



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$3.90

WINDHOEK - 29 December 2000

No.2465

CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 299 Promulgation of Value-Added Tax Amendment Act, 2000 (Act 34 of 2000), of the Parliament	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 299 2000

PROMULGATION OF ACT OF PARLIAMENT

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

No. 34 of 2000: Value-Added Tax Amendment Act, 2000.

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

EXPLANATORY NOTE:

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

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

ACT

To amend the Value-Added Tax Act, 2000, so as to define or further define certain expressions; to exclude goods used for demonstration purposes from tax; to further define the expression "taxable activity"; to provide for the value of a supply where the recipient is an association not for gain; to require a guarantee only from foreign importers to cover the value of tax; to further provide for the registration of certain persons; to absolve the State from the liability to register for tax; to provide for the effective date of registration to be determined in the same manner; to provide for deemed input credits in respect of used goods and for bad debt allowances; to extend the basis of the apportionment formula; to provide that tax invoices only be issued on request and to increase the amount of cash sales below which a tax invoice is not required; to further define the expression "farming activities"; to make provision for a predetermined date for the submission of returns; to allow the Commissioner to extend on reasonable grounds the period within which objections are to be lodged; to disallow the addition of new grounds of appeal in appeals against objection decisions; to allow the consolidation of amounts due per tax period into a consolidated account; to reformulate the treatment of refunds and the basis of calculating interest on delayed refunds; to provide for refunds in respect of tax paid by certain diplomats, diplomatic and consular missions and international organisations, and in respect of certain technical assistance agreements; to further define the expression "records"; to require that records be kept at places of business of registered persons and that all accounting records be maintained in Namibia within a certain period of time; to provide that tax investigations only be conducted for the period that records are required to be kept; to limit the period for calculating interest to completed months; to provide that interest may exceed any capital outstanding; to delete the provision regarding the improper use of exemption certificates; to criminalise the failure to produce certain records to a taxation officer; to revise certain penalties to enable the computerisation thereof; to authorise the Commissioner to make arrangements to overcome certain difficulties and anomalies; to repeal the provision regarding the prohibition of the registration of certain goods in certain circumstances; to more clearly provide for transitional matters; to revise the Schedule of goods subject to the 30% tax rate; to further define the expression "maize meal"; to define the expressions "asset management services" and "financial services" and to delete the definition of "used goods" in Schedule IV; to provide for the taxability of certain financial services and the exemption therefrom of certain long-term insurance business; to more correctly specify exempt imports; and to provide for matters connected therewith.

(Signed by the President on 21 December 2000)

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

Amendment of section 1 of Act No. 10 of 2000

1. Section 1 of the Value-Added Tax Act, 2000 (hereinafter referred to as the principal Act), is amended -

- (a) by the substitution for paragraph (a) of the definition of "association not for gain" of the following paragraph:

- (a) any institution of religious worship or institution of education, or any charitable organisation, children's home, old-age home, orphanage or institution of a similar nature; or;
- (b) by the insertion after the definition of "exported from Namibia" of the following definition:
"'financial institution' means a banking or like institution authorised or registered under the applicable laws of Namibia to conduct business as such;";
- (c) by the substitution for the definition of "life insurance contract" of the following definition:
"'life insurance contract' means any long-term policy within the meaning of the Long-term Insurance Act, 1998 (Act No. 5 of 1998), but does not include a sinking fund policy or any policy of a nature similar to a sinking fund policy (as defined in section 1(1) of that Act) or a credit guarantee policy;";
- (d) by the substitution for the definition of "services" of the following definition:
"'services' means anything that is not goods or money, and includes any incorporeal movable property other than shares in a company or an interest held by any member in a partnership or close corporation;";
- (e) by the substitution for the definition of "tour operator" of the following definition:
"'tour operator' means any person whose supply mainly consists of package holiday tours with all arrangements made at an inclusive package price;";
- (f) by the substitution for the definition of "unconditional gift" of the following definition:
"'unconditional gift' means a payment voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment [, but does not include any payment made by a public authority or a local authority];"; and
- (g) by the insertion after the definition of "unconditional gift" of the following definition:
"'used goods' means any inanimate goods (including vehicles) which were previously owned;".

Amendment of section 3 of Act No. 10 of 2000

2. Section 3 of the principal Act is amended -
- (a) by the substitution for subsection (6) of the following subsection:

“(6) (a) Subject to section 17(12), the application by a registered person of goods or services acquired for use in a taxable activity to a different use (including the provision of goods or services to an employee for personal use or the application of **[goods (including vehicles)]** passenger vehicles, as defined in section 19(1), for demonstration purposes) shall be deemed to be a supply of those goods or services by the registered person in the course or furtherance of that taxable activity, but only if the registered person has been allowed a deduction for input tax in respect of those goods or services.

(b) The application by a registered person of goods or services acquired for the making of an exempt supply to **[a different use]** the making of a taxable supply shall be deemed to be a taxable supply of those goods or services to the registered person at a value determined in accordance with section 8(4).”;

(b) by the substitution for subsection (19) of the following subsection:

“(19) Where a registered person supplies goods or services and a deduction for input tax paid on the acquisition of such goods or services was denied, the supply by the registered person shall be deemed to be a supply of goods or services made otherwise than in the course or furtherance of a taxable activity: Provided that this subsection shall not apply where section 16(3) applies.”; and

(c) by the substitution for subsection (26) of the following subsection:

“(26) For the purposes of this Act -

(a) the erection or any extension of a building or any improvements thereto; or

(b) a sale of land or buildings or both,

shall be deemed not to be a supply.”.

Amendment of section 4 of Act No. 10 of 2000

3. Section 4 of the principal Act is amended by the addition to paragraph (v) of subsection (1) of the word “or” and the addition to that subsection of the following paragraph:

“(vi) any activity conducted by the State.”.

Amendment of section 8 of Act No. 10 of 2000

4. Section 8 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) Where a supply is made by a registered person for no consideration or for a consideration in money that is less than the open market value of that supply and in respect of that supply -

(a) the recipient is an association not for gain, the value of the supply shall be the amount of such consideration; or

(b) the recipient and supplier are connected persons, the value of the supply shall be the open market value of that supply.”.

Amendment of section 12 of Act No. 10 of 2000

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

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

- (i) the free-on-board value of the goods; and
- (ii) an amount equal to 10 per cent of the amount under subparagraph (i); or”.

Amendment of section 14 of Act No. 10 of 2000

6. Section 14 of the principal Act is amended -

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

“(c) in the case where goods, in circumstances contemplated in paragraph (a) or (b), are imported on a VAT import account arranged as contemplated in subsection (5)(a)(ii)(aa) or (bb), the importer shall, not later than the twentieth day of the month following the month of import, pay the tax due in respect of the import of those goods; or”;
and

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

“(ii) where -

- (aa) the importer, not being a foreign importer, is a registered person and has arranged a VAT import account with the Commissioner;
or
- (bb) the importer, being a foreign importer, has arranged a VAT import account with the Commissioner and has furnished the Commissioner with a guarantee issued by a financial institution, and at the time of the import a sufficient amount of the guarantee so furnished is available to cover the value of any tax due in respect of the import,

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

Amendment of section 15 of Act No. 10 of 2000

7. Section 15 of the principal Act is amended -

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

“(1) Subject to this Act, every person who -

- (a) on the date of commencement of this Act continues to carry on any activity being a taxable activity under this Act, becomes

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

liable to be registered on such date where during the period of 12 months immediately preceding such date that person made supplies in the course or furtherance of that activity the total value of which exceeded N\$200 000; or

- (b) on or after the date of commencement of this Act carries on any taxable activity and is not registered under this Act, becomes liable to be registered -
 - (i) at the end of any period of 12 months, where during that period such person made taxable supplies the total value of which exceeded N\$200 000; or
 - (ii) at the beginning of any period of 12 months, where there are reasonable grounds for believing that the total value of taxable supplies to be made by such person during that period will exceed N\$200 000.; and

- (b) by the substitution for subsection (5) of the following subsection:

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

Amendment of section 16 of Act No. 10 of 2000

- 8. Section 16 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) Registration shall take effect -

- (a) in the case of -
 - (i) any person referred to in section 15(1)(a), notwithstanding anything in this Part, from the date of commencement of this Act; or
 - (ii) any person referred to in section 15(1)(b)(i) or (ii), from the beginning of the second month immediately following the month during which such person’s application for registration was approved by the Commissioner; or
- (b) in the case of any person referred to in section 15(5), from the commencement of the said taxable activities; or
- (c) in the case of an application under section 15(4), from the beginning of the second month immediately following the date of approval of such application by the Commissioner.”.

Amendment of section 18 of Act No. 10 of 2000

- 9. Section 18 of the principal Act is amended -

- (a) by the addition to paragraph (e) of subsection (1) of the word “and” and the addition to that subsection of the following paragraphs:

- “(f) an amount equal to the tax fraction of any amount paid during the tax period by the registered person for used goods acquired from a non-registered person: Provided that a signed receipt reflecting the non-registered person’s name and address, the description (including, where available, serial or other identifying numbers) of the used goods so acquired and the consideration received for those used goods, is obtained from the non-registered person; and
- (g) an amount equal to the tax fraction of the value of the supply of any goods repossessed by a creditor.”; and
- (b) by the insertion after subsection (1) of the following subsection:

“(1A) (a) Where a registered person -

- (i) has made a taxable supply for consideration in money; and
- (ii) has furnished a return in respect of the tax period for which the output tax on that supply was payable and has properly accounted for the output tax on that supply as required under this Act; and
- (iii) has written off so much of the said consideration as has become irrecoverable,

the registered person may, subject to paragraph (b), make a deduction in respect of that portion of the amount of tax charged in relation to that supply as bears to the full amount of such tax the same ratio as the amount of consideration so written off as irrecoverable bears to the total consideration for the supply, and the deduction so made shall be deemed to be input tax for the purposes of section 19.

- (b) Where any amount in respect of which a deduction has been made in accordance with paragraph (a) is at any time wholly or partly recovered by the registered person, that portion of the amount of such deduction as bears to the full amount of such deduction the same ratio as the amount of the irrecoverable debt recovered bears to the debt written off shall be deemed to be tax charged in relation to a taxable supply made during the tax period in which the debt is wholly or partly recovered.”.

Amendment of section 19 of Act No. 10 of 2000

10. Section 19 of the principal Act is amended -
- (a) by the substitution in subsection (1) for the definition of “passenger vehicle” of the following definition:
- “‘passenger vehicle’ means a motor vehicle principally designed or adapted for the transport of nine or fewer seated persons and includes a double cab vehicle, but does not include an ambulance or a motorcycle with **[an engine capacity not exceeding 200 cc]** a consideration not exceeding the consideration contemplated in tariff heading 87.11 of paragraph 2 of Schedule II.”;

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

- (b) by the substitution for paragraph (e) of subsection (2) of the following paragraph:

“(e) any **[goods (including vehicles)]** passenger vehicles applied for demonstration purposes.”;

- (c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) in respect of a supply or import received which is used both for the making of taxable and exempt supplies, the amount calculated in accordance with the following formula -

$$A \times B/C,$$

in which formula -

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

‘B’ is the total amount of taxable supplies made by the registered person, in the case where such person is registered for income tax, during the preceding year of assessment for income tax or, in any other case, during the preceding financial year of the registered person; and

‘C’ is the total amount of all supplies made by the registered person, in the case where such person is registered for income tax, during the preceding year of assessment for income tax or, in any other case, during the preceding financial year of the registered person: Provided that where the registered person is a financial institution, a supply with regard to interest shall be the net interest earned by such institution.”;

- (d) by the substitution for subsection (5) of the following subsection:

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

- (e) by the substitution for subsection (8) of the following subsection:

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

Amendment of section 21 of Act No. 10 of 2000

11. Section 21 of the principal Act is amended by the substitution for subsections (1) and (2) of the following subsections:

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

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

(2) A registered supplier shall not be required to provide a tax invoice if the total consideration for the taxable supply is in cash and does not exceed N\$[20]100.”.

Amendment of section 23 of Act No. 10 of 2000

12. Section 23 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) In this section ‘farming activities’ means agricultural, pastoral or horticultural **[or other farming]** activities and includes the renting of grazing, renting of livestock, conducting of hunting, conducting of farm shops for labourers or any other activities incidental to any of the aforementioned activities.”.

Amendment of section 24 of Act No. 10 of 2000

13. Section 24 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Every registered person shall furnish the Commissioner with a return in respect of each tax period relating to such person **[within 25 days after]** not later than the twenty-fifth day of the month following the end of the tax period, whether or not tax is payable in respect of such period.”.

Amendment of section 27 of Act No. 10 of 2000

14. Section 27 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who is dissatisfied with an appealable decision may lodge an objection to the appealable decision with the Commissioner within 90 days after the **[person was served with a]** date of issue of the notice of the decision or assessment in question or within such extended period as the Commissioner may allow on good cause shown in writing.”.

Amendment of section 28 of Act No. 10 of 2000

15. Section 28 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

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

Amendment of section 31 of Act No. 10 of 2000

16. Section 31 of the principal Act is amended -

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

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

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

(b) Where tax is owing by any person in respect of one or more tax periods, the Commissioner shall not be required to maintain a separate account in respect of each tax period, but may maintain one tax account for such person recording details of all transactions with regard to such tax, and in any legal proceedings for the recovery of any amount of tax due by such person, the Commissioner shall not be required to furnish detailed particulars of the amount claimed.”; and

(b) by the deletion of subsection (10).

Amendment of section 38 of Act No. 10 of 2000

17. Section 38 of the principal Act is amended -

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

“(1) Where -

(a) the total amount deductible by a registered person under section 18(1) for a tax period exceeds the person’s output tax for that period; or

(b) the amount of tax paid by a person (other than in circumstances contemplated in paragraph (a)) was in excess of the amount properly charged to tax under this Act; or

(c) tax paid is claimed by any person, diplomatic or consular mission, or organisation referred to respectively in paragraphs (a), (b) and (c) of subsection (1) of section 40 or by any organisation or government (other than the Government of Namibia) in respect of any technical assistance agreement referred to in subsection (2) of that section,

the [amount of the excess] credit balance arising on the tax account of any such person, mission, organisation or government shall be dealt with in the manner provided in this section.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to this section, if, for any tax period, a registered person files a return reporting an excess referred to in subsection (1)(a), or any person, mission, organisation or government contemplated in subsection (1)(c) files a return of tax paid, the return shall constitute a claim for a refund, and where the Commissioner is satisfied that a refund is due to any such person, mission, organisation or government -

(a) the Commissioner shall first apply the amount of the refund in reduction of any tax, levy, interest or penalty payable by that person, mission, organisation or government in terms of this Act and may then apply any amount remaining or any portion thereof to any unpaid amount due in terms of the Income Tax

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

Act, 1981 (Act No. 24 of 1981), the Sales Tax Act, 1992 (Act No. 5 of 1992), or the Additional Sales Levy Act, 1993 (Act No. 11 of 1993); and

- (b) any credit balance remaining on the tax account of any such person, mission, organisation or government shall be refunded to the person, mission, organisation or government claiming the refund not later than the end of the second calendar month following the date the credit balance arose on the relevant tax account.”;
- (c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
- “(a) **[may] shall** first apply the amount of the excess in **[reduction of any tax, levy, interest, penalty or unpaid amount referred to in] the manner provided in paragraph (a) of subsection (2)[(a)] as if it were a refund contemplated in that paragraph;** and”;
- (d) by the substitution for subsection (11) of the following subsection:
- “(11) Where a non-resident person has exported from Namibia goods acquired from a registered person, the tax paid on those goods shall be refunded to that non-resident person within 30 days of the date of receipt of a claim for the refund of such tax, supported by a tax invoice in proof of the tax paid and documentary proof of the export of the goods.”.

Substitution of section 39 of Act No. 10 of 2000

18. The following section is substituted for section 39 of the principal Act:

“Interest on delayed refunds

39. Where the Commissioner does not refund any amount refundable on the due date for payment prescribed in section 38(2)(b) interest shall be paid on such amount at the rate of 11 per cent per annum, calculated from the due date for payment so prescribed to the date of the payment of such refund: Provided that where the Commissioner withholds a refund as contemplated in section 38(6) no interest shall be so payable.”.

Substitution of section 40 of Act No. 10 of 2000

19. The following section is substituted for section 40 of the principal Act:

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

40. (1) The Permanent Secretary: Foreign Affairs may issue a diplomatic refund authorisation certificate enabling the claiming of refunds of tax paid, in such form and upon such conditions and subject to such restrictions as he or she may prescribe -

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

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

- (b) to any diplomatic or consular mission of a foreign country established in Namibia to the extent provided under the Diplomatic Privileges Act, 1951; or
- (c) to any organisation established by international convention of which Namibia is a member to the extent provided under such convention.

(2) The Commissioner, in consultation with the Minister whose Ministry benefits from any technical assistance agreement entered into between the Government of Namibia and any organisation or the government of any other country, may issue a refund authorisation letter enabling the claiming of refunds of tax paid, in such form and upon such conditions and subject to such restrictions as he or she may prescribe, to such organisation or government in terms of, and for the purpose of attaining the objects of, such technical assistance agreement in relation to every taxable supply of goods or services contemplated in section 6 of this Act, and the Commissioner shall keep and maintain a register of all refund authorisation letters so issued.

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

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

(5) Where tax relief is claimed -

- (a) by any person under subsection (1)(a), the claim for refund of tax paid shall monthly, in such form as the Commissioner may prescribe, be submitted to the Commissioner and shall be accompanied by a tax invoice in support of each amount of tax claimed; or
- (b) by any mission, organisation or government under subsection (1)(b), (1)(c) or (2), whichever may be applicable, the claim for refund of tax paid shall monthly, in such form as the Commissioner may prescribe, be submitted to the Commissioner, and all tax invoices in support of any such claim shall be retained by the mission, organisation or government claiming the refund and be held available for inspection by the Commissioner for a period of one year from the date of the claim.

(6) Notwithstanding anything in this section, the Commissioner may at any time prescribe such further conditions and restrictions as may be necessary to facilitate the administration of claims for refunds under this section.

Amendment of section 47 of Act No. 10 of 2000

20. Section 47 of the principal Act is amended by the substitution for paragraph (b) of the definition of "records" of the following paragraph:

- "(b) any accounting records required to be maintained in terms of section 48(2), irrespective of whether such records are maintained in or outside Namibia;
or".

Amendment of section 48 of Act No. 10 of 2000

21. Section 48 of the principal Act is amended -

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Every registered person and every person other than a registered person who is liable for the payment of tax under this Act shall, in particular, maintain the following records in the English language at such registered or other person’s place or places of business in Namibia, namely -”;

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

“(2) Every registered person and every person other than a registered person who is liable for the payment of tax under this Act shall maintain accounting records in the English language at such registered or other person’s place or places of business in Namibia.”;

- (c) by the substitution for subsection (3) of the following subsection:

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

- (a) those accounting records are maintained on a centralised computer system in the country where such registered or other person’s main activities are located; and
- (b) that centralised computer system is linked to such registered or other person’s place or places of business in Namibia; and
- (c) such registered or other person, if at any time requested thereto in writing by the Commissioner -
 - (i) furnishes the Commissioner with such computer print-outs as may be specified in that request; or
 - (ii) grants a taxation officer (employed in the directorate of Inland Revenue) access to that centralised computer system,

within 24 hours from receiving that request,

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

- (d) by the substitution for subsection (5) of the following subsection:

“(5) Records required to be maintained in terms of [subsections (1) and (2)] this section shall be retained for a period of at least five years after the end of the tax period to which they relate, and such records shall (in so far as they are required to be so retained) be produced on demand by a taxation officer.”.

Amendment of section 49 of Act No. 10 of 2000

22. Section 49 of the principal Act is amended by the addition of the following subsection:

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

“(8) Nothing in subsection (1) contained shall be construed so as to allow a taxation officer to exercise any power granted by that subsection (except paragraph (g)) with respect to records that are no longer required to be retained in terms of section 48(5).”.

Amendment of section 53 of Act No. 10 of 2000

23. Section 53 of the principal Act is amended -

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

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

(b) by the substitution for subsection (4) of the following subsection:

“(4) Notwithstanding anything in any law or the common law, the amount that may be accumulated and be recovered in respect of interest levied in accordance with this section shall not be limited to, and may exceed, the amount of the principal debt due, whether such principal debt represents tax, penalties or interest, or a combination thereof.”.

Amendment of section 55 of Act No. 10 of 2000

24. Section 55 of the principal Act is amended by the deletion of subsection (3).

Substitution of section 59 of Act No. 10 of 2000

25. The following section is substituted for section 59 of the principal Act:

“Failure to comply with demand or provide reasonable assistance

59. Any person who -

(a) without sufficient cause fails to produce on demand any records required to be retained in terms of section 48(5) to a taxation officer; or

(b) fails to provide a taxation officer with reasonable facilities and assistance as required by section 49(4),

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

Substitution of section 67 of Act No. 10 of 2000

26. The following section is substituted for section 67 of the principal Act:

“Penalty for failure to furnish returns or import declarations

67. Any person who fails to furnish any return or import declaration within the period required by this Act shall be liable for the payment of a penalty of N\$100 for each day during which the return or import declaration remains outstanding.”.

Substitution of section 83 of Act No. 10 of 2000

27. The following section is substituted for section 83 of the principal Act:

“Arrangements to overcome difficulties or anomalies

83. If in any case the Commissioner is satisfied that in consequence of the manner in which any registered person or any person other than a registered person 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 Commissioner and such registered or other person may agree as to the manner in which those provisions shall be applied in the case of such registered or other person, and they may in such agreement make such arrangements as to the application of those provisions as appear to overcome such difficulties or anomalies: Provided that such agreement shall not have the effect of substantially reducing or increasing the ultimate liability of such registered or other person for tax levied under this Act.”.

Amendment of section 87 of Act No. 10 of 2000

28. Section 87 of the principal Act is amended -

(a) by the substitution for subsection (2) of the following subsection:

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

(b) by the deletion of subsection (3);

(c) by the substitution for subsections (4), (5), (6), (7), (8), (9) and (10) of the following subsections:

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

(5) For the purposes of subsection (4), where a registered person held, at the end of the last business day before the beginning of the first tax period after the date of commencement of this Act, qualifying goods being goods acquired not more than six months before the tax becomes effective, and the Commissioner is satisfied that sales tax or additional sales levy has been paid by the registered person on the acquisition or import of those

goods, the amount of the sales tax and additional sales levy **[deduction]** claimable shall be the amount of such taxes paid on such goods, but with respect to each item qualifying for the **[deduction]** claim, the sales tax or additional sales levy shall not exceed the amount of tax which would have been payable had the goods been subject to tax chargeable under this Act.

(6) If **[, in any tax period,]** a registered person has sales tax or additional sales levy **[deductible]** claimable under subsection (4), the amount **[deductible]** claimable shall be deemed to be input tax deductible under section 18 in the first tax period after the date of commencement of this Act: **[and subject to the provisions of section 38 relating to the overpayment of tax]** Provided that a claim for the deduction, in such form as the Commissioner may prescribe, shall be submitted to the Commissioner within 14 days of the date of commencement of this Act or within such extended period as the Commissioner may allow on good cause shown in writing.

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

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

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

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

(d) by the addition to subsection (11) of the following paragraph:

“(c) In respect of any consideration -

- (i) levied before the date of commencement of this Act on supplies made after such date, tax on such supplies shall be levied after such date; and
- (ii) levied after the date of commencement of this Act on supplies made before such date, no tax shall be levied under this Act, but, where applicable, sales tax shall pursuant to section 87(2) be levied after such date.”.

Amendment of Schedule II to Act No. 10 of 2000

29. Schedule II to the principal Act is amended -

(a) in paragraph 2 -

(i) by the deletion of tariff heading 42.00;

(ii) by the insertion after tariff heading 33.04 of the following tariff headings:

42.01	<i>Subheading:</i>	4201.00	Saddlery and harness for any animal (including traces, leads, knee pads, saddle cloths, saddle bags, dog coats, and the like) of leather.
42.02	<i>Subheading:</i>	4202.11	Trunks, suitcases, vanity cases, executive cases, briefcases, school satchels and similar containers with outer surface of leather, of composition leather or of patent leather.
		4202.21	Handbags, whether or not with shoulder strap, including those without handle, with outer surface of leather, of composition leather or of patent leather.
		4202.31	Articles of a kind normally carried in the pocket or in the handbag with outer surface of leather, of composition leather or of patent leather.
		4202.91	Other with outer surface of leather, of composition leather or of patent leather.
42.03	Articles of apparel and clothing accessories, of leather or of composition leather.		
42.04	Articles of leather or of composition leather, of a kind used in machinery or mechanical appliances for other technical uses.		
42.05	Other articles of leather or of composition leather.”; and		

(iii) by the substitution for tariff heading 87.11 of the following tariff heading:

“87.11 Motorcycles with a consideration (as defined in section 1 of this Act) exceeding N\$100 000, or such greater amount as the Minister may, subject to paragraph 3, determine.”; and

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

- “3. The Minister shall, not later than 31 March 2001 and annually thereafter, review, with reference to the Interim Consumer Price Index - Windhoek (published by the Central Statistics Office), the **[amount]** amounts specified in tariff **[heading]** headings 87.03 and 87.11 of this Schedule and, if necessary, increase the said **[amount]** amounts accordingly by notice in the *Gazette*.”

Amendment of Schedule III to Act No. 10 of 2000

30. Schedule III to the principal Act is amended -

(a) by the substitution in paragraph 1 for the definition of “maize meal” of the following definition:

“‘maize meal’ means -

(a) maize meal graded in accordance with the standard of composition specified in Government Notice No. 72 of 14 May 1994 (or any amendment thereof), issued under section 19(1) of the Agronomic Industry Act, 1992 (Act No. 20 of 1992), as super maize meal, special maize meal, sifted maize meal, unsifted maize meal, samp or mealie rice; or

(b) maize intended to be used for the production of maize meal contemplated in paragraph (a).”; and

(b) by the addition to item (iv) of subparagraph (o) of paragraph 2 of the word “or” and the addition to the said subparagraph (o) of the following item:

“(v) by a tour operator;”.

Amendment of Schedule IV to Act No. 10 of 2000

31. Schedule IV to the principal Act is amended -

(a) in paragraph 1 -

(i) by the insertion before the definition of “commercial rental establishment” of the following definition:

“‘asset management services’ means -

(a) services for which asset management fees are earned by a person approved in terms of section 4(1) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), who as a regular feature of such person’s business, manages, administers or holds in safe custody on behalf of any other person any investment in stocks, shares, bonds, treasury bills, cash, debentures (whether issued by the State or a company having a share capital or any other body corporate or association of persons), notes, units of stock issued in place of shares, and options on stocks or shares or on such debentures, notes or units, and rights thereto, and includes -

(i) shares in a private company; and

- (ii) stocks or shares in a public company which cannot be acquired or transferred without the consent or approval of the directors or representatives of the company, other than such consent or approval required by, under or by virtue of any law, or options on or rights to such stocks or shares; and
- (iii) treasury bills, bankers acceptances, negotiable certificates of deposit issued by a banking institution as defined in section 1(1) of the Banking Institutions Act, 1998 (Act No. 2 of 1998), or by a building society registered under the Building Societies Act, 1986 (Act No. 2 of 1986), or any similar short-term instruments, or options on or rights to such bills, acceptances, certificates or instruments; and
- (iv) cash; and
- (v) offshore investments; or
- (b) services for which fees are earned by a person registered as contemplated in section 3(1) of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), for managing unit portfolios;”;
- (ii) by the insertion after the definition of “education services” of the following definition:

“‘financial services’ means -

- (a) granting, negotiating or dealing with loans, credit, credit guarantees or any security for money, including management of loans, credit or credit guarantees by the grantor; or
- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques or negotiable instruments, other than debt collection or factoring; or
- (c) transactions relating to financial derivatives, forward contracts, options or similar arrangements; or
- (d) transactions relating to shares, stocks, bonds, treasury bills, unit portfolios or other securities, other than custody services; or
- (e) provision of asset management services; or
- (f) provision, or transfer of ownership, of a life insurance contract or the provision of reinsurance in respect of any such contract; or
- (g) provision, or transfer of ownership, of an interest in a scheme whereby provision is made for the payment or granting of benefits by a benefit fund, provident fund, pension fund, retirement annuity fund or preservation fund; or
- (h) provision of intermediation services by a buy-aid society or medical-aid fund; or
- (i) the arranging of any of the services referred to in paragraphs (f) to (h), inclusive, or the management of any fund or entity referred to in paragraphs (g) and (h);” and

- (iii) by the deletion of the definition of "used goods";
- (b) by the substitution for subparagraph (a) of paragraph 2 of the following subparagraph:
 - "(a) A supply of financial services referred to in -
 - (i) paragraphs (a) to (c), inclusive, of the definition of 'financial services', to the extent that the consideration payable in respect of such services is not any fee, commission or similar charge; and
 - (ii) paragraphs (d) to (i), inclusive, of that definition;" and
- (c) by the deletion of subparagraph (g) of paragraph 2.

Substitution of Schedule V to Act No. 10 of 2000

32. The following Schedule is substituted for Schedule V to the principle Act:

"SCHEDULE V
(Section 13)

Exempt Imports

1. In this Schedule -
 - 'commencement date' means the date of the coming into operation of this Act;
 - 'specified country' means Botswana, Lesotho, South Africa and Swaziland.
2. The following imports are specified as exempt imports for the purposes of section 13:
 - (a) An import of goods or services by an export processing zone enterprise or an export processing management company for use by that enterprise or company in an export processing zone;
 - (b) an import of services where the recipient of the services received the services in respect of a technical assistance agreement referred to in section 40(2);
 - (c) goods imported for welfare or charitable purposes consisting of used clothing purchased by or forwarded unsolicited and free to any church or any welfare organisation as defined in section 1 of the National Welfare Act, 1965 (Act No. 79 of 1965), for distribution free of charge by such church or organisation to indigent persons, subject to production at the time of importation of a written declaration by such church or organisation that the goods have been purchased or forwarded unsolicited and free and that they will be distributed free of charge to indigent persons;
 - (d) an import of urns and coffins containing human remains, together with flowers or wreaths;

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

- (e) an import of ships, boats and other vessels (excluding yachts and other vessels for pleasure or sports, rowing boats and canoes), in such quantities and at such times and subject to such conditions as the Permanent Secretary: Trade and Industry may allow by specific permit;
- (f) goods imported for use solely in operations in connection with the prospecting for, or the mining of, natural oil or natural gas;
- (g) an import of goods which are entered or are required to be entered in terms of the Customs and Excise Act, where -
- (i) the goods fall under any heading or rebate item and description mentioned below, to the extent indicated and subject to the Notes set out in Schedule 4 to the Customs and Excise Act, and in respect of which either no customs duty is payable or a rebate of customs duty is granted in terms of the said Act:

<i>Heading</i>	<i>Subheading</i>	<i>Article Description</i>
27.10	2710.00.12	Petrol, leaded.
	2710.00.12	Petrol, unleaded.
	2710.00.12	Distillate fuels (for example gas oil and diesel oil).
	2710.00.14	Kerosene (excluding mixtures of kerosene with lubricity agents).
27.16		Electrical energy.
49.11	4911.10.20	Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries.

<i>Rebate Item</i>	<i>Description</i>
406.00	Goods for Heads of State, Diplomatic and other Foreign Representatives.
407.01	Personal effects and sporting and recreational equipment, new or used: <ol style="list-style-type: none"> (1) Imported either as accompanied or unaccompanied passengers' baggage by non-residents of Namibia for their own use during their stay in Namibia; (2) exported by residents of Namibia for their own use while abroad and subsequently reimported either as accompanied or unaccompanied passengers' baggage by such residents.

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

rate of zero per cent under section 9, if the supply had taken place on or after the commencement date.

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

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

- 409.07 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Permanent Secretary: Trade and Industry, provided -
- (1) the specific permit is obtained before the temporary exportation of the goods; and
 - (2) any additional conditions which may be stipulated in the said permit are complied with; and
 - (3) the exemption shall apply only to the extent of the value of the goods sent from Namibia on the day the goods left Namibia.
- 412.03 Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in Namibia.
- 412.04 Used property of a person normally resident in Namibia who dies while temporarily outside Namibia.
- 412.10 *Bona fide* unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed N\$400 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars)) consigned by natural persons abroad to natural persons in Namibia.
- 412.11 Goods imported -
- (1) for the relief of distress of persons in cases of famine or other national disaster; or
 - (2) under any technical assistance agreement contemplated in subparagraph (b); or
 - (3) in terms of an obligation under any multilateral international agreement to which Namibia is a party.
- 412.12 Goods imported for any purpose agreed upon between the Governments of Namibia, Botswana, Lesotho, South Africa and Swaziland.
- 470.01 Goods temporarily admitted for processing, provided such goods do not become the property of the importer.
- 470.02 Goods for repair, cleaning or reconditioning.

- 480.00 Goods temporarily admitted for specific purposes.
- 490.00 Goods temporarily admitted subject to exportation in the same state; or
- (ii) the goods are any of the following in respect of which the Controller of Customs and Excise has in terms of section 40(2) of the Customs and Excise Act granted permission that entry need not be made:
- (aa) Containers temporarily imported;
- (bb) human remains;
- (cc) goods which in the opinion of the Commissioner for Customs and Excise are of no commercial value;
- (dd) goods imported under an international carnet;
- (ee) goods of a value for customs duty purposes not exceeding N\$500, and on which no such duty is payable in terms of Schedule 1 to the said Act; or
- (iii) the goods are printed books, newspapers, journals and periodicals imported into Namibia by post of a value for duty purposes under the Customs and Excise Act not exceeding N\$100 per parcel;
- (h) an import of goods which are not entered or are not required to be entered in terms of the Customs and Excise Act, where the goods are imported into Namibia from any specified country and are -
- (i) goods referred to in subparagraph (a), (b), (c), (d), (e) or (f), or subparagraph (g)(i) under Heading Nos. 27.10, 27.16 and 49.11, and Rebate Item Nos. 406.00, 407.01, 407.02, 407.06, 409.01, 409.02, 409.04, 409.06, 409.07, 412.03, 412.04, 412.10, 412.11, 412.12, 470.01, 470.02, 480.00 and 490.00, to the extent indicated; or
- (ii) goods referred to in subparagraph (g)(ii) or (iii), to the extent indicated;
- (i) 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 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;
- (j) 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

Act No. 34, 2000

VALUE-ADDED TAX AMENDMENT ACT, 2000

and without a change in ownership, if such goods were acquired in Namibia before the commencement date or, where such goods were so acquired on or after that date, tax under this Act was paid in respect of the acquisition thereof;

- (k) goods which are shipped or conveyed to Namibia for transshipment or conveyance to any other country;
- (l) an import by a fishing enterprise of unprocessed catches of fish and crustaceans, molluscs and other aquatic invertebrates caught within Namibian and international waters.

Registration before commencement of Act

33. Any registration effected before the date of commencement of the Value-Added Tax Act, 2000 (Act No. 10 of 2000), and purporting to be a registration under section 16 of that Act, shall be deemed to be a registration under the said section 16 on such date.

Short title and commencement

34. This Act shall be called the Value-Added Tax Amendment Act, 2000, and shall come into operation or be deemed to have come into operation on the date of commencement of the Value-Added Tax Act, 2000 (Act No. 10 of 2000).
