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Government Notice

OFFICE OF THE PRIME MINISTER

No. 121 2007

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. 2 of 2007: Value-Added Tax Amendment Act, 2007.

Act No. 2, 2007 VALUE-ADDED TAX AMENDMENT ACT, 2007**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 the expression “debt security” and to redefine the expression “used goods”; to provide that a registered person may claim Input VAT incurred within a period of three years from the time he or she becomes entitled to such deduction; to ensure that a registered person may not claim a deemed Input VAT when such person acquires immovable property from another person; to ensure that the deemed Input VAT provision is only applicable when used goods are acquired within the borders of Namibia; to delete words that form part of the definition of a “passenger vehicle” that are referring to Schedule II which was already deleted; to insert provisions that will be applicable to agents and auctioneers; to delete the provision that requires a registered person to pay or provide sufficient security before the Commissioner of Inland Revenue would consider an objection to an assessment; and to insert the issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debt security as an exempt supply; and to provide for incidental matters.

(Signed by the President on 22 June 2007.)

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

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

1. Section 1 of the principal Act is amended -
 - (a) by the insertion after the definition of “Customs and Excise Act” of the following definition:

“debt security’ means -

 - (a) an interest in or right to be paid money; or
 - (b) an obligation or liability to pay money,

that is, or is to be, owing by any person, but does not include a cheque; and;”;
 - (b) by the substitution for the definition of “used goods” of the following definition:

““used goods’ means any inanimate goods (including vehicles but excluding animals) which were previously owned;”.

Act No. 2, 2007 VALUE-ADDED TAX AMENDMENT ACT, 2007**Amendment of section 18 of Act No. 10 of 2000, as amended by section 9 of Act No. 34 of 2000, as amended by section 9 of Act No. 6 of 2002**

2. Section 18 of the principal Act is amended -
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) subject to this section and section 19, the total amount of input tax -
- (i) payable in respect of taxable supplies made to the registered person during the tax period, or during the preceding **[two]** tax periods (and has not been claimed under this subparagraph in those periods): Provided that no deduction in relation to that supply shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction; and
- (ii) paid in respect of any import of goods by the registered person during the tax period, or during the preceding **[two]** tax periods (and has not been claimed under this subparagraph in those periods), in the course or furtherance of a taxable activity carried on by the registered person: Provided that no deduction in relation to that importation shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction; and
- (iii) allowed under section 20 for the tax period; and”;
- (b) by the substitution for paragraph (f) of subsection (1) of the following paragraph:
- “(f) an amount equal to the tax fraction of any amount paid during the tax period by the registered person for used goods (excluding immovable property) acquired from any person in Namibia who at the time of acquisition was not entitled to claim input tax on those used goods: Provided that a signed receipt reflecting that other person’s name and address, the description (including, where available, serial or other identifying numbers) of the used goods so acquired and the consideration received for those used goods, is obtained from that other person; and”.

Amendment of section 19 of Act No. 10 of 2000, as amended by section 10 of Act No. 34 of 2000 and section 10 of Act No. 6 of 2002

3. Section 19 of the principal Act is amended 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 a**

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consideration not exceeding the consideration contemplated in tariff heading 87.11 of paragraph 2 of Schedule II].”.

Amendment of section 27 of Act No. 10 of 2000, as amended by section 14 of Act No. 34 of 2000

4. Section 27 of the principal Act is amended by the deletion of subsection (4).

Insertion of section 46A in Act No. 10 of 2000

5. The following section is inserted in the principal Act after section 46:

“Agents and auctioneers

46A. (1) For the purposes of this Act, where an agent makes a supply of goods or services for and on behalf of any other person who is the principal of the agent, the supply is deemed to have been made by the principal and not by the agent: Provided that, where the supply is a taxable supply and the agent is a registered person -

- (a) the agent may, despite anything to the contrary in this Act, issue a tax invoice or a credit note or a debit note in relation to such supply as if the agent had made a taxable supply; and
- (b) to the extent that the tax invoice or credit note or debit note relates to such supply, the principal may not also issue a tax invoice or a credit note or a debit note, as the case may be.

(2) For the purposes of this Act, where any registered person makes a taxable supply of goods or services to an agent who is acting on behalf of another person who is a principal for the purposes of that supply, that supply is deemed to be made to that principal and not to such agent: Provided that -

- (a) such agent may nevertheless request that he or she be provided with a tax invoice; and
- (b) the vendor may issue a tax invoice or a credit note or a debit note as if the supply were made to such agent.

(3) For the purposes of this Act, where any goods are imported into Namibia by an agent who is acting on behalf of another person who is the principal for the purposes of that importation, that importation is deemed to be made by that principal and not by such agent: Provided that a bill of entry or other document prescribed in terms of the Customs and Excise Act in relation to that importation may nevertheless be held by such agent.

(4) Despite subsection (3), where any goods are imported into Namibia by an agent who is acting on behalf of another person who is the principal for the purposes of that importation, and -

- (a) the agent is a registered person;
- (b) the principal is not a resident in Namibia and is not a registered person;

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- (c) the goods are imported by the principal for the purposes of a supply made or to be made by him or her to a person in Namibia; and
- (d) the agent obtains and retains documentary proof, as is acceptable to the Commissioner, that
 - (i) he or she paid the tax on importation on behalf of the principal; and
 - (ii) the agent and the principal agreed in writing that the tax referred to in subparagraph (i) has not been and will not be reimbursed to the agent by the principal,

that importation is, for the purposes of this Act, deemed to have been made by the agent and not by the principal.

- (5) Where -
 - (a) a tax invoice or a credit note or debit note in relation to a supply has been issued -
 - (i) by an agent as contemplated in subsection (1); or
 - (ii) to an agent as contemplated in subsection (2); or
 - (b) a bill of entry or other document prescribed in terms of the Customs and Excise Act in relation to the importation of goods is held by an agent as contemplated in subsection (3),

the agent shall -

- (i) maintain sufficient records to enable the name and address and registration number of the principal to be ascertained and in respect of all supplies made by or to the agent on behalf of the principal; and
- (ii) notify the principal in writing, within 21 days of the end of the calendar month during which the supply was made or received, of the particulars contemplated in section 21 in relation to such supplies.

(6) For the purposes of subsection (7), “auctioneer” means a registered person carrying on a taxable activity which comprises or includes the supply by him or her by auction, of goods as an auctioneer or agent for or on behalf of another person (hereinafter in this section referred to as a principal).

(7) Despite anything to the contrary in the preceding provisions of this section, where the principal and the auctioneer agree to have a supply by auction of any goods, other than a taxable supply, treated as if that supply were made by the auctioneer and not by the principal, the supply is charged with tax as if it were made by the auctioneer in the course of furtherance of the auctioneer’s taxable activity and the auctioneer may -

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- (a) recover the amount of tax charged on that supply from the principal as a debt together with the costs of recovery in any court of competent jurisdiction; or
- (b) retain or deduct such amount and costs out of any money in the auctioneer's hands belonging or payable to the principal,

provided that the auctioneer or agent shall maintain the records contemplated in section 48 as if the principal made a supply of goods to him or her, not being a taxable supply.

(8) Despite anything to the contrary in subsection (2), where any registered person makes a taxable supply (other than a supply that is charged with tax at the rate of zero per cent under section 9) of goods or services to an agent who is a registered person and is acting for or on behalf of another person who is the principal for the purposes of that supply, and -

- (a) the principal is not a resident in Namibia and is not a registered person;
- (b) the supply is directly in connection with -
 - (i) the exportation, or the arranging of the exportation, of goods from Namibia to an export country outside Namibia; or
 - (ii) the importation, or the arranging of the importation, of goods to Namibia from any country outside Namibia,

including the transportation of those goods within Namibia as part of such exportation or importation, as the case may be; or

- (c) the supply is of services which comprise the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while present in Namibia or is of services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft,

this Act, where agent and the principal agree, applies as if the supply were made to the agent and not to the principal.”

Amendment of Schedule IV to Act No. 10 of 2000, as amended by section 31 of Act No. 34 of 2000 and section 10 of Act No. 12 of 2004

6. Schedule IV to the principal Act is amended by the substitution for paragraph (b) of the definition of “financial services” in paragraph 1 of the following paragraph:

- “(b) transactions concerning money, deposit and current accounts, payments, transfers, debts (including the issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debt security), cheques or negotiable instruments, other than debt collection or factoring; or”.

Act No. 2, 2007 VALUE-ADDED TAX AMENDMENT ACT, 2007**Short title and commencement**

7. (1) This Act is called the Value-Added Tax Amendment Act, 2007, and commences on the first day of the month following the month of its publication in the *Gazette*.

(2) Section 2 is deemed to have commenced on 27 November 2000.
