



# **GOVERNMENT GAZETTE**

OF THE

# **REPUBLIC OF NAMIBIA**

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## **Government Notice**

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### **OFFICE OF THE PRIME MINISTER**

No. 34

1992

### **PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY**

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

No. 5 of 1992: Sales Tax Act, 1992.

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# ACT

**To amend and consolidate the laws on the levying of sales tax; and to provide for incidental matters.**

*(Signed by the President on 23 March 1992)*

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**BE IT ENACTED** by the National Assembly of the Republic of Namibia, as follows:-

**INTRODUCTORY PROVISIONS****Definitions.**

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

“accommodation enterprise” means any business carried on in Namibia by any person in the course of which accommodation in any room, house, flat or apartment or on any caravan or camping site is regularly or systematically, without meals, let for residential purposes by such person to other persons for continuous periods not exceeding 45 days, in the case of each occupant;

“auctioneer” means any person carrying on a business in the ordinary course of which goods are sold by auction or out of hand on behalf of other persons, and includes any local authority, society or association which or any other person who regularly or periodically conducts public auctions or out-of-hand sales of goods on behalf of other persons, and any person conducting a sale of goods by public auction in the execution of an order of court or in the course of the liquidation of the estate of a deceased or insolvent person or the liquidation of any company;

“charitable institution” means any institution or organization of a public character and of a permanent nature -

- (a) which carries on or intends to carry on charitable activities consisting of the provision of food, meals, board, lodging, clothing or other necessities, comforts or amenities to aged or indigent persons, children or physically or mentally handicapped persons; and
- (b) which in terms of its constitution is required to utilize 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 institution or organization for any services actually rendered to such institution or organization;

“close corporation” means a close corporation within the meaning of the Close Corporations Act, 1988 (Act 26 of 1988);

“company” means a company as defined in section 1 of the Income Tax Act;

“connected persons” means -

- (a) any natural person and -
  - (i) any relative of that natural person (being a relative as defined in section 1 of the Income Tax Act); or
  - (ii) any trust fund in respect of which any such relative is or may be a beneficiary; or
- (b) any trust fund and any person who is or may be a beneficiary in respect of that fund; or
- (c) any partnership or close corporation and -
  - (i) any member thereof; or
  - (ii) any other person where that person and a member of such partnership or close corporation, as the case may be, are connected persons in terms of this definition; or

(d) any company (other than a close corporation) and -

- (i) any person (other than a company), where that person, his or her spouse or minor child or any trust fund in respect of which that person, his or her spouse or minor child is or may be a beneficiary, is separately interested or two or more of them are in the aggregate interested in 10 per cent or more of the company's paid-up capital or 10 per cent or more of the company's equity share capital (as defined in section 1 of the Income Tax Act) or 10 per cent or more of the voting rights of the shareholders of the company, whether directly or indirectly; or
- (ii) any other company the shareholders in which (being shareholders as contemplated in the definition of 'shareholder' in section 1 of the Income Tax Act) are substantially the same persons as the shareholders in the first-mentioned company, or which is controlled by the same persons who control the first-mentioned company; or
- (iii) any person where that person and the person referred to in subparagraph (i) or his or her spouse or minor child or the trust fund referred to in that subparagraph or the other company referred to in subparagraph (ii) are connected persons in terms of this definition;

"construction activity" means any activity which is in terms of Schedule 3 deemed to be a construction activity;

"construction agreement" means any agreement to the extent that it provides for the carrying out of any construction activity;

"consumption" includes the incorporation of goods into any building or other structure or work of a permanent nature;

"enterprise" means any commercial, industrial, farming, fishing, professional or other enterprise of a continuing nature carried on in Namibia or partly in Namibia, in the ordinary course of which -

- (a) sales of goods are concluded, lease considerations are derived under financial leases, rental considerations are derived under rental agreements, taxable services (other than any taxable service the taxable value of which is exempt from tax under section 6(1)(w)) are rendered, or board and lodging or accommodation is supplied; or
- (b) goods are manufactured or assembled for sale or any process of manufacture is undertaken for reward; or
- (c) mining or quarrying operations or pastoral, agricultural, forestry or other farming operations or fishing operations are undertaken in order to derive income; or
- (d) rock-breaking services or refinery services are rendered as contemplated in Division VI of Schedule 2, or any of the services referred to in paragraphs (a) to (f) of Division VIII of that Schedule are rendered as contemplated in that Division;
- (e) the activities of an auctioneer are undertaken;

“exported”, in relation to any goods means -

- (a) in relation to a seller under a sale of such goods -
  - (i) sold and consigned or sold and delivered by the seller to a purchaser at an address outside Namibia; or
  - (ii) sold and delivered by the seller to the owner or charterer of any foreign-going ship or foreign-going aircraft for use in such ship or aircraft; or
  - (iii) sold and delivered by the seller to any person in Namibia for conveyance forthwith to any place outside Namibia, if such person satisfies the seller of such goods so delivered that he or she carries on any *bona fide* professional practice or any *bona fide* commercial, industrial, farming, fishing, forestry, mining, quarrying or other business operations at the said place and that such goods are required

for the purposes of such practice or operations and are intended for resale, use or consumption, as the case may be, at that place;

(b) in relation to a seller under a sale concluded on or after 14 November 1980 in respect of any goods described in section 36 and in relation to which the provisions of paragraph (a) of this definition do not apply, sold and delivered by the seller to any person in Namibia for conveyance to an address outside Namibia where such person is ordinarily resident or carries on business, if the relevant law referred to in the said section does not require that in consequence of the change of ownership such goods be registered in Namibia;

(c) (i) in relation to a seller under a sale of goods concluded from any special customs and excise warehouse which is licensed as such under the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964), and in respect of which the letters SOS have been allocated; or

(ii) in relation to a seller under a sale of goods consisting of articles of apparel and clothing accessories of furskin concluded from any such special customs and excise warehouse in respect of which the letters VS have been allocated; or

(iii) in relation to a seller under a sale of goods consisting of liquor for exportation to any place outside the common customs area as defined in section 1 of the said Act from any customs and excise warehouse licensed under the said Act and in respect of which the letters OS have been allocated,

sold and delivered by the seller to any person in Namibia if such seller complies with the procedures and conditions prescribed by the Commissioner for Customs and Excise regarding the clearance and removal of such goods from such warehouse;

(d) in relation to any person who holds such goods, removed from Namibia by such person otherwise

than in consequence of any sale referred to in the preceding provisions of this definition;

“financial lease” means any agreement or delegation which is in terms of paragraph 1 or 2 of Schedule 4 deemed to be a financial lease or a new financial lease, as the case may be;

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

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

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

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

appeal provided in this Act, determine as the free-on-board value of those goods;

“goods” means -

- (a) corporeal movable things, including any share in the rights of ownership of such thing, but excluding -
  - (i) coins and notes which are under the Bank of Namibia Act, 1990 (Act 8 of 1990), legal tender;
  - (ii) any bill of exchange, bank draft, postal order, money order or marketable security;
  - (iii) any stamp, form or card which has a money value and has been sold or issued by the State for the payment of postage or any tax or duty levied under any law for the benefit of the State Revenue Fund, except when, subsequent to its sale or issue, it is disposed of or imported as a collector's piece;
  - (iv) any coin (other than a gold coin) or note which is not legal tender in Namibia, except when disposed of or imported as a collector's piece;
  - (v) gold coins minted outside Namibia of numismatic interest;
  - (vi) any stamp which has a money value and has been sold or issued under the Post Office Act, 1958 (Act 44 of 1958), for the payment of postage, except when, subsequent to its sale or issue, it is disposed of or imported as a collector's piece;
- (b) stamps, coupons or tokens when sold by a trader under any scheme whereby the value of such stamps, coupons or tokens is, on the surrender of such stamps, coupons or tokens to the trader, to be utilized in payment of the purchase price of merchandise purchased or to be purchased by the holder of the stamps, coupons or tokens from the trader, but excluding any stamps, coupons or tokens intended to be used as gift vouchers or given by any trader to any customer by way of a discount on purchases made by the customer;

- (c) any asset referred to in paragraph 4 of Schedule 3, when supplied by any person as contemplated in that paragraph;

“hotel enterprise” means any hotel, boarding house or other establishment in Namibia in which board (consisting of at least one meal per day) and lodging is regularly or normally provided to five or more persons at a daily, weekly, monthly or other periodic charge, but does not include -

- (a) any boarding establishment operated by any charitable institution solely or mainly for the benefit of aged persons, children or physically or mentally handicapped persons;
- (b) any boarding establishment operated by any educational institution of a public character solely or mainly for the benefit of pupils or students of that institution;
- (c) any boarding establishment operated by any employer solely or mainly for the benefit of his or her employees or their dependants, provided such establishment is not operated for the purposes of making profits for the employer;
- (d) any boarding establishment operated by any local authority otherwise than for the purpose of making profits;
- (e) any hospital, nursing home or maternity home which is established or registered under any law;

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

“leased property” means property leased under a financial lease;

“local authority” means any council of a municipality or a village management board or the Peri-Urban Development Board established by section 2 of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

“manufactured” means produced by a process of manufacture carried out entirely within Namibia;

“Minister” means the Minister of Finance;

“occasional sale” means a sale of goods (other than a sale of goods constituting assets of the seller’s enterprise, business or professional practice or a sale of goods by auction or out of hand concluded by an auctioneer in the course of his or her auctioneering business or a sale of goods to which the provisions of section 36 apply) which is not one of a series of sales sufficient in number, scope and character so as to constitute a regular activity of such person;

“Permanent Secretary” means the Permanent Secretary: Finance;

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

“process of manufacture” includes any process which is determined by the Permanent Secretary for the purposes of this Act to be similar to a process of manufacture;

“purchaser”, in relation to any sale or financial lease or any rental consideration or any taxable service or board and lodging or accommodation, means the purchaser or other person acquiring goods under such sale or the lessee under such financial lease or the person liable for the payment of such rental consideration or the person to whom such service is rendered or to whom such board and lodging or accommodation is supplied, as the case may be;

“qualifying rental consideration”, in relation to any rental agreement, means a rental consideration -

- (a) which accrues to the lessor within a period of 12 months reckoned from the commencement of the period of such agreement or which accrues to the lessor by way of amounts payable at regular intervals not exceeding 12 months, the first of such intervals being reckoned from the date of such commencement; and
- (b) which is so calculated that the amount thereof accruing to the lessor during each period of 12 months in the period of such agreement is not less than 10 per cent -

- (i) in the case of goods referred to in section 6(1)(f)(ii), of the cost of such goods to the vendor contemplated in that section; or
- (ii) in the case of leased property contemplated in section 6(1)(o), of the cash value of such leased property referred to in paragraph 3 of Schedule 4; or
- (iii) in the case of goods referred to in section 6(1)(x)(iv), of the taxable value of such goods as determined in accordance with the provisions of section 7(1)(g); or
- (iv) in the case of goods referred to in section 6(1)(z)(v), of the cost of the goods to the vendor contemplated in that section as determined in accordance with the provisions of section 7(5),

or where the period of such agreement is less than 12 months or the rental consideration is payable in respect of a period of less than 12 months ending at the end of the period of such agreement, which is not less than a percentage of the relevant cost or value which bears to 10 per cent of such cost or value the same ratio as such lesser period bears to 12 months;

“registered vendor” means a vendor who is the holder of a registration certificate issued in terms of section 12;

“rental agreement” means an agreement which is in terms of paragraph 9(a) of Schedule 4 deemed to be a rental agreement;

“rental consideration” means a rental consideration as defined in paragraph 9(b) of Schedule 4;

“rental enterprise” means any enterprise in the course of which rental considerations are derived solely or mainly from persons who are not connected persons in relation to the person carrying on such enterprise;

“returnable container” means any container belonging to a class of containers in relation to which, at the time of the sale of the contents thereof, ownership of that container is not transferred to the purchaser in relation

to such sale and a specifically identified amount is usually charged as a deposit by the seller in relation to such sale upon the express undertaking of the vendor that upon the return of that container such deposit will be refunded or allowed as a credit to such purchaser;

“sale”, in relation to goods, means an agreement whereby a party thereto agrees to sell, grant, donate or cede goods to another or exchange goods with another or otherwise to dispose of goods to another, including, without in any way limiting the scope of this definition -

- (a) any agreement in respect of goods which constitutes a sale subject to a suspensive condition and any other agreement for the sale of goods on credit;
- (b) any agreement for the furnishing or serving for reward of any meal, refreshment, cooked food or food prepared and served so as to be ready for immediate consumption or any drink, except when furnished or served -
  - (aa) under an agreement for the supply of board and lodging at an inclusive charge and such meal, refreshment, food or drink is not charged for separately; or
  - (bb) by any charitable institution to aged or indigent persons, children or physically or mentally handicapped persons; or
  - (cc) by any educational institution of a public character in any cafeteria, canteen or similar establishment operated solely or mainly for the benefit of pupils or students of that institution; or
  - (dd) by any employer in any cafeteria, canteen or similar establishment which is operated and controlled directly by the employer otherwise than for the purpose of making profits therefrom and is patronized solely or mainly by employees of that employer or employees of a connected person in relation to that employer; or
  - (ee) by any local authority in any cafeteria, canteen or similar establishment which is

## SALES TAX ACT, 1992

operated and controlled directly by the local authority otherwise than for the purpose of making profits;

- (c) any other transaction whereby the ownership of goods passes or is to pass from one person to another,

wheresoever such agreement or transaction is entered into or concluded, but does not include -

- (i) any such agreement or transaction in respect of goods which are situated outside Namibia if the goods are permanently situated outside Namibia;
- (ii) any cession of the rights of a lessor under a financial lease (excluding any new financial lease referred to in paragraph 3 of Schedule 4) or rental agreement to any person: Provided that the provisions of this paragraph shall not apply where the cessionary is the lessee under such lease or agreement or any person who is a connected person in relation to such lessee unless such rights are ceded under a block discounting agreement;
- (iii) any cession of the rights of the seller under any agreement contemplated in paragraph (a), to any person other than the purchaser under such agreement;
- (iv) any disposal of an undivided share in the assets of a continuing commercial, financial, industrial, mining, farming, forestry or fishing concern carried on for profit or of a professional practice carried on for profit, by virtue of an agreement for the formation of a partnership to take over such concern or practice from a person who becomes a partner in such partnership or an agreement under which one of the partners in such concern or practice disposes of his or her share (or a portion thereof) in such concern or practice to any other partner therein or a person admitted as a partner in such concern;
- (v) any donation to a natural person of any goods if such goods were acquired by the donor under a sale in respect of which tax was borne by the

donor and such goods were acquired by the donor for the sole purpose of making such donation;

- (vi) any donation to any charitable institution or to any ecclesiastical or educational institution of a public character of goods which in the opinion of the Permanent Secretary have no commercial value;
- (vii) any disposal of goods by any person to his or her spouse or former spouse under any duly registered antenuptial or post-nuptial contract or any order of divorce or judicial separation or any agreement of separation;
- (viii) any transaction whereby the ownership of goods passes to an heir or legatee by virtue of *ab intestato* or testamentary succession or as a result of the redistribution of the assets of the estate of a deceased person while the estate is in the process of liquidation;
- (ix) any construction agreement;

“seller”

- (a) in relation to a sale (other than a sale of goods concluded by an auctioneer on behalf of another person), means the party who under such sale sells, grants, donates, cedes, exchanges or otherwise disposes of goods or who furnishes or serves any meal, refreshment, food or drink as contemplated in paragraph (b) of the definition of “sale” in this section or from whom the ownership of goods passes or is to pass as contemplated in paragraph (c) of that definition, and in relation to a sale of goods concluded by an auctioneer on behalf of another person, such other person, and the expressions “sells” and “sold” shall be construed accordingly; or
- (b) in relation to any financial lease or rental consideration or any taxable service or any board and lodging or accommodation, means the lessor under such financial lease or the person entitled to such rental consideration or the person by whom such service is rendered or such board and lodging or accommodation is supplied, as the case may be;

“specified country” means Botswana, Lesotho, Swaziland, the Republic of South Africa or any country the territory of which is situated within the common customs union of Southern Africa;

“tax” means the tax leviable under this Act;

“taxable service” means any service which in terms of Schedule 1 is deemed to be a taxable service;

“taxable value” means a taxable value determined under section 7;

“tax period” means a tax period determined under section 17;

“this Act” includes the regulations;

“vendor” means any person who carries on any enterprise.

## PART 1 Administration

Act to be administered by  
Permanent Secretary.

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

Exercise of powers and  
performance of duties.

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

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

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

(4) Where any decision has been given by the Permanent Secretary to any person to the effect that such person is required or not required to be registered as a vendor 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 the said person and all the material facts were known to the Permanent Secretary when the decision was given.

Secrecy.

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

- (a) disclose to any person 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 Permanent Secretary,

except in the exercise of his or her powers or the performance of his or her duties under this Act or by order of a competent court: Provided that the Auditor-General shall in the performance of his or her duties in terms of section 24 of the State Finance Act, 1982 (Act 1 of 1982), have access to all records and documents in the possession or custody of the Permanent Secretary for the purposes of this Act.

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

- (a) using any information obtained by him or her in the exercise of his or her powers or the perfor-

mance of his or her duties under this Act for the purposes of any other fiscal law administered by him or her;

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

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

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

## PART II

### Sales Tax

Levy of sales tax.

5. (1) Subject to the provisions of section 6, there shall be levied and paid, for the benefit of the State Revenue Fund, a tax (to be known as the sales tax) calculated at the rate of 11 per cent of the taxable value of -

- (a) every sale of goods;
- (b) leased property delivered to a lessee under a financial lease;
- (c) every rental consideration in respect of goods which accrues to any person;
- (d) every taxable service rendered or to be rendered by any person in the course of any enterprise carried on by him or her;
- (e) board and lodging supplied by any person carrying on an hotel enterprise;

- (f) accommodation (of the nature referred to in the definition of "accommodation enterprise" in section 1) let by any person and supplied to the occupant for a period not exceeding 45 days by any person in carrying on any accommodation enterprise;
- (g) goods imported into Namibia;
- (h) (i) goods acquired under a sale or imported into Namibia or produced by any person in carrying on any enterprise or leased property held under a financial lease or goods let to any person under a rental agreement concluded in the course of any enterprise carried on by any person, but excluding -
  - (aa) goods acquired by such person under a sale if he or she has borne tax in respect of the taxable value of such sale; or
  - (bb) goods imported into Namibia by such person if he or she has borne tax in respect of the taxable value of such goods; or
  - (cc) leased property held by such person under a financial lease if he or she has borne tax in respect of the taxable value of such property; or
  - (dd) goods let to such person under a rental agreement at a rental consideration equal to or greater than a qualifying rental consideration if tax is borne by him or her in respect of the taxable value of such rental consideration; or
- (ii) goods manufactured, assembled or produced by any person in carrying on any manufacturing enterprise; or
- (iii) assets of the nature described in paragraph 1(b)(ii) of Schedule 1 which have been erected, constructed, assembled or installed by any person in carrying on any enterprise in the course of which services relating to assets of the said nature are rendered,

which are applied by such person to his or her private or domestic use or consumption or for the use or consumption thereof in such enterprise or for the use or consumption of any other person or for the purposes of any other enterprise carried on by the person who has so applied such goods or assets.

(2) For the purposes of this Act -

- (a) the date of conclusion of a sale of goods shall be deemed to be the date on which delivery of the goods is effected under the sale or the date on which the consideration payable by the purchaser under the sale is paid in full, whichever date is earlier;
- (b) where any agreement other than an agreement referred to in paragraph 2 of Schedule 1 provides for the payment of any consideration in respect of a sale of goods and the rendering of a taxable service in connection with such sale, without any apportionment of the consideration between such sale and such taxable service, the consideration shall be deemed to be payable in respect of the sale, and the agreement as a whole shall be treated as a sale;
- (c) where any asset is supplied by any contractor as contemplated in paragraph 4 of Schedule 3, such asset shall be deemed to have been delivered to the person to whom the asset is supplied when the erection, construction, assembly or installation of such asset has been completed or the contract price (disregarding any retention money) has become payable and the said person has taken possession of the asset.

(3) The provisions of subsection (1)(c) shall not apply to any rental consideration accruing to a vendor who is registered under section 12 in respect of a rental enterprise by virtue of a rental agreement concluded before 10 June 1985 in respect of goods -

- (a) which were acquired by that vendor under a sale by virtue of an agreement entered into by him or her before that date; and

(b) delivered to that vendor on or after that date,

if the tax levied in terms of subsection (1)(a) on the taxable value of the sale of such goods was borne by that vendor on or after 10 June 1985 by reason of the fact that such vendor did not comply with the provisions of section 6(1)(f)(ii).

**Exemptions.**

**6. (1)** The tax shall not be payable in respect of any taxable value which, but for the provisions of this section, would be determinable in respect of the following, namely -

(a) (i) the sale of goods which are exported from Namibia and any taxable service referred to in paragraph 1 of Schedule 1 which is rendered in respect of such goods by the seller in relation to such sale within a period of 12 months after the date of such sale, if the purchaser in relation to such sale or service furnishes the seller with a declaration, in such form as the Permanent Secretary may prescribe, relating to that sale or service;

(ii) the sale of goods which are situated outside Namibia by any seller who is resident or carries on business outside Namibia (other than any sale of such goods in the ordinary course of any enterprise carried on by the seller in Namibia) if such goods are intended for shipment or conveyance to any purchaser thereof at an address within Namibia;

(b) subject to compliance with the provisions of section 15 -

(i) the sale to a registered vendor of goods intended for resale as such by the vendor in the ordinary course of the enterprise in respect of which he or she is registered under section 12 (but excluding a resale of goods in respect of which the vendor will be exempt from tax under paragraph (i)(ii) or (k) of this subsection): Provided that the exemption contained in this subparagraph shall not apply -

(aa) in respect of goods in the form of containers or packaging or wrapping materials intended for use in connection

with the sale by such vendor of other goods in carrying on such enterprise; or

- (bb) in the case of a vendor who is registered in respect of any accommodation, hotel or catering enterprise, in respect of goods in the form of eating, drinking or carrying utensils or articles or serviettes intended for resale as adjuncts to the supply of any prepared food or beverage; or
- (ii) the sale to a resigered vendor of goods intended to be incorporated in any movable asset of the nature described in paragraph 1(b)(ii) of Schedule 1 if such asset, after such goods have been incorporated therein, is intended for sale by such vendor; or
- (iii) any taxable service referred to in paragraph 1(c) of Schedule 1 which is rendered to any registered vendor in respect of any movable asset of the nature described in paragraph 1(b)(ii) of that Schedule, if such asset is intended for sale by such vendor; or
- (iv) any taxable service rendered to a registered vendor acting on behalf of his or her customer who is to be charged for such service by the vendor; or
- (v) any taxable service referred to in paragraph 1(c) of Schedule 1 which is rendered to any registered vendor carrying on the business of a banker, financier or dealer in respect of any machinery or plant referred to in paragraph 1(a) of Schedule 4, if such machinery or plant is intended to be let by such vendor under a financial lease in the ordinary course of such enterprise; or
- (vi) any taxable service referred to in paragraph 1(c) of Schedule 1 which is rendered to any registered vendor carrying on any rental enterprise in respect of any movable asset of the nature described in paragraph 1(b)(ii) of that Schedule, if such asset is intended to be let by him or her in the ordinary course of

such enterprise to users in Namibia at a qualifying rental consideration; or

- (vii) any taxable service referred to in subparagraph (i), (l) or (m) of paragraph 1 of Schedule 1 which is rendered by any company (other than a close corporation) to a connected person in relation to such company;
- (c) subject to compliance with the provisions of section 15 -
- (i) sales of goods or taxable services rendered to a vendor who is registered under section 12 in respect of an enterprise falling within a category of enterprises mentioned in Schedule 2, if such goods or services are goods or services described in that Schedule in relation to such category and are intended for use or utilization in such enterprise;
  - (ii) any rental consideration payable in respect of any goods capable of being hired by a vendor who is registered under section 12 in respect of an enterprise falling within a category of enterprises mentioned in Schedule 2, if such goods are goods described in that Schedule in relation to such category and are hired for use in such enterprise;
- (d) the sale of electricity, gas or water when delivered to purchasers -
- (i) in the case of electricity, through mains, cables or lines;
  - (ii) in the case of gas, through mains or pipes;
  - (iii) in the case of water, through mains, pipes, furrows or canals or from tankers or in barrels or drums;
- (e) the sale of fuel -
- (i) to the S.W.A. Water and Electricity Corporation (Proprietary) Limited, Trans-Namib Limited, or any ministry of State or a local authority if such fuel is to be used by the

said Corporation, TransNamib, ministry or local authority directly in the generation of electricity; or

- (ii) to any producer of gas for consumption by the general public, if such fuel is to be used by such producer directly in the production of such gas;
  - (f) subject to compliance with the provisions of section 15, the sale of goods to a vendor who is registered under section 12, if -
    - (i) such goods constitute in whole or in part property intended to be let by the vendor under a financial lease: Provided that the provisions of this subparagraph shall not apply in respect of goods which constitute in whole or in part property intended to be let under a financial lease referred to in paragraph (l), unless -
      - (aa) such property consists of goods described in section 36 in respect of which registration is not required under the relevant law referred to in that section by reason of the fact that such goods will not be situated in Namibia; or
      - (bb) such property consists of machinery or plant which will have a fixed location outside Namibia,
- and in either case the leased property is to be used in any country outside Namibia in which a sales tax or a substantially similar tax is levied on the rentals under such lease or in respect of the value of such goods or the importation thereof into such country; or
- (ii) the vendor is so registered in respect of a rental enterprise and the goods are intended to be let by him or her in the ordinary course of such enterprise to users in Namibia at a qualifying rental consideration; or
  - (iii) such goods consist of containers intended to be let by the vendor in the ordinary course of a rental enterprise in respect of which he or she is so registered for use in any foreign-going ship or foreign-going aircraft;

- (g) the sale of trading stock by any vendor (other than a registered vendor) in the ordinary course of carrying on any enterprise, if -
- (i) the gross receipts or accruals of such enterprise during the latest completed year of assessment of the vendor under the Income Tax Act (but excluding any amount derived from any transaction which, by virtue of the provisions of subparagraph (bb), (cc), (dd) or (ee) of paragraph (b) of the definition of sale, is deemed not to be a sale) have not exceeded the sum of R50 000; and
  - (ii) such gross receipts or accruals of such enterprise during the period (other than a full period of 12 months) ensuing after the end of such year have not exceeded such sum:

Provided that where such gross receipts or accruals of the enterprise for such ensuing period have exceeded the said sum and the vendor has, within a period of 30 days thereafter or such further period as the Permanent Secretary may regard as reasonable in the circumstances, notified the Permanent Secretary of the change in his or her circumstances as required by section 12(5), the exemption conferred by this paragraph in respect of sales by the vendor shall, subject to compliance with the provisions of section 11(5), not be deemed to have ceased to apply by reason of the fact that such receipts or accruals have exceeded the said sum, but shall continue to apply in respect of sales of goods concluded by the vendor during the period ending on the date fixed by the Permanent Secretary under section 11(5);

- (h) any occasional sale of goods if the total consideration payable under such sale does not exceed R1 000;
- (i) (i) the sale of banknotes, specie or gold or silver bullion to the Bank of Namibia or any banking institution registered under the Banks Act, 1965 (Act 23 of 1965); or
  - (ii) the sale by such Bank or banking institution of any cheque form or other form intended for use by customers of such Bank or banking institution in transactions involving such Bank or banking institution;

- (j) the sale of goods constituting assets of any enterprise or any other commercial, financial, industrial, mining, quarrying, farming, forestry or fishing concern or of any professional practice if, under the agreement whereby the sale is effected, such enterprise, other concern or practice is, together with all the assets thereof (excluding any fixed property or book debt, or any other asset which the Permanent Secretary having regard to the circumstances may approve), disposed of to the purchaser as a going concern;
- (k) any transaction (being a transaction constituting a sale) whereby goods are supplied by and the ownership of such goods passes from one person to another person in the rendering by the first-mentioned person of any service which is not a taxable service or any service the taxable value of which is exempt from tax under this section, if the supply of such goods is necessary for and subordinate and incidental to the rendering of such service: Provided that the provisions of this paragraph shall not apply in respect of the supply of -
  - (i) medicines prescribed by any medical practitioner or dentist for use at any time other than at the time of a consultation, or by any homeopath, naturopath or herbalist; or
  - (ii) prostodontic goods by any dentist; or
  - (iii) spectacles or contact lenses by any optometrist; or
  - (iv) medicines prescribed by any veterinary surgeon for use at any time other than at the time of a consultation;
- (l) any leased property delivered to a lessee under a financial lease or any rental consideration accruing in respect of goods, if such property is, or such goods are used exclusively outside Namibia, provided the lessee under the lease or rental agreement is not ordinarily resident within Namibia (or, in the case of a company, is not a domestic company for the purposes of the Income Tax Act) and payment of the rent under such

financial lease or of such rental consideration, as the case may be, is effected outside or from outside Namibia;

- (m) any leased property delivered to a third party as lessee under a new financial lease referred to in paragraph 2 of Schedule 4 where the delegation so referred to is effected under an agreement referred to in paragraph (j) of this subsection and the former lessee's interest in the financial lease is transferred to the said third party as an asset of the enterprise, concern or practice disposed of under the said agreement;
- (n) any leased property delivered to a lessee under a financial lease, if -
  - (i) such property consists of goods described in section 36 in respect of which registration is not required under the relevant law referred to in that section by reason of the fact that such goods will not be situated in Namibia; or
  - (ii) such property consists of machinery or plant which will have a fixed location outside Namibia,

and in either case the leased property is to be used in any country outside Namibia in which a sales tax or a substantially similar tax is levied on the rentals under such lease or in respect of the value of such goods or the importation thereof into such country;

- (o) subject to compliance with the provisions of section 15, leased property consisting of movable goods delivered under a financial lease to a lessee who is registered as a vendor under section 12 in respect of a rental enterprise, if such goods are hired by the lessee in order to be let by him or her in the ordinary course of such enterprise to users in Namibia at a qualifying rental consideration;
- (p) subject to compliance with the provisions of section 15, any rental consideration payable in respect of goods hired by any lessee who is registered as a vendor under section 12 in respect of a rental enterprise, if such goods are hired by the

lessee solely in order to be let by him or her in the ordinary course of such enterprise to users in Namibia and the rental consideration payable by such users is not less than the rental consideration payable by the said lessee;

- (q) any rental consideration payable by any lessee to any lessor who is ordinarily resident in Namibia (or, being a company, is a domestic company for the purposes of the Income Tax Act), if the lessee and the lessor are connected persons in relation to each other and the goods in respect of which the rental consideration is payable were, whether before or after the commencement of this Act, acquired by the lessor under a sale concluded or delivered to the lessor under a financial lease or imported by the lessor or erected, constructed, assembled or installed for the lessor or applied by the lessor in the circumstances contemplated in section 5(1)(h) or let to the lessor at a qualifying rental consideration as defined in section 1, if tax was or is borne under this Act or any law repealed by this Act by the lessor in respect of that sale, financial lease, importation, erection, construction, assembly or installation, application or rental consideration;
- (r) any rental consideration payable to the Ministry of Works, Transport and Communication in respect of telephones and telex equipment;
- (s)
  - (i) any rental consideration payable in respect of goods let under a rental agreement concluded outside Namibia if the goods are used exclusively outside Namibia;
  - (ii) any rental consideration payable in respect of any ship (other than a foreign-going ship) let under a rental agreement concluded outside Namibia in so far as such rental consideration is to the satisfaction of the Permanent Secretary payable for the use of that ship while outside the territorial waters of Namibia but within the territorial waters of any other country in which a sales tax or any substantially similar tax is leviable in respect of any rental consideration payable under the rental agreement in question;

- (t) any rental consideration payable by any lessee who is ordinarily resident in Namibia (including any company which is a domestic company for the purposes of the Income Tax Act) to a lessor who is not ordinarily resident in Namibia (including any company which is an external company for the purposes of the said Act), if the goods let were imported by the lessee and tax has been paid in respect of the importation of the goods;
- (u) subject to compliance with the provisions of section 15, any repair or maintenance service rendered to any vendor who is registered under section 12 in respect of a rental enterprise, if such service is rendered in respect of goods let in the ordinary course of such enterprise in order to maintain the goods in a lettable condition, and the sale to such vendor of parts and materials for incorporation in or attachment to the goods let or gas in order to have such service effected;
- (v) any repair or maintenance service rendered in respect of a foreign-going ship or a foreign-going aircraft;
- (w) in relation to any contractor under an agreement for the carrying out by him or her of a construction activity, any taxable service contemplated in subparagraph (b) or (c) of paragraph 1 of Schedule 1 which relates to any asset of the nature described in item (aa), (bb) or (cc) of the said subparagraph (b)(ii), if -
  - (i) such asset is or is to be a part of a building in respect of which the said construction activity is or is to be carried out;
  - (ii) such service in its entirety is or is to be performed by a sub-contractor who is responsible to the said contractor for the performance of that service; and
  - (iii) tax in respect of the taxable value of such service has been paid or is payable by the subcontractor and has been recovered or is recoverable by him or her from the contractor;

(x) subject to compliance with the provisions of section 15, goods imported into Namibia by -

(i) a registered vendor if the goods are intended for sale or resale as such by the vendor in the ordinary course of the enterprise in respect of which he or she is registered under section 12 (but excluding a resale of goods in respect of which the vendor will be exempt from tax under paragraph (i)(ii) or (k) of this subsection): Provided that the exemption contained in this subparagraph shall not apply -

(aa) in respect of goods in the form of containers or packaging or wrapping materials intended for use in connection with the sale by such vendor of other goods in carrying on such enterprise; or

(bb) in the case of a vendor who is registered in respect of any accommodation, hotel or catering enterprise, in respect of goods in the form of eating, drinking or carrying utensils or articles or serviettes intended for resale as adjuncts to the supply of any prepared food or beverage; or

(ii) a vendor who is registered under section 12 in respect of an enterprise falling within a category of enterprises mentioned in Schedule 2, if such goods are goods described in that Schedule in relation to such category and are intended for use or utilization in such enterprise; or

(iii) a registered vendor if such goods constitute in whole or in part property intended to be let by the vendor under a financial lease: Provided that the provisions of this subparagraph shall not apply in respect of goods which constitute in whole or in part property intended to be let under a financial lease referred to in paragraph (l), unless -

(aa) such property consists of goods described in section 36 in respect of which registration is not required under the

relevant law referred to in that section by reason of the fact that such goods will not be situated in Namibia; or

- (bb) such property consists of machinery or plant which will have a fixed location outside Namibia,

and in either case the leased property is to be used in any country outside Namibia in which a sales tax or a substantially similar tax is levied on the rentals under such lease or in respect of the value of such goods or the importation thereof into such country; or

- (iv) a vendor who is registered in respect of a rental enterprise and the goods are intended to be let by him or her in the ordinary course of such enterprise to users in Namibia at a qualifying rental consideration; or
- (v) a registered vendor if such goods are intended to be incorporated in any movable asset of the nature described in paragraph 1(b)(ii) of Schedule 1, and such asset, after such goods have been incorporated therein, is intended for sale by such vendor;
- (y) such goods imported into Namibia as are referred to in Schedule 5;
- (z) goods which are as contemplated in section 5(1)(h) applied by a vendor for the purposes of any enterprise carried on by him or her if the vendor is registered under section 12 in respect of such enterprise and -
  - (i) such goods are intended for sale or resale as such by the vendor in the ordinary course of such enterprise (but excluding a resale of goods in respect of which the vendor will be exempt from tax under paragraph (i)(ii) or (k) of this subsection) or are intended to be consumed, destroyed, lost or rendered useless for the purposes of quality testing or research; or

- (ii) such enterprise falls within a category of enterprises mentioned in Schedule 2, such goods are goods described in that Schedule in relation to such category and are intended for use or utilization in such enterprise; or
  - (iii) such goods are intended to be let by the vendor under a financial lease (other than a financial lease referred to in paragraph (l) ) concluded in the ordinary course of the vendor's enterprise; or
  - (iv) such goods are intended to be let by the vendor in the ordinary course of his or her rental enterprise to users in Namibia at a qualifying rental consideration; or
  - (v) such goods are intended to be incorporated in any movable asset of the nature described in paragraph 1(b)(ii) of Schedule 1 and such asset, after such goods have been incorporated therein, is intended for sale by such vendor;
- (ab) subject to compliance with the provisions of section 15 as applied by section 37 -
- (i) the sale to any charitable institution of goods;
  - (ii) goods imported into Namibia by such institution;
  - (iii) any leased property delivered to such institution as lessee;
  - (iv) any rental consideration payable by such institution in respect of goods; or
  - (v) any taxable service rendered to such institution,

if the charitable institution is registered under section 37 and the goods sold under such sale or such imported goods or such leased property or the goods in respect of which such rental consideration is payable or such taxable service, as the case may be, is or are intended to be utilized by such institution solely in the carrying out of any charitable activities referred to in the definition of charitable institution;

- (ac) (i) the sale or importation of any goods (excluding any vehicle other than any invalid carriage) designed, manufactured, adjusted or modified solely as aids or devices for the use of any physically handicapped person who is blind, deaf or crippled or is a chronic invalid where ownership in the goods is to vest in such handicapped person and such goods are required for his or her personal use in consequence of his or her physical handicap; or
- (ii) any repair or maintenance service rendered in respect of any goods referred to in subparagraph (i) and spare parts and materials required to effect such service; or
- (iii) any adjustment or modification service rendered in respect of any vehicle intended for the use of any physically handicapped person referred to in subparagraph (i) where such service is required solely to enable such person to operate such vehicle, and the sale of parts and materials required to effect such service,

if the seller in relation to such sale or service or the importer of such goods, as the case may be, issues an invoice or other document stating the name and address of the seller or the importer, as the case may be, the name and address of the purchaser as well as the name and address of such physically handicapped person if he or she is not the purchaser or the importer, as the case may be, and a full description of such goods or service, as the case may be;

- (ad) (i) the sale to or the importation by the State or any body approved by the Minister of such strategic materials as the Minister, in consultation with any other Minister whose ministry of State is concerned, may approve; and
- (ii) any taxable service rendered in respect of such strategic materials, but subject to such conditions as the Minister may impose;
- (ae) the sale to or the importation by -
- (i) any person who is ordinarily resident in Namibia or to or by any company which is a

domestic company for the purposes of the Income Tax Act, of -

- (aa) any ship in respect of which the Permanent Secretary is satisfied that it will be a Namibian ship and will be used by such person or company wholly or mainly as a foreign-going ship; or
- (bb) any aircraft in respect of which the Permanent Secretary is satisfied that it will be used by such person or company wholly or mainly as a foreign-going aircraft;
- (ii) any organization, not formed for gain, of any boat in respect of which the Permanent Secretary is satisfied that it will be used by such organization solely for the purposes of rescue operations in or around the territorial waters or in the inland waters of Namibia;
- (af) subject to compliance with the provisions of section 15 as applied by section 40 -
  - (i) the sale of goods to any person or representative registered under paragraph (a) or (b) of section 40(1);
  - (ii) any leased property delivered to such person or representative as lessee;
  - (iii) any rental consideration payable by such person or representative in respect of goods;
  - (iv) any taxable service rendered or to be rendered to such person or representative;
  - (v) board and lodging supplied to such person or representative by any person carrying on an hotel enterprise; or
  - (vi) accommodation (of the nature referred to in the definition of "accommodation enterprise" in section 1) let to such person or representative for a period not exceeding 45 days by any person in carrying on any accommodation enterprise,

if the goods sold under such sale or such leased property or the goods in respect of which such

rental consideration is payable or such taxable service or such board and lodging or such accommodation, as the case may be, are or is intended to be utilized by such person for his or her personal or domestic purposes or by such representative for the official purposes of the diplomatic or consular mission in Namibia to which he or she is attached;

- (ag) the sale in terms of section 5(1)(h) of any goods set forth in Schedule 6;
- (ah) subject to compliance with the provisions of section 15, the sale to or importation by a person who carries on a manufacturing enterprise and has been approved by the Minister on recommendation of the Minister of Trade and Industry, of any machinery or plant in respect of which the Permanent Secretary is satisfied that it will be used by such person in or in connection with a manufacturing or assembling process in such enterprise, and which is described in a certificate issued by the Permanent Secretary for the purposes of this paragraph.

(2) Where an exemption applies under subsection (1)(b), (c), (f), (m), (o), (p), (u), (x), (ab) or (ah) in respect of a sale of goods or financial lease or rental consideration or the rendering of a taxable service or goods imported, the purchaser in relation to such sale or financial lease or rental consideration or service or the importer of the goods imported shall, subject to the provisions of sections 15 and 16, be entitled to purchase the goods which are the subject of such sale or to conclude such financial lease or to pay such rental consideration or to have such service rendered to him or her or to import the goods, as the case may be, free of tax.

Determination of gross value and taxable value.

7. (1) For the purposes of this Act a gross value shall, subject to the provisions of subsections (2), (3), (4) and (5), be placed on any sale of goods, leased property, rental consideration, taxable service, board and lodging, accommodation or goods imported or applied, as contemplated in section 5(1), and such gross value shall be -

- (a) in relation to any such sale of goods, the sum of all the amounts of the consideration accruing to the seller in respect of such sale, whether such consideration (or any portion thereof) is or has become payable before or at the time of the sale or is or will be payable at some other time, any amount charged by the seller in relation to such

sale as a deposit on any returnable container and any amount charged by him or her in respect of the delivery of such goods: Provided that -

- (i) where such sum includes any delivery charge which is charged by the seller and shown as a separate item on any invoice, cash slip or other statement relating to the price charged for the goods under such sale, such sum shall be reduced by so much of the delivery charge so shown as is sufficient to reduce such sum to an amount equal to the full price which the seller would normally have charged for the said goods if not delivered by the seller;
  - (ii) where the value of any stamp, coupon or token referred to in paragraph (b) of the definition of "goods" in section 1 which was sold by the seller as the trader under the scheme referred to in the said paragraph, is utilized in payment of the purchase price of merchandise purchased from the seller, such value shall be excluded from the value of the consideration to be accounted for under this paragraph in respect of the sale of such merchandise; or
- (b) in relation to such leased property, the cash value thereof referred to in paragraph 1(e) of Schedule 4; or
- (c) in relation to such rental consideration, each amount of such consideration which has accrued to the seller or vendor: Provided that in the case of any rental consideration payable in respect of ships' containers let under a rental agreement concluded outside Namibia and used mainly outside Namibia, the gross value shall be such portion of the consideration which is proved to the satisfaction of the Permanent Secretary as being payable for the use of such containers within Namibia; or
- (d) in relation to such taxable service, each amount of the consideration which has accrued to the vendor in respect of such services; or
- (e) in relation to such board and lodging -
- (i) each amount of the consideration accruing to the person carrying on the hotel enterprise in respect of such board and lodging, if the

charge for the board and lodging supplied to the guest is based on a daily or weekly tariff or a tariff which is less than monthly or if the period for which the board and lodging is contracted is fixed and does not exceed 45 days; or

- (ii) in any other case, 30 per cent of each amount of the consideration accruing to the said person in respect of such board and lodging; or
- (f) in relation to such accommodation, each amount of the consideration accruing in respect of such accommodation to the person carrying on the accommodation enterprise; or
- (g) in relation to goods referred to in section 5(1)(g) -
  - (i) where such goods are cleared or will be required to be cleared under the Customs and Excise Act, 1964 (Act 91 of 1964), and are cleared for home consumption within Namibia, the value thereof for customs duty purposes, plus any duty levied under the said Act in respect of the importation of such goods, plus 10 per cent of the said value; or
  - (ii) where such goods are not and will not be required to be so cleared, the free-on-board value of the goods; or
- (h) in relation to goods, leased property or any asset referred to in paragraph (h) of section 5(1) -
  - (i) the cost of such goods or the value of such property or asset to the person who has applied such goods, property or asset as contemplated in the said paragraph or where such goods have or such property or asset has been used prior to the application thereof as contemplated in the said paragraph, such cost or the market value of the goods, property or asset in question, whichever is the lesser; or
  - (ii) where such goods are applied for use solely or mainly for purposes of demonstration with the intention of being held for sale thereafter,

the value attached to the use of the goods to the person who has so applied such goods as contemplated in the said paragraph,

or, where the tax payable in relation to such sale, rental consideration, taxable service, board and lodging or accommodation, as the case may be, has not been included in the consideration referred to in paragraph (a), (c), (d), (e) or (f), as the case may be, or where such gross value consists of the cash value referred to in paragraph (b), an amount equal to the sum of the amount of such consideration or such cash value, as the case may be, any tax charged by the seller to the purchaser in relation to such sale, leased property, rental consideration, taxable service, board and lodging or accommodation, as the case may be, and any amount which is in terms of section 35(1) required to be accounted for under this subsection.

(2) For the purposes of determining the amount of any consideration referred to in subsection (1) -

- (a) there shall be excluded from such consideration any finance charges charged by a seller to a purchaser in respect of any outstanding balance owing by the purchaser under any agreement constituting a sale subject to a suspensive condition;
- (b)
  - (i) where any such consideration consists in whole or in part of any asset other than money, the amount of such consideration shall, to the extent that it consists of such asset, be deemed to be the market value thereof; or
  - (ii) where such consideration consists in whole or in part of any benefit or advantage capable of being calculated in money, the amount of such consideration shall, to the extent that it consists of such benefit or advantage, be deemed to be the money value thereof; and
- (c) no deduction shall be made in respect of any commission or other remuneration payable to an agent of the seller or in respect of any expenditure incurred by the seller.

(3) (a) Subject to the provisions of subsection (4) -

(i) where under any agreement or transaction treated as a sale of goods for the purposes of this Act, goods (except goods referred to in subparagraph (ii) ) are disposed of or the ownership therein passes or is to pass without the payment of any consideration to the seller in relation to such sale or for a consideration which is less than the cost of such goods to the seller, a consideration in respect of such sale shall be deemed to have accrued to the seller equal in value to such cost or if the market value thereof at the time of such sale is less than such cost, such market value;

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

(b) For the purposes of paragraph 6 of Schedule 4 a consideration in respect of a sale referred to in that paragraph shall be deemed to have accrued to a former lessor so referred to equal in value to -

(i) the cash value referred to in paragraph 3 of the said Schedule which was applicable to the property concerned before the agreement so referred to ceased to exist, reduced by an amount equal to 20 per cent per annum of such cash value, calculated according to the reducing balance method; or

(ii) such other amount which in the opinion of the Permanent Secretary is the market value of the property concerned.

(4) The provisions of subsection (3)(a) shall not apply in respect of any transaction (other than a donation or any transaction under which no consideration is payable

to the seller) concluded between parties acting at arm's length unless they are connected persons in relation to each other.

(5) For the purposes of subsections (1)(h) and (3)(a) the cost of goods or the value of leased property, any asset or the use of goods for purposes of demonstration, as the case may be, to any person shall be deemed to be -

- (a) where such goods were acquired by him or her under a sale, an amount equal to the value of the consideration given by him or her for such goods and any amounts expended by him or her in effecting permanent improvements or additions (other than repairs) to such goods; or
- (b) where such goods were manufactured, assembled or produced by him or her, the aggregate of -
  - (i) the cost to him or her of the materials used in manufacturing, assembling or producing such goods and any materials used in effecting permanent improvements or additions (other than repairs) to such goods;
  - (ii) any amounts expended by him or her in respect of remuneration paid by him or her to any other person employed in manufacturing, assembling or producing such goods or in effecting any such improvements or additions;
  - (iii) any other costs incurred by him or her directly in the manufacture, assembly or production of such goods or in effecting any such improvements or additions; and
  - (iv) an estimated amount representing the depreciation of any machinery, equipment or plant used in the manufacture, assembly or production of such goods or in effecting any such improvements or additions; or
- (c) where the goods were imported into Namibia by him or her, the gross value of such goods as determined under the applicable provisions of subsection (1)(g); or
- (d) where the leased property was held by him or her under a financial lease, the cash value thereof

referred to in paragraph 3 of Schedule 4, reduced by an amount equal to 15 per cent of such cash value for each completed year during which such property was used for the purposes of any enterprise carried on by him or her; or

- (e) where the asset has been erected, constructed, assembled or installed by him or her, the aggregate of -
  - (i) the cost to him or her of the materials or components used in the erection, construction, assembly or installation of such asset and any materials or components used in effecting permanent improvements or additions (other than repairs) to such asset;
  - (ii) any amounts expended by him or her in respect of remuneration paid by him or her to any other person employed in the erection, construction, assembly or installation of such asset or in effecting any such improvements or additions;
  - (iii) any other costs incurred by him or her directly in the erection, construction, assembly or installation of such asset or in effecting any such improvements or additions; and
  - (iv) an estimated amount representing the depreciation of any machinery, equipment or plant used in the erection, construction, assembly or installation of such asset or in effecting any such improvements or additions; or
- (f) where any goods were applied by any person for purposes of demonstration as contemplated in subsection (1)(h)(ii), an amount equal to one-twelfth of the cost contemplated in paragraph (a), (b), (c), (d) or (e), as the case may be, for each month during which such goods are or were applied for purposes of demonstration as contemplated in the said subsection; or
- (g) where the goods, property or asset is applied as contemplated in section 5(1)(h) for a period shorter than the remaining useful life of such goods, property or asset, an amount equal to one-

twelfth of the cost contemplated in paragraph (a), (b), (c), (d) or (e), as the case may be, for each month during which such goods, property or asset is or was so applied; or

- (h) where the goods are held by him or her under a rental agreement, an amount equal to the rental consideration payable by him or her under such rental agreement or an amount equal to a qualifying rental consideration, whichever is the greater; or
- (i) where the goods consist of any cooked or prepared food or any non-alcoholic drink to be supplied without charge by any vendor who is registered in respect of any hotel or catering enterprise to any employee of that enterprise, an amount calculated at the rate of 50 per cent of the list or menu selling price charged by such enterprise for the supply of such food or drink to patrons of the enterprise.

(6) For the purposes of this Act the taxable value of any sale, leased property, rental consideration, taxable service, board and lodging, accommodation or goods imported or applied, as contemplated in section 5, shall be the gross value placed in accordance with the provisions of subsection (1) of this section on such sale, leased property, rental consideration, taxable service, board and lodging, accommodation or goods, as the case may be: Provided that where the tax in respect of the taxable value of any sale of goods or rental consideration is payable by a seller or vendor and the tax is to be calculated otherwise than under the provisions of section 11, such taxable value shall be determined by reducing the gross value placed on such sale or rental consideration, as the case may be, by an amount determined in accordance with the formula -

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

in which formula -

r, represents the rate of sales tax, expressed as a percentage; and

c, represents the said gross value.

Date on which tax is deemed to have become payable.

8. For the purposes of this Act, the tax payable in respect of any taxable value shall be deemed to have become payable -

- (a) in the case of a sale of goods referred to in section 5(1)(a), on the date on which such sale is concluded or, in the case of any such sale concluded in terms of an agreement on a lay-by basis in terms of which such goods are sold at a consideration not exceeding R1 000 and are not delivered before such consideration or any particular portion thereof has been paid, on the date on which such goods are delivered to the purchaser; or
- (b) in the case of any leased property referred to in section 5(1)(b), on the date of delivery of such property to the lessee, including the third party referred to in paragraph 2 of Schedule 4; or
- (c) in the case of any rental consideration referred to in section 5(1)(c), on the date on which the amount of such consideration accrues to the lessor; or
- (d) in the case of -
  - (i) any taxable service, board and lodging or accommodation referred to in section 5(1)(d), (e) or (f), on the date of accrual to the vendor of the consideration included under section 7(1)(d), (e) or (f) in the gross value placed on such taxable service, board and lodging or accommodation, as the case may be;
  - (ii) any taxable service referred to in paragraph 2(b) of Schedule 1, on the date on which the agreement is cancelled or terminated; or
- (e) (i) in the case of goods imported into Namibia from a specified country, and which are not cleared or required to be cleared under the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964) -
  - (aa) if imported by rail, air, ship or post, on the date on which the goods are delivered to the addressee;

- (bb) if imported by road, on the date on which the goods enter Namibia; or
  - (ii) in the case of goods imported into Namibia and which are cleared for home consumption under the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964), on the date on which they are so cleared; or
- (f) in the case of goods referred to in paragraph (h) of section 5(1) -
  - (i) on the date on which such goods are applied as contemplated in the said paragraph; or
  - (ii) where such goods are applied by a vendor for purposes of demonstration as contemplated in section 7(1)(h)(ii) or are applied by him or her for a period shorter than the remaining useful life of the goods as contemplated in section 7(5)(g), on the last day of each month during which the goods are or were so applied.

Persons liable for tax.

**9. (1) The tax shall be paid -**

- (a) in the case of any sale of goods concluded by an auctioneer on behalf of any other person or a sale of goods by an auctioneer for his or her own account, by the auctioneer; or
- (b) in the case of any sale of goods in relation to which tax is payable in the manner provided in section 18(3), by the seller in relation to such sale or, if the seller has not paid such tax, by the purchaser in relation to that sale; or
- (c) in the case of -
  - (i) any rental consideration payable to a person who is not carrying on business in Namibia and who is not ordinarily resident in Namibia (or, where such person is a company, such company is an external company for the purposes of the Income Tax Act), by the purchaser in relation to such rental consideration;

- (ii) any taxable service rendered or to be rendered by any person who is not a registered vendor and is not ordinarily resident in Namibia (or, where such person is a company, such company is an external company for the purposes of the Income Tax Act), by the purchaser in relation to such taxable service; or
- (d) in the case of goods imported into Namibia, by the importer or where such goods are not required to be cleared under the Customs and Excise Act, 1964 (Act 91 of 1964), and the tax has not been paid to the Permanent Secretary in respect of such goods, by the purchaser in relation to any transaction with regard to such goods; or
- (e) in the case of goods applied by any person for use or consumption as contemplated in section 5(1)(h), by such person; or
- (f) where the tax is in terms of section 16(1) recoverable from a purchaser, by the purchaser or, subject to the provisions of section 16(2), by the seller in relation to the relevant sale, financial lease, rental consideration, taxable service, board and lodging or accommodation, as the case may be; or
- (g) in any other case, by the seller in relation to the relevant sale, financial lease, rental consideration, taxable service, board and lodging or accommodation, as the case may be.

(2) In the case of any professional services referred to in paragraph 1(h) of Schedule 1 which have been rendered by an advocate for any person on the instructions of an attorney and for which services and by virtue of such instructions the attorney is liable to pay to such advocate the amount of the consideration for such services, the attorney shall, for purposes of paragraph (g) of subsection (1), be deemed to be the seller.

Recovery of tax from purchaser by auctioneer or vendor.

**10. (1)** Notwithstanding anything to the contrary contained in any law, in the case of any sale referred to in section 9(1)(a), the auctioneer shall charge to the purchaser the amount of any tax payable in respect of such sale by

adding such tax to the amount of the successful bid or, in the case of a sale out of hand, the purchase price payable by the purchaser, and shall be entitled to recover such tax from the purchaser.

(2) Notwithstanding anything to the contrary contained in any law, the tax payable by the vendor in terms of section 9(1)(g) shall be recoverable by the seller from the purchaser in relation to the relevant sale, financial lease, rental consideration, taxable service, board and lodging or accommodation, as the case may be.

(3) The tax so recoverable in the case of any sale (other than a sale referred to in subsection (1)), rental consideration, taxable service, board and lodging or accommodation may be recovered -

- (a) by including such tax as part of the price or amount charged by the seller to the purchaser under the relevant agreement; or
- (b) by adding the tax to the price or amount charged by the seller to the purchaser under the relevant agreement.

(4) Any tax added as contemplated in subsection (3)(b) shall be stated as a separate item on any invoice, cash slip or other statement relating to any amount due under the relevant sale or in respect of the relevant rental consideration, taxable service, board and lodging or accommodation, as the case may be, but where on the same occasion or as part of one transaction one or more items of goods are sold or one or more taxable services are rendered or to be rendered, the tax to be added shall be calculated with reference to the total amount of the consideration payable by the purchaser in respect of such items and services.

(5) The lessor under any financial lease shall charge to the lessee under such financial lease the amount of any tax payable in respect of the taxable value of the leased property by adding such tax to the amounts payable under such financial lease and shall be entitled to recover such tax from the lessee.

(6) Every vendor shall, in respect of any enterprise carried on by him or her, be required to display prominently at all entrances to the premises in which the enterprise is carried on and at all points in such premises where payments are effected a notice, in such form as the Permanent Secretary may prescribe, indicating -

- (a) in the case of any business in the ordinary course of which goods are sold by auction, that tax at the appropriate rate will be added to the amount of the successful bid or, in the case where goods are sold out of hand by an auctioneer, that tax at the appropriate rate will be added to the price payable by the purchaser; or
- (b) in the case of any other business in the ordinary course of which any goods are sold, any rental consideration accrues, any taxable service is rendered or any board and lodging or accommodation is supplied, that tax at the appropriate rate is included as part of the price or amount charged (as contemplated in subsection (3)(a)), or that tax at the appropriate rate will be added to the price or amount charged (as contemplated in subsection (3)(b)), as the case may be.

(7) Every vendor may, after having adopted one of the two methods contemplated in paragraphs (a) and (b) of subsection (3) for the recovery of the tax payable by the vendor in terms of section 9(1)(g), adopt the other method, but such changed method shall only be brought into operation at the commencement of a tax period applicable in terms of section 17 to the enterprise carried on by such vendor.

(8) Every person who advertises or quotes a price or amount relating to the sale of any goods, any rental consideration, the rendering of any taxable service or the supply of any board and lodging or accommodation, whether in any newspaper, periodical, magazine, price list, handbill, display window or otherwise, shall indicate whether such price or amount is inclusive or exclusive of the tax imposed under this Act.

(9) In the determination of the amounts of tax to be included or added in terms of this section, the auctioneer or vendor, as the case may be, shall use such tax rounding-off tables as the Permanent Secretary may from time to time prescribe.

(10) Every auctioneer who recovers the tax in the manner contemplated in subsection (1) and every vendor who recovers the tax in the manner contemplated in subsection (3)(b) shall be required to display the rounding-off tables referred to in subsection (9) at all points where payments are effected in the premises in which he or she carries on any enterprise.

(11) Where any auctioneer has in contravention of the provisions of subsection (1) failed to charge to any purchaser the amount of any tax payable by such auctioneer in respect of any sale referred to in section 9(1)(a), the Permanent Secretary may make an assessment upon the auctioneer under the provisions of section 20 of the amount of tax which such auctioneer failed to pay to the Permanent Secretary.

(12) Any person who fails to comply with the provisions of subsection (3), (4), (6), (8) or (10) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(13) (a) Where any person (hereinafter referred to as the first party) from whom any amount of tax is recoverable by any seller or auctioneer under this section or any other person under section 35 (such seller, auctioneer or other person being hereinafter referred to as the second party) disputes or does not acknowledge the right of the second party to recover such amount from the first party and refuses or fails to pay such amount to the second party when it falls due, and in consequence of such refusal or failure payment of the tax to the Permanent Secretary is unduly delayed or the person liable for the payment of the tax is in the opinion of the Permanent Secretary unduly embarrassed, the Permanent Secretary may, if he or she is of the opinion that in the circumstances the said amount should be recovered by him or her from the first party, raise an assessment upon the first party in respect of the said amount of the tax and so much of any penalty which has become payable under section 25 in respect of the late payment of tax by the person liable to make such payment as is attributable to the said refusal or failure on the part of the first party, and the Permanent Secretary shall have the right to recover from the first party the amounts of tax and penalty under the assessment.

(b) The provisions of section 20(5) and Part V shall *mutatis mutandis* apply in respect of such assessment.

- (c) Any amount of tax or penalty which the Permanent Secretary has the right to recover under this subsection shall be recoverable in the manner provided in section 26.
- (d) Where any amount of tax or penalty has been recovered by the Permanent Secretary from the first party under this subsection, the liability of any other person for the payment of such tax or penalty shall be discharged to the extent of the amount recovered or if such other person has paid any amount in respect of such tax or penalty the Permanent Secretary shall make an appropriate adjustment in respect of such other person's liability for the tax or penalty by way of a credit or repayment in respect of the tax or penalty paid by that person.

Determination of tax payable in respect of an enterprise.

11. (1) Where tax (other than tax in respect of the taxable value of goods imported into Namibia or tax which he or she is liable to pay under the provisions of section 9(1)(c)) has become payable by any vendor during any tax period of that vendor in respect of any enterprise carried on by him or her, his or her liability for such tax shall be calculated for such period and in relation to such enterprise in accordance with the formula -

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

in which formula -

- r, is the rate of sales tax, expressed as a percentage, which in terms of section 5 was in force on the last day of the said period; and
- t, is the amount determined under subsection (2) or, in the circumstances contemplated in subsection (3), the said amount as adjusted in accordance with subsection (3):

Provided that where tax has become payable in respect of the sale of registrable goods contemplated in section 36 and is required to be paid before registration of such goods is effected by a registering authority referred to in the said section, such tax shall be paid in the manner provided in section 18(3) and liability for such tax shall not be determined under this section.

(2) Subject to the provisions of subsection (3), the amount represented by "t" in the formula referred to in subsection (1) shall be the aggregate of -

- (a) the taxable values (as determined under subsection (6) of section 7 before applying the proviso to that subsection) in respect of which tax (other than tax in respect of the taxable value of goods imported into Namibia or tax which he or she is liable to pay under the provisions of section 9(1)(c)) has become payable by the vendor during the tax period in connection with his or her enterprise, but excluding any taxable value the tax in respect of which is in terms of the proviso to subsection (1) of this section required to be paid in the manner provided in section 18(3);
- (b) any amount which in terms of paragraph (iii) is deemed to be a taxable value of such enterprise for the tax period;
- (c) where tax has become payable by the vendor during the tax period in respect of the taxable value of goods referred to in section 5(1)(h) or 7(3), an amount calculated as a percentage of the taxable value of such goods at the rate of sales tax, expressed as a percentage; and
- (d) any amount recovered by the vendor during the tax period in respect of any amount allowed as a deduction under paragraph (iv) in respect of an irrecoverable debt or under paragraph (v) in respect of a cash counter shortage, whether the amount so allowed as a deduction was allowed in respect of the tax period or any previous tax period,

less the sum of -

- (i) any amount which has in relation to the vendor's enterprise become repayable by, or no longer payable to, the vendor during the tax period -
- (aa) in respect of the cancellation or termination of any sale of goods by the vendor to the purchaser or any financial lease or any rental agreement or any agreement for the rendering of a taxable service by the vendor to the purchaser or any

agreement for the supply by the vendor to the purchaser of board and lodging or accommodation, if the consideration payable by the purchaser in respect of such sale, rental agreement, taxable service, board and lodging or accommodation or the cash value of the leased property under such financial lease, as the case may be, has been included in any taxable value taken into account under this subsection in respect of the said enterprise, whether for the tax period or any previous tax period; or

(bb) by way of a reduction of the consideration payable by the purchaser in respect of any sale of goods, rental agreement, taxable service, board and lodging or accommodation or the cash value of any leased property let under a financial lease, in consequence of any defect in the goods so sold or let or in such taxable service, board and lodging, accommodation or leased property, if the full amount of such consideration or cash value, as the case may be, has been included in any taxable value taken into account under this subsection in respect of the said enterprise, whether for the tax period or any previous tax period; or

(cc) by way of a reduction of the consideration payable by the purchaser in consequence of a discount granted by the vendor, if a credit note or other documentary evidence satisfactory to the Permanent Secretary in respect of such discount is issued by such vendor and the full amount of such consideration has been included in any taxable value taken into account under this subsection in respect of the said enterprise, whether for the tax period or any previous tax period; or

(dd) in consequence of a calculation or accounting error, if such account has been included in any taxable value taken into account under this subsection in respect of the said enterprise, whether for the tax period or any previous tax period;

(ii) where a deposit on any returnable container has been included under paragraph (a) (whether in respect of the tax period or a previous tax period) in the taxable

value of goods sold by the vendor to a purchaser in the course of the vendor's enterprise and the tax borne by the purchaser in respect of such deposit has been repaid or credited to the purchaser, so much of such deposit, together with such tax, as the vendor has during the tax period repaid or credited to the purchaser;

(iii) where, in the carrying on of the vendor's enterprise, credit has been granted to any purchaser, whether under a sale subject to a suspensive condition or otherwise, in respect of any consideration taken into account in the determination of any taxable value, such allowance as may be claimed by the vendor in respect of the total amount owing to him or her by the purchaser at the end of the tax period in respect of such consideration and finance charges or interest relating to such consideration: Provided that -

(aa) the allowance shall not exceed 50 per cent of the said total amount owing at the end of the tax period which commences on a date one month after the commencement of this Act, and that such allowance shall not exceed 40 per cent, 30 per cent, 20 per cent and 10 per cent, respectively, of the said total amount owing at the end of each of the next succeeding four tax periods commencing on or after such commencement, after which such allowance shall cease to be claimable;

(bb) no allowance may be claimed under this paragraph in respect of any finance charges or interest (which finance charges or interest may not, unless the Permanent Secretary determines otherwise in any particular case, be less than an amount which bears to the total amount referred to in this paragraph the same ratio as the aggregate of the finance charges or interest payable by the purchaser during the period in respect of which such finance charges are or interest is payable bears to the sum of such aggregate and the taxable value of such sale) debited to any purchaser by any seller under any sale subject to a suspensive condition in terms of which the consideration is payable in full in respect of a period of more than 60 months;

(cc) no allowance may be claimed under this paragraph in respect of any amount owing by a

purchaser which has proved to be irrecoverable and has been allowed to be deducted by the vendor under the provisions of paragraph (iv), whether in respect of the tax period or any previous tax period;

(dd) the amount of any allowance allowed as a deduction under this paragraph in respect of the tax period shall be deemed to be a taxable value of the vendor's enterprise for the next succeeding tax period;

(iv) the amount of -

(aa) any debt due to the vendor in relation to his or her enterprise, to the extent to which it is proved to the satisfaction of the Permanent Secretary to have become irrecoverable and has been written off during the tax period;

(bb) any consideration referred to in section 7(3)(b) or that portion thereof in respect of which it is proved to the satisfaction of the Permanent Secretary by the vendor concerned that the tax payable in respect of such consideration was irrecoverable,

provided such amount has been included in any taxable value taken into account under this subsection in respect of the said enterprise, whether for the tax period or any previous tax period;

(v) the amount of any cash counter shortage occurring during the tax period as a result of pilferage or the giving of incorrect change, if that amount has been included in the taxable values taken into account under this subsection; and

(vi) any amount allowed to be brought forward from the preceding tax period under the provisions of subsection (4).

(3) If the rate of tax has been varied by an amendment of section 5 which has come into operation during any tax period of any vendor and any amount accounted for by the vendor in terms of subsection (2)(a) or (b) in respect of that period includes any taxable value in respect of which tax has become payable at a rate (hereinafter referred to as the previous rate) which is lower or higher

than the rate (hereinafter referred to as the new rate) represented by "r" in the formula set forth in subsection (1) (as applicable in respect of the said period), the amount represented by "t" in that formula, as determined for that period in terms of the provisions of subsection (2), shall in respect of that period be adjusted -

- (a) if the previous rate is lower than the new rate, by deducting from the amount represented by "t", as so determined, an amount calculated in accordance with the formula -

$$\frac{n - p}{n} \times \left( \frac{100 \times y}{100 + p} \right),$$

in which formula (and in the formula set forth in paragraph (b) -

n, represents the new rate, expressed as a percentage;

p, represents the previous rate, expressed as a percentage; and

y, represents the said value; or

- (b) if the previous rate is higher than the new rate, by adding to the amount represented by "t", as so determined, an amount calculated in accordance with the formula -

$$\frac{p - n}{n} \times \left( \frac{100 \times y}{100 + p} \right);$$

Provided that, if the Permanent Secretary, having regard to the circumstances of the case, is satisfied that adjustments should be made over more than one tax period of the vendor, he or she may authorize the vendor to make, in lieu of the adjustment provided for in this paragraph, such adjustments as the Permanent Secretary may specify in respect of the first-mentioned tax period and succeeding tax periods of the vendor, in such manner as to ensure that the same amount of tax is ultimately paid by the vendor as would have been payable by him or her if this proviso had not been applicable.

(4) Where, in respect of any tax period, the sum of the amounts which in terms of paragraphs (i) to (vi), inclusive, of subsection (2) are deductible from the aggregate of the values and amounts accounted for under paragraphs (a) to (d), inclusive, of that subsection, exceeds such aggregate, the excess may be carried forward to the next succeeding tax period and be allowed as a deduction in respect of such succeeding tax period under paragraph (vi) of the said subsection.

(5) (a) Where any vendor has in respect of his or her enterprise been entitled to the exemption under section 6(1)(g) and he or she has in accordance with the provisions of section 12(5) and within the period or further period referred to in the proviso to section 6(1)(g), notified the Permanent Secretary that the gross receipts or accruals of his or her enterprise (as determined in accordance with the provisions of section 6(1)(g)) have exceeded the sum of R50 000, the Permanent Secretary shall notify the vendor that as from a date fixed by the Permanent Secretary the exemption under section 6(1)(g) shall no longer apply and call upon the vendor to furnish the Permanent Secretary, as soon as possible after the date so fixed, with details of the trading stock held by the vendor and not disposed of by him or her on the day before that date, the cost thereof, the names and addresses of the persons from whom such trading stock was acquired and the amounts of tax, if any, borne by the vendor in respect of the sale to him or her or the importation by him or her of such trading stock.

(b) Where the Permanent Secretary is able to establish to his or her satisfaction the amounts of tax borne by the vendor in respect of such trading stock, the Permanent Secretary shall allow such amounts as a credit against tax which becomes payable by the vendor.

(6) Where any registration certificate issued to a vendor under section 12 has in terms of the provisions of section 14(9) been surrendered to or seized by the Permanent Secretary for cancellation, the vendor shall furnish the Permanent Secretary with details of any trading stock held by the vendor and not disposed of by him or her on the date of surrender of such certificate together with the

cost thereof and the vendor shall, in the manner prescribed by section 18(3), pay tax in respect of the taxable value of such trading stock as if such stock had been disposed of at such cost under a sale concluded by him or her on the date of surrender of such certificate.

(7) Subject to the provisions of subsection (6), where the tax period in relation to an enterprise is a period referred to in paragraph (iii) of the proviso to paragraph (a) of subsection (1) of section 17 -

- (a) no allowance shall be made under paragraph (iii) of subsection (2) of this section in respect of any amount owing to the vendor by a purchaser at the end of such tax period in relation to such enterprise; and
- (b) no amount shall, in relation to such enterprise, be allowed under subsection (4) of this section to be carried forward from such tax period to a succeeding tax period relating to such enterprise.

(8) Where the tax period in relation to an enterprise is a period referred to in paragraph (iii) of the proviso to paragraph (a) of subsection (1) of section 17 ending on the date of the vendor's death or on the day before the date on which the disposal of a part interest in the enterprise takes effect or on the day before the date from which a partnership in respect of the enterprise is dissolved and the Permanent Secretary is satisfied that the enterprise has been or will be continued by the vendor's heir or by a beneficiary in his or her estate to whom such enterprise is transferred or is to be transferred or by the person or persons who take over the enterprise by reason of the said disposal or dissolution of partnership, the Permanent Secretary may, if requested by such heir, beneficiary, person or persons, as the case may be, direct that, subject to any conditions the Permanent Secretary may impose, the provisions of this section (excluding subsection (7)) shall be applied in respect of the said enterprise as though no change in ownership of the enterprise had occurred, and in such case the provisions of subsection (5) shall not apply.

**PART III**  
**Registration and duties of vendors**

Registration of vendors.

**12. (1) Every person -**

- (a) who on or at any time after the date of commencement of this Act carries on or commences to carry on any enterprise shall within one month reckoned from that date (or, if such person commences to carry on the enterprise on a later date, from such later date), or within such further period as the Permanent Secretary may allow;
- (b) who on such date or at any such time intends to carry on any enterprise may at the time he or she makes application to any local authority for a licence to carry on such enterprise,

furnish the Permanent Secretary with a declaration in such form as the Permanent Secretary may prescribe which shall contain such information relating to the enterprise as may be required by the Permanent Secretary for the purposes of this Act.

**(2) Where -**

- (a) the gross annual receipts or accruals of any enterprise from the sale of goods have exceeded R50 000 or the Permanent Secretary is satisfied that such gross annual receipts or accruals will exceed R50 000; or
- (b) the gross annual receipts or accruals of any enterprise have consisted of or included amounts derived under financial leases or by way of rental considerations or from the rendering of taxable services or the Permanent Secretary is satisfied that such gross annual receipts or accruals will consist of or include such amounts; or
- (c) any enterprise is that of an auctioneer; or
- (d) any enterprise is an accommodation or a hotel enterprise; or

- (e) it appears to the Permanent Secretary that a person should be registered in respect of any enterprise or business carried on by him or her,

the Permanent Secretary shall register the person carrying on the enterprise in question as a vendor in respect of such enterprise and issue to such person a registration certificate, in such form as the Permanent Secretary may determine.

(3) Notwithstanding the provisions of paragraph (a), (b), (c) or (d) of subsection (2) and if the Permanent Secretary has reason to believe that any person who has furnished a declaration in terms of subsection (1) -

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

the Permanent Secretary may refuse to register such person under subsection (2) and shall give such person written notice of such refusal.

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

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

- (a) changed his or her address; or
- (b) changed the name of any enterprise in respect of which he or she was registered under subsection (2); or

- (c) ceased to carry on any enterprise in respect of which he or she was registered under subsection (2); or
- (d) by virtue of a change in circumstances, become registrable in relation to the carrying on of an enterprise in respect of which he or she was not required to be registered under subsection (2),

shall within fourteen days after any event contemplated in paragraph (a), (b) or (c), as the case may be, notify the Permanent Secretary in writing of such event and furnish particulars in regard thereto, or, in the case of any change of circumstances contemplated in paragraph (d), furnish the Permanent Secretary with a further declaration in the form of the declaration referred to in subsection (1) or in such other form as the Permanent Secretary may prescribe.

(6) The Permanent Secretary may by notice in writing require any person who he or she believes is or was required to furnish a declaration referred to in subsection (1) or a further declaration referred to in subsection (5) and has not done so, to furnish the said declaration or further declaration, as the case may be, within such period as the Permanent Secretary may allow.

(7) Any person who -

- (a) fails or neglects to furnish a declaration or further declaration as and when required by subsection (1) or (5) or to comply with a notice issued by the Permanent Secretary under subsection (6); or
- (b) fails to notify the Permanent Secretary of any event as contemplated in subsection (5); or
- (c) in any declaration or further declaration furnished by him or her under the provisions of subsection (1) or (5) or in response to a notice issued by the Permanent Secretary under subsection (6), makes any statement or gives any information knowing the same to be incorrect,

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

Surrender of registration  
certificates for revision.

**13. (1)** Whenever it appears to the Permanent Secretary that the particulars reflected on any registration certificate issued in terms of section 12(2) or 37(1) ought to be revised -

- (a) the Permanent Secretary may by a notice in writing request the person to whom such certificate has been issued to furnish the Permanent Secretary, within such period or further period as the Permanent Secretary may allow, with such information as the Permanent Secretary may require for the purposes of the revision of such certificate and the issue of a new certificate;
- (b) the Permanent Secretary shall, if such information has not been so furnished within that period or further period or upon the issue of the new certificate, by a like notice request that person to surrender, within such period or further period as the Permanent Secretary may allow, the first-mentioned certificate.

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

Validity of registration  
certificate.

**14. (1)** Any registration certificate issued in terms of section 12(2) or 37(1) to any person in respect of any enterprise or to any charitable institution shall be valid only in respect of that enterprise or charitable institution and shall remain valid -

- (a) for so long as that person continues to carry on such enterprise or, in the case of any charitable institution, the charitable activities in respect of which that institution has been registered continue to be carried out; or
- (b) until the certificate is cancelled; or
- (c) until the expiration of the period or further period allowed for the surrender of the certificate under section 13(1).

## (2) Where -

- (a) an enterprise ceases to be carried on; or
- (b) unless the provisions of subsection (3) apply, an enterprise is disposed of by the owner thereof or the owner of an enterprise has died or his or her estate has been sequestrated,

any registration certificate issued under section 12 in respect of such enterprise shall, within 14 days after any event contemplated in paragraph (a) or (b), be surrendered to the Permanent Secretary for cancellation.

## (3) Where -

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

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

to such executor, trustee, guardian or curator, in his or her capacity as such, or to such partnership or new partnership, as the case may be, in respect of the said enterprise.

(4) Where any vendor -

- (a) repeatedly fails or neglects to pay any tax due by him or her as and when required by this Act; or
- (b) repeatedly fails or neglects to furnish any declaration or return as and when required by this Act or fails to surrender in terms of subsection (2) a registration certificate issued under section 12; or
- (c) utilizes any registration certificate issued under section 12 -
  - (i) to obtain goods free of tax under any sale in respect of which tax is chargeable; or
  - (ii) to have delivered to him or her free of tax any leased property the taxable value of which is subject to tax; or
  - (iii) to hire goods free of tax under any rental agreement if the taxable value of the rental consideration under such agreement is subject to tax; or
  - (iv) to have rendered to him or her free of tax any taxable service in respect of which tax is chargeable; or
  - (v) to import into Namibia free of tax goods in respect of which tax is chargeable,

or is found guilty of an offence under section 16(3), the Permanent Secretary may, after giving written notice of at least 10 days to the vendor of his or her intention to cancel any registration certificate issued to the vendor under section 12, cancel such certificate, and in such case such certificate shall on demand by the Permanent Secretary be surrendered by any person in possession thereof to the Permanent Secretary, and, if the certificate is not so surrendered, the Permanent Secretary may seize the certificate.

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

(6) Where the Permanent Secretary -

- (a) has cancelled any registration certificate as contemplated in subsection (4) of this section or section 29(3); or
- (b) has subsequent to such cancellation reinstated the registration of the vendor,

the Permanent Secretary shall, notwithstanding the provisions of section 4, by notice in the *Gazette*, publish the name and address of the vendor or of his or her enterprise, the sales tax registration number appearing on the relevant registration certificate issued to the vendor under section 12 and the fact that such certificate has been cancelled or that such registration has been reinstated, as the case may be.

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

(8) Where the Permanent Secretary: Foreign Affairs has in terms of section 40 issued a diplomatic exemption certificate to any person or representative referred to in that section, the Permanent Secretary: Foreign Affairs shall make arrangements with the head of any foreign diplomatic or consular mission in Namibia for the return to him or her forthwith of any such certificate if -

- (a) such person or representative has died; or
- (b) the tour of duty in Namibia of such person or representative has terminated; or
- (c) the entitlement of such person or representative to make use of such certificate has for any other reason been withdrawn by the Permanent Secretary: Foreign Affairs,

and the said Permanent Secretary: Foreign Affairs shall upon the return to him or her of such certificate notify the Permanent Secretary of such return and the reasons therefor.

(9) Where any vendor carries on an enterprise of which the gross annual receipts or accruals from the sale of goods do not exceed R50 000 or the Permanent Secretary is satisfied that such annual receipts or accruals will not exceed R50 000, the Permanent Secretary may, on the application of the vendor or after giving written notice of at least 10 days to the vendor of his or her intention to cancel any registration certificate issued to the vendor under section 12 cancel such certificate, and in such case such certificate shall on demand by the Permanent Secretary be surrendered by any person in possession thereof to the Permanent Secretary and, if the certificate is not so surrendered, the Permanent Secretary may seize the certificate: Provided that if the Permanent Secretary is of the opinion that the certificate ought not to be cancelled, he or she may refuse to cancel it notwithstanding such application or written notice.

Use of registration certificate for exemption purposes.

15. (1) Where any purchaser in relation to any sale of goods, financial lease, rental consideration, taxable service, board and lodging or accommodation or any importer of goods claims that an exemption provided under section 6(1)(b), (c), (f), (m), (o), (p), (u), (x), (ab), (af) or (ah) is applicable in respect of such sale, financial lease, rental consideration, taxable service, board and lodging or accommodation or the importation of goods -

- (a) the seller in relation to such sale, financial lease, rental consideration, taxable service, board and lodging or accommodation or, in the case of such importation, the Controller of Customs and Excise concerned or any person concerned who is an officer as defined in the Customs and Excise Act, 1964 (Act 91 of 1964), shall satisfy himself or herself that the said purchaser or importer holds a valid registration certificate issued in terms of section 12 and, where applicable, a certificate issued in terms of section 6(1)(ah); and
- (b) such seller shall give the purchaser an invoice or other document -
  - (i) naming, describing or identifying the goods, financial lease, rental consideration, taxable

service, board and lodging or accommodation; and

- (ii) stating the price charged or amount subject to tax and the name, address and the sales tax registration number of the sales tax exemption certificate number of the purchaser,

and the seller shall retain a copy of such invoice or other document; or

- (c) in relation to such importation, the said Controller or officer shall endorse, or request the importer to endorse, such sales tax registration number on a customs document relating to such importation.

(2) Where any purchaser or importer claims any exemption as contemplated in subsection (1), he or she shall satisfy the seller or Controller or officer referred to in paragraph (a) of that subsection, as the case may be, that he or she holds a valid registration certificate issued under section 12 -

- (a) by producing such registration certificate; or

- (b) by giving to such seller, Controller or officer, as the case may be -

- (i) a photocopy of such registration certificate; or

- (ii) a declaration, in such form as the Permanent Secretary may prescribe, relating to such registration certificate,

and where such purchaser or importer acts in terms of the provisions of paragraph (b), he or she shall be deemed to have utilized a registration certificate issued under section 12.

(3) The provisions of subsections (1) and (2) shall not apply in relation to any sale of farming products by a farmer to a control board established under the Marketing Act, 1968 (Act 59 of 1968), the Meat Industry Act, 1981 (Act 12 of 1981), the Karakul Pelts and Wool Act, 1982 (Act 14 of 1982), or the Agronomic Industry Proclamation, 1985 (Proclamation AG. 11 of 1985).

(4) In relation to any sale by auction or out of hand by an auctioneer on behalf of any other person the reference to seller in subsections (1) and (2) shall be construed as a reference to such auctioneer.

Misuse of registration  
certificate by purchaser.

**16. (1) Where any person -**

- (a) has obtained goods free of tax under any sale the taxable value of which was subject to tax which should have been borne by him or her; or
- (b) has had delivered to him or her free of tax leased property the taxable value of which was subject to tax which should have been borne by him or her; or
- (c) has hired goods free of tax under any rental agreement if the taxable value of the rental consideration under such agreement was subject to tax which should have been borne by him or her; or
- (d) has had rendered to him or her free of tax any taxable service the taxable value of which was subject to tax which should have been borne by him or her; or
- (e) has imported into Namibia free of tax goods the taxable value of which was subject to tax which should have been borne by him or her,

the tax which became payable and any penalty payable under section 25 in respect of the late payment of such tax shall be recoverable from that person.

(2) Where the seller in relation to any sale, financial lease, rental consideration or taxable service referred to in paragraph (a), (b), (c) or (d) of subsection (1) has acted in good faith and in accordance with the provisions of sections 6 and 15, such seller shall be relieved of liability for the payment of the tax and penalty recoverable from the purchaser under the said subsection.

(3) Any person who with a wrongful intent to avoid bearing tax payable in respect of goods which are or may be purchased or imported by him or her or services which have been or may be rendered to him or her -

- (a) falsely represents that he or she is a registered vendor; or
- (b) falsely represents that he or she is the holder of a registration certificate which was issued to any other person under section 12; or
- (c) alters or writes on any registration certificate issued to him or her under the said section; or
- (d) utilizes any registration certificate issued to him or her under the said section in respect of any enterprise for any purpose other than the purposes of such enterprise; or
- (e) makes use of any registration certificate issued to him or her in terms of the said section which is no longer valid,

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

#### PART IV

##### Returns, payments and assessments

Tax period.

17. (1) The tax periods applicable under this Act to any enterprise carried on by a vendor shall be -

- (a) the periods ending on the last day of each month or on a day within seven days before or after such last day or on such other day as the Permanent Secretary, having regard to the circumstances of the case, may approve: Provided that -
  - (i) where a vendor dies or his or her estate is sequestrated or he or she ceases to carry on the enterprise or he or she disposes of the enterprise as a whole or any part interest therein or, where the vendor is a partnership, the partnership is dissolved, whether by operation of law or otherwise, or his or her registration certificate has been surrendered for cancellation under section 14(4) or (9), there shall, unless the Permanent Secretary

otherwise directs, be a tax period ending on the date of the vendor's death or the date of the sequestration of the vendor's estate or the date on which the vendor ceases to carry on the enterprise or on the day before the date on which the disposal of the enterprise or the interest therein takes effect or on the day before the date from which the partnership is dissolved or the date on which the vendor's registration certificate is surrendered for cancellation;

- (ii) there shall be a tax period ending on the last day of every year of assessment of the vendor under the Income Tax Act or, where the vendor is under the provisions of that Act permitted to furnish accounts for his or her enterprise made up to a date other than such last day, on such date, unless the vendor has before such last day or such date, as the case may be, ceased to carry on such enterprise; or

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

(2) For the purposes of this section "month" means any of the twelve portions into which any calendar year is divided.

Returns, declarations  
and payments of tax.

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

- (a) furnish the Permanent Secretary with a return (in such form as the Permanent Secretary may prescribe) of the taxable values in respect of which tax has become payable by the vendor during such tax period and containing such information as may be required; and
- (b) calculate such tax in accordance with the said section and pay such tax to the Permanent Secretary:

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

(2) Every vendor who is under the provisions of section 12 registered in respect of any enterprise shall within the period allowed by subsection (1) of this section furnish the return referred to in that subsection in respect of each tax period in relation to such enterprise, whether or not tax is payable in respect of such period.

(3) Subject to the provisions of -

(a) section 36 and paragraph (b) of this subsection, where tax (including tax which has for any reason whatsoever not been paid as provided in paragraph (b) of this subsection) in respect of any taxable value has become payable and such tax is not required to be calculated in the manner prescribed by section 11, the person liable for the payment of such tax shall not later than the end of the period of 21 days after the date on which such tax has become payable -

(i) furnish the Permanent Secretary with a declaration (in such form as the Permanent Secretary may prescribe) containing such information as may be required; and

(ii) calculate the tax on such taxable value at the rate of tax in force and pay such tax to the Permanent Secretary:

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

(b) sections 36 and 41, where tax in respect of the taxable value of goods referred to in section 5(1)(g) which have been imported by road has become payable and such tax is not required to be calculated in the manner prescribed by section 11, the person liable for the payment of such tax shall -

(aa) furnish the Permanent Secretary with a declaration (in such form as the Permanent Secretary may prescribe) containing such information as may be required; and

- (bb) calculate the tax on such taxable value at the rate of tax in force and pay such tax to the Permanent Secretary on the date on which it is payable in terms of section 8:

Provided that the Permanent Secretary may, having regard to the circumstances of any case, determine, on such conditions as may be determined by the Permanent Secretary, any later date on which such tax is to be paid.

- (4) For the purposes of this section "month" means any of the twelve portions into which any calendar year is divided.

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

Estimate of tax on failure of registered vendor to furnish return.

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

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

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

(4) In the event of the vendor furnishing the said return or an assessment of the tax payable having been

made under section 20 the estimate made by the Permanent Secretary in terms of subsection (1) of this section shall lapse and any amount of tax paid or recovered in respect of the tax period shall be deducted from the amount of tax finally determined by the Permanent Secretary to be payable in respect of the tax period in question, any amount paid in excess being refundable to the vendor and any amount shortpaid being recoverable from him or her.

## Assessments.

**20. (1) Where -**

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

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

(2) In making such assessment the Permanent Secretary may estimate the amount upon which the tax is payable.

(3) Subject to the provisions of subsection (5), the Permanent Secretary shall give the person concerned a written notice of such assessment stating the amount upon which tax is payable, the amount of tax payable and the amount of any penalty payable on such tax in terms of section 25: Provided that where the Permanent Secretary is satisfied that a failure by the person concerned or any other person under the control of that person to furnish an accurate return or declaration or to pay any amount of tax due was not due to an intent to avoid or postpone liability for the payment of tax or the Permanent Secretary is partly so satisfied, he or she may in such assessment remit such penalty in whole or in part.

(4) The Permanent Secretary shall, in the notice of assessment referred to in subsection (3), give notice to the person upon whom it has been made that any objection to

such assessment shall be lodged or be sent so as to reach the Permanent Secretary within twenty-one days after the date of such notice.

(5) Before giving the person concerned any written notice of assessment as contemplated in subsection (3), the Permanent Secretary shall send such person a written notice of his or her intention to raise such an assessment, and such notice shall contain particulars of -

- (a) the enterprise or transaction in respect of which the assessment is to be raised;
- (b) the tax period (if any) in relation to which the assessment is to be raised;
- (c) the amount upon which the tax is to be payable;
- (d) the amount of the tax calculated thereon; and
- (e) the amount of any penalty chargeable in terms of section 25:

Provided that the Permanent Secretary shall not be required to comply with the foregoing provisions of this subsection in any case where the person concerned has failed to comply with the provisions of section 12(1) or the Permanent Secretary is of the opinion that a delay in the issue of the notice of assessment contemplated in subsection (3) of this section might result in a loss of State revenue.

## PART V

### Objections and Appeals

Objections.

21. (1) Any person who is dissatisfied with any assessment made upon him or her by the Permanent Secretary under the provisions of section 10(13)(a) or 20 or of the Permanent Secretary's refusal to authorize a refund under the provisions of section 33(1) may lodge an objection with the Permanent Secretary.

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

(3) No objection shall be considered by the Permanent Secretary which is not delivered at his or her office

or posted to him or her in sufficient time to reach him or her within 21 days after the date of the notice of the assessment or of the Permanent Secretary's refusal to authorize a refund under the provisions of section 33(1) against which the objection is lodged, unless the Permanent Secretary is satisfied that reasonable grounds exist for delay in lodging the objection.

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

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

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

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

#### Appeals.

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

- (2) (a) Every notice of appeal shall be in writing and shall be lodged with the Permanent Secretary within a period of 30 days after the date of the notice mentioned in section 21(4).
- (b) No notice of appeal shall be of any force or effect whatsoever unless it is delivered at the office of the Permanent Secretary, or posted to the Permanent Secretary in sufficient time to reach him or her, on or before the last day of the period allowed for the lodging of such notice, except if the Permanent Secretary is satisfied that reasonable grounds exist

for any delay in lodging such notice: Provided that any decision of the Permanent Secretary in the exercise of his or her discretion under this paragraph shall be subject to objection and appeal.

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

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

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

(5) The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Permanent Secretary so directs, be suspended by any appeal or pending the decision of a court of law under section 76 of the Income Tax Act, as applied by subsection (4) of this section, but if any assessment is altered on appeal or in conformity with any such decision or any decision by the Permanent Secretary to concede the appeal to the special court or such court of law a due adjustment shall be made, amounts paid in excess being refunded with interest at the rate contemplated in paragraph (b) of the definition of "prescribed rate" in section 1 of the Income Tax Act, such interest being calculated from the date proved to the

satisfaction of the Permanent Secretary to be the date on which such excess was received and amounts shortpaid being recoverable with penalty calculated as provided in section 25(1).

Burden of proof as to exemptions or non-liability.

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

## PART VI

### Payment and recovery of tax

Manner in which tax shall be paid.

**24.** (1) Subject to the provisions of subsections (2), (3) and (4) of this section and the provisions of section 41, the tax payable under this Act shall be paid in full within the time allowed by section 18.

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

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

(4) Interest shall -

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

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

Penalty for failure to pay  
tax when due.

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

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

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

(3) Where any importer of goods which are required to be cleared under the Customs and Excise Act, 1964 (Act 91 of 1964), fails to pay any amount of tax payable in respect of the taxable value of the imported goods at the time the goods are entered under the said Act for home consumption in Namibia, he or she shall, in addition to

such amount of tax and any interest payable on such amount in terms of section 24(4), pay a penalty equal to 10 per cent of such amount for each month or part thereof reckoned from the day after the date on which the goods are so cleared to the date of payment of the said amount: Provided that such penalty shall not exceed such amount of tax.

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

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

Recovery of tax.

26. (1) Any amount of tax, interest or penalty payable in terms of this Act shall, when it becomes due or is payable, be a debt due to the State and shall be recoverable by the Permanent Secretary in the manner hereinafter provided.

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

(b) The Permanent Secretary may by notice in writing addressed to the aforesaid clerk or registrar, withdraw the statement referred to in paragraph (a) and such statement shall thereupon cease to have any effect: Provided that the Permanent Secretary may institute proceedings afresh under

that paragraph in respect of any tax, interest or penalty referred to in the withdrawn statement.

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

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

Tax, interest or penalty  
not recoverable in respect  
of certain past trans-  
actions.

**27. Notwithstanding anything to the contrary in this Act -**

- (a) no amount of tax, interest or penalty otherwise properly chargeable under this Act, shall be recoverable by the Permanent Secretary in respect of any past transaction or event if, in terms of a general ruling by the Permanent Secretary which had not been withdrawn by him or her at the time of the conclusion of such transaction or the happening of such event, no tax, interest or penalty was payable in respect of such transaction or event;
- (b) no amount of additional tax, interest or penalty shall be recoverable by the Permanent Secretary in respect of or in relation to any past transaction or event if, in terms of a general ruling by the Permanent Secretary which had not been withdrawn by him or her at the time of the conclusion of such transaction or the happening of such event, the tax, interest or penalty payable in respect of or in relation to such transaction or event had been calculated and paid in accordance with such ruling;
- (c) where the Permanent Secretary has, in any case of doubt and at a time when there was no applicable general ruling, given a particular ruling to the effect that any exemption provided for in this Act is not applicable in respect of or in relation to any

transaction of a particular nature concluded by a particular person, no amount of tax, interest or penalty otherwise properly chargeable under this Act against that person in respect of or in relation to any other transaction of the said nature concluded by that person prior to the date of such particular ruling, shall be recoverable by the Permanent Secretary from that person if the Permanent Secretary is satisfied -

- (i) that the failure by the said person to pay the said tax was not due to an intent on his or her part to avoid payment of the tax; and
  - (ii) that the said person, in failing to pay the said tax, acted in good faith and on the assumption that an exemption was in fact applicable; and
  - (iii) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person;
- (d) no amount of tax, interest or penalty otherwise properly chargeable under this Act, shall be recoverable by the Permanent Secretary in respect of or in relation to any past transaction or event after the expiration of a period of five years from the date of conclusion of the transaction or the happening of the event in relation to which the said amount was payable, if the Permanent Secretary is satisfied -
- (i) that the failure to pay the said tax was not due to an intent to avoid payment of the tax; and
  - (ii) that the person responsible for payment of the said tax acted in good faith and on an assumption that an exemption was in fact applicable; and
  - (iii) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person:

Provided that the provisions of this paragraph shall not apply in respect of or in relation to any such past transaction or event giving rise to such

amount having become payable where information relating to such transaction or event was disclosed as a result of any investigation or inspection commenced, or request made, by the Permanent Secretary prior to 29 June 1991.

Correctness of estimate or assessment cannot be questioned.

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

Security for tax.

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

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

(3) If such vendor refuses or neglects to comply with such notice the Permanent Secretary may, in the manner provided in section 14, cancel any registration certificate issued to the vendor under section 12.

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

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

**PART VII**  
**Representatives**

Power to appoint agents.

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

Remedies of Permanent Secretary against agent or trustee.

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

Duties of persons acting in representative capacity.

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

- (a) on any company shall be the public officer thereof contemplated in section 93 of the Income Tax Act or, in the case of any company which is placed in liquidation, the liquidator thereof;
- (b) on the State shall be any person responsible for accounting for the receipt and payment of moneys under the provisions of any law or for the receipt and payment of public funds or of funds voted by Parliament;
- (c) on a local authority or any corporate or unincorporate body (other than a company), shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such local authority or body;
- (d) on a person under legal disability shall be his or her guardian, curator or administrator or the other person having the management or control of his or her affairs;

- (e) on any person who is not ordinarily resident in Namibia shall be any agent of such person controlling such person's affairs in Namibia and any manager of any enterprise of such person in Namibia;
- (f) on the estate of a deceased person shall be the executor or administrator of such estate;
- (g) on the estate of an insolvent person, shall be the trustee or administrator of such estate;
- (h) on any person who acts through an agent shall be such agent, including an agent appointed under the provisions of section 30;
- (i) on any person acting in a fiduciary capacity shall be such person:

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

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

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

(4) Every representative who, as such, pays any tax, interest or penalty due under this Act shall be entitled to recover the amount so paid from the person on whose

behalf it is paid, or to retain out of any moneys that may be in his or her possession or may come to him or her in his or her representative capacity, an amount equal to the amount so paid.

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

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

- (a) he or she alienates, charges or disposes of any money received or accrued in respect of which the tax is chargeable; or
- (b) he or she disposes of or parts with any fund or money belonging to the person whom he or she represents which is in his or her possession or comes to him or her after the tax, interest or penalty has become payable, if such tax, interest or penalty could legally have been paid from or out of such fund or money.

#### PART VIII Miscellaneous

Refunds.

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

- (a) that any amount of -
  - (i) tax, penalty or interest paid by any person was in excess of the amount of tax, penalty or interest which should properly have been charged under this Act;

- (ii) tax has been borne by a purchaser or importer solely by reason of the fact that he or she, in circumstances where in the opinion of the Permanent Secretary he or she acted in good faith, did not comply with the provisions of section 15(2); or
- (b) that any person who has furnished a declaration in accordance with the provisions of section 12 has borne tax in respect of any goods purchased by him or her or any leased property delivered to him or her or any rental consideration payable by him or her or any taxable service rendered to him or her or goods imported by him or her after the expiry of a period of 15 days reckoned from the date on which the said declaration was received by the Permanent Secretary, that such tax would not have been borne by him or her if he or she had been in possession of a registration certificate issuable under the said section and that the receipt by such person of a registration certificate issued by the Permanent Secretary under the said section on the strength of the said declaration has been delayed beyond the said period of 15 days,

the Permanent Secretary may authorize a refund -

- (i) of any amount referred to in paragraph (a) to the person who paid such amount, or where such person has ceased to carry on any enterprise, to the person by whom such amount was borne; or
- (ii) of the amount of tax referred to in paragraph (b) to the person by whom such tax was borne:

Provided that if the Permanent Secretary refuses to authorize a refund under this subsection, he or she shall give the person concerned written notice of such refusal.

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

- (a) a claim for any refund under the provisions of paragraph (a) of that subsection is made within three years after the date upon which payment of the amount claimed to be refundable was made: Provided that if the Permanent Secretary is satisfied that such payment was made in accord-

ance with the practice generally prevailing at the said date no refund may be authorized unless the claim for any refund is made within six months after such date; or

- (b) a claim for any refund under the provisions of paragraph (b) of that subsection is made within three months after the date upon which the registration certificate referred to in that paragraph was received by the person concerned; or
- (c) the amount to be refunded is R5 or more; or
- (d) the Permanent Secretary is satisfied that any amount of tax claimed to be refundable to any person who has paid the tax will in turn be refunded by such person to any other person who has borne the tax.

Prohibition against advertising that tax will be absorbed.

**34. (1)** No vendor shall advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the tax imposed by this Act or any part thereof will be borne or absorbed by him or her or that such tax will not be considered as an element in the price to the purchaser, or, if added to such price, that such tax or any part thereof will be refunded.

(2) Every vendor who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

Contract price or consideration may be varied according to tax.

**35. (1)** Whenever any tax is imposed or increased in respect of the taxable value of any sale, financial lease, rental consideration, taxable service, board and lodging or accommodation referred to in section 5 in relation to which any agreement was entered into by the acceptance of an offer made before the tax was imposed or increased, as the case may be, the seller may, notwithstanding anything to the contrary in any agreement or law, recover from the purchaser, as an addition to the amounts payable by the purchaser to the seller, a sum equal to any amount payable by the seller by way of the said tax or increase, as the case may be, and any amount so recoverable by the seller shall, whether or not it is recovered, be accounted for by the seller under the provisions of section 7(1).

(2) Whenever any tax is withdrawn or decreased in respect of the taxable value of any sale, financial lease, rental consideration, taxable service, board and lodging or accommodation referred to in section 5 in relation to which any agreement was entered into by the acceptance of an offer made before the tax was withdrawn or decreased, as the case may be, the seller shall, notwithstanding anything to the contrary in any agreement or law, reduce the amount payable to him or her by the purchaser by way of any consideration in which the amount of such tax was included or the amount payable to him or her by the purchaser by way of such tax in addition to the consideration payable by the purchaser, by a sum equal to the amount of the tax withdrawn or the amount by which the tax is decreased, as the case may be.

(3) Where any construction agreement has been entered into before -

- (a) the date on which any tax is decreased; or
- (b) the date on which any tax is withdrawn or decreased,

and any contractor in relation to such agreement has borne the tax in respect of any goods which were required to be purchased by him or her for the purpose of carrying out the terms of such agreement, then, notwithstanding anything to the contrary in such agreement or in any law -

- (i) such contractor may recover from the person by whom the contract price is payable a sum equal to the amount of the tax or increased tax, as the case may be, so borne by him or her as an addition to the contract price stipulated in such agreement; or
- (ii) such contractor shall reduce the amount of the contract price stipulated in such agreement by a sum equal to the amount of the tax withdrawn or the amount by which the tax is decreased, unless the sum concerned is otherwise recoverable or deductible by the contractor under the construction agreement or is in terms of an express provision of that agreement not recoverable or deductible.

(4) Where any construction agreement has been entered into before 1 October 1980 and any contractor in relation to such agreement has borne the tax in respect of

any taxable service referred to in paragraph 1(c) of Schedule 1 which was required to be rendered to him or her for the purposes of carrying out the terms of such agreement, such contractor may, notwithstanding anything to the contrary in such agreement or in any law, recover from the person by whom the contract price is payable a sum equal to the amount of the tax so borne by him or her as an addition to the contract price stipulated in such agreement, unless such sale is otherwise recoverable by the contractor from the said person under the construction agreement.

Registration of certain goods prohibited in certain circumstances.

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

- (a) (i) in the case of registrable goods which form the subject of any sale, or which are imported into Namibia and are not required to be cleared under the Customs and Excise Act, 1964 (Act 91 of 1964), a receipt or certificate issued by the Permanent Secretary showing that any tax which may be payable under this Act has been paid in respect of such sale or importation into Namibia, as the case may be, of the registrable goods in consequence of which the registration is required; or
- (ii) in the case of registrable goods imported into Namibia which are required to be cleared under the said Customs and Excise Act, 1964, 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, 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 Permanent Secretary may prescribe, issued by any registered vendor who, in carrying on any enterprise in the

ordinary course of which registrable goods are dealt in, sold such goods in consequence of which the registration is required, certifying -

- (i) that the tax payable under this Act has been, or will be, paid by such vendor; or
  - (ii) that the purchaser has purchased such goods for the purposes of resale or letting, as the case may be, in the course of carrying on any enterprise in respect of which he or she is a registered vendor; or
- (c) an exemption certificate issued by the Permanent Secretary to the effect that no tax is payable under this Act in respect of -
- (i) any sale or other disposal; or
  - (ii) any importation into Namibia as contemplated in paragraph (a)(i); or
  - (iii) any importation into Namibia in respect of which an exemption applies in terms of section 6(1)(ae),

relating to registrable goods where registration of the registrable goods in question is required in consequence of such sale, disposal or importation.

Registration of charitable institutions.

37. (1) The Permanent Secretary may, on the written application by any institution or organization which satisfies him or her that it is or will be a charitable institution, register such institution or organization as a vendor in respect of such charitable activities which are or will be carried on by it as are contemplated in the definition of charitable institution, and issue to such institution or organization a registration certificate in such form as the Permanent Secretary may see fit.

(2) The provisions of sections 14, 15 and 16 shall *mutatis mutandis* apply in relation to any charitable institution so registered and to any registration certificate so issued to it.

(3) Any charitable institution so registered shall not be entitled to utilize a registration certificate issued to it

under subsection (1) for any purpose other than for the purpose of section 6(1)(ab).

(4) Where the Permanent Secretary is satisfied that any institution or organization is not a charitable institution and refuses to register such institution or organization under subsection (1), the Permanent Secretary shall give such institution or organization written notice of such refusal.

(5) For purposes of the provisions of this Act the International Red Cross Society and the Namibia Red Cross Society shall be deemed to have been registered under subsection (1) as charitable institutions.

Sale of goods by selling agents.

**38.** For the purposes of this Act, where -

- (a) any person (hereinafter referred to as the selling agent) sells goods at prices fixed or recommended by the manufacturer of the goods or a distributor thereof from whom the selling agent obtains the goods;
- (b) the selling agent is entitled to a commission or other remuneration calculated on the selling price of the goods;
- (c) such goods are supplied by the manufacturer or distributor on the order of the selling agent placed in consequence of orders received by the selling agent from customers;
- (d) the full selling price, less only the said commission or other remuneration, is required to be remitted by the selling agent to the manufacturer or distributor,

the manufacturer or distributor to whom the balance of the selling price is so required to be remitted shall be deemed to be the seller of such goods and such selling agent shall be deemed to have sold the goods as the agent of the supplier.

Tax relief allowable to certain diplomats and diplomatic and consular missions.

**39. (1)** The Minister may, in consultation with the Minister of Foreign Affairs, authorize the granting of relief, by way of a refund, in respect of tax paid or borne -

- (a) by any person enjoying full or limited immunity, rights or privileges under any law or agreement in force in Namibia or under the recognized prin-

ciples of international law or by the wife, child or dependant of such person living with him or her, provided similar or equivalent relief is granted in the country by which such person is employed to any representative or employee of the Government of Namibia stationed in such country who enjoys full or limited immunity, rights or privileges in that country; or

- (b) by any diplomatic or consular mission of a foreign country established in Namibia, relating to transactions concluded for the official purposes of such mission, provided similar or equivalent relief is granted to any diplomatic or consular mission of Namibia established in the foreign country concerned.

(2) The relief contemplated in subsection (1)(a) shall not be granted to any Namibian citizen or permanent resident of Namibia.

(3) The Minister may authorize any relief under this section on such conditions and subject to such restrictions as he or she may deem fit.

(4) Any claim for a refund of tax under this section shall be made in such form and at such time as the Permanent Secretary may prescribe and shall be accompanied by such proof of payment of tax or certification as the Permanent Secretary may require.

Issue of diplomatic exemption certificates to certain diplomats and representatives of diplomatic and consular missions.

**40. (1)** Notwithstanding the provisions of section 39, the Permanent Secretary: Foreign Affairs may issue to -

- (a) any person who enjoys full or limited immunity, rights or privileges under any law or agreement in force in Namibia or under the recognized principles of international law; or
- (b) any specified representative of any diplomatic or consular mission established in Namibia,

a diplomatic exemption certificate in such form and upon such conditions and subject to such restrictions as the Permanent Secretary may prescribe, provided relief similar or equivalent to the exemption referred to in section 6(1)(af) is granted in the country by which such person or representative is employed to any employee or representative of the Government of Namibia stationed in such

country who enjoys full or limited immunity, rights or privileges in that country, and shall inform the Permanent Secretary in such form as may be determined by the Permanent Secretary of the issue of such diplomatic exemption certificate who shall keep and maintain a register of diplomatic exemption certificates issued under this subsection.

(2) The provisions of sections 15 and 16(3) shall, *mutatis mutandis* and subject to such restrictions or conditions as the Permanent Secretary may determine, apply in relation to any person or representative to whom a diplomatic exemption certificate has been issued under subsection (1) and to any diplomatic exemption certificate so issued.

(3) A diplomatic exemption certificate shall not be so issued to any person who is a Namibian citizen or permanent resident of Namibia.

Arrangements for collection of tax on goods imported into Namibia.

41. (1) Notwithstanding the provisions of section 18, the Permanent Secretary, the Commissioner for Customs and Excise and the Postmaster-General may make such arrangements as they may deem necessary -

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

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

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

## Records.

42. (1) Every vendor shall keep such books of account or other records as may enable him or her to observe the requirements of this Act and enable the Permanent Secretary to satisfy himself or herself that the vendor has observed such requirements, and every vendor shall, in particular, keep such record of all amounts received by or accruing to him or her in respect of sales of goods, financial leases, rental considerations and taxable services rendered in respect of which tax has not been charged by the vendor to the purchaser as may enable the Permanent Secretary to identify such purchaser and the amounts received by or accruing to the vendor from such purchaser and to satisfy himself or herself that tax is not chargeable in respect of any such amount in the hands of the vendor or the purchaser.

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

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

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

(4) The Permanent Secretary may, subject to such conditions as he or she may determine, and in respect of any documents referred to in paragraph (b) of subsection (3), authorize the retention of a microfilm copy or computer tape record of such documents in lieu of the originals thereof.

(5) Every vendor who fails to keep or to preserve any books of account, records and other documents as provided in subsections (1) and (3), shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to

imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(6) Where the Permanent Secretary has under subsection (4) authorized the retention of a microfilm copy or computer tape record of any documents referred to in subsection (3)(b), every vendor who fails to preserve -

- (a) such documents as provided in subsection (3); or
- (b) such microfilm copy or computer tape record of such documents in lieu of the originals thereof for a period of five years after the completion of the transactions, acts or operations to which such originals relate, shall be guilty of an offence and liable on conviction to the penalties prescribed by subsection (5).

Information.

43. (1) The Permanent Secretary may by notice in writing require any person to furnish the Permanent Secretary, within such period as he or she may determine, with such information at such person's disposal as the Permanent Secretary may require for the purposes of this Act, whether or not such person is or has been required in terms of section 12 to furnish the Permanent Secretary with a declaration.

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

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

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

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

Powers of entry and search.

**44.** (1) Any officer engaged in carrying out the provisions of this Act who has been authorized thereto by the Permanent Secretary in writing or by telegram, may, for the purposes of the administration of this Act -

- (a) without previous notice, at any time enter any premises and on such premises search for any accounts, books, moneys, records or other documents or articles;
- (b) in carrying out any such search, in any manner open or cause to be opened or removed and opened, any article in which he or she suspects any accounts, books, moneys, records or other documents or articles are kept;
- (c) seize any such accounts, books, records or other documents or articles which in his or her opinion may afford evidence which may be material in assessing the liability of any person for any tax payable under the provisions of this Act;
- (d) retain any such accounts, books, records or other documents or articles for as long as they may be required for any assessment or for any criminal or other proceedings under this Act;
- (e) examine and make extracts from and copies of such accounts, books, records or other documents or articles and may require from any person an explanation or any entry therein;
- (f) stop and board any vehicle which he or she has reasonable cause to believe is importing goods into Namibia, and may search any such vehicle or any person found thereon or therein for imported goods the taxable value of which is liable to tax and may question any such person with respect to any matter dealt with in this Act:

Provided that, in the event of any search of the person or home of any person, such search shall take place *mutatis mutandis* in accordance with the provisions of section 22 of the Criminal Procedure Act, 1977 (Act 51 of 1977), as if any such officer were a police official contemplated in that Act.

(2) Any officer referred to in subsection (1) shall on demand produce the written authority issued to him or her by the Permanent Secretary.

(3) The person to whose affairs any accounts, books, records or other documents seized under the provisions of subsection (1) relate, shall be entitled to examine and make copies thereof or extracts therefrom during office hours under such supervision as the Permanent Secretary may determine.

(4) Any person who -

- (a) hinders, obstructs or assaults an officer referred to in subsection (1); or
- (b) wilfully fails to comply with any lawful demand made by such officer in the performance of his or her duties or the exercise of his or her powers,

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

(5) Any officer referred to in subsection (1) in carrying out his or her duties in terms of this Act may at any time request the assistance of any person or police officer as he or she may deem necessary and such person or such police officer shall be obliged to render such assistance as may be required by that officer.

Offences.

45. Any person who -

- (a) holds himself or herself out as an officer engaged in carrying out the provisions of this Act; or
- (b) holds himself or herself out as an officer authorized by the Permanent Secretary for the purposes of entry and search as contemplated in section 44(1); or

- (c) fails to surrender for cancellation any registration certificate as contemplated in section 14(2), (4) or (9); or
- (d) being an auctioneer or a seller in relation to any transaction consisting of any sale of goods, financial lease, rental agreement, taxable service, board and lodging or accommodation -
  - (i) declares to any purchaser in relation to such transaction that tax has been included in or will be added on to the price or amount chargeable in respect of such transaction, where in fact no tax is payable in terms of this Act; or
  - (ii) knowingly and without lawful excuse (the burden of proof whereof shall be upon him or her) includes in or adds on to the price or amount charged to the purchaser in relation to such transaction any tax, where in fact no tax is payable in terms of this Act; or
  - (iii) knowingly and without lawful excuse (the burden of proof whereof shall be upon him or her) includes in or adds on to the price or amount charged to the purchaser in relation to such transaction any tax in excess of the tax properly leviable under this Act in respect of the taxable value of such transaction; or
- (e) not being a vendor who is registered under section 12 in respect of any enterprise, knowingly and without lawful excuse (the burden of proof whereof shall be upon him or her) includes in or adds on to the price or amount charged to any other person who is a party to any transaction (other than any transaction referred to in paragraph (d)) any tax, where in fact no tax is payable in terms of this Act, and fails to pay such tax to the Permanent Secretary,

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

Offences and penalties in regard to tax evasion.

**46. (1)** Any person who with intent to evade or to assist any other person to evade the payment of the tax under this Act -

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

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

(2) Whenever in any proceedings under this section it is proved that any false statement or entry has been made in any return or declaration rendered under this Act by or on behalf of any person or in any books of account or other records of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused that false statement or entry to be made or to have allowed it to be made with intent to evade the payment of taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the first-mentioned person to evade the payment of taxation.

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

Reporting of unprofessional conduct.

47. (1) For the purposes of this section “controlling body” means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rule or code of conduct laid down by such association, body or board.

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

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

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

(3) (a) Notwithstanding the provisions of section 4 of this Act, the Permanent Secretary may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Permanent Secretary it is necessary to lay before the controlling body to which the complaint is made.

(b) Before lodging any such complaint or disclosing such information the Permanent Secretary shall

deliver or send to the client and the person against whom the complaint is to be made a written notification of his or her intended action setting forth particulars of the said information.

- (c) The client or the said person may within 30 days after the date of such written notification lodge in writing with the Permanent Secretary any objection he or she may have to the lodging of the said complaint.
- (d) If on the expiry of the said period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Permanent Secretary is not satisfied that the objection should be sustained, the Permanent Secretary may thereupon lodge the complaint as contemplated in subsection (2).

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

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

Jurisdiction of courts.

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

Authentication and  
service of documents.

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

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

- (a) if delivered to him or her; or
- (b) if left with some adult person apparently residing at or occupying or employed at his or her last known abode or office or place of business in Namibia; or
- (c) if despatched by registered or any other kind of post addressed to him or her at his or her last known address, which may be any such place or office as is referred to in paragraph (b) or his or her last known post office box number or that of his or her employer; and
- (d) in the case of a company -
  - (i) if delivered to the public officer of the company contemplated in section 93 of the Income Tax Act; or
  - (ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company as its registered office in Namibia or where no such place has been appointed by the company, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company in Namibia; or
  - (iii) if despatched by registered or any other kind of post addressed to the company or its public officer at its or his or her last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his or her last known post office box number or that of his or her employer.

(3) Any form, notice, demand, document or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contem-

plated in paragraph (c) or (d)(iii) of that subsection shall be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed, unless the Permanent Secretary is satisfied that it was not so received or was received at some other time or, where the time at which it was received or the fact that it was received is in dispute in proceedings under this Act in any court having jurisdiction to decide the matter, the court is so satisfied: Provided that the preceding provisions of this subsection shall not apply where any person is in criminal proceedings charged with the commission of an offence under this Act by reason of his or her failure, refusal or neglect to do anything which he or she is required to do in terms of the said form, notice, demand, document or other communication, unless it was despatched to such person by registered or certified post.

(4) If the Permanent Secretary is satisfied that any form, notice, demand, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner contemplated in paragraph (b), (c) or (d)(ii) or (iii) of subsection (2), has not been received by the person to whom it was addressed or has been received by such person considerably later than it should have been received by him or her and that such person has in consequence been placed at a disadvantage, the Permanent Secretary may, if he or she is satisfied that the circumstances warrant such action, direct that such form, notice, demand, document or other communication be withdrawn and be issued, given, sent or served anew.

Arrangements to overcome difficulties or anomalies.

**50.** (1) If in any case the Permanent Secretary is satisfied that in consequence of the manner in which any vendor or seller conducts his or her business, trade or occupation, difficulties or anomalies have arisen or may arise in regard to the application of any of the provisions of this Act, the Permanent Secretary and the vendor or seller may agree as to the manner in which such provisions shall be applied in the case of such vendor or seller, and they may in such agreement make such arrangements as to the calculation or payment of tax or the application of any exemption from tax provided in this Act as appear to overcome such difficulties or anomalies: Provided that subject to the provisions of subsection (2), such agreement shall not have the effect of substantially reducing or increasing the ultimate liability of the vendor or seller for taxation levied under this Act.

(2) Where the Permanent Secretary is satisfied that the turnover of any enterprise consists wholly or mainly of

amounts derived from sales of an essential commodity supplied in small measures, that the price per measure is such that the tax thereon, calculated at the rate provided in section 5(1), amounts to one or more cents, plus a fraction of a cent, and that, by reason of the manner in which the vendor carries on such enterprise, the vendor will not be able to recover such fraction of a cent from purchasers without unduly increasing the price of the commodity, the Permanent Secretary may in any agreement with the vendor under subsection (1) authorize the vendor to disregard such fraction in calculating his or her liability for tax.

Regulations.

**51. (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 out of the objects and purposes of this Act.

(2) Notwithstanding anything to the contrary in this Act, where the Minister is satisfied that in consequence of the manner in which any business, trade or occupation is carried on malpractices or difficulties have arisen or may arise in regard to the collection of tax levied under this Act, the Minister may, in order to counter such malpractices or to overcome such difficulties, make regulations in regard to the application of any exemption or to the payment or collection of any tax in a manner other than that provided in this Act.

(3) Any regulation made under subsection (2) may provide that any exemption applicable under this Act in respect of goods of any kind mentioned in such regulation shall no longer apply with respect to any vendor or class of vendors mentioned in such regulation: Provided that where such exemption no longer applies the vendor who would otherwise have been entitled to claim such exemption shall be allowed relief in respect of the amount of tax paid in respect of the goods mentioned in the regulation, whether by way of a credit against tax which becomes payable by such vendor or in such other manner as may be provided in such regulation.

Agreements for granting relief to certain vendors in specified countries arising out of certain regulations made by Minister.

**52. (1)** Where the Minister has under section 51(2) of this Act made any regulation in regard to the application of any exemption or to the payment or collection of any tax in a manner other than that provided in this Act and in consequence thereof any class of vendors carrying on any enterprise in any specified country in which a sales tax or a substantially similar tax is levied, is thereby placed at a disadvantage, the Government of Namibia may enter into an agreement with the Government of any such country

with a view to granting relief to such class of vendors upon such terms and conditions as may be set forth in such agreement.

(2) In any agreement contemplated in subsection (1), provision may be made for payments by the Government of Namibia to the Government of the specified country concerned of any tax borne in Namibia by such class of vendors who are so placed at a disadvantage in consequence of any regulation referred to in that subsection, and also for the establishment and constitution of a committee comprised of representatives of such Governments to perform functions relating to the implementation and monitoring of matters arising out of such agreement.

Amendments varying  
rate of tax or Schedules to  
this Act.

53. (1) The Minister may from time to time and when Parliament is not in session by notice in the *Gazette* -

- (a) amend the provisions of subsection (1) of section 5 so as to effect a variation or further variation of the rate of tax fixed by the said subsection by increasing or reducing that rate: Provided that the rate fixed under the said subsection shall not be varied under this paragraph so as to provide for an increase of more than two per cent in the rate of tax so fixed;
- (b) amend the Schedules to this Act whenever he or she deems it expedient in the public interest to do so.

(2) Any amendment made under the provisions of subsection (1) before the date upon which Parliament meets for the first time for the dispatch of business in any session during which the Minister introduces the Appropriation Bill shall, unless Parliament otherwise provides, lapse 30 days after the end of the session during which the minister introduced such Bill, but without detracting from the validity of such amendment before it has so lapsed.

(3) Whenever in any legal proceedings any question arises as to whether during any session of Parliament the Appropriation Bill was introduced by the Minister or as to the date upon which Parliament met for the first time for the dispatch of business in such session or as to the date upon which such session ended, a copy or copies of the minutes of proceedings of Parliament, indicating that during any session of Parliament that Bill was so introduced, and specifying such date or dates, and certified by the Secretary to Parliament to be a true copy or true copies

of such minutes, shall be accepted as sufficient evidence that that Bill was so introduced during such session, and of such date or dates.

Notice during session of Parliament of variation of rate of tax.

**54. (1)** The Minister may during any session of Parliament by notice in the *Gazette* make known for general information -

- (a) that in terms of a taxation proposal tabled by him or her in Parliament during such session, the rate of tax specified in section 5 is to be increased to a rate set forth in that proposal and in that notice; or
- (b) that it is proposed, during that session to decrease the rate of tax so mentioned to a rate set forth in that notice,

and the increased or decreased rate of tax so set forth shall, until an Act of Parliament, passed during that session, is promulgated whereby effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of tax which in terms of section 8 of this Act are deemed to have become payable on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased rate of tax, as the case may be.

(2) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (1), 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 sufficient evidence that such proposal was tabled and of the particulars contained therein.

Act binding on State, and effect of certain exemptions from taxes.

**55.** This Act shall bind the State, and no provision contained in any other law promulgated before, on or after the date of commencement of this Act providing for an exemption from any tax or duty shall be construed as applying or referring, as the case may be, to the tax leviable under this Act unless such tax is specifically mentioned in such provision.

Repeal of laws and savings.

**56. (1)** The laws specified in Schedule 7 are hereby repealed.

(2) Anything done under a provision of a law repealed by subsection (1) which could have been done

under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act.

Short title.

**57. (1)** This Act shall be called the Sales Tax Act, 1992.

(2) The provisions of subsection (1) of section 56, in so far as it relates to Government Notice 87 of 1991, in respect of -

- (a) services rendered by a banking institution or a building society referred to in paragraph 1(i) of Schedule 1, and the said paragraph 1(i); and
- (b) a service referred to in paragraph (b)(vii) of subsection (1) of section 6, and the said paragraph (b)(vii),

shall be deemed to have come into operation on 1 August 1991.

## SCHEDULE 1

*(Definition of 'taxable service' in section 1 of this Act)*

### SERVICES

1. For the purposes of this Act any service included in the services mentioned hereunder shall be deemed to be a taxable service, namely:-

- (a) In the case of a person who carries on any enterprise in the course of which goods are sold or let, any delivery (excluding the delivery of goods contemplated in section 7(1)(a)), installation, repair or maintenance service or any other service whatsoever rendered or to be rendered by such person in connection with or following upon the sale or letting of such goods.
- (b) Installation, repair, maintenance, restoration, alteration or embellishment services in respect of goods carried out in the course of carrying on any enterprise, including, without limiting the generality of this subparagraph -
  - (i) installation, repair, maintenance, restoration, alteration or embellishment services rendered by any shoe-repairer, shoemaker, watchmaker, jeweller, repairer of motor vehicles, photographic equipment or domestic appliances, panelbeater or tyre retreader; or
  - (ii) repair, maintenance, restoration, alteration or embellishment services rendered in respect of any asset consisting of -

- (aa) any plant or equipment used for the purposes of heating (other than hot-water cylinders, non-industrial boilers or solar water heaters), ventilation, air-conditioning, refrigeration, television or radio or any communication system (including any alarm signalling system) other than any communication system installed by the Ministry of Works, Transport and Communication; or
- (bb) any floor-covering material composed of carpets, wood-blocks, vinyl or plastic materials, cork, linoleum, rubber, glazed bituminous felt or any other resilient flooring material; or
- (cc) any lift or escalator; or
- (dd) any machinery or plant used directly in a process of manufacture or for the pumping of water or which qualifies or which, but for any provision in the Income Tax Act entitling any organization or body to exemption from normal tax, would have qualified for the granting of any allowance or deduction, as the case may be, for normal tax purposes under the provisions of section 17(e) or (t) or 18(a) of the said Act; or
- (ee) any machinery or plant, together with any footing, foundation or supporting structure specifically designed for such machinery or plant, used for the purposes of the operations of any power station, including the transformation of electric power by means of any transformer having a unit capacity exceeding 3 150 kilovolt-ampere,

whether or not such asset is movable or immovable property.

- (c) Erection, construction, assembly or installation services rendered in respect of any asset of the nature described in subparagraph (b)(ii): Provided that the provisions of this subparagraph shall not apply in respect of the erection, construction, assembly or installation of any such asset under an agreement which in terms of paragraph 4 of Schedule 3 is deemed to be a sale of goods.
- (d) Any service other than a service referred to in subparagraph (b)(ii) or (c) which is necessary for the rendering by any vendor of any service so referred to and which is rendered by the vendor concerned or by a connected person in relation to such vendor.
- (e) Services rendered or facilities provided by any person in the course of the carrying on by him or her of any enterprise which is the trade, business or occupation of a dressmaker, tailor, milliner, barber, hairdresser, dry-cleaner, dyer, launderer (including a provider of coin-

operated laundry services), blacksmith, locksmith, signwriter, printer, engraver, photographer, processor of photographic material, picture framer, provider of duplicating services, provider of blueprint services, tanner, leather processor, taxidermist, tower of motor vehicles, provider of fumigation or pest-control services, provider of animal-care services.

- (f) Services rendered or facilities provided by any person in the course of any enterprise carried on by him or her, as aids to health, strength or beauty, including, without limiting the generality of this subparagraph, the giving of advice in connection with health, strength or beauty, massages and other treatments, the provision of turkish and sauna baths, slimming courses or devices, gymnasium facilities (other than gymnasium facilities provided for any organized competitive sport), and services rendered by any dental mechanic, optician or pharmacist in the course of his or her trade, business or occupation as such, but excluding -
  - (i) such medical services as are provided for his or her own account in the ordinary course of his or her practice as such by -
    - (aa) a person referred to in section 17(1)(a) of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974), or who holds a written authority under the Health Services Professions Proclamation (Proclamation AG. 70 of 1989);
    - (bb) a nurse or midwife registered in terms of the provisions of the Nursing Act, 1978 (Act 50 of 1978), or who holds a written authority under the Health Services Professions Proclamation (Proclamation AG. 70 of 1989);
    - (cc) a practitioner registered in terms of the provisions of the Chiropractors Act, 1971 (Act 76 of 1971), or the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974 (Act 52 of 1974); or
  - (ii) any services rendered or facilities provided in any registered hospital, maternity home or nursing home, or clinic conducted by a local authority.
- (g) Professional or other services rendered for his or her own account in the ordinary course of his or her practice as such by any person registered by a "controlling body" as defined in section 47(1).
- (h) Professional services rendered for his or her own account by an advocate or an attorney, or a private company referred to in section 23 of the Attorneys Act, 1979 (Act 53 of 1979), in the ordinary course of his, her or its practice as such.

- (i) Professional or other services other than services referred to in paragraphs (g) and (h) rendered by any person for his or her own account in the ordinary course of his or her trade, business or occupation, including, without limiting the generality of this subparagraph, any services rendered by any bookkeeper, financial adviser, insurance broker in relation to the provision, or transfer of ownership, of life policies in the course of any business other than long-term insurance business as defined in section 1 of the Insurance Act, 1943 (Act 27 of 1943), share broker, or any executor, administrator, trustee or provisional trustee of a deceased or insolvent estate, or any liquidator, provisional liquidator or judicial manager or provisional judicial manager of a company, or any auctioneer, but excluding -
  - (aa) any services rendered by any banking institution, defined in section 1 of the Banks Act, 1965 (Act 23 of 1965), or any building society, as defined in section 1 of the Building Societies Act, 1986 (Act 2 of 1986), in the ordinary course of its business as such banking institution or building society other than services so rendered which may ordinarily be rendered by any financial adviser, insurance broker, share broker, or any executor, administrator, trustee or provisional trustee of a deceased or insolvent estate, or any liquidator or provisional liquidator or judicial manager or provisional judicial manager of a company;
  - (bb) the provision, or transfer of ownership, of life policies in the course of any long-term insurance business, as defined in section 1 of the Insurance Act, 1943 (Act 27 of 1943), carried on by or on behalf of a registered insurer, as so defined.
  - (cc) any services rendered by any travel agent in the ordinary course of his or her business as such travel agent.
- (j) Services whereby goods are produced, manufactured, fabricated, assembled, processed or imprinted or are subjected to a process of manufacture, but excluding -
  - (i) any refinery services referred to in Division VI of Schedule 2; or
  - (ii) any cut, make and trim service rendered by a clothing manufacturer to a concern outside Namibia in respect of clothing material imported into Namibia for the purposes of such service and returned to such concern on completion of such service.
- (k) Any service in the form of an undertaking given by a person to carry out repair or maintenance services in respect of goods during any particular period as and when the carrying out of such services is necessary.
- (l) Any advertising or publicity service rendered by any person in the carrying on by him or her of any enterprise in the ordinary course of which such service is rendered to any person for reward.

*Definition:* For the purposes of this subparagraph "advertising or publicity service" means any activity whereby any communication is directed or intended to be directed to the public or a section thereof through the medium of -

- (i) any advertisement in any newspaper, periodical, journal, catalogue, directory, book, pamphlet, leaflet, programme, circular or handbill; or
- (ii) any advertisement on any billboard, hoarding, poster, placard, vehicle, film, projector slide, sound recording or any other property, whether movable or immovable; or
- (iii) any advertisement broadcast by radio or television,

and includes the preparation, design or furnishing of any material to be used for the purposes of such advertisement, whether or not the advertisement is exposed: Provided that the provisions of this definition shall not be construed so as to apply in respect of -

- (a) the preparation, design, printing, production or furnishing of any packaging or wrapping material (including labels) for use in the marketing of goods; or
- (b) any merchandising or direct-selling activity or any fashion or modelling show; or
- (c) the publication in the *Gazette* or any newspaper of any notice containing any information which is published by, under or for the purposes of any law.
- (m) Any service other than a service referred to in subparagraph (l) which is connected with or necessary for the rendering by any vendor of any service so referred to and which is rendered by the vendor concerned or by a connected person in relation to such vendor.

2. For the purposes of this Act -

- (a) where any agreement provides -
  - (i) for the supply of any asset referred to in paragraph 1(b)(ii); and
  - (ii) for the rendering of any service which in terms of paragraph 1(b)(ii), (c) or (d) is deemed to be a taxable service,

and the consideration payable under such agreement to the person supplying such asset and rendering such service is payable in respect of the supply of such asset and the rendering of such service (including any materials, components or other goods supplied by such person which are required for the rendering of such service), the said agreement as a whole shall be treated as an agreement for the rendering of a taxable service and the said consideration shall be deemed to be payable in respect of such taxable service;

- (b) where any agreement in relation to a sale concluded on a lay-by basis referred to in section 8(a) is cancelled or terminated for any reason before the goods are delivered by the seller to the purchaser, the said agreement shall be treated as an agreement for the rendering of a taxable service and any amount already paid by the purchaser at the time of the cancellation or termination of such agreement which is retained by the seller and any amount recovered by the purchaser from the seller in terms of any such agreement shall be deemed to be the amount payable in respect of such taxable service.
3. A construction activity shall not be deemed to be a taxable service for the purposes of this Act.

## **SCHEDULE 2**

*(Section 6 of this Act)*

### **EXEMPTIONS: CERTAIN SALES OF GOODS AND TAXABLE SERVICES**

The categories of enterprises and the goods and taxable services in respect of which the exemptions applicable under the provisions of section 6(1)(c), (x) and (z) shall apply, shall be as hereinafter set forth.

#### **Division I**

#### **Manufacturing Enterprises**

In the case of any enterprise in the ordinary course of which goods (other than goods in respect of which an exemption under section 6(1)(d) applies) are manufactured or assembled for sale or any process of manufacture is undertaken for reward, the goods and taxable services set forth in this Division but excluding any goods or services acquired or utilized in the course of any construction activity or of any mining or quarrying enterprise or in rendering any rock-breaking or refinery services referred to in Division VI:

1. Goods intended to be so used or dealt with in such manufacture, assembly or process that such goods or some element thereof will form an integral part of other goods to be manufactured or produced in such enterprise, and will remain in the goods so manufactured or produced as an element or essential thereof in their completely manufactured or produced condition.

2. Any taxable service employed directly in such manufacture, assembly or process and which is attendant upon the production of any goods to be manufactured, assembled or processed.
3. (a) Containers and packaging or wrapping materials (including labels) for use in the marketing of goods so manufactured, assembled or processed by such enterprise.  
  
(b) Containers, packaging or wrapping materials (including pallets) and binding or tying materials used by such enterprise for the shipment or conveyance of such goods which are exported from Namibia.
4. Goods being -  
  
(a) fuel purchased in bulk supply;  
  
(b) catalysts, reductants, oxydants or enzymes and any other similar processing materials (excluding any such materials as fall under the heading of non-qualifying goods in this Division),  
  
used directly in the manufacture, assembly or processing of goods by the enterprise concerned and which are necessary for such manufacture, assembly or processing.
5. Goods intended to be consumed or rendered worthless in the course of the production for sale or commercial exploitation of any motion picture film or any film, video tape or disc for use in connection with television.
6. The following goods used in the manufacture or production of primary iron and steel products, ferro-alloys or non-ferrous alloy metals, glass or carbide:  
  
(a) Refractory material for use in furnaces;  
  
(b) arc furnace electrodes;  
  
(c) pickling materials and agents, rolling mill oils and conditioners and continuous casting and mouldlining powders; and  
  
(d) steel surface process materials (excluding any such materials as fall under the heading of non-qualifying goods in this Division).
7. The following goods used in the foundry industry:  
  
Casting and moulding materials used for the making of moulds and cores as aids in the manufacture or processing of goods.

**Non-qualifying goods****Item No.**

- (1) Abrasives and abrasive materials, polishing and buffing compounds.
- (2) Grinding or crushing balls and rods.
- (3) Tools, accessories, equipment or component parts attached to machinery or plant and which come into direct contact with goods which are being processed and which by their specific function alter such goods or are used for the purposes of brushing, crushing, cutting, forming, honing, machining, mixing, moulding, painting, polishing or screening.
- (4) Tools, accessories, equipment or component parts attached to machinery or plant used for the purpose of handling goods which are being processed.
- (5) Greases and lubricants.
- (6) Cutting oils.
- (7) Filtering and screening materials.
- (8) Cleaners and disinfectants.
- (9) Stencils and patterns.
- (10) Casting and moulding materials.
- (11) Marking pencils and crayons.
- (12) Furnace electrodes.
- (13) Conveyor belts and conveyor belting.
- (14) Sewing needles, points, discs, shanks, reamers, knives and dies.
- (15) Fluxes.
- (16) Nozzles (other than grease nozzles).
- (17) Millstones.
- (18) Wax — natural and synthetic.
- (19) Curing bags, bladders and airbags.

**Division II  
Service Enterprises**

In the case of any enterprise in the ordinary course of which any taxable service is rendered for reward:

1. Goods intended to be so used or dealt with in performing any such service that such goods will be incorporated in or attached to any other goods or property in respect of which such service is performed as a permanent part of such other goods or property.
2. Cleaning liquids, soaps, detergents, dyes, bleaching agents, insecticides, fungicides, rodenticides, hairdressing preparations or other chemicals for use directly in performing any such service.
3. Animal feeds purchased by any provider of animal care services for the purposes of rendering such services.

4. Boiler fuel purchased by any enterprise for use directly in carrying on any laundering or dry-cleaning enterprise.
5. Gas purchased for use directly in rendering any taxable service.
6. Grit (copper slag) purchased for use in the ship-repair industry.
7. The following goods purchased by any enterprise for the purpose of rendering any advertising or publicity service:-
  - (a) Paper, artboard or other materials for use in the reproduction of layouts or rough sketches.
  - (b) Final artwork which is to be photographed so that the photographic image may be reproduced as the subject of any plate, block or other printing medium.
  - (c) Any photographic material, video or sound recording tape or disc, paint, crayon, pen, pencil, ink, cardboard, artboard, paper, wood or other material used directly in the preparation or presentation of advertising copy.
  - (d) Any plate, block or other printing medium used directly in the preparation or presentation of advertising copy.

### **Division III Commercial Enterprises**

In the case of any enterprise in the ordinary course of which sales of goods are concluded:

1. Any taxable service (excluding any advertising or publicity service) rendered in respect of goods intended for sale.
2. Any repair service rendered in respect of goods which were the subject of a sale concluded by such enterprise, where such service is rendered in pursuance of any guarantee to effect that service, and parts purchased in order to effect such service.

### **Division IV Printing and Publishing Enterprises**

In the case of any enterprise in the ordinary course of which -

- (a) commercial printing; or

- (b) transfer paper printing for the textile industry; or
- (c) the publishing or production of newspapers, books, magazines or allied products,

is undertaken for sale or reward:

1. Paper, paperboard, ink, solvents, ink additives, proofing material and other materials used directly in the process of printing.
2. Materials and chemicals used for the preparation and making of zinc, copper, lithographic, rotogravure or other printing faces.
3. Materials used for the binding and finishing of books and other printed matter.
4. Wrapping and packaging materials (including labels) used directly in the marketing of printed matter to end users.
5. Printing-face, bookbinding, book-finishing and other services attendant upon the direct production of printed matter.
6. Fuel, chemicals and catalysts used directly in the process of printing and the recovery of ink and chemicals used in such process.
7. Rotary cylinders containing printed designs and end rings for such cylinders for use directly in the printing of transfer paper for the textile industry.

#### **Division V** **Mining or Quarrying Enterprises**

In the case of any enterprise in the ordinary course of which mining or quarrying operations are undertaken in order to derive income:

1. Goods and services described below and used or performed directly for the purposes mentioned:

Item No.

Description

#### **Breaking Rock**

010 Coal cutter pick boxes and coal cutter picks

Explosives and Explosives requisites

- 020 Explosives, explosive ingredients and explosives accessories and requisites used or consumed directly for the purposes of mining or quarrying operations, including, without limiting the foregoing -
- 021 Slurry explosives and agents
- 022 Ammonium nitrate and ingredients
- 023 Gunpowder
- 024 Nitro-glycerine based explosives and ingredients, blasting agent slurry
- 025 Detonators, detonator tubes, detonating relays and fuse assemblies, detonating accessories
- 026 Blasting wire and cable, blasting machines (excluding vibro-recorders and peak particle velocity meters), blasting circuit testers (continuity, ohm-meters and insulation)
- 027 Fuse-safety, fuse igniters, fuseheads and assemblies, fuse clips and crimpers
- 028 Igniter cord, delay igniter cord igniter and fasteners
- 029 Lighter holders, primer piercers, safety clips, tamping plugs
- 030 Explosives delay and booster charges and requisites and clearing charges
- 031 Exploders or shot fires, shot exploder testers, anstarts

#### Other

- 100 Mine marking crayon, mine stick chalk and mine marking paint
- 101 Hose-Rock drill: Air/Water
- 102 Hose fittings
- 103 Detachable bits, raisebore reamers (cutters) and raisebore reamers (reaming assembly), detachable casing bits and shoes
- 104 Drill steel, shanks and couplings for drill steel, drill steel stabilizer rollers and drill steel swivelmount shock assemblies, reaming shells, core barrel assembly, drill rods, couplings for drill rods, clamps, hoisting plugs and steel ropes used in the operation of core drilling rigs

#### Ore Dressing/Treating

- 200 Assay, laboratory and smelting goods
- 201 Chemicals — cyanide
- 202 Acid — nitric and sulphuric
- 203 Sodium chemicals
- 204 Ammonia, ammonium nitrate and ammonium chemicals
- 205 Lime — slaked and unslaked
- 206 Chemicals used as flocculating agents (including glue), collectors, dispersants, chemical transfer agents, promoters, frothers, pH regulators, modifiers, extractors, depressants, activators and binding agents
- 207 Resin compound for water treatment
- 208 Thiourea and other reagents, salt (used as electrolytic reagent), borax-fused, litharge, sodium carbonate, uranium chemicals (including ion exchange resins, flotation reagents), ferrosilicon, zinc chloride, hydrochloric acid, magnetite, activated carbon, lead nitrate, caustic soda, electrode paste

- 209 Limestone, iron ore, soda ash, quartzite, silica, when used as a flux
- 210 Abrasive resistant castings used in mining for asbestor
- 211 Mercury
- 212 Zinc-dust
- 213 Pyrite
- 214 Manganese dioxide ore
- 215 Screening material
- 216 Filter cloths (including bag-house bags), filter cloths (special)
- 217 Coco mats and leaves

#### Safety

- 300 Blasting mats (metal and non-metal) and blasting barricades
- 301 Safety lamps (including parts used in the repair and maintenance thereof) and methanometers-gas testing
- 302 Stone dust (collieries)
- 303 Hardhats and protective clothing
- 304 Respirators and proto (or rescue) equipment
- 305 Safety chains
- 306 Water tamping material
- 307 Diamond-mesh wire

#### Miscellaneous

- 500 Power fuel, tyres and tubes for use in respect of off-highway vehicles used in open-pit mining or quarrying operations for the conveyance of rock, minerals, sand or clay from pit to on-site crushers and waste dumps
- 501 Power fuel, tyres and tubes for use in respect of vehicles used in underground mines for the conveyance of rock and minerals from the production area to the shaft or tipping point
- 502 Fuel for use in the generation of electricity used directly for the purposes of mining or quarrying operations, and fuel for use in the operation of pumps by salt producers
- 503 Fuel for use in the firing of furnaces used directly for the purposes of mining or quarrying operations
- 504 Containers and packaging or wrapping materials (including labels) for use in the marketing of the products of such mining or quarrying operations
- 505 Refractory material for use in furnaces used in the mining industry

*Definitions:* For the purposes of this Division -

- (a) the expression "mining operations" means those operations the essential object of which is the recovery of mineral or oil deposits from the earth, including operations concerned with prospecting for such deposits, the extraction of the deposit-bearing materials from the earth and the treatment of those materials for the purpose of recovering such deposits therefrom; and

- (b) the expression “quarrying operations” means those activities undertaken with the object of recovering ordinary soil, sand, stone, feldspar, clay, gravel or other similar materials from natural deposits from the earth without being subjected to any form of treatment after the recovery thereof.

#### **Division VI Mining and Quarrying Service Enterprises**

In the case of any enterprise in the ordinary course of which -

- (i) rock-breaking services;
- (ii) tunneling services;
- (iii) shaft-sinking services;
- (iv) core-drilling services for the purposes of searching for or mining any mineral; or
- (v) refinery services (being services in respect of the extraction or refining of minerals),

are rendered to any vendor for the purposes of the vendor’s mining or quarrying enterprise in respect of which the vendor is registered under section 12 of this Act:

1. In relation to such rock-breaking, tunneling or shaft-sinking or core-drilling services, the goods and services set forth in Division V under the headings “Breaking Rock”, “Explosives and Explosives requisites”, “Other”, “Safety” and “Miscellaneous”, when acquired or utilized for the direct purpose of rendering such services.
2. In relation to such refinery services, the goods set forth in Division V under the heading “Ore Dressing/Treating”, when acquired for the direct purpose of rendering such services.

#### **Division VII Farming Enterprises**

In the case of any enterprise in the ordinary course of which any farming or forestry operations are undertaken in order to derive income:

1. Fertilizers, insecticides, fungicides, herbicides, rodenticides, livestock medicines and vaccines.

2. Seed, shrubs, plants, bulbs, trees and other plant material for the production of crops or produce.
3. Packing or wrapping materials (including labels and binding or tying materials) and containers including pallets used for the marketing of farming or forestry products.
4. Livestock, other animals, poultry, bees, birds, fish or reptiles purchased for the purposes of farming operations.
5. Animal feeds and licks.
6. Fuel purchased in bulk supply and intended to be used directly in the production of farming or forestry products.
7. Any fumigation or pest-control service utilized in the course of farming or forestry operations.
8. Aviation fuel, aviation kerosene and illuminating paraffin for use in any aircraft designed, adapted or modified exclusively for aerial operations directly concerned with the production of farming or forestry products.

*Definition:* For the purposes of this Division, the expression "farming operations" shall be deemed to include any operation in the nature of -

agriculture;  
apiculture;  
horticulture;  
viticulture;  
pasturage;  
poultry farming;  
dairy farming; or  
the rearing of animals, poultry, birds, fish or reptiles.

### **Division VIII** **Farming Service Enterprises**

In the case of any enterprise in the ordinary course of which services consisting of -

- (a) the tilling or fertilizing of soil; or
- (b) the planting, sowing, tending, reaping or harvesting of crops; or
- (c) the planting or tending of orchards, vineyards or plantation; or
- (d) the felling of trees; or

- (e) the tending, shearing and milking of livestock; or
- (f) the preparation or packing of any agricultural produce, livestock product or forestry product which has not undergone any process of manufacture, where such preparation or packing is undertaken for the purpose of rendering the produce or product marketable by the producer,

are rendered to a vendor for the purposes of the vendor's farming or forestry enterprise in respect of which the vendor is registered under section 12 of this Act, the goods and services set forth in Division VII, when acquired or utilized for the direct purpose of rendering any of the first-mentioned services.

### **Division IX Fishing Enterprises**

In the case of any enterprise in the ordinary course of which any fishing operations are undertaken in order to derive income:

1. Packaging or wrapping materials and containers (other than returnable containers) used directly for the marketing of fish, other marine animals or uncultivated marine products which are caught, netted or gathered.
2. Fuel purchased in bulk supply intended to be used directly in the propulsion of fishing vessels.
3. Bait.

### **Division X Accommodation, Hotel and Catering Enterprises**

In the case of any enterprise in the ordinary course of which any accommodation, hotel or catering enterprise is carried on:

1. Foodstuffs (including condiments, spices and flavourings) for use in the preparation of meals and refreshments to be supplied to patrons.
2. Alcoholic and non-alcoholic drinks intended for sale, whether served with meals or in a bar or in an off-sales outlet.
3. Goods intended to be held by such enterprise for the purpose of being hired out as such to patrons of such enterprise at the option of such patrons.
4. Fuel used for preparing food and beverages, for the heating of rooms and water, for lighting, for generating electricity or for laundering and dry-cleaning.

**SCHEDULE 3**

*(Definition of "construction activity" in section 1 of this Act)*

**CONSTRUCTION ACTIVITIES**

1. Subject to the provisions of paragraph 4, for the purposes of this Act any operation or activity mentioned hereunder shall be deemed to be a construction activity, namely:-
  - (a) The erection, construction, assembly, installation, alteration, repair, maintenance or decoration on site of any building or other structure or work of a permanent nature, including -
    - (i) the installation on site of plumbing, electrical fittings or other parts or fittings forming an integral part of any such building, other structure or work; and
    - (ii) the mixing of concrete, mortar or asphalt for delivery on site in order to be incorporated in any such building, other structure or work, as the case may be.
  - (b) Subject to the provisions of paragraph 3, the construction, assembly or fabrication of any prefabricated complete building (other than any prefabricated building unit manufactured for sale to other persons on a supply-only basis, or any prefabricated caravan, mobile home or park home capable of being hauled from place to place on wheels which are or may be affixed thereto), if such building is installed or erected on any site by the same person by whom such construction, assembly or fabrication is undertaken and is intended to remain permanently on such site.
  - (c) Tunnelling.
  - (d) The excavation of stone, soil and other material.
  - (e) The drilling of wells and boreholes for any purpose.
  - (f) The laying out of golf courses, tennis courts, bowling greens, sports fields, other sporting facilities of a permanent nature, lawns and gardens.
  - (g) Land draining and reclamation.
  - (h) Dredging and underwater rock removal.
  - (i) Pile driving.

- (j) Shaft-sinking and underground cementation where such operation or activity is undertaken for the purposes of mining or quarrying operations.
2. Subject to the provisions of paragraph 3, where any contractor carries on any on-site activity which in terms of paragraph 1(a) or (j) is deemed to be a construction activity, any further activity which is incidental to such on-site activity and is carried out by the contractor off-site by way of the making or preparation of components specifically designed and made for installation by the contractor as a permanent part of any building or other structure or work of a permanent nature in respect of which the said on-site activity is carried out, shall for the purposes of this Act be deemed to be a construction activity if that further activity consists of -
- (a) shopfitting in respect of custom-made building components; or
  - (b) the fabrication or assembly of architectural metal work or curtain or window walling; or
  - (c) reinforcing steel fixing, including bending, cutting and assembly of steel components; or
  - (d) sheet metal work in respect of gutters, downpipes of flashings or roof or wall cladding; or
  - (e) the cutting or assembly of roof trusses; or
  - (f) the assembly of tiled panels; or
  - (g) stone dressing for masonry purposes (other than stone dressing for memorials); or
  - (h) the fabrication or assembly of prefabricated panels for cladding purposes, but excluding panels used for garden walls; or
  - (i) the fabrication of beams of masonry units of concrete or ash; or
  - (j) joinery work; or
  - (k) the fabrication or assembly of custom-made partitionings or ceilings; or
  - (l) the fabrication or assembly of custom-made laboratory fittings; or
  - (m) the assembly of sprinkler or fire-detection systems; or
  - (n) the fabrication or assembly of rock anchors and items used for lateral support; or

- (o) the fabrication or assembly of structural steelwork, platework or precast concrete structural components custom-made to specific designs.
- 3. The provisions of paragraphs 1(b) and 2 shall not apply in respect of the making or preparation of components in the course of carrying on any enterprise where components of the same nature are made for sale to other persons.
- 4. For the purposes of this Act the erection, construction, assembly or installation of any asset of the nature described in paragraph 1(b)(ii) of Schedule 1 shall not be deemed to be a construction activity if such asset is supplied by the person by whom the erection, construction, assembly or installation thereof is effected or by a person who is a connected person in relation to such first-mentioned person, and the agreement in respect of such erection, construction, assembly or installation shall be deemed to be a sale of goods: Provided that the foregoing provisions of this paragraph shall not apply in respect of the installation of any floor, carpet or floor-covering material installed in any building or other structure or work of a permanent nature at the time of the erection, construction or assembly of such building, other structure or work.
- 5. For the purposes of this Act any service which in terms of subparagraph (b)(ii), (c) or (d) of paragraph 1 of Schedule 1 is deemed to be a taxable service, shall be deemed not to be a construction activity.

#### SCHEDULE 4

*(Definitions of "financial lease", "leased property", "rental agreement" and "rental consideration" in section 1 of this Act)*

#### FINANCIAL LEASES AND RENTAL AGREEMENTS

- 1. For the purposes of this Act an agreement shall be deemed to be a financial lease, if -
  - (a) the agreement is in writing and provides for the letting and hiring of any asset (hereinafter referred to as the leased property) consisting of goods or of any machinery or plant referred to in paragraph 1(b)(ii)(dd) or (ee) of Schedule 1;
  - (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;
- (c) the lessor is the owner of the leased property;
- (d) the lessee is entitled to the possession, use or enjoyment of the leased property for a period of at least 12 months;
- (e) the cash value of the leased property (being the cash value referred to in paragraph 3) is stated in the agreement;
- (f) 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:

Provided that -

- (i) no lease agreement shall be deemed to be a financial lease for the purposes of this Act unless the conditions set out in this paragraph are or were satisfied at the time of delivery of the leased property under such agreement; and
  - (ii) where the Permanent Secretary 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 Permanent Secretary may recognize such agreement as a financial lease for the purposes of this Act.
2. For the purposes of this Act any delegation in respect of the rights and obligations of a lessee under a financial lease, shall be deemed to be a new financial lease between the lessor under such financial lease and the third party concerned.
3. The cash value of the leased property under a financial lease shall be -
- (a) where the lessor is a banker or financier, the cost to the banker or financier of the leased property, including any cost of erection, construction, assembly or installation of the leased property borne by the banker or financier; or
  - (b) where the lessor is a dealer, the price at which the leased property is normally sold by him or her for cash or may normally be acquired from

him or her for cash plus any charge made by the lessor in respect of the erection, construction, assembly or installation of the leased property if such charge is financed by the lessor under the financial lease; or

- (c) in the case of a new financial lease referred to in paragraph 2, the market value (as at the time when the delegation takes place) of the leased property under the said new financial lease as endorsed on the financial lease or on a document evidencing the delegation.
4. Where any agreement which is a financial lease provides that upon the expiry of the period for which the leased property is let under such agreement, the lessee has the option of terminating such agreement (whether by returning such property to the lessor or in some other manner) or of continuing to hire the leased property, whether at the same or a different rental, and the lessee continues to hire such property after the expiry of the said period -
- (a) the agreement shall upon such expiry in respect of any period subsequent to the said period, be deemed to have ceased to be a financial lease; and
  - (b) subject to the provisions of paragraph 6 or 7, any rental payable in respect of the hire of such property for the said period shall for the purposes of this Act be deemed to be a rental consideration payable in respect of movable goods.
5. Where any lessor under a financial lease sells or alienates any asset which is or has been the subject of such lease (otherwise than under a cession of his or her rights under such lease to a person other than the lessee), such sale or alienation shall for the purposes of this Act be deemed to be a sale by the lessor of goods, notwithstanding the fact that the asset may be immovable property.
6. (1) Where any agreement which is a financial lease ceases to exist (whether on the expiration of the period for which the property was leased or otherwise) and the person who was the lessee under such financial lease (in this paragraph referred to as the former lessee) continues to use or enjoy the leased property or deal with it as he or she deems fit -
- (a) without the payment of any rental or other consideration; or
  - (b) without the payment of any rental or other consideration or subject to the payment of any rental or other consideration which is less than an amount calculated at the rate of 10 per cent per annum of an amount equal to the consideration calculated as provided in section 7(3)(b),

and no legal proceedings in relation to the repossession of such leased property or to the fulfilment of any obligations as to the disposal thereof

in terms of such financial lease have been instituted by the person who was the lessor under such financial lease (in this paragraph referred to as the former lessor) on the expiration of a period of three months as from the date on which such financial lease ceased to exist in circumstances where he or she could have instituted any such legal proceedings, a sale shall, notwithstanding the provisions of paragraph 4, but subject to the provisions of paragraph 7, be deemed to have been concluded in respect of such leased property between the former lessee and the former lessor on the date of the expiration of such period of three months as if such leased property were goods notwithstanding the fact that such leased property may have become immovable property.

(2) When a former lessee -

- (a) who continues to use or enjoy leased property referred to in subparagraph (1) or to deal with it as he or she deems fit subject to the payment of any rental or other consideration which is equal to or more than an amount calculated at the rate of 10 per cent per annum of an amount equal to the consideration calculated as provided in section 7(3)(b); and
- (b) who at any time after the financial lease in question ceased to exist, for any reason ceases -
  - (i) to pay any rental or other consideration; or
  - (ii) to pay a rental or other consideration which is equal to or more than an amount calculated at the said rate,

and no legal proceedings in relation to the repossession of such leased property or to the fulfilment of any obligations as to the disposal thereof were instituted by the former lessor on the expiration of a period of three months as from the date on which the former lessee ceased to pay such rental or consideration in circumstances where he or she could have instituted any such legal proceedings, a sale shall be deemed to have been concluded in respect of such leased property between the former lessee and the former lessor on the date of the expiration of such period of three months, as if such leased property were goods notwithstanding the fact that such leased property may have become immovable property.

7. Any agreement under which property which was leased under a financial lease which has ceased to exist (whether on expiration of the period for which such property was leased or otherwise) is let by the person who was the lessor under such financial lease to the person who was the lessee under such financial lease from the date on which such financial lease so ceases to exist upon substantially the same terms and conditions which applied in respect of such financial lease, at a rental or other consideration which is

greater or smaller than any instalment by way of which the principal debt and finance charges were paid or were required to be paid, shall for the purpose of this Act be deemed to be part of such financial lease: Provided that the provisions of this paragraph shall not apply in relation to any financial lease if the amount owing in respect of the principal debt and finance charges in terms of such financial lease on the date on which such financial lease so ceases to exist is less than 10 per cent of the cash value of the property which was applicable in respect of such financial lease in terms of paragraph 2.

8. For the purposes of this Act -

- (a) an agreement shall be deemed to be a rental agreement if it provides for the payment of any rental consideration in respect of movable goods;
- (b) "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 -
  - (i) any rental or other consideration payable in respect of the hiring of goods under a financial lease;
  - (ii) 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 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;
  - (iii) 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 any body or by any local authority or by a body which the Permanent Secretary is satisfied is not conducted for the purposes of profit;
  - (iv) 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;

- (v) 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;
- (vi) any rental or other consideration payable in respect of the use of or the right to use or the grant of permission to use -
  - (aa) any goods for the purposes of any sport, games or amusement activity; or
  - (bb) 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 R5 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 5

*(Section 6(1)(y) of this Act)*

### EXEMPTION: CERTAIN GOODS IMPORTED INTO NAMIBIA

The goods in respect of which the exemption under the provisions of section 6(1)(y) shall apply, shall be as hereinafter set forth.

#### PART A

*Imported goods which are cleared or will be required to be cleared  
under the provisions of the Customs and Excise Act, 1964  
(Act 91 of 1964)*

1. Goods imported into Namibia which fall under any heading and description mentioned below, to the extent indicated, and in respect of which either no customs duty is payable or a rebate of customs duty is granted in terms of the Customs and Excise Act, 1964 (Act 91 of 1964):

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 organization registered in terms of the National Welfare Act, 1978 (Act 100 of 1978), for distribution free of charge by such church or organization to indigent persons, subject to production at the time of importation of a written declaration by such church or organization 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, the following consumable products:  
  
Heading No.  
  
22.00 (i) Wine, not exceeding 2 litres;  
  
(ii) spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre;  
  
24.02 manufactured tobacco, not exceeding 400 cigarettes and 50 cigars and 250 g of cigarette or pipe tobacco;  
  
33.06 perfumery not exceeding 300 ml and toilet water not exceeding 250 ml.
  - (2) Other new or used goods (excluding television receiving sets), of a total value not exceeding R500 per person.

- 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.
- 409.00 Re-imported goods.
- 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 R200 (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 -
- (a) for the relief of distress of persons in cases of famine or other national disaster;
  - (b) under any technical assistance agreement; or
  - (c) 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, Republic of South Africa, Botswana, Lesotho and Swaziland.
- 460.17 89.01 Ships, boats and other vessels (excluding yachts and other vessels for pleasure or sport, rowing boats and canoes), in such quantities and at such times and subject to such conditions as the Minister of 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.
- 480.00 Goods temporarily admitted for specific purposes.
- 490.00 Goods temporarily admitted subject to the exportation in the same state.

## Heading No.

- 49.11.60 Publications and other advertising matter, relating to fairs, exhibitions and tourism in foreign countries, when imported by a tourist agency of a foreign government recognized by the Permanent Secretary for the purposes of this exemption.
  - 72.01.20 Gold coin.
  - 87.11 Invalid carriages, whether or not motorised or otherwise mechanically propelled.
2. Any of the following items imported into Namibia in respect of which the Controller of Customs and Excise has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act, 1964 (Act 91 of 1964), granted permission that entry need not be made:
- (i) containers temporarily imported;
  - (ii) human remains;
  - (iii) goods which in the opinion of the Commissioner for Customs and Excise are of no commercial value;
  - (iv) goods imported under an international carnet; and
  - (v) goods of a value for customs duty purposes not exceeding R200, and on which no such duty is payable in terms of Schedule 1 to the said Act.
3. Goods, being printed books, newspapers, journals and periodicals, imported into Namibia by post of a value for duty purposes under the Customs and Excise Act, 1964, not exceeding R40 per parcel.

**PART B**

*Imported goods which are not and will not be required to be cleared  
under the provisions of the Customs and Excise Act, 1964  
(Act 91 of 1964)*

1. Goods imported into Namibia from any specified country as defined in section 1, namely -
  - (a) Goods referred to in paragraph 1 of Part A of this Schedule under items 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 Headings 49.11.60, 72.01.20 and 87.11 to the extent indicated.
  - (b) Goods or items referred to in paragraphs 2 and 3 of Part A of this Schedule, to the extent indicated.
  - (c) Goods intended for sale to -
    - (i) a registered vendor for resale as such by the vendor in the ordinary course of the enterprise in respect of which he or she is registered under section 12;
    - (ii) a vendor who is registered under section 12 in respect of an enterprise falling within a category of enterprises mentioned in Schedule 2, if such goods are goods described in that Schedule in relation to such category and are intended for use or utilization in such enterprise,  
  
if such goods have been produced, manufactured, assembled or processed by the person who imported such goods.
  - (d) Goods set forth in Schedule 6.
  - (e) Any motor vehicle constituting an asset of any enterprise or of any other *bona fide* commercial, financial, industrial, mining, quarrying, farming, 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 his or her 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.
2. 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 tax under this Act or any law repealed by this Act was paid in respect of the acquisition thereof.

3. Goods which are shipped or conveyed to Namibia for transshipment or conveyance to any specified country.

### **SCHEDULE 6**

*(Section 6(1)(ag) of this Act)*

#### **EXEMPTION: CERTAIN GOODS IN THE FORM OF FOODSTUFFS**

The goods in respect of which the exemption under the provisions of section 6(1)(ag) shall apply, shall be as hereinafter set forth, but shall not include any such goods as are supplied for reward in the course of carrying out any agreement -

- (a) for the furnishing or serving of any meal, refreshment, cooked or prepared food or any drink ready for immediate consumption; or
  - (b) for the supply of board and lodging at an inclusive charge.
1. Maize meal, being -
- (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.
2. Mahango.

### **SCHEDULE 7**

*(Section 56)*

#### **REPEAL OF LAWS**

Number and year of law	Short title
Proclamation AG. 40 of 1978	Sales Tax Proclamation, 1978
Act No. 22 of 1980	Sales Tax Amendment Act, 1980
Act No. 17 of 1982	Sales Tax Amendment Act, 1982
Act No. 22 of 1985	Sales Tax Amendment Act, 1985
Act No. 13 of 1991	Sales Tax Amendment Act, 1991
Government Notice 87 of 1991	Amendment of Schedule 1 to the Sales Tax Proclamation, 1978 (Proclamation AG. 40 of 1978)