Act No. 10 of 2000, as substituted by section 19 of Act No. 34 of 2000

12. Section 40 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) (a) 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 a refund authorisation letter enabling the claiming of refunds of tax paid, 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, and the Commissioner shall keep and maintain a register of all refund authorisation letters so issued.

- (b) For the purposes of paragraph (a), any financial assistance agreement entered into between the Government of Namibia and any organisation or the government of any other country, which provides for the acquisition of goods or services by the beneficiary and not the donor, excluding a loan agreement, shall be deemed to be a technical assistance agreement.”

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VALUE-ADDED TAX AMENDMENT ACT, 2002**Repeal of Schedule II to Act No. 10 of 2000, as amended by section 29 of Act No. 34 of 2000**

13. Schedule II to the principal Act is repealed.

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

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

“(y) a supply of goods or services for residential purposes comprising -

- (i) the erection or extension of, or improvements to, a building; or
- (ii) the sale of land or buildings;

(z) a supply of telecommunication services to a residential account.”.

Short title and commencement

15. This Act shall be called the Value-Added Tax Amendment Act, 2002, and shall come into operation on the first day of the month following the month in which this Act is published in the *Gazette*.
