

REPUBLIC OF VANUATU

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BILL FOR THE  
VALUE ADDED TAX ACT NO. OF 1998

Explanatory Note EXPLANATORY NOTES TO VALUE ADDED TAX BILL 1998

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**Note:** The following are general explanatory notes to the Bill. The paragraph numbers and subparagraph numbers refer to the numbers of sections and subsections in the Bill.

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1. This section states the purpose of the Bill.
  2. This section defines certain important terms. The following should be noted.

The exclusion from the definition of “consideration” of unconditional gifts is designed to avoid difficulties potentially arising for charitable and other non-profit bodies.

The definition of “registered person” includes a person who is liable to be registered but has defaulted in completing the necessary formalities. The definition ensures that the person remains subject to VAT obligations.

The definition of “services” includes anything which is not “goods” and hence includes choses in action (choses in action are personal rights or property which can only be claimed or enforced by action, and not by taking physical possession – debts, shares and copyrights are examples of choses in action).

The definition of “taxable supply” includes zero-rated supplies and accordingly ensures that input tax deductions are fully available notwithstanding the fact that certain outputs are zero-rated.
  3. This section includes certain things within the concept of “supply” so as to ensure that tax is payable in respect of amounts received. Specifically included are sales by a creditor of goods on behalf of the registered person debtor, grants or subsidies from the State, a deemed supply of all taxable activity assets on cessation of registration, indemnity payments received under contracts of insurance if (in general terms) the insurance contract was itself subject to VAT and amounts received for participation in lotto or casino games of chance. Subsection (7) separates out the

taxable and zero-rated aspects of a supply which is partially one and partially the other.

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4. This section broadly defines the concept of “taxable activity” which is one of the key elements necessary in order for tax to be imposed on a supply. Generally it includes anything involving the continuous or regular supply of goods or services for consideration. It does not matter whether the activities are profit-making or not but the concept does not include hobbies, provision of employment services under a contract of service, directors’ fees (other than those earned in connection with a taxable activity) and an activity to the extent to which it involves exempt supplies. Anything done in connection with the commencement or termination of an activity is treated as being in the course of the activity.
5. This section contains rules to clarify precisely when a supply of goods and services is treated as taking place, which is primarily relevant for determining in which taxable period tax on the supply must be reported. Generally a supply takes place as soon as a tax invoice is issued, a payment is received or the goods or services are delivered (whichever is the earliest). Of particular note are the rules inserted to deal with agreements for hire or agreements involving periodic or progressive supplies, with the general approach being that the arrangement is treated as involving successive supplies. There is also a specific rule to deal with circumstances where it is not possible at the time of supply to identify the total amount of consideration.
6. This section defines the value of a supply for the purposes of the calculation of the VAT amount. Generally the value of a supply is taken by aggregating the consideration in money and any non-monetary consideration valued at its open market value. An amount equal to any value added tax charged is then deducted from the total so as to produce a VAT-exclusive amount. An anti-avoidance rule applies to transactions between related parties to impose an open-market value. Specific rules are introduced to deal with certain specific circumstances, such as gambling.
7. This section defines the place of supply, as supply in Vanuatu is another key element to the imposition of the tax. In the case of goods, generally the supply is treated as taking place in Vanuatu if the goods are in Vanuatu but a special rule applies in the case of importation and exportation. In the case of services, a supply is treated as taking place in Vanuatu if the supplier operates in Vanuatu.
8. This section defines where a supplier operates and generally treats a supplier as operating in Vanuatu if resident in Vanuatu or operating through a branch, agency or fixed establishment in Vanuatu in respect of a supply.
9. This section ensures that the State is liable to VAT in respect of supplies made by State agencies and instruments, including local authorities and provincial governments.
10. This section imposes VAT on supplies by a registered person in the course of a taxable activity in Vanuatu and on importation of goods into Vanuatu. Subsection (3) excludes from the application of the tax the exempt supplies listed in the First Schedule and the exempt importations listed in the Second Schedule. Subsection (4) ensures that the rules in the Import Duties Act [CAP 91]] for collection of tax apply to VAT payable on importation.

11. ~~11.~~—This section imposes the rate of tax. Generally the rate of tax is 12.5% applied to the value of the supply. In the case of importation, 12.5% applies to the aggregate of the value of the goods for customs duty purposes and any duties imposed on importation. Subsection (2) overrides the general rule and applies a zero-rate of VAT to the zero-rated supplies listed in the Third Schedule.

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12. This section imposes the registration requirement, being another a key element of the circumstances which must exist in order for the tax to apply. Generally a person must be supplying goods or services in the course of a taxable activity for a total consideration exceeding 4 million vatu per annum. The value of exempt supplies is disregarded as is the value of any extraordinary supplies occurring due to a substantial change in the scale of taxable activity being carried on. There is provision for voluntary registration. Subsection (7) excludes from calculation of the threshold amount any amounts which in fact become payable simply to recover VAT.

13. This section provides for cancellation of registration on application or if the Director is satisfied that a registered person is no longer liable to be registered and chooses to cancel registration.

14. A registered person must notify the Director of such matters as changes of address etc.

15. This section defines taxable periods in respect of which VAT is payable. In broad terms, taxpayers who have an annual turnover of more than VT 8 million have a monthly taxable period (which means they must make VAT returns each calendar month). Taxpayers with an annual turnover of VT 8 million or less are assigned a quarterly taxable return period (which means they must make VAT returns in respect of three monthly periods). The end of a quarterly return period will be the last day of March, June, September and December. The first return period for taxpayers placed in category B will be for to months beginning on 1 August and ending on 30 September.

16. This section imposes a requirement for returns in respect of each taxable period, by the 27th day of the month following the taxable period. A specific return is required to be filed by a creditor selling goods on behalf of a registered person debtor. The Director may extend the time of filing a return.

17. This section specifies the circumstances where taxpayers may account for VAT on either an invoice or a payments basis. Subsection (4) stipulates requirements where a taxpayer changes from one accounting basis to another.

18. This section imposes a requirement for VAT to be paid by the taxpayer, or refunded by the Director, where a taxpayer changes from an invoice to a payments basis of accounting for VAT or *vice versa*. Generally, if a taxpayer changes to a payments basis, VAT must be paid in respect of all accrued inputs (less accrued outputs) which will result in cash payments entries in future. If a taxpayer changes to an invoice basis, VAT must be paid in respect of all accrued outputs (less accrued inputs) which have not previously resulted in cash payment entries.

19. ~~19.~~—This section provides rules for calculation of the tax. Generally the amount of tax is to be calculated by aggregating all amounts of tax payable in respect of

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supplies by the registered person where the time of supply falls during the taxable period and then deducting all amounts of tax payable in respect of input supplies acquired by the registered person during the taxable period. Included in the amounts able to be deducted are VAT amounts payable on importation and an amount equal to one-ninth of all acquisitions of secondhand goods from non-registered persons.

Subsection

(5)

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imposes an additional requirement for an input tax deduction: The goods or services must be acquired wholly for the purposes of making taxable supplies or else the input tax deduction will only be available to the extent to which the goods or services are acquired for the purpose of making taxable supplies. Under subsection (6) the extent to which goods or services are acquired for the purpose of making taxable supplies is to be determined having regard to the circumstances in the taxable period of acquisition unless the Director considers that a longer period is appropriate. Under subsection (7), in order for an input tax credit to be available in respect of tax payable on supplies acquired from other registered persons, a tax invoice must be held. Under subsection (8), it is possible to defer the claiming of an input tax credit deduction until a later return period in certain circumstances. In broad terms, under section 8A, a deduction may be claimed in respect of private goods purchased after 1 August 1998 that are subsequently introduced to a taxable activity.

20. This section imposes a requirement to pay tax by the day upon which the return must be filed.
21. This section generally imposes the requirement on a registered person to provide a tax invoice to another registered person within 28 days of request. There is provision for recipients to create tax invoices if the Director agrees. The content of tax invoices is to be determined by regulation. There is a prohibition on providing multiple tax invoices. No tax invoice needs to be prepared if the consideration in money for the supply does not exceed 5,000 vatu.
22. This section imposes various rules for dealing with circumstances where a supply has been cancelled or the supply or the consideration for the supply has been changed in nature or amount, rendering a tax invoice incorrect or a return incorrect. Generally, the registered person must make an appropriate adjustment in the return for the taxable period when the change becomes apparent and must either pay additional tax or claim a further deduction as appropriate. Further, the registered person must provide the recipient with a credit note if a tax invoice has shown an excessive amount of tax or a debit note if a tax invoice has shown an insufficient amount of tax. Again, the content of credit notes and debit notes is to be determined by the Director and there is provision for the Director to allow recipients to create credit notes or debit notes. A recipient issued with a credit note or a debit note is required to make appropriate adjustments in the recipient's own tax return for the period in which the credit note or debit note is received.
23. This section provides for rules governing bad debts. Generally, a registered person who has been unable to recover an amount payable in respect of a taxable supply can claim a deduction for the tax previously payable to the extent to which it becomes excessive due to the bad debt amount.

24. This section provides for the Director to issue assessments if returns are not filed or are incorrect.
25. This section deems assessments to be correct except as disputed in objection proceedings and provides that assessments will not be invalidated by any procedural failures.

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26. This section provides for objections to assessments for any taxable period to be made within 28 days of the person receiving the assessment for that period. Where the Director amends an earlier assessment, the right of objection is confined only to any fresh liability imposed (or existing liability increased) on the person. Subsections (2) to (10) set out the procedures for the Director to consider the objection and also for a taxpayer to request that a ruling by the Director on the person's objection be referred to the Tribunal.
27. This section provides that the Tribunal may confirm, cancel or alter an assessment.
28. This section provides that rulings of the Tribunal and Supreme Court can be subject to appeal to the Supreme Court and Court of Appeal, respectively.
29. This section provides that the obligation to pay tax is not suspended by any objection or appeal.
30. This section provides that no assessment is to be set aside by the Tribunal or Court on the basis of procedural errors.
31. This section imposes additional taxes for late payment or evasion. Generally, any tax not paid by the due date is subject to additional tax of 10% immediately and a further 2% for each complete month during which a failure continues. (It should be noted that the 10% will not apply if an assessment is not issued until after the original due date and will only apply if tax is not paid by the new due date set in the assessment). If any under-payment results from fraud, an additional tax penalty of 200% of the tax payable is applied.
32. Section 32 provides that tax payable is recoverable as a debt due to the State, although the Director (after consultation with the Director General of the Ministry of Finance and Economic Management) can write off any debt if the Director is satisfied that it is irrecoverable.
33. This section gives the Director power to direct any person who pays amounts to a taxpayer in default to withhold a portion of the payments and forward them to the Department.
34. This section sets out procedures to be followed if a defendant is absent from Vanuatu or cannot be traced.
35. This section sets out the particulars that must be included in any claim or demand conveyed to the defendant.

36. This section provides that costs may be awarded against the Director but that any costs awarded will be payable only from money appropriated by Parliament.
37. This section provides that proceedings will not be affected by any vacancy or change in the office of the Director.
38. This section allows the Director to distrain on goods and chattels for unpaid tax.

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39. This section imposes a priority for unpaid tax in circumstances of liquidation, bankruptcy, receivership etc, generally ranking the unpaid tax after preferential claims for wages but before other fixed charges and claims.
40. This section provides that no statute of limitation will bar any action for recovery of tax.
41. This section provides rules for refund of tax in circumstances where input tax deductions exceed the output tax payable in respect of a taxable period. Generally the refund must be paid by the Director within 15 working days. However, the Director can defer payment of a refund if not satisfied with the return and undertake further investigation. A refund can be offset against unpaid VAT, business licence fee or import duties payable to the State. This section also provides rules for time limits for notice to be given to taxpayers of further investigation and information requests.
42. This section requires the Director to pay interest to a taxpayer at the rate of 15% per annum in circumstances where the refund is not paid within the required period of 15 days. However, interest is not payable for periods during which the Director is undertaking further investigation or where the taxpayer has failed to furnish a return.
43. This section provides rules for refund of any tax overpaid by a taxpayer.
44. This section contains certain provisions relating to relief from VAT.
45. This section permits a group of companies to be treated as a single taxpayer for the purposes of VAT, with intra-group supplies being disregarded. Generally, one member of the group is nominated as the representative member required to perform tax obligations, but without prejudice to the joint and several liability of group members for the tax. Under subsection (10), the concept of group registration can also be applied to persons other than companies in circumstances where there is common control.
46. This section provides for rules governing the application of the VAT legislation to unincorporated bodies. Generally, the body is treated as being a registered person rather than individual members.
47. This section provides for rules governing supplies by and to agents. Generally the supply is treated as being by or to the principal for whom the agent acts. However the agent may issue a tax invoice or receive a tax invoice in substitution for the principal.

48. This section provides for receivers, liquidators, mortgagees in possession and other like representatives to be treated as registered persons during a period of incapacity of a registered person.
49. This section provides that agents in Vanuatu for non-resident taxpayers are liable for the obligations of the non-resident.
50. This section permits a company to have an input tax deduction in respect of goods or services acquired on behalf of the company prior to incorporation.
51. This section provides for various offences for failure to comply with obligations under the Act and imposes various specific penalties depending upon the category of offence.

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52. This section provides that officers and employees of corporate bodies commit an offence if they fail to comply with obligations under the Act imposed on the corporate body for which the person is responsible.
53. This section provides for rules concerning the taking of proceedings in respect of offences.
54. This section imposes certain requirements for keeping of records, generally for a period of 6 years.
55. This section provides for a general anti-tax avoidance rule for arrangements entered into defeating the intent and application of the legislation. The Director can treat the arrangement as void and adjust the amount of tax payable by a registered person as a result.
56. This section applies in circumstances where a company has been left with insufficient assets to meet a VAT liability as a result of an arrangement entered into at a time when it should have been clear that the tax liability could not be satisfied. Generally, directors become jointly and severally liable for the tax liability as agents of the company. Controlling shareholders can also become liable as agents for the company.
57. This section contains certain rules allowing the Director to inspect documents and make inquiries concerning VAT.
58. This section generally prohibits the making of an assessment more than 6 years after a return was filed except in the case of fraud or assessments issued by consent.
59. This section provides for the making of regulations for the purposes of the VAT legislation.
60. This section provides that goods and services must be displayed with a price including VAT (although prices exclusive of VAT may also be shown). However, certain tourism publicity material intended primarily for offshore advertising may be displayed exclusive of tax.

61. This section provides for the establishment of a Value Added Tax Tribunal to hear objections.
62. This section provides for the appointment of a Registrar of the Tribunal.
63. This section provides for the Chief Justice to make rules for the Tribunal.
64. This section provides for the Tribunal to fix the date and place of hearings of objections.
65. This section provides for proceedings of the Tribunal to be in camera if requested, to be ex-parte if the objector fails to appear and for the Tribunal to receive such evidence as it thinks fit.
66. This section provides for the burden of proof to be on the objector in all objection hearings.

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67. This section provides for the Tribunal to award such costs it thinks fit against either the director or the objector.
68. This section provides for the filing of case stated documentation in relation to an objection hearing.
69. This section permits the price of goods or services to be increased to take account of the introduction of VAT, to the extent to which the VAT exceeds the turnover tax component of any business licence fee which would have been payable and certain other taxes that have been reduced or eliminated, such as the rent tax and the hotel and licensed premises tax.
70. This section, in broad terms, allows a deduction (referred to as a customs duty credit) in recognition of import duties paid on stock held at 31 July 1998 which would be reduced if the goods had been imported after that date. Taxpayers who paid the duty, may elect to undertake a full stock-take and calculate the extent of the reduction of duties that would have arisen. Alternatively, taxpayers can elect to calculate the deduction by reference to a standard percentage of the stock they hold on 31 July or (for persons in category B) their sales over the three months to 30 June. The customs duty credit can be deducted in equal instalments over taxable periods to 31 December.
71. This section requires registered persons to have regard, when determining the price of a supply of goods or services, to the amount of customs duty credit available under section 70 in respect of the goods and the amount by which customs duty payable on importation of the goods after 1 July 1998 is lower than otherwise would be the case. The section only applies in respect of supplies made before 30 September 1998. If a registered person does not have adequate regard to the customs duty credit and reduction in customs duty, the Director may deny a deduction for customs duty credit or impose additional tax of 5% of the tax payable for the period in which the supply is made.
72. This section imposes an obligation on people, who know that they will be required to be registered for VAT purposes, to apply for registration by ~~29 May~~30 June 1998.

73. This section is a transitional provision to ensure that, if the time of performance in respect of a supply of goods or services is after 1 August 1998, VAT applies notwithstanding the fact that the supply would be, under the new VAT legislation, deemed to occur before 1 August 1998.
74. This provision provides for various amendments to, or repeals of, existing statutes which are specified in the Fourth Schedule.
75. This provision sets out the dates upon which the Act becomes effective where no other dates are provided. In general, the provisions of the Act apply to any supply of goods or services, or any importation, that occurs after 1 August 1998.

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**First Schedule** - this schedule lists supplies which are exempt from VAT, including in particular financial services, the letting of residential property, education services of certain educational institutions and certain services provided by local tour operators (the last until 30 June 1999). It should be noted that the effect of exemption is that input tax deductions cease to be available to the extent to which the inputs are acquired for the purposes of making exempt outputs.

**Second Schedule** - this schedule lists certain items which are exempt from VAT imposed on importation.

**Third Schedule** - this schedule lists supplies which are subject to VAT at the rate of 0%, including in particular exports of goods and services, and international transportation.

**Fourth Schedule** - this schedule lists consequential amendments and repeals.

MAY, 1998

SELA MOLISA  
Minister of Finance and  
Economic Management

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REPUBLIC OF VANUATU

VALUE ADDED TAX ACT NO. 12 OF 1998

Arrangement of Sections

VALUE ADDED TAX ACT – Draft 18/05/98

ANALYSIS

Title

1. Purpose

16. Returns
17. Accounting basis
18. Tax payable or refund where change in accounting basis

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PART I -  
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4. Meaning of term "taxable activity"
5. Time of supply
6. Value of supply
7. Place of supply
8. Place where supplier operates
9. Application of the Act to the State

19. Calculation of tax payable or refund due
20. Payment of tax
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22. Credit and debit notes
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11. Rates of tax

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26. Objections
27. Tribunal may confirm, cancel or alter the assessment
28. Appeals to Supreme Court and Court of Appeal
29. Obligation to pay tax not suspended by objection or appeal
30. No assessment to be set aside for technical reasons

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73. Supplies prior to 1 August 1998
74. Repeals of and consequential amendments to other Acts
75. Commencement

**FIRST SCHEDULE**

Exempt supplies

**SECOND SCHEDULE**

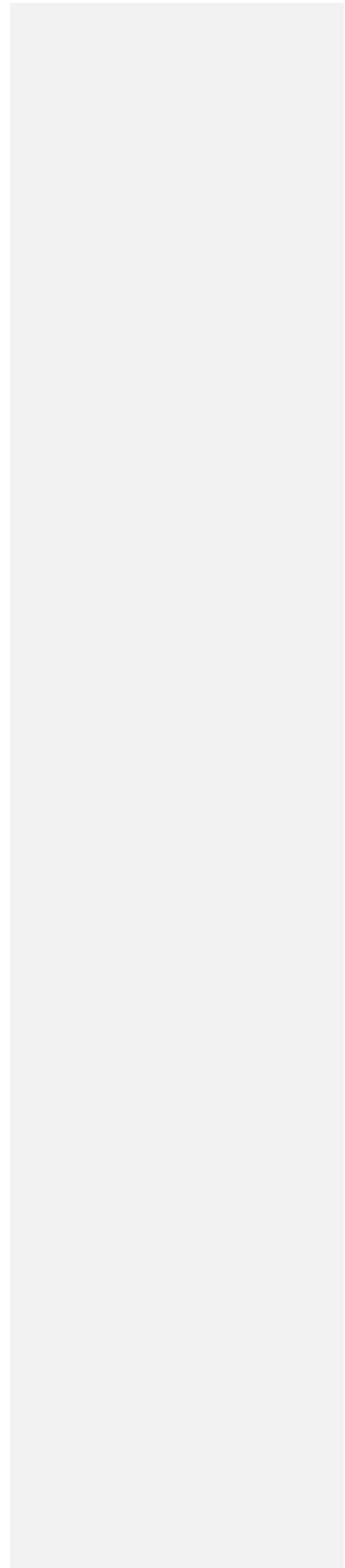
Exempt importations

**THIRD SCHEDULE**

Zero-rated supplies

**FOURTH SCHEDULE**

Enactments repealed or amended



**REPUBLIC OF VANUATU**

Assent: 16/07/98  
Commencement: 01/08/98

**BILL FOR**

**THE VALUE ADDED TAX ACT NO. 12 OF 1998**

An Act to impose value added tax which will provide a more equitable taxation system and to provide for its collection.

**BE IT ENACTED** by the President and Parliament as follows: -

**PURPOSE**

1. An Act to impose value added tax and to provide for its collection.

**PART I**  
**INTERPRETATION**

**INTERPRETATION**

2. In this Act, unless the context otherwise requires -

“Agreement for hire” means an agreement for the bailment of goods for hire but does not include -

- (a) An agreement under which property in the goods passes, or is expressly contemplated to pass, to the bailee; or
- (b) A hire purchase agreement:

“Approved aid project” and “approved project” means a project entered into with the consent of the Government of the Republic of Vanuatu:

“Consideration” includes all forms of consideration but does not include an unconditional gift:

“Credit note” means a document provided under section 22(3)(a) of this Act:

“Customs duty” means customs duties and other charges imposed under the Import Duties [Consolidation Act](#) [CAP 91]:

“Debit note” means a document provided under section 22(3)(b) of this Act:

“Department” means the Department of the State responsible for the collection of value added tax:

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“Director” means the person appointed as the Director for the purposes of this Act or any person acting under the authority of the Director:

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~~“Director” means the person appointed as the Director for the purposes of this Act or any person acting under the authority of the Director:~~

“Exempt supply” means a supply of goods or services in Vanuatu which is exempt from tax under section 10(3)(a) and the First Schedule:

“Goods” means all kinds of real or personal property, but does not include choses in action or money:

“Local authority” includes any municipality established under the Municipal Councils Act [CAP 126] and any ~~provincial council~~ Local Government Council established under the Decentralisation ~~and Local Government Regions~~ Act No 1 of 1994 (as amended):

“Minister” means the Minister of the State responsible for Finance:

“Money” includes currency, promissory notes and bills of exchange of Vanuatu or any other country; but does not include a mere collector’s piece, investment article or item of numismatic interest:

“Non-profit body” means a religious, charitable or other organisation which is carried on other than for the purposes of profit or gain to owners or members of the body and which is prevented by its constitution from making any distribution to owners or members of the body:

“Open market value”, in respect of a supply of goods or services, means the consideration in money which the supply would generally fetch if supplied in similar circumstances at that date in Vanuatu in a supply freely offered and made between persons who are not related (by blood, marriage or ownership), and includes any value added tax payable under this Act in respect of the supply:

“Person” includes a company, an unincorporated body of persons, an instrument of the State (whether departments, ministries, agencies, or other instruments) and a local authority:

“Prescribed form”, for the purposes of sections 12, 16, 17, 21, 22, 23, 26 and 72, is a form prescribed from time to time by the Director:

“Records” includes books of account (whether manual, mechanical or electronic) and tax invoices, credit notes, debit notes and such other documents as are necessary to verify the entries in the books of account including –

- (a) A record of all goods and services supplied by or to the registered person showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services and the suppliers or their agents to be readily identified by the Director; and
- (b) The system and programme documentation which describes the accounting system used.

“Registered person” means a person who is registered under Part III or who is liable to be so registered:

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“Registration threshold amount” means the amount applying under section 12:

“Resident of Vanuatu” means -

- (a) In the case of a natural person, that person if the person has spent not less than 12 months in Vanuatu in the preceding 24 month period:
- (b) In the case of a company or an unincorporated body of persons, that company or body if it has its centre of administrative management in Vanuatu, -

but does not include a company registered under the International Companies Act 1992:

“Second hand goods” does not include livestock:

“Services” means any thing which is not goods or money:

“State” means the Republic of Vanuatu:

“Supply” includes all forms of supply and the extended meanings in section 3 of this Act; and “supplies”, “supplier” and “supplied” have corresponding meanings:

“Tax file number” means any identification number that has been allocated to a person by the Director for the purposes generally of this Act:

“Tax invoice” means a document provided under section 21:

“Taxable period”, in relation to a registered person, means a taxable period determined under section 15:

“Taxable supply” means a supply of goods or services in Vanuatu which is charged with value added tax under Part II, including where the rate of tax is 0%:

“Taxpayer” means any person liable for any tax hereunder:

“Tribunal” means the Value Added Tax Tribunal established under Part XII:

“Unconditional gift” means a payment voluntarily made to any non-profit body for the carrying on or carrying out of the purposes of that non-profit body and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods and services to the person making that payment, or any other person where that person and that other person are associated persons; but does not include any payment made by the State or an instrument of the State.

**EXTENDED MEANING OF TERM “SUPPLY”**

- 3. (1) If goods or services acquired or produced by a registered person in the course of carrying on a taxable activity are supplied by a creditor in satisfaction of the

registered person's debt, the goods or services are to be treated as if supplied by the registered person in the course of the taxable activity.

- (2) If a payment in the nature of a grant or subsidy is made by the State to a person in respect of the person's taxable activity, the payment is to be treated as consideration for the supply of goods or services by the person in Vanuatu in the course of the person's taxable activity.
- (3) If a person ceases to be a registered person, goods and services then forming part of the assets of a taxable activity of the person are to be treated as if supplied by the person in the course of the taxable activity immediately before the cessation of registration.
- (4) An indemnity payment received by a registered person under a contract of insurance will be treated as if it were consideration received for a supply of services made on the date of receipt in the course of the registered person's taxable activity, if and to the extent that -
  - (a) The supply of the insurance was a taxable supply by the insurer;
  - (b) The loss of the registered person was incurred in the course of the registered person's taxable activity; and
  - (c) The payment is not to indemnify the registered person for loss of employment services earnings.
- (5) If a person pays an amount of money to participate in lotteries or any other legal game of chance, the money paid is to be treated as consideration for a supply of services by the person conducting the game of chance.
- (6) If a person pays to a casino an amount of money -
  - (a) To purchase a chip or otherwise to participate in a game played in the casino; or
  - (b) As commission in respect of participation in such a game, -the money paid is to be treated as a supply of services by the casino operator.
- (7) For the purposes of this Act, if a supply is charged with tax in part at the standard rate under section 11(1) and in part at zero rate under section 11(2), each such part is to be treated as a separate supply.
- (8) For the purposes of this Act, every local authority is deemed to supply goods and services to any person where any amount of municipal tax is payable by that person to that local authority.

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- (9) Any contract that is a layby sale does not constitute a supply of goods and services unless the goods to which the contract relates are delivered to the buyer and the property therein is transferred to the buyer:

Provided that a supply of services will, in respect of any such contract, be deemed to take place where –

- (a) A layby sale is cancelled; and
- (b) The seller either –
  - (i) Retains any amount paid to the seller to recoup that seller's selling costs in respect of the layby sale; or

(ii) ~~(ii)~~

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(10) Subject to subsection (3), to the extent that goods and services supplied by a registered person for the principal purposes of making taxable supplies are subsequently applied by that person for a purpose other than that of making taxable supplies, they shall be treated as being supplied by that person in the course of that taxable activity to the extent that they are so applied.

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**MEANING OF THE TERM "TAXABLE ACTIVITY"**

4. (1) For the purposes of this Act, the term "taxable activity" means any activity (personal, professional, corporate or otherwise) carried on continuously or regularly and involving the supply of goods or services to any other person for a consideration.
- (2) Without limiting subsection (1), the term "taxable activity" includes any activity referred to in subsection (1) carried on -
  - (a) Without the intention of making a profit; or
  - (b) By the State or an instrument of the State; or
  - (c) By an association or club.
- (3) Notwithstanding subsections (1) and (2), the term "taxable activity" does not include -
  - (a) Any activity carried on by a natural person essentially as private recreation or a hobby; or
  - (b) Any engagement, occupation, or employment under any contract of service or as a director of a company:

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Provided that, where any person in carrying on any taxable activity, accepts an office, any services supplied by that person as the holder of that office shall be deemed to be supplied in the course or furtherance of that taxable activity; or

- (c) Any activity to the extent to which it involves making exempt supplies.

- (4) Anything done in connection with the commencement or termination of a taxable activity, including its supply as a going concern, is to be treated as if done in the course of the taxable activity.

#### TIME OF SUPPLY

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5. (1) Subject to this Act and in particular the following subsections of this section, for the purposes of this Act a supply of goods or services is to be treated as taking place at the earliest of the times -

- (a) A tax invoice is issued by the supplier or recipient in respect of the supply:
- (b) A payment is received by the supplier in respect of the supply:
- (c) The supplier delivers the goods or services.

- (2) If a supply is treated as being made by a casino operator under section 3(6), it is to be treated as taking place at the time a casino count takes place. For the purposes of this section, "casino count", in relation to a casino, means a count of money or money's worth paid for the right to participate in gaming in that casino.

- (3) If a supply is treated as taking place under section 3(5) (which relates to games of chance), the time of supply is to be treated as being the date on which the first drawing or determination of a result commences.

- (4) If the supply is for consideration received by the supplier in the form of a coin or token inserted into a machine, the supply is to be treated as taking place at the time the coin or token is removed from the machine.

- (5) If -

- (a) Goods are supplied under an agreement for hire; or
- (b) Services are supplied under an agreement or Act which provides for periodic payments, -

the goods or services are to be treated as being supplied successively, when and to the extent that a payment is due or is received (whichever is earlier).

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- (6) If goods or services are supplied progressively or periodically under an agreement or Act which provides for consideration in instalments by reference to the progressive or periodic supplies, the goods or services are to be treated as being supplied successively, when and to the extent that a payment is due, a payment is received or a tax invoice is issued relating only to that payment (whichever is the earliest).

- (7) If goods or services are supplied under a hire purchase agreement, the time of supply is the time the agreement is entered into.

- (8) If goods are delivered by a supplier at a time when the consideration for the supply cannot finally be determined, the supply is to be treated as taking place successively when and to the extent that a payment is due, a payment is received or a tax invoice relating only to the payment is issued (whichever is the earliest).

## VALUE OF SUPPLY

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6. (1) Subject to this section, for the purposes of this Act, the value of a supply of goods or services will be the aggregate of -
- (a) The consideration in money for the supply, if any; and
  - (b) The open market value of the consideration for the supply which is not in money, if any -
- reduced by the amount of value added tax charged to the supplier in respect of the supply.
- (2) If the parties to a supply are related (by blood, marriage or ownership) and the relationship has resulted in a reduction in the consideration for the supply to an amount below the open market value, the consideration will be deemed to be equal to the open market value for the supply.
- (3) Subsection (2) of this section will not apply to any supply to a person who is entitled under section 19(4) to a deduction for the whole of the tax charged in respect of the supply.
- (4) If goods or services are deemed by section 3(3) [or 3\(10\)](#) to be supplied on cessation of registration, the consideration in money for the supply is to be treated as being the lesser of -
- (a) The cost of the goods or services (inclusive of any tax charged in respect of the acquisition) to the supplier; and
  - (b) The open market value of the supply.

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- (5) If a supply of second-hand goods to a non-resident is not zero-rated due only to the proviso to paragraph 1 of the Third Schedule, the consideration in money for the supply will be treated as being equal to the purchase price of the goods to the supplier.
- (6) If a supply is treated as being made by a casino operator under section 3(5), the consideration in money for the supply will be equal to the amount paid to purchase or participate less any amount paid out by the casino as winnings.
- (7) If a supply of services is deemed to be made under section 3(5), (which relates to games of chance), the consideration in money for the supply will be treated

as being the portion of the amount paid to participate as is equal to the portion of the total proceeds of the game which is left after deducting all amounts paid out as prizes.

- (8) If a right to receive goods or services for a monetary value stated on a token, stamp (not being a postage stamp) or voucher is granted for consideration in money, the supply will be disregarded except to the extent (if any) that the consideration exceeds the monetary value.
- (9) If a taxable supply is not the only matter to which a consideration relates, the supply will be treated as being for such consideration as is properly attributed to the taxable supply.
- (10) Subject to the preceding subsections of this section, if a supply is made for no consideration, the value of the supply is nil.

#### **PLACE OF SUPPLY**

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- 7. (1) The provisions of this section apply to determine the place of supply of goods or services for the purposes of this Act.
- (2) If a supply of goods does not involve the removal of the goods from or to Vanuatu, -
  - (a) The goods will be treated as being supplied in Vanuatu if the goods are physically in Vanuatu at the time of supply; and
  - (b) The goods will be treated as being supplied outside Vanuatu in any other case.
- (3) If a supply of goods does involve the removal of the goods -
  - (a) From Vanuatu, the goods will be treated as being supplied in Vanuatu:
  - (b) To Vanuatu, the goods will be treated as being supplied outside Vanuatu.

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- (4) A supply of services will be treated as being made -
  - (a) In Vanuatu if the supplier operates in Vanuatu in respect of the supply:
  - (b) Outside Vanuatu if the supplier operates outside Vanuatu in respect of the supply.

#### **PLACE WHERE SUPPLIER OPERATES**

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- 8. A supplier will be treated as operating in Vanuatu in respect of a supply if the supplier -

- (a) Has a branch, agency or other fixed establishment only in Vanuatu and not elsewhere; or
- (b) Has no such branch, agency or fixed establishment anywhere but is resident in Vanuatu; or
- (c) Has such a branch, agency or fixed establishment both in Vanuatu and elsewhere but is making the supply in the course of carrying on activities through the branch, agency or fixed establishment in Vanuatu.

#### **APPLICATION OF THE ACT TO THE STATE**

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- 9. (1) Subject to this section, this Act will apply to the State, or an agency of the State, if liable to be a registered person and carrying on a taxable activity.
- (2) Each instrument or agency of the State will be treated as a separate person for the purposes of liability to tax under this Act.

### **PART II** **IMPOSITION OF THE TAX**

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#### **IMPOSITION OF VALUE ADDED TAX**

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- 10. (1) Subject to the provisions of this Act, there will be assessed, levied and paid for the use of the State a tax herein referred to as value added tax.
  - (2) Subject to the provisions of this Act, value added tax will be payable by -
    - (a) Any registered person on account of any supply of goods or services made in Vanuatu in the course of carrying on a taxable activity, with the amount of tax measured by reference to the value of the supply; and
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- (b) Any person importing goods into Vanuatu for home consumption, with the amount of tax measured by reference to the aggregate of the value of the goods for the purposes of customs duty determined under the Import Duties Act [CAP 91] and the items specified in section 11(b).
  - (3) Notwithstanding subsection (2), no value added tax will be payable -
    - (a) In respect of a supply of goods or services in Vanuatu which is one of the exempt supplies listed in the First Schedule, unless the supply would (but for this paragraph) be subject to tax at a 0% rate under section 11(2):

- (b) In respect of an importation of goods into Vanuatu which is one of the exempt importations listed in the Second Schedule.
- (4) The provisions of Parts V, VI, VII and VIII are not applicable to tax payable on importation under section 10(2)(b) and, subject to subsection (5), that tax will be collected and paid as if it were a customs duty levied on the importation of goods under the Import Duties Act [CAP 91].
- (5) The provisions of the Import Duties Act [CAP 91] that provide for the refund of duty in certain circumstances will:
  - (a) In respect of the valued added tax on goods that are temporary exports that are re-imported, by the same person as the person who exported them from Vanuatu, apply only if, at the time of their export from Vanuatu, those goods were not part of -
    - (i) A supply of goods charged with tax at the rate of zero percent pursuant to section 11; or
    - (ii) A supply of goods, made before 1 August 1998, that would have been charged with tax at the rate of zero percent pursuant to section 11 if the supply of those goods had taken place on 1 August 1998; and
  - (b) In respect of the value added tax on any other goods, not apply in respect of goods imported by a registered person for the purpose of carrying on that person's taxable activity.

## RATES OF TAX

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- 11. (1) The rate of value added tax will be 12.5% of -
  - (a) Except in the case of importation, the value of the supply:
  - (b) In the case of importation, the aggregate of -
    - (i) The value of the goods for the purposes of customs duty; and
    - (ii) The amounts of customs duty payable; and
    - (iii) The amount paid or payable to transport the goods to Vanuatu and to insure the goods for such transport, -
 unless subsection (2) applies.
- (2) Notwithstanding subsection (1), the rate of tax will be 0% of the value of the supply in the case of a supply in Vanuatu by a registered person which is one of the zero-rated supplies listed in the Third Schedule.

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**PART III**  
**REGISTRATION**

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**REGISTRATION OF PERSONS MAKING TAXABLE SUPPLIES**

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12. (1) Subject to this section, every person who carries on a taxable activity and is not already registered becomes liable to be registered under this Act -

- (a) At the end of any month if the total value of supplies made in Vanuatu by the person in the year which ends with that end of that month in the course of carrying on taxable activities has exceeded four million vatu; ~~(or such other amount as the Minister may, from time to time, stipulate by order); or~~
- (b) At the start of any month if there are reasonable grounds for believing that the total value of supplies made in Vanuatu by the person in the year which starts at the start of that month in the course of carrying on taxable activities will exceed the registration threshold amount.

(2) In determining whether the total value of supplies exceeds the registration threshold amount -

- (a) The value of exempt supplies will be disregarded; and
- (b) The value of supplies will be disregarded if and to the extent that the Director is satisfied that the supply is solely as a consequence of -

(i) (i)

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(ii) The replacement of any plant or other capital asset used in any taxable activity carried on by the person.

(3) Every person who, under subsection (1) becomes liable to be registered must apply to the Director in the prescribed form for registration under this Act within 21 days of becoming so liable and must provide the Director with such other information as the Director may consider relevant.

(4) Notwithstanding subsections (1) and (3), every person who satisfies the Director that -

- (a) The person is carrying on a taxable activity; or
- (b) The person intends to carry on a taxable activity from a specified date, -

may apply to the Director in the prescribed form for registration under this Act, and must provide the Director with such other information as the Director may consider relevant.

- (5) If a person has applied for registration under subsection (3) or subsection (4) and the Director is satisfied that the person is eligible to be registered under this Act, the person will be registered for the purposes of this Act with effect from such date as the Director determines.
- (6) If a person has not applied for registration under subsection (3) and the Director is satisfied that the person is liable to be registered under this Act, the person will be deemed to be registered for the purposes of this Act with effect from the date on which the person first became liable to be registered under this Act (unless the Director determines that it would be equitable for the person to be deemed to be registered from a later date stipulated by the Director).
- (7) Section 6 applies to determine the value of supplies for the purposes of this section except that no regard will be had to any amount of consideration payable in order to recover tax charged in respect of the supplies.

#### **CANCELLATION OF REGISTRATION**

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13. (1) A registered person will cease to be liable to be registered at any time if the total value of supplies to be made in Vanuatu by the person in the year which starts at that time will be below the registration threshold amount.
- (2) If a registered person ceases to be liable to be registered, the person may request the Director in writing to cancel the person's registration.
- (3) If the Director is satisfied that a registered person who has applied for cancellation is no longer liable to be registered, the Director will cancel the person's registration with effect from the last day of the taxable period in which the application for cancellation was made (or with effect from such other date as the Director may stipulate).

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- (4) If the Director is satisfied that a registered person is no longer liable to be registered and the person has not applied for cancellation, the Director may nevertheless cancel the person's registration with effect from the last day of the taxable period in which the Director gives notice to the person of the cancellation.
- (5) The obligation and liabilities under this Act of any person in respect of anything done, or omitted to be done, by that person while that person is a registered person will not be affected by the fact that the person ceases to be a registered person or by the fact that the Director has cancelled the person's registration.

#### **REGISTERED PERSON TO NOTIFY CHANGE OF STATUS**

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14. Every registered person will within 21 days notify the Director in writing of -
  - (a) Any change in the name, address or nature of the principal

taxable activity or activities of the registered person:

- (b) Any change in the address from which, or the name in which, a taxable activity is carried on by the registered person:
- (c) ~~(e)~~ Any change where the registered person, being a member of a group of companies under section 45 of this Act, ceases to be eligible to be a member of the group.

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## **PART IV** **RETURNS AND PAYMENTS**

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### **TAXABLE PERIODS**

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- 15. (1) Each registered person will be placed by the Director in one of the following categories for the purposes of this Act -
  - (a) Category A, with taxable periods of one month ending on the last day of each month in each year; and
  - (b) Category B, with taxable periods of three months ending on the last day of such months in any year as may be determined by the Director, provided that for the first taxable period that ends after 1 August 1998, the Director may stipulate a taxable period of two months.
- (2) Each registered person who is not placed in Category B under subsection (3) will be placed by the Director in Category A.

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- (3) The Director may place a registered person in Category B only if the person has made written application and the total value of that person's taxable supplies has not, in the twelve months ending with the last day of any month, exceeded eight million vatu or such other amount as the Minister may, from time to time, declare by order.
- (4) For the purposes of subsection (3) of this section, the total value of a registered person's taxable supplies will be deemed not to have exceeded any amount specified in or under that subsection where that total value exceeds any such amount solely as a consequence of -
  - (a) Any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that registered person; or
  - (b) The replacement of any plant or other capital asset used in any taxable activity carried on by that registered person.

- (5) Subject to subsection (3), the Director may from time to time direct that a registered person change from category A to category B or, as the case may be, category B to category A and the change will take effect immediately after the end of the taxable period in which the Director notifies the registered person of the change.

## RETURNS

16. (1) Every registered person will furnish to the Director, in the prescribed form, a tax return for each taxable period -
- (a) By the 27th day of the month following the taxable period, unless that day is not a working day in which case the return must be furnished by the working day which immediately succeeds the 27th day; and
  - (b) Showing the amount of tax payable in respect of the taxable period as calculated under section 19.
- (2) If goods are treated as being supplied under section 3(1) (which relates to a creditor selling goods of a registered person in satisfaction of a debt), the creditor selling the goods (whether or not a registered person) must furnish a special return, in the prescribed form, by the ~~24st~~ 27<sup>th</sup> day of the month following the taxable period in which the supply occurs and -
- (a) The creditor and the debtor must exclude the supply and any tax charged on the supply from any other return; and
  - (b) The tax charged will be treated as tax payable under this Act by the creditor.

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- (3) In addition to the returns specified in subsections (1) and (2), the Director may require any person to furnish a return to the Director, in the prescribed form, at any time for the purposes of this Act.
- (4) The Director, for good cause shown, may extend the time for making the return on the application of any registered person and grant such reasonable additional time within which to make the same as may, by the Director, be deemed advisable.

## ACCOUNTING BASIS

17. (1) A registered person may elect to account for tax payable on either an invoice basis or a payments basis and will notify the Director of the election in the prescribed form.
- (2) In any case where a person fails to elect a basis for accounting for tax payable under subsection (1), the registered person will be deemed to have elected to account for tax payable on a payments basis.

- (3) The Director may, on application in writing by a registered person, approve a change in the basis for accounting for tax payable by the registered person and the change will take effect from the beginning of the next taxable period that follows the receipt of the application by the Director or of such later taxable period as the Director approves.
- (4) Where a registered person changes the basis for accounting for tax payable under subsection (3), the registered person will:
  - (a) Prepare a list of creditors of the registered person in relation to that person's taxable activity, showing the amounts due by that person as at the last day of the taxable period preceding that in which the change takes effect; and
  - (b) Prepare a list of debtors of the registered person in relation to that person's taxable activity, showing the amounts due to that person as at the last day of the taxable period preceding that in which the change takes effect.
- (5) The particulars required to be furnished under subsection (4) will be furnished to the Director not later than the last day for furnishing a return under section 16 for the taxable period preceding that in which the change takes effect.

#### **TAX PAYABLE OR REFUND WHERE CHANGE IN ACCOUNTING BASIS**

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18. (1) Every registered person whose accounting basis changes under section 17 will, not later than the last day allowed under subsection 17(5) for furnishing particulars in respect of the change, pay the Director the tax payable, if any, as determined under this section.

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- (2) If a registered person changes from an invoice basis to a payments basis of accounting, the tax payable will be an amount determined in accordance with the following formula:

a - b

where –

- a is the aggregate amount able to be deducted under section 19(4) in relation to the amounts due that are required to be shown in the list of creditors required to be prepared by the person under section 17; and
  - b is the aggregate amount of the tax payable under section 19(3) in relation to the amounts due that are required to be shown in the list of debtors to be prepared by the person under section 17.
- (3) If a registered person changes from a payments basis to an invoice basis of accounting, the tax payable will be an amount determined in accordance with the following formula:

a - b

where -

- a is the aggregate amount of the tax payable under section 19(3) in relation to the amounts due that are required to be shown in the list of debtors to be prepared by the person under section 17; and
  - b is the aggregate amount able to be deducted under section 19(4) in relation to the amounts due that are required to be shown in the list of creditors to be prepared by the person under section 17.
- (4) If the amount determined under subsection (2) or (3) is a negative amount, the amount will be refunded by the Director to the registered person under section 41.

#### **CALCULATION OF TAX PAYABLE OR REFUND DUE**

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19. (1) Every registered person will calculate the amount of tax payable by, or refund due to, the registered person in respect of each taxable period under the rules in this section.

(2) The tax payable or refund amount is calculated by -

- (a) Adding the amounts referred to in subsection (3); and

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- (b) Subtracting the amounts referred to in subsection (4) but subject to subsections (5), (6) and (7).

(3) The amounts to be added are -

- (a) In respect of supplies made by the registered person -

- (i) If the registered person accounts for tax on an invoice basis, all amounts of tax payable in respect of supplies where the time of supply falls during the taxable period; and
- (ii) If the registered person accounts for tax on a payments basis, all amounts of tax payable in respect of supplies to the extent that payment for the supply has been received during the taxable period; and

- (b) All amounts to be added under section 22(2) or (7) (which relate to subsequent period adjustments) or section 23(2) (which relates to recovered bad debts).

(4) The amounts able to be deducted are -

- (a) All amounts of tax payable by other registered persons in respect

of supplies made to the first registered person -

- (i) If the first registered person accounts for tax on an invoice basis, where the time of supply falls during the taxable period; and
- (ii) If the first registered person accounts for tax on a payments basis, to the extent that a payment in respect of the supply has been made during the taxable period, -

but subject to subsections (5), (6) and (7); and

- (b) All amounts of tax payable under section 10(2)(b) by the registered person in respect of the importation of goods -

- (i) If the registered person accounts for tax on an invoice basis, where the tax is invoiced under the Import Duties Act [CAP 91] or paid (whichever is the earlier) during the taxable period; and
- (ii) If the registered person accounts for tax on a payments basis, to the extent that payment of the tax is made during the taxable period, -

but subject to subsections (5) and (6); and

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- (c) Amounts equal to one-ninth of the consideration in money for all supplies of secondhand goods to the registered person -

- (i) If the registered person accounts for tax on an invoice basis, the time of supply falls during the taxable period; and
- (ii) If the registered person accounts for tax on payments basis, to the extent the consideration is paid during the taxable period; and
- (iii) The place of supply is in Vanuatu; and
- (iv) The goods are not supplied by a supplier who is not resident in Vanuatu and who has previously supplied the goods to a registered person who has entered the goods for home consumption under the Import Duties Act [CAP 91],

and subject to subsections (5) and (6) of this section; and

- (d) All amounts deductible under section 22(2) or (8) (which relate to subsequent period adjustments) or section 23(1) (which relates to bad debts); and

- (e) Amounts equal to one-ninth of any payments made during the taxable period by the registered person to indemnify another person under a contract of insurance but only if -
  - (i) The supply of the contract of insurance is a taxable supply; and
  - (ii) The payment is not in respect of the supply of goods or services to the registered person or importation of goods by the registered person; and
  - (iii) The supply of the contract of insurance was not subject to tax at the 0% rate in any case where the other person is, at the time of payment, neither a registered person nor resident in Vanuatu; and
  - (iv) The payment does not result from a supply of goods or services to the other person where the place of supply is outside Vanuatu; and
  - (v) The payment is not to indemnify the other person for loss of employment services earnings.
- (5) An amount to which subsection (4)(a), (b) or (c) refers -

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- (a) Will be wholly deductible if the goods or services are acquired by the registered person wholly for the purposes of making taxable supplies:
- (b) If the goods or services are acquired by the registered person partially for the purposes of making taxable supplies, will be deductible only to the extent that the goods or services are acquired for the purposes of making taxable supplies.
- (6) In a case to which subsection (5)(b) applies, the extent to which goods or services are acquired for the purposes of making taxable supplies will be determined -
  - (a) Having regard only to the circumstances existing in the taxable period of acquisition or such longer period as the Director considers equitable; and
  - (b) By the Director, if the extent cannot correctly be determined otherwise.
- (7) No deduction will be made for -
  - (a) An amount referred to in subsection (4)(a) or (d) unless -
    - (i) A tax invoice provided under section 21 or debit or credit note provided under section 22 in respect of the supply is

- held by the registered person when the return is filed; or
- (ii) None of a tax invoice, credit note or debit note is required to be provided in respect of the supply:
- (b) An amount referred to in subsection (4)(c) unless the registered person keeps the records referred to in section 21(6):
  - (c) An amount referred to in subsection (4)(c) to the extent to which -
    - (i) The supplier of the secondhand goods was a person related (by blood, marriage or ownership) to the registered person; and
    - (ii) Consideration for the supply exceeded the open market value of the supply.
- (8) A deduction in calculating the tax payable or refund due for a taxable period will also be available if and to the extent that -
- (a) A deduction would have been available in an earlier taxable period but for the fact that the registered person did not hold a tax invoice and the registered person holds such a tax invoice at the time the return is filed for the later taxable period:

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- (b) A deduction could have been claimed in an earlier taxable period but was not in fact included in a return for an earlier taxable period.
- (9) For the purposes of paragraph (c) of subsection (4), the following goods will be deemed to be second-hand goods where the time of supply is the first day of the first taxable period following the registration of the registered person:
- (a) Goods and services acquired or produced after 1 August 1998 by the person other than for the purposes of making taxable supplies which are subsequently applied in any taxable activity by that person or, where that person is a member of a partnership, by that partnership for the purposes of making taxable supplies; and
  - (b) Goods and services that were previously deemed under section 3(3) to be supplied to the person because the person ceased to be a registered person that are subsequently applied by that person, or by a partnership of which that person is a partner, for the purposes of making taxable supplies, -

Provided that the consideration in money for those goods and services will be deemed to be the lesser of –

- (c) The cost of those goods and services, including any tax charged or any tax deducted in respect of those goods and services:
- (d) The open market value of the supply of those goods and services

(10) If the calculation in a return produces -

- (a) A positive amount, the amount will be tax payable by the registered person under section 20:
- (b) A negative amount, the amount will be a refund due to the registered person under section 41.

#### **PAYMENT OF TAX**

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20. (1) A registered person must pay any tax payable calculated under section 19 for a taxable period by the day on which the return must be filed for the period.
- (2) Subject to Parts V and VI, the amount of tax payable calculated in a return furnished by the registered person will be conclusively treated as being correct for the purposes of this Act.

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- (3) All remittances of tax will be made by money, bank draft, cheque, cashier's cheque, money order, or certificate of deposit to the office of the Department nearest to the principal place of business of the registered person, the office of the Department in Port Vila, or such other place as may be determined by the Minister and notified in the Gazette. The Department will issue its receipts there to the taxpayer and will pay the moneys into the Vanuatu Government account to be kept and accounted for as provided by law.

#### **TAX INVOICES**

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21. (1) Subject to this section, a registered person making a taxable supply to another registered person must provide the other registered person with a tax invoice within 28 days of the other registered person requesting such a tax invoice.
- (2) A recipient of a supply of goods or services who is a registered person may create a document which is treated as a tax invoice provided by the supplier under subsection (1) if -
- (a) The document otherwise complies with the requirements of this section; and
  - (b) The Director has previously granted approval for the issue of such a document by such a recipient; and
  - (c) The supplier and the recipient agree that the supplier will not issue such a tax invoice; and
  - (d) The supplier is provided with a copy of the document; and
  - (e) The words "buyer created tax invoice - VAT approved" are

contained on the document in a prominent place.

- (3) The tax invoice must contain the particulars specified in the prescribed form.
- (4) A registered person must not provide more than one tax invoice for a taxable supply, unless the other registered person claims to have lost the original, in which case a copy can be provided clearly marked "copy only".
- (5) Notwithstanding the preceding subsections, a registered person is not required to provide a tax invoice if -
  - (a) The consideration in money for the supply does not exceed 5,000 vatu (or such greater amount as the Minister may declare by order); or
  - (b) The Director determines that sufficient records will exist to establish the particulars of the supply and it would be impractical to require issue of a tax invoice.

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- (6) A registered person who acquires secondhand goods under a supply which is not a taxable supply must keep records of the supply showing the particulars specified in the prescribed form.
- (7) Subsection (6) will not apply if the consideration in money for the supply does not exceed 5,000 vatu (or such greater amount as the Minister may declare by order).

#### **CREDIT AND DEBIT NOTES -**

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22. (1) This section applies if, in relation to a supply of goods and services by a registered person, -
  - (a) The supply has been cancelled; or
  - (b) The nature of the supply has been fundamentally varied or altered; or
  - (c) The agreed consideration for the supply has been altered; or
  - (d) All or part of the goods or services have been returned to the registered person, -  
and the registered person has -
    - (e) Provided a tax invoice in respect of the supply which is incorrect; or
    - (f) Furnished a return for the relevant taxable period which shows an incorrect amount of tax payable or refund due, -

as a result of one or more of these events.

- (2) If the registered person has accounted for an incorrect amount of tax payable or refund due, -
- (a) The registered person will make an adjustment in calculating the tax payable or refund due by the registered person in the return for the taxable period during which it has become apparent that a correction is needed; and
  - (b) If the tax properly payable by the registered person in respect of the supply exceeds the tax accounted for, the excess is to be treated as tax payable in relation to a taxable supply in the later taxable period and not in the original taxable period; and
  - (c) If the tax properly payable by the registered person in respect of the supply is less than the tax accounted for, the registered person will make a deduction of the difference under section 19(4) in respect of the later taxable period.

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- (3) If a tax invoice to which subsection (1)(e) refers has been provided and -
- (a) The amount shown as tax payable on the invoice exceeds the correct amount of tax payable, the registered person must provide the recipient with a credit note;
  - (b) The amount shown as tax payable on the invoice is less than the correct amount payable, the registered person must provide the recipient with a debit note, -
- containing the particulars specified in the prescribed form.
- (4) A registered person -
- (a) Must not issue more than one credit note or debit note in respect of the same excess or difference; and
  - (b) May issue to a recipient a copy of a credit note or debit note if the recipient claims to have lost the original and the copy is clearly marked "copy only"; and
  - (c) Is not required to provide a recipient with a credit note if and to the extent that the excess results from a prompt payment discount which is clearly described on the face of the tax invoice.
- (5) If a recipient of a supply who is a registered person has created a document which complies with the requirements of this section in respect of a credit note or debit note in respect of that supply which could have been issued by the supplier, the document will be treated as if issued by the supplier under this section if -
- (a) The Director has granted prior approval to the issue of such a document by such a recipient; and

- (b) The supplier and the recipient have agreed that the supplier will not issue such a credit note or debit note; and
  - (c) The supplier does not in fact issue such a credit note or debit note; and
  - (d) The supplier is provided with a copy of the credit note or debit note.
- (6) A registered person is not required to issue a credit note or debit note if the Director determines that sufficient records will exist to establish the particulars of the supply and it would be impractical to require issue of a credit note or debit note.
- (7) If a recipient, being a registered person, -

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- (a) Has been issued with a credit note under this section or otherwise knows that a tax invoice held by the recipient is incorrect as a result of one of the events listed in subsection (1); and
- (b) Has made a deduction under section 19(4) in respect of tax payable on the relevant supply, -

an amount equal to any excess of the tax for which a deduction has been made over the tax actually payable is to be treated as tax payable by the recipient in respect of a taxable supply made by the recipient in the taxable period in which the credit note or the knowledge is received.

- (8) If a recipient, being a registered person, -
- (a) Has been issued with a debit note under this section; and
  - (b) Has made a deduction under section 19(4) in respect of the tax payable on the relevant supply, -

an amount equal to any excess of the tax actually payable over the tax for which a deduction has been made is to be treated as a deduction available to the recipient under section 19(4) for the taxable period in which the debit note is received.

**BAD DEBTS**

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23. (1) If a registered person -
- (a) Has made a taxable supply for consideration in money; and
  - (b) Has furnished a return for the taxable period in which the time of supply fell; and

- (c) Has properly accounted for the tax payable on the supply as required under this Act;
- (d) Has written off as a bad debt the whole or part of the consideration in money not paid to the registered person; and
- (e) Has provided to the Director in a prescribed form such information as will satisfy the Director that the debt has been properly written off -

the registered person will make a deduction under section 19(4) for that proportion of the tax payable in respect of the supply which the bad debt represents as a proportion of the total consideration for the supply.

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- (2) If an amount in respect of which a deduction has been made under subsection (1) is subsequently wholly or partly recovered, the portion of the deduction which is equal to the portion which the recovered amount is of the bad debt is to be treated as tax payable in respect of a taxable supply by the registered person during the taxable period in which the recovery takes place.

## **PART V** **ASSESSMENT OF TAX**

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### **ASSESSMENT OF TAX**

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- 24. (1) The Director may, from time to time, from returns furnished under this Act or from other information, make assessments of the amount which the Director considers is the tax payable under this Act by any person.
- (2) If -
  - (a) A person is not satisfied with a return furnished by the person or by another person under section 16(2) in respect of goods supplied to satisfy a debt owed by the person; and
  - (b) The person requests the Director to alter the return; and
  - (c) The Director has not already made an assessment of the tax payable in respect of the taxable period to which the return relates, -

the Director will make an assessment of the amount that the Director considers is the tax payable under this Act.

- (3) Any person assessed by the Director as being liable to tax will be liable to pay the tax assessed except to the extent that the person establishes on objection that the tax is not payable.

- (4) The Director may from time to time amend an assessment to ensure its correctness.
- (5) If an assessment or amended assessment is made under this section, the Director will -
  - (a) Cause notice of the assessment or amended assessment to be given to the person liable to pay the tax; and
  - (b) In the case of an assessment in respect of a return under section 16(2), send a copy of the assessment to whichever of the person whose goods were supplied and the person selling the goods is not the person assessed, -

but failure to give notice will not invalidate the assessment.

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- (6) In the case of an assessment not made until, or increased, after the due date of payment of the tax, the Director will set a new due date for payment being one calendar month after the date of payment but without prejudice to the application of section 31(a)(ii).
- (7) For the purposes of Parts IV (which relates to returns and payments), VII (which relates to recovery of tax) and X (which relates to offences and penalties), if -
  - (a) A person, not being a registered person, supplies goods and services and represents that tax is payable on that supply; or
  - (b) A person furnishes, or makes default in furnishing, a return required to be made by the person under section 16(2), -

the person will be treated as being a registered person and any tax represented to be payable on the relevant supply by the person will be tax payable by the person.

#### **CORRECTNESS OF ASSESSMENTS**

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- 25. Except in objection proceedings under Part VI, an assessment by the Director may not be disputed in any court and will be conclusively deemed and taken to be correct and the liability to tax of the person assessed will be determined accordingly.

## **PART VI** **OBJECTIONS**

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### **OBJECTIONS**

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26. (1) Any person who has been assessed for value added tax for any taxable period may object either personally or by the person's agent against the assessment by lodging with the Director an objection in writing to the assessment within twenty eight days of the date upon which the notice of assessment has been served upon the person or the person's agent or, where such notice has been posted, the date of posting:
- (2) If the assessment is an amended assessment, the person so assessed will have no further right to objection except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is imposed on the person or an existing liability in respect of any particular is increased.
- (3) An objection made under subsection (1) will be lodged in a prescribed form stating fully and in detail the grounds of the objection.

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- (4) If the Director is satisfied that there is no suitable mail or means of delivery by which a written notice of objection can reach the Director within the time so specified, then advice to the Director by radio, telephone, facsimile or other electronic means that the taxpayer objects to an assessment will constitute an effective notice of objection if -
- (a) The advice is received by the Director within the time so specified; and
- (b) The taxpayer posts to the Director by the next available mail a written statement in the prescribed form setting out fully and in detail the grounds of the objection.
- (5) No notice of objection given after the time so specified will be of any force or effect unless the Director accepts the objection and gives notice to the objector accordingly.
- (6) On receipt of the notice of objection referred to in subsection (1) of this section, the Director may require any person to furnish such particulars as the Director may deem necessary in accordance with section 57 (which relates to the power to inspect books and records).
- (7) The Director will not be required to consider any objection unless and until the objector, or any person under subsection (6), has complied with all requirements under this Act or the Business Licence Act [CAP 173] for the furnishing of returns, the furnishing of information, and the payment of tax.

- (8) The Director will consider the objection and will either allow or disallow it wholly or in part and will notify the objector accordingly within 60 days of the date upon which the Director is required to consider the objection under subsection (7).
- (9) If an objection is not wholly allowed by the Director, the objector may, within two months after the date on which notice of disallowance is given to the objector by or on behalf of the Director, by notice in writing to the Director require that the objection be heard and determined by the Tribunal and in that event the objection will be heard and determined in the Tribunal.
- (10) If the Director, after considering the objection, has allowed the objection in part and has reduced the assessment, the reduced assessment will be the assessment to be dealt with by the Tribunal.

**TRIBUNAL MAY CONFIRM, CANCEL OR ALTER THE ASSESSMENT**

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- 27. On the determination of any such objection, the Tribunal may either confirm or cancel the assessment, or increase or reduce the amount thereof, and the assessment will be altered by the Director, if necessary, so as to conform to that determination.

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**APPEALS TO SUPREME COURT AND COURT OF APPEAL**

- 28. The determination of the Tribunal on any such objection will be subject to appeal to the Supreme Court of the State, and the determination of the Supreme Court subject to appeal to the Court of Appeal of the State, in accordance with the normal practice of the Supreme Court and the Court of Appeal.

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**OBLIGATION TO PAY TAX NOT SUSPENDED BY OBJECTION OR APPEAL**

- 29. The obligation to pay and the right to receive and recover any value added tax will not be suspended by any objection or appeal, but if the objector succeeds the amount (if any) of the tax received by the Director in excess of the amount which, according to the decision on the hearing of the objection or appeal, was properly payable will forthwith be refunded to the objector by the Director.

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**NO ASSESSMENT TO BE SET ASIDE FOR TECHNICAL REASONS**

- 30. No assessment will be set aside by thea Tribunal or a Court upon the ground that there has been an error or omission in connection with any proceedings required to be taken under this Act or any order thereunder, but such Tribunal or Court, in any case that may come before it, may determine the true and proper amount of the tax to be paid under this Act.

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**PART VII**  
**RECOVERY OF TAX**

#### **ADDITIONAL TAXES FOR NON-COMPLIANCE OR EVASION**

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31. There will be added to and become part of the tax imposed by this Act and collected as such -
- (a) In the case of any failure to pay any tax required to be paid under this Act by the due date for payment under this Act, there will be added to the tax-
    - (i) Additional tax of 10% of the tax; and
    - (ii) A further 2% for each complete month during which the failure continues;
  - (b) If any part of the underpayment of tax required to be shown on any return is due to fraud, there will be added to the tax an amount of 200% of the underpayment as determined by the Director.

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#### **MODE OF RECOVERY OF UNPAID TAX**

32. (1) Tax payable by any person will be recoverable as a debt due to the State.
- (2) If the Director, after consultation with the Director General of the Ministry of Finance and Economic Management, is satisfied that the unpaid tax is in fact irrecoverable, the Director may write off the unpaid tax.

#### **DEDUCTION OF VALUE ADDED TAX FROM PAYMENT DUE TO DEFAULTERS**

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33. (1) If any taxpayer has made default in the payment of any tax or additional tax payable by the taxpayer under this Act, or any part of any such tax, the Director may from time to time by notice in writing require any person to deduct from any amount payable or to become payable by that person to the taxpayer such sum as may be specified in the notice (whether in one sum or by way of two or more sums deducted or extracted by way of instalment), and to pay every sum so deducted to the Director to the credit of the taxpayer within such time as may be specified in the notice.
- (2) This section will bind the State.
- ~~(3)~~ ~~(3)~~ Any notice under this section may be at any time revoked by the Director by a subsequent notice to the person to whom the original notice was given (in this section referred to as "the debtor"), and will be so revoked at the request of the taxpayer at any time when the Director is satisfied that all value added tax then due and payable by the taxpayer has been paid.
- ~~(3)~~
- ~~(4)~~ ~~(5)A~~ A copy of every notice given under this section in respect of any taxpayer and of the revocation of any such notice will be given to the taxpayer by the Director.

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(5) — (6) — Whenever pursuant to a notice under this section any deduction is made from any amount payable to any taxpayer, the taxpayer will be entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.

(5) —

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(6) — (7) — The sum deducted from any amount pursuant to a notice under this section will be deemed to be held in trust for the State, and, without prejudice to any other remedies against the debtor or any other person, will be recoverable in the same manner in all respects as if it were value added tax payable by the debtor.

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(7) — (8) — Any person making any deduction, extraction, or payment pursuant to a notice under this section will be deemed to have been acting under the authority of the taxpayer to whom the notice relates and of all other persons concerned and is hereby indemnified in respect of such deduction, extraction, or payment.

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(89) Any person receiving a notice of deduction under subsection (1) who is unable to comply with the notice on account of the fact that the monies in question do not come into the person's possession within the period specified in such notice will notify the Director within fourteen days of the expiration of such period, acquainting the Director with the facts.

**PROCEDURE IN SUPREME COURT WHERE DEFENDANT ABSENT FROM VANUATU OR NOT TRACED**

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34. In any action in the Supreme Court for the recovery of tax, if the defendant is absent from Vanuatu or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be effected by posting a duplicate or sealed copy thereof in a letter addressed to the defendant at the defendant's present or last known place of abode or business, whether in Vanuatu or elsewhere.

**PARTICULARS OF CLAIM OR DEMAND**

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35. In an action in any Court for the recovery of tax it will be sufficient if the particulars of claim or demand state the amount sought to be recovered and the date on which the same became payable, and such further particulars (if any) as the Director thinks necessary in order to fully inform the defendant of the nature of the claim.

### **COSTS AGAINST DIRECTOR**

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36. In all proceedings in any Court for the recovery of tax, costs may be awarded to or against the Director in the same manner as in other cases, but all costs so awarded against the Director will be payable out of money appropriated by Parliament and not otherwise.

### **PROCEEDINGS NOT AFFECTED BY VACANCY OR CHANGE IN OFFICE OF DIRECTOR**

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37. No action instituted by the Director for the recovery of tax, and no proceedings on objection to an assessment of tax, will abate by reason of any vacancy in the office of Director, or will be deemed defectively constituted by reason of any change in the holder of that office, and every such action or proceeding will be continued in the ordinary course as if the Director and the Director's successors in office were a corporation sole.

### **DISTRAIN FOR UNPAID TAX**

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38. The Director may levy distress on the goods, other than real property, and chattels of any registered person who refuses or fails to pay any tax payable by the registered person or any other amount recoverable from the registered person under this Act and [provide](#) for the disposal of any such goods or chattels by supply or otherwise to recover the amount of the tax payable by the registered person and any other amount recoverable from the registered person including the costs and expenses of the disposal.

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### **PRIORITY FOR TAX**

39. Notwithstanding sections 32 to 37, if a person has not paid any amount of value added tax as required under this Act, the amount of tax unpaid will, in the application of the assets of the person, rank as follows:
- (a) If the person is an individual, upon the person's bankruptcy or upon the person making an assignment for the benefit of the person's creditors, the amount of the tax payable will rank, in order of priority, immediately after preferential claims for wages or other sums payable to any worker, and in priority to all other claims;
  - (b) If the person is a company, upon the liquidation of the company or upon the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company or upon possession being taken on behalf of that debenture holder of the property, the amount of the tax payable will rank immediately after preferential claims for wages or other sums payable to any worker, and in priority to all other claims;
  - (c) If the person is a body of persons other than a company, upon the appointment of a receiver on behalf of any person under any

order by a court, the amount of tax payable will rank, in order of priority, immediately after any preferential claims for wages or other sums payable to any worker, and in priority to any claims of holders of debentures under any floating charge (including a floating charge which has since creation become a fixed or specific charge) created by the body ~~and will be paid accordingly out of any priority comprised in or subject to that charge.~~

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#### STATUTE OF LIMITATION

40. No statute of limitation will bar or affect any action or remedy for recovery of tax under this Act.

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### **PART VIII** **REFUNDS AND RELIEF**

#### REFUNDS OF EXCESS CREDITS

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41. (1) Subject to this section, if a refund is due to a registered person under section 19 (which relates to the calculation of tax payable or refund due), the Director will refund the amount to the registered person not later than 15 working days following the day on which the return of the registered person was received by the Director.
- (2) Notwithstanding subsection (1), if the Director is not satisfied with the return made by a registered person and decides that further investigation is required, the Director may withhold payment of the amount otherwise refundable until the later of the date the investigation is completed and the date the registered person has supplied all information requested.
- (3) Notwithstanding subsection (1), but subject to the following provisions of this section, if a registered person has, -
- (a) In respect of a taxable period, failed to pay the Director in whole or in part any amount of tax payable ~~before by~~ the due date for payment for the tax; or

- (b) In respect of any obligation imposed under the Import Duties Act [CAP 91] or the Business Licence Act [CAP 173], failed to pay to the Director any amount in whole or in part, -

the Director may set off, against that unpaid tax, duty or levy, any amount otherwise refundable to the person under section 19, or any amount of interest payable under section 3042, and will treat any amount so set off as a payment received from the registered person.

- (4) Notwithstanding subsection (1) but subject to the following subsections of this section, if a registered person has failed to furnish a return for a taxable period, the Director may withhold any amount otherwise refundable under section 19, or any amount of interest payable under section 42, until the registered person has complied with the return filing requirements.
- (5) The Director will give notice in writing to the registered person of any action taken under subsections (2), (3) or (4) within the period of 15 working days following the day on which the return showing the refund due was received by the Director.
- (6) If the Director requires further information from a registered person in order to investigate a return in respect of a taxable period, the Director will give notice in writing to the registered person, -

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- (a) In respect of an initial request for information in respect of the return, within the period of 15 working days following the day on which the return was received by the Director; and
- (b) In relation to subsequent requests for information in respect of a return, within the period of 15 working days following the date of receipt of any information previously requested by the Director.

- (7) All money payable by the Director under this Part will be paid without further appropriation than this Act.

#### **INTEREST ON REFUNDS OF EXCESS CREDITS**

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42. (1) In any case where the Director is required by section 41 to refund an amount to a registered person and the Director does not refund the amount within the period of 15 working days following the day upon which the return of the registered person was received by the Director, the Director will pay to the registered person interest on the amount withheld.
- (2) Interest payable under this section will be payable at the rate of 15% per annum from the day following the day on which the Director is required under section 41 to refund an amount to the registered person and will be calculated in accordance with the following formula:

$$a \times b \times c$$

where:

- a is the number of days for which interest is to be paid;
  - b is the amount of the refund required to be paid under subsection (1); and
  - c is the rate of interest specified in this subsection.
- (3) Notwithstanding anything in this section, no interest will be payable if the amount of interest that, but for this subsection, would be paid is less than 1,000 vatu.
- (4) Notwithstanding anything in this section, interest will not be payable in respect of any period that ends ten working days after -
- (a) Any period during which the Director is not satisfied with the return made by the registered person and is undertaking further investigation; or

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- (b) Any period in which the Director has requested further information from the registered person in respect of the return and has not received all the information requested; or
  - (c) Any period after the Director has set off under section 41(3) the amount of refund due against tax payable by the registered person; or
  - (d) Any period in which the registered person has failed to furnish a return under this Act for a taxable period.
- (5) If the Director is satisfied that the amount of any interest paid to a person under this section is in excess of the proper amount, the Director may recover the amount of the excess in the same manner, with any necessary modifications, as if it were tax payable by the person.

#### **REFUND OF TAX OVERPAID**

43. (1) If a registered person has paid to the Director any amount in excess of the amount of the tax payable under section 19 (which relates to the calculation of tax payable or refund due) in respect of any taxable period, the Director will refund the amount paid in excess.
- (2) Subject to subsection (3) of this section, no refund will be made after the expiry of the period of 6 years immediately following the end of the taxable period,

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unless written application for the refund is made by or on behalf of the registered person before the expiration of that period.

- (3) If an assessment made under this Act reduces any amount of tax payable by a registered person or increases any amount refundable by the Director to a registered person, the Director will, notwithstanding that the time limited in accordance with subsection (2) for the making of a refund may have expired, refund the excess tax or deficient refund.
- (4) No refund will be made under subsection (3) after the expiry of the period of 6 years immediately following the end of the year in which the assessment was made, unless written application for the refund is made by or on behalf of the registered person before the expiry of the period.

## **RELIEF FROM TAX**

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- 44. (1) Notwithstanding anything in this Act, the Director may refrain from either issuing a notice of assessment or collecting or refunding tax in any case where, as the case may be -
  - (a) The balance of any tax payable does not exceed 400 vatu; or
  - (b) The tax paid exceeds the amount of the tax for which the taxpayer is liable by an amount not exceeding 400 vatu.

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- (2) The Director may in the Director's discretion mitigate or remit in whole or in part any additional tax or interest or penalty which may be assessed under this Act.
- (3) No amount in excess of 150,000 vatu will be remitted or refunded under this section except with the approval of the Director General of the Ministry of Finance and Economic Management.

## **PART IX** **SPECIAL CASES**

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### **GROUPS OF COMPANIES**

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- 45. (1) For the purposes of this Act, two or more companies, each being a registered person, are eligible to be members of a group of companies in respect of any taxable period if not less than one half of the paid-up capital of each of those companies is held by shareholders in the other or if not less than one half in nominal value of the allotted shares in each of them is held by shareholders in the other.
- (2) For the purposes of subsection (1), shares in one company held by another company will for this purpose be deemed to be held by the shareholders in the last mentioned company.

- (3) If 2 or more companies apply to be members of a group of companies for the purposes of this section and the Director is satisfied that they are eligible to be members of a group of companies under subsection (1) of this section, they will be members of a group of companies from the beginning of such taxable period as is determined by the Director.
- (4) In any application made under subsection (3), one such company will be nominated to be the representative member.
- (5) If any companies are members of a group of companies, the representative member may apply to the Director for -
  - (a) The addition to that group of a further eligible company; or
  - (b) The exclusion from that group of one of the current members; or
  - (c) The substitution of another member of the group as the representative member; or
  - (d) That group of companies to no longer be a group of companies for the purposes of this section, -

and the Director will grant the application from the beginning of such taxable period as is determined by the Director.

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- (6) If any member of a group of companies ceases to be eligible to be a member of the group and the Director becomes aware of that fact, the Director will, by notice in writing given to that member or the representative member, terminate that membership from such date as may be specified in the notice.
- (7) For the purposes of this Act, a notice under this Act addressed to the representative member will be deemed to be served on all members of the group.
- (8) If any companies form a group of companies for the purposes of this section-
  - (a) Any taxable activity carried on by a member of the group will be deemed to be carried on by the representative member and not to be carried on by any other member of the group; and
  - (b) Subject to the following paragraphs of this subsection, any taxable supply by a member of the group to another member of the group may be disregarded; and
  - (c) Any taxable supply by a member of the group to a person outside the group or from a person outside the group to a member of the group will be deemed to be a taxable supply by or to the representative member; and
  - (d) Any supply of goods and services which is not a taxable supply made by a member of the group will be deemed to be made by the representative member; and

- (e) Any deductions under section 19(4) otherwise available to a member of the group will be deemed to be available only to the representative member; and
  - (f) Any obligation on a member of the group, other than the representative member, to file returns under section 16 will be disregarded.
- (9) Notwithstanding subsection (8), -
- (a) All members of the group will remain liable jointly and severally for any tax payable by the representative member; and
  - (b) The provisions of section 21 (which relates to tax invoice requirements), section 54 (which relates to the keeping of records) and Part III (which relates to registration) will continue to apply to all members of the group.
- (10) If the Director is satisfied in relation to 2 or more registered persons (not each being companies) that -
- (a) One of them controls each of the others; or

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- (b) One person controls all of them; or
- (c) Two or more persons carrying on a taxable activity in partnership control all of them, -

the Director may deem those registered persons to be members of a group and the preceding subsections of this section (other than subsections (1) and (2)) will apply as if every reference in the said subsections to -

- (d) A group of companies were a reference to that group; and
- (e) Companies were a reference to the members of the group.

## **UNINCORPORATED BODIES**

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46. (1) For the purposes of this section -
- “Body” means an unincorporated body of persons and includes a partnership, a joint venture and the trustees of a trust:
- “Member” means a partner, joint venturer, trustee, or other member of any body.
- (2) If an unincorporated body that carries on any taxable activity is registered under this Act:-
- (a) The members of the body will not themselves be liable to be registered under this Act in relation to the carrying on of the taxable activity; and

- (b) Any supply of goods and services made in the course of carrying on the taxable activity will be treated for the purposes of this Act as being supplied by the body and not supplied by any member of a body; and
- (c) Any supply of goods and services to, or acquisition of goods by, a member of the body acting in the capacity as a member of the body and in the course of carrying on the taxable activity will be treated for the purposes of this Act as being supplied to or acquired by the body and will be treated as not being supplied to or acquired by the member; and
- (d) The registration will be in the name of the body, or where the body is the trustees of a trust, in the name of the trust; and
- (e) Subject to subsection (3), any change of members of the body will have no effect for the purposes of this Act.

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- (3) Notwithstanding anything in this section, every member is jointly and severally liable with any other members for tax payable by the body while that member remains a member of a body.
- (4) If a body is a partnership, joint venture, or the trustees of a trust, a member will not cease to be a member of the body for the purposes of this section until the date on which any change of membership of the body is notified in writing to the Director.
- (5) For the purposes of this Act, a notice served in accordance with this Act which is addressed to a body by the name which it is registered under this Act will be treated as being served on the body and on all members of the body.
- (6) Subject to subsection (7), if anything is required to be done under this Act by or on behalf of a body, it will be the joint and several liability of all the members to do any such thing but if any such thing is done by one member it will be sufficient compliance with this requirement.
- (7) Notwithstanding anything in this section but subject to subsection (3), if anything is required to be done under this Act by or on behalf of a body (other than a partnership, joint venture or trustees of a trust) the affairs of which are managed by its members or a committee of its members, it will be the joint and several responsibility of -
  - (a) Every member holding office as president, chair, treasurer, secretary or any similar office; or
  - (b) In default of any such member, every member holding office as a member of a committee, -

but if any such thing is done by any official or committee member it will be

sufficient compliance with any such requirement.

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## **AGENTS AND AUCTIONEERS**

47. (1) Subject to this section, for the purposes of this Act, if an agent makes a supply of goods and services for and on behalf of any other person who is the principal of that agent, a supply will be treated as being made by the principal and not by the agent.
- (2) Notwithstanding subsection (1), if the supply is a taxable supply, an agent of registered person may, notwithstanding anything in this Act, issue a tax invoice or a credit note or a debit note in relation to the supply as if the agent had made the taxable supply and, to the extent that that tax invoice or credit note or debit note relates to the supply, the principal will not also issue the tax invoice or credit note or debit note (as the case may be).

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- (3) Subject to this section, for the purposes of this Act, if a registered person makes a taxable supply of goods and services to an agent who is acting on behalf of another person who is the principal for the purpose of the supply, the supply will be treated as being made to the principal and not to the agent.
- (4) Notwithstanding subsection (3), the agent may nevertheless request to be issued with a tax invoice and the registered person making the supply may issue a tax invoice or a credit note or a debit note as if the supply were made to the agent.
- (5) If a tax invoice or a credit note or a debit note in relation to a supply has been issued under this section by an agent or to an agent, the agent will maintain sufficient records to enable the name and address and registration number (if any) of the principal to be ascertained.
- (6) Notwithstanding anything in subsection (3) of this section, if a registered person makes a taxable supply (not being a supply which is charged with tax at the rate of 0%) of goods or services to an agent, being a registered person, who is acting for and on behalf of another person who is a principal for the purpose of the supply and -
- (a) The principal is not resident in Vanuatu and is not a registered person; and
  - (b) The supply is directly in connection with the exportation of goods from Vanuatu or the importation of goods into Vanuatu, -

this Act will, if the agent and the principal agree, have effect as if the supply were made to the agent and not to the principal.

## **PERSONAL REPRESENTATIVES, LIQUIDATORS, RECEIVERS ETC**

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48. (1) In this section -

“Agency period” means the period beginning on the date on which a person becomes entitled to act as a specified agent carrying on a taxable activity in relation to an incapacitated person and ending on the earlier of -

- (a) The date on which some person other than the incapacitated person or the specified agent is registered in respect of the taxable activity; or
- (b) The date on which the person ceases to be a specified agent in relation to the incapacitated person:

“Incapacitated person” means a registered person who dies, or goes into liquidation or receivership, or becomes bankrupt or is otherwise incapacitated:

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“Specified agent” means a person carrying on any taxable activity in a capacity as personal representative, liquidator, or receiver of an incapacitated person, or otherwise as agent for or on behalf of or in the stead of an incapacitated person.

- (2) For the purposes of this Act and notwithstanding section 47, if any person becomes a specified agent that person will, during the agency period, be deemed to be a registered person carrying on the taxable activity of the incapacitated person, and the incapacitated person will during that period be deemed not to be carrying on that taxable activity.
- (3) If a mortgagee is in possession of any land or other property previously mortgaged by the mortgagor, being a registered person, the Director may, from the date on which the mortgagee took possession of that land or other property, until such time as the mortgagee ceases to be in possession of that land or other property, deem the mortgagee, in any case if and to the extent that the mortgagee carries on any taxable activity of the mortgagor, to be a registered person.
- (4) Any person who becomes a specified agent, or who as a mortgagee in possession carries on any taxable activity of the mortgagor, will, within 21 days of becoming a specified agent or commencing that taxable activity of the mortgagor, inform the Director in writing of that fact and of the date of the death or of the liquidation or receivership or bankruptcy or mortgagee taking possession of any land or other property previously mortgaged by the mortgagor, or of the nature of the incapacity and the date on which it began.

## **AGENTS IN THE CASE OF ABSENTEES**

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49. If any person acts or assumes to act as the agent of any other person who is outside Vanuatu or does not have a place of business in Vanuatu, the agent will be liable to the same value added tax and all obligations imposed by this Act as if the agent were the principal for whom the agent so acts or assumes to act.

**GOODS AND SERVICES ACQUIRED BEFORE INCORPORATION**

50. (1) If -

- (a) An amount of tax has been charged under this Act in relation to the acquisition of goods and services for and on behalf of a company or in connection with the incorporation of a company; and
- (b) The company becomes a registered person on incorporation; and
- (c) The goods and services were acquired prior to incorporation by a person who -

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- (i) Became a member, officer, or employee of the company and was reimbursed by the company for the whole amount of the consideration paid for the goods and services; and
- (ii) Acquired those goods and services for the purposes of a taxable activity to be carried on by the company and has not used those goods and services for any purpose other than such taxable activity, -

the company will be deemed to be the recipient of the goods and services as if the supply or importation in question had been made during the taxable period in which the reimbursement referred to in this section is made.

(2) This section will not apply in relation to any goods and services where -

- (a) The supply of the goods and services by the person to the company is itself a taxable supply or is a supply of secondhand goods not being a taxable supply; or
- (b) The goods and services were acquired more than 6 months prior to the date of incorporation of the company; or
- (c) The company does not hold sufficient records to establish the particulars relating to the deduction to be made under section 19(4) as a result of the application of this section.

**PART X**  
**OFFENCES AND PENALTIES**

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**OFFENCES**

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51. (1) Every person commits an offence against this Act who -
- (a) Fails to apply for registration as required under this Act; or
  - (b) Refuses or fails to furnish any return or information as and when required by this Act, or any regulations made under this Act or by the Director; or
  - (c) Makes any false return, false statement or false declaration or gives any false information, knowing it to be false or being reckless as to whether it was false, or intentionally misleads or attempts to mislead the Director in relation to any matter under this Act; or
  - (d) Knowingly falsifies any records required to be kept under this Act; or

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- (e) Knowingly issues any incorrect tax invoice; or
- (f) Knowingly misrepresents that an amount is payable as tax under this Act in respect of a supply; or
- (g) Receives or deals with goods or services, if the person knows or has reason to believe that the tax payable on the supply of the goods or services has been or will be evaded; or
- (h) Obstructs any officer of the Department acting in discharge of that officer's duties or the exercise of that officer's power under this Act; or
- (i) Fails to keep or properly maintain records of a taxable activity carried on by the person as required under this Act; or
- (j) Knowingly breaches the provisions of this Act prohibiting the issue of multiple tax invoices, credit notes or debit notes; or
- (k) Fails to provide another registered person with a tax invoice as required under this Act; or
- (l) Fails to make any deduction required by a notice under section 33 to be made from any amount payable by the person to a taxpayer or fails after making any such deduction to pay the sum deducted to the Director within the time specified by the notice; or

- (m) Fails to display prices inclusive of value added tax, as required by section 60 of this Act; or
  - (n) Aids, abets, incites, or conspires with any other person to commit any offence against this Act or against any regulations made under this Act.
- (2) Every person who commits an offence ~~against~~under paragraphs (i), (k), (l) or (m) of subsection (1) will be liable to fine not exceeding 40,000 vatu for the first such conviction, to a fine not exceeding 75,000 vatu for the second such conviction and to a fine not exceeding 300,000 vatu for each subsequent such conviction.
- (3) Every person who commits an offence ~~against~~under paragraph (b) of subsection (1) will be liable to a fine not exceeding 40,000 vatu for each month of the default for the first time upon which the person is convicted of such an offence and for a fine not exceeding 75,000 vatu for each month of default for the second and subsequent occasions on which the person is convicted of such an offence.
- (4) Every person who commits an offence against this Act for which no other penalty is prescribed will:

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- (a) On the first such conviction, be liable for a fine not exceeding 700,000 vatu or to imprisonment of three months in respect of any such offence or each of those offences, or to both such fine ~~or~~and imprisonment;
  - (b) For each subsequent such conviction, be liable for a fine not exceeding 1,500,000 vatu or to imprisonment for a period not exceeding one year in respect of any such offence or each of those offences, or to both such fine ~~and~~or imprisonment.
- (5) Every person who commits an offence ~~against~~under paragraph (n) of subsection (1) will be liable to a fine not exceeding the maximum fine applicable to the resultant offence committed by the person aided, abetted, incited, or conspired with.
- (6) The Director shall, from time to time, publish in the Gazette a list of persons who have been convicted under subsection (4) or persons who have been charged additional tax under section 31(b).

#### OFFICERS AND EMPLOYEES OF CORPORATE BODIES

52. Directors, secretaries, statutory officers, receivers, managers of any property of or liquidators of a corporate body commit an offence against this Act if, being responsible for furnishing to the Director any information or statement or return under this Act, they fail to furnish that information or statement or return to the Director within the time required under this Act.

## **PROCEEDINGS**

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53. (1) Proceedings for offences under this Act will be taken by way of prosecution in the Supreme Court upon the information of the Director.
- (2) Any information may charge the defendant with any number of offences against the Act if those offences are founded on the same set of facts or are of the same or similar character.
- (3) Where any information charges more than one such offence, particulars of each offence charged will be set out separately in the information.
- (4) All such charges will be heard together unless the Court, either before or at any time during the hearing, considers it just that any charge should be heard separately and makes an order to that effect.
- (5) Notwithstanding anything in any other Act, any information in respect of any offence against this Act or against any regulations made under this Act may be laid at any time within 10 years after the end of the taxable period in which the offence was committed.

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## **PART XI** **GENERAL PROVISIONS**

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### **KEEPING OF RECORDS**

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54. (1) Subject to this section, every registered person who supplies in Vanuatu goods and services will keep in Vanuatu sufficient records in English, French or Bislama to enable ready ascertainment by the Director of the registered person's liability to tax and will retain in Vanuatu all such records for a period of at least 6 years after the end of the taxable period to which they relate.
- (2) The Director may on application in writing authorise a registered person to keep the records outside Vanuatu.
- (3) This section will not require the retention of [the records of](#) a company [which once it](#) has been liquidated.
- (4) The Director may, by notice in writing given before the expiry of the 6 year retention period specified in subsection (1), require a registered person to retain the records specified for a further period not exceeding 3 years if -
- (a) The affairs of the registered person are under investigation by the Director; or
- (b) The Director intends to conduct such an investigation or is actively considering such an investigation.

## **AGREEMENT TO DEFEAT THE INTENTION AND APPLICATION OF ACT TO BE VOID**

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55. (1) Notwithstanding anything in this Act, where the Director is satisfied that an arrangement has been entered into to defeat the intent and application of this Act or of any provision of this Act, the Director will treat the arrangement as void for the purposes of this Act and will adjust the amount of tax payable by any registered person (or refundable to that person by the Director) who is affected by the arrangement, whether or not the registered person is a party to the arrangement, in such manner as the Director considers appropriate so as to counteract any tax advantage obtained by the registered person from or under the arrangement.

(2) For the purposes of this section -

“Arrangement” means any contract, agreement, plan or understanding including all steps and transactions by which it is carried into effect:

“Tax advantage” includes -

(a) Any reduction in the liability of a registered person to pay tax:

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(b) Any increase in the entitlement of a registered person to a refund of tax:

(c) Any reduction in the total consideration payable by a person in respect of any supply of goods and services.

## **LIABILITY FOR TAX PAYABLE BY COMPANY LEFT WITH INSUFFICIENT ASSETS**

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56. (1) This section will apply if -

(a) An arrangement (as defined in section 55(2)) has been entered into in relation to a company; and

(b) An effect of the arrangement is that the company is unable to satisfy a liability to tax under this Act, whether the liability exists at the time of entry into the arrangement or subsequently; and

(c) It can reasonably be concluded that -

(i) A director of the company at the time of entry into the arrangement who had made all reasonable enquiries would have anticipated that the tax liability would be, or would likely to be, required to be satisfied by the company; and

(ii) A purpose of the arrangement was to have the effect referred to in paragraph (b) of this subsection.

(2) This section will not apply to an arrangement to which the Director is a party.

- (3) If an arrangement to which this section applies has been entered into, all persons who were directors of the company at the time the arrangement was entered into will, subject to this section, be jointly and severally liable for the tax liability as agent of the company.
- (4) If an arrangement to which this section applies has been entered into, a person who -
  - (a) Together with persons related to that person (whether by blood, marriage or ownership), controlled the company at the time the arrangement was entered into; or
  - (b) Had an ownership interest (direct or indirect) in the company at the time the arrangement was entered into and who, it could reasonably be concluded, having regard to the materiality of a benefit derived by the person from the arrangement, was a party to the arrangement, -

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will be liable as agent for the company for the tax liability to the extent that the tax liability is no greater than the market value of the person's direct or indirect interest in the company at the time of entry into the arrangement and the value of any benefit derived by the person from the arrangement (whichever is larger).

- (5) A director will not be liable under this section for a tax liability of a company if the Director is satisfied that the director derived no benefit from the arrangement and either notified the Director of the arrangement and the application of this section to the arrangement in writing at the first reasonable opportunity after the director became aware of the arrangement or had no knowledge of the arrangement.
- (6) Subject to section 58 (which relates to limitation periods), but notwithstanding any other provision of this Act, the Director may at any time after the liquidation of a company make or amend any assessment of the company under this Act as if the company had not been liquidated, in order to give effect to this section.
- (7) If the Director makes an assessment after liquidation of a company, the Director will nominate one or more persons whom the Director considers to be liable under this section in respect of the tax liability specified in the assessment and each such person will be treated for the purposes of this Act as the agent of the company.

#### **DIRECTOR TO HAVE POWER TO INSPECT RECORDS**

57. (1) Notwithstanding anything in any other Act, the Director will at all times have full and free access to all records, whether in the custody or under the control of a public officer or a body corporate or any other person, for the purpose of inspecting any records which the Director considers necessary or relevant for the purpose of collecting any tax or duty which the Director is authorised to collect, or considers likely to provide any information otherwise required for any

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such purpose, and may, without fee or reward, make extracts from or copies of any such records.

- (2) The Director may for the purpose of any investigation under this section require any person to give all reasonable assistance in the investigation, and to answer all proper questions relating to any such investigation either orally, or, if the Director so requires, in writing, or by statutory declaration, and for that purpose may require the person to attend at ~~the such~~ premises ~~with as nominated by~~ the Director.

#### LIMITATION PERIOD

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58. Any amount of value added tax imposed by this Act will be assessed within 6 years after the return in respect of the taxable period was filed or within three years of the due date prescribed for the filing of the said return, whichever is later, and no proceeding in Court without assessment for the collection of any such taxes will be begun after the expiration of such period, provided that:

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- (a) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the return, the tax may be assessed or levied at any time. However, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim must first be made by a Judge of the Supreme Court;
- (b) Where, before the expiration of the period prescribed in this section, both the Director and the taxpayer have consented in writing to the assessment of the tax after the expiration of the period, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

#### REGULATIONS

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59. (1) The Minister may from time to time make all such regulations as, in the Minister's opinion, may be deemed necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the general power to make regulations conferred by subsection (1), it is hereby declared that regulations may be made under this section prescribing forms and rules or procedure for the ascertainment, assessment and collection of taxes imposed under this Act.
- (3) All regulations made under this section will be laid before the Parliament of the State within 28 days after the making thereof, if the Parliament is then in session, and if not, will be laid before the Parliament within 28 days after the commencement of the next ensuing session.

## **DISPLAY OF GOODS OR SERVICES FOR SALE**

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60. (1) Subject to subsections (2) and (3), any registered person displaying the prices of goods or services for sale must display the prices inclusive of value added tax (if any), but the person may also display the value added tax content of the prices.
- (2) Where any tourism publicity material is or will be utilised predominantly overseas to advertise the supply of any goods and services by any registered person, the price of those goods and services advertised may be displayed as exclusive of tax (if any) on that supply, provided that any tourism publicity material on which an exclusive of tax price is displayed must clearly state that the price displayed is subject to the tax.
- (3) The Director may, upon application by a registered person, allow the application of subsection (1) by the person to be deferred until 1 February 1999.

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## **PART XII** **VALUE ADDED TAX TRIBUNAL**

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### **ESTABLISHMENT OF VALUE ADDED TAX TRIBUNAL**

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61. (1) A Tribunal called the Value Added Tax Tribunal is established.
- (2) Each member of the Tribunal and its chairperson (if any) will be appointed by the Judicial Service Commission established under Article 48 of the Constitution provided that there shall not be more than seven members of the Tribunal at any time.
- (3) The Tribunal will hear and determine objections made under section 26.
- (4) Each member of the~~The~~ Tribunal will be a person with legal or accounting knowledge and experience appropriate for the purpose of hearing and determining objections.
- (5) Subject to this Part and Part VI, the Tribunal will have powers and authority similar to those vested in a judge of the Supreme Court as if the hearing of the objection were the hearing of an action between the objector and the Director.

### **REGISTRAR OF TRIBUNAL**

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62. (1) The Tribunal will have a Registrar who will be primarily responsible for arranging sittings of the Tribunal and undertaking other administrative duties necessary for the efficient and effective work of the Tribunal.
- (2) The Registrar will be appointed by the Director in consultation with the Chief Justice.

## **RULES OF TRIBUNAL**

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63. (1) The Chief Justice will have the power to make rules for the Tribunal for regulating -
- (a) Any matters relating to the practice and procedure of the Tribunal; and
  - (b) The fees to be charged and the costs of proceedings at the Tribunal.
- (2) Rules made under this section will constitute part of this section.

## **TRIBUNAL SITTINGS**

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64. (1) The Tribunal will fix the date and place of hearing of objections and will notify the parties accordingly.

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- (2) Notwithstanding subsection (1) the hearing of an objection by the Tribunal will not commence until one month after the date of notification.
- (3) One or more members of the Tribunal may sit at a hearing at the discretion of the Chairperson.

## **PROCEEDINGS AT SITTINGS**

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65. (1) All proceedings of the Tribunal will be held in camera if requested by the objector.
- (2) If the objector fails to appear either in person or by agent, the Tribunal may proceed ex-parte or may defer the hearing.
- (3) The Tribunal may receive such evidence as it thinks fit, whether receivable in accordance with law or in other proceedings or not.

## **BURDEN OF PROOF ON OBJECTOR**

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66. On the hearing and determination of all objections to assessments of value added tax, the burden of proof will be on the objector.

## **COSTS**

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67. On the determination of any objection, the Tribunal may award against the Director or against the objector such costs as it deems just (including interest on tax payable or received).

## **CASE STATED**

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68. (1) The parties to the objection hearing will be the objector, and the Director as respondent.

- (2) For the purpose of every objection hearing -
- (a) The Director will state and sign a case setting forth the facts as alleged by the Director, the nature of the assessment made by the Director, the ground of objection thereto, and the question for the determination of the Tribunal;
  - (b) The case, so stated and signed, will be filed by the Director in the Tribunal, and the filing of the case will be deemed to be the institution of the objection hearing;
  - (c) A copy of the case so filed will be sent by the Director to the objector.

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- (3) Within 14 days after the filing of the case by the Director or within such further time as the Director may allow, the objector may file an answer to the case, in which circumstance the answer will set forth the facts as alleged by the objector and the grounds of the objection.
- (4) The case as stated and filed by the Director will not be conclusive as to the matters set forth therein, either against the objector or the Director, except so far as agreed to in writing by or on behalf of the Director and the objector.
- (5) After the filing of the case by the Director, the Registrar of the Tribunal will, on the application of the Director or of the objector, appoint a time and place for the hearing of the objection.
- (6) Reasonable notice of the time and place of the hearing of the objection will be given by the applicant under subsection (5) to the other party.

**PART XIII**  
**TRANSITIONAL PROVISIONS AND REPEALS**

**EFFECT ON SUPPLY PRICE OF 1998 INTRODUCTION OF TAX**

69. (1) If -
- (a) A supply of goods or services has become subject to value added tax as a result of this Act; and
  - (b) The parties to the supply have not expressly agreed that this subsection will not apply; and
  - (c) The agreement between the parties for the making of the supply is entered into before 31 July 1998, -

the registered person making the supply may increase the agreed price for the supply, and may recover the increase from the acquirer of the goods or

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services, by the amount of tax payable in respect of the supply, to the extent to which that tax exceeds the aggregate of the following sums:

- (d) The business licence fee related to the turnover (if any) which would have been payable in respect of the supply but for the ~~repeal of amendments to~~ the Business Licence Act [CAP 173] made by ~~this Act~~ [the Business Licence Act 1998](#);
- (e) The hotel and licensed premises tax (if any) that would have been payable in respect of the supply but for the repeal of the Hotel and Licensed Premises Act [CAP 141] under this Act;

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- (f) The video cassette tax on hiring (if any) that would have been payable in respect of the supply but for the repeal of the Video Cassette (Tax on Hiring) Act [CAP 180] under this Act;
- (g) The customs duty that would have been payable by the registered person in respect of the supply but for amendments to the Import Duties Act [CAP 91] that apply in respect of goods imported and cleared through customs on or after 1 July 1998; and
- (h) Tax that would have been payable by the registered person under the Rent Taxation Act [CAP 196] but for amendments to that Act that apply in respect of rent payable after 1 August 1998.

(2) If -

- (a) A fee, charge or other amount is payable under an Act or regulation; and
- (b) The supply to which the fee, charge or other amount relates becomes subject to value added tax as a result of this Act; and
- (c) It is not expressly provided that the fee, charge or other amount is inclusive of value added tax; and
- (d) The fee, charge or other amount was determined before 1 August 1998, -

the fee, charge or other amount will be treated as if increased by the amount of the tax payable in respect of the supply, to the extent to which that tax exceeds the aggregate of the sums referred to in paragraphs (d) to (h) of subsection (1) with those paragraphs applied as if the supply referred to in subsection (1) were the supply covered by this subsection.

#### **DEDUCTIONS FOR CUSTOMS DUTY**

70. (1) For the purposes of this section –

“Capital asset” means any goods forming part of the capital assets of a taxable activity:

—“Trading stock” does not include:

- (a) Any capital asset; or
- (b) Any goods held on hire or for hire; or
- (c) Any second-hand goods, unless goods in respect of which that registered person has paid customs duty and which have been supplied and subsequently reacquired by that person; or

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- (d) Beer, cigarettes, manufactured tobacco or spirits; or
- (e) Any goods being consumables and spare parts of the taxable activity; or
- (f) Any goods entered free of duty under the Import Duties Act [CAP 91].

(2) Notwithstanding anything in section 19(4), in calculating the amount of tax payable by a registered person, the person may deduct an amount equal to the customs duty credit calculated in accordance with subsections (3) to (7):

- (a) In two equal instalments, each of one half of the customs duty credit, over two taxable periods the latter of which ends on 31 December 1998, if the taxpayer is in Category B under section 15(1); or
- (b) In twelve equal instalments, each of one twelfth of the customs duty credit, over twelve taxable periods the last of which ends on 31 July 1999 if the taxpayer is in Category A under section 15(1) and holds, on 1 August 1998, a bonded warehouse licence for the operation of a duty free shop under the Customs Act [CAP 3]; or
- (c) In five equal instalments, each of one fifth of the customs duty credit, over five taxable periods the last of which ends on 31 December 1998, otherwise.

(3) An amount of customs duty credit able to be deducted under this section arises only in respect of goods -

- (a) Held by the registered person at the close of 30 June 1998; and
- (b) Which are trading stock of a taxable activity carried on by the registered person; and
- (c) In respect of which the Director is satisfied that customs duty was paid on their importation or entry for home consumption.

(4) The amount of customs duty credit may, at the election of the person but

subject to subsection (5), be calculated under any one of the following paragraphs:

(a) An amount (not less than zero) calculated by deducting from the customs duty paid by the registered person in respect of the goods the amount of customs duty that would have been correctly payable by the person if those goods had been imported or entered for home consumption on or after 1 July 1998;

(b) An amount equal to 5 percent of the cost of the goods; or

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(c) For taxpayers entitled to be placed in Category B under section 15, an amount equal to 5 percent of the total proceeds of sales of trading stock by the person in the three months ending on 30 June 1998.

(5) The Minister may, by order, require that the customs duty credit in respect of certain items of trading stock be calculated in accordance with subsection (4)(a).

(6) A registered person entitled to a deduction against value added tax under this section will disclose to the Director with the person's return for each taxable period in which a claim for a deduction is made -

(a) The total amount of the deduction to which the person is entitled;

(b) The total amount, if any, claimed as a deduction in previous returns; and

(c) The amount, claimed as a deduction in the current return.

(7) A registered person will not be entitled to a deduction under this section unless the claim for the deduction is supported by adequate stock, purchase and sales records kept by the person, including stock sheets, information on the cost of goods purchased, records of sales and purchases and of customs duty payments.

#### **REGARD TO CUSTOMS DUTY CREDIT AND DUTY REDUCTIONS IN PRICES**

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71. (1) For the purposes of this section, "customs duty credit" means any amount that a registered person is or, but for this section, would be allowed to deduct under section 70.

(2) In determining the price of a supply of goods or services, a registered person will have regard to the amount of customs duty credit the registered person is entitled to deduct under section 70 in respect of the supply and the amount, if any, by which customs duty payable on goods in respect of that supply is lower than the customs duty that would have been payable if those goods had been imported and cleared through Customs before 1 July 1998.

- (3) If a registered person does not have adequate regard to the amount of customs duty credit and reduction in customs duty in respect of a supply under subsection (1), the Director may, notwithstanding section 70:
- (a) Deny a deduction for any customs duty credit in respect of the goods supplied; and
  - (b) Impose additional tax of up to 5% of the ~~taxable supply payable~~ ~~in~~ ~~in~~ respect of the taxable period in which the supply is made, which tax will be payable in all respects as if were additional tax imposed under section 31.

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- (4) This section will apply in respect of taxable supplies made in any taxable period that ends on or before 30 ~~November~~~~September~~ 1998.

#### REGISTRATION OF PERSONS LIABLE TO BE REGISTERED ON 1 AUGUST 1998

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72. Notwithstanding anything in section 12 (which relates to registration of persons making taxable supplies), every person who, on or before ~~29 May~~~~30 June~~ 1998, knows, or could with reasonable diligence have known, that he or she will be liable to be registered from 1 August 1998 under section 12, will apply in the prescribed form for registration before ~~29 May~~~~30 June~~ 1998, and the Director will register that person under section 12.

#### SUPPLIES PRIOR TO 1 AUGUST 1998

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73. (1) For the purposes of this section, the expression "time of performance" means, -
- (a) In relation to a supply of goods, -
    - (i) If the goods are to be removed and the property in those goods will pass from the supplier to the recipient, the earlier of the time of the removal and the time that that property passes:
    - (ii) If the goods are to be removed but property in the goods will not pass from the supplier to the recipient, the time of the removal:
    - (iii) If the goods are not to be removed, the time they are made available to the recipient:
    - (iv) If the goods (being sent or taken on approval, sale or return or similar terms) are removed before it is known whether a supply will take place, the time when it becomes certain that the supply has taken place; and
  - (b) In relation to a supply of services, the time when the services are performed.

- (2) If a registered person supplies services under an agreement or enactment and the agreement or enactment expressly or impliedly provides that, for and in respect of any period, -
- (a) A right is to be granted or exercisable or anything is to be done or omitted to be done; or
  - (b) A payment is due, or may be made; or
  - (c) The agreement is enforceable or will have effect, -

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those services will for the purposes of subsection (1)(b) be treated as if performed by the registered person continuously and uniformly during the whole of that period.

- (3) If services are supplied under an agreement or enactment which provides that any right is to be granted or exercisable by an individual for a period which will end with the termination of the life of the individual and there is a single non-refundable payment as consideration, the services will, for the purposes of subsection (1)(b) , be deemed to have been performed at the earlier of the time the right is granted by the supplier or at the time that it first becomes exercisable.
- (4) Notwithstanding anything in this Act, for the purposes of subsection (1) , goods supplied under an agreement to hire will be deemed to be a supply of services.
- (5) Notwithstanding anything in section 5, if and to the extent that the time of performance of any supply of goods and services -
- (a) Is before 1 August 1998 and that supply would, but for this section, be deemed by section 5 of this Act to take place on or after 1 August 1998, and the value of the supply is ascertainable, the time of performance will, for the purposes of this Act, be treated as being the time when the supply of the goods and services takes place:
  - (b) Is on or after 1 August 1998, and that supply would, but for this section, be deemed by section 5 of this Act to take place before 1 August 1998, -
    - (i) The time of performance will, for the purposes of the imposition of value added tax under section 10 of this Act, be treated as being the time when the supply of the goods and services takes place; and
    - (ii) For the purposes of section ~~46~~5 of this Act, the time when the supply of those goods and services is made will be treated as being 1 August 1998 and
    - (iii) For the purposes of section 19(3)(a)(ii) and (4)(a)(ii) (which relate to the payments basis for tax accounting), a

payment made or received in respect of the supply before 1 August 1998 is deemed to be made or (as the case may be) received on 1 August 1998.

- (6) Subsection (5) does not apply if and to the extent that -
- (a) A supply of goods is the construction or alteration of a building or civil engineering work; and
  - (b) The goods are sold under a written contract entered into before 1 August 1998; and

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- (c) The goods are made available to the recipient after 1 August 1998, meaning that but for this subsection, the whole supply would be deemed to be subject to value added tax under subsection (5), -

and instead the value of all work and materials permanently incorporated into the building or work under the contract must be determined as at the close of 31 July 1998 and subsections (8) and (9) will apply.

- (7) The valuation required under subsection (6) must be undertaken by a competent independent valuer in a manner acceptable to the Director unless -
- (a) The Director approves otherwise; or
  - (b) The supply of the building or work is to a registered person exclusively for the purposes of the registered person making taxable supplies.
- (8) If the value calculated under subsection (6) exceeds the total of the consideration in money invoiced by, received by or due to the supplier in respect of the building or work before 1 August 1998, the consideration in money for the first supply in respect of the building or work which is deemed to occur on or after 1 August 1998 under section 5(6) is reduced by the excess and, if the excess is greater than that consideration in money, the surplus will be carried forward to reduce the consideration in money for the next subsequent such supply, and so on.
- (9) If the value calculated under subsection (6) is less than the total of the consideration in money invoiced by, received by or due to the supplier before 1 August 1998, the difference is deemed to be consideration in money for a taxable supply made by the supplier on 1 August 1998 and charged with value added tax under section 10(2)(a).

#### **REPEALS OF AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

74. (1) The enactments specified in the Fourth Schedule are hereby repealed and amended as stated in that Schedule.
- (2) Without limiting the application of the Interpretation Act [CAP 132], -the repeal of any provision by this Act will not (except as otherwise provided in this Act) affect

any document made or anything whatsoever done under the provision so repealed or under any corresponding former provision and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, will continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

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- (3) For all purposes relating to assessment or recovery of any tax, fee or duty payable under a provision repealed by this Act in respect of a supply or importation before 1 August 1998, the provisions repealed by this Act are deemed to remain in force.

#### **COMMENCEMENT**

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75. (1) Subject to subsection (2), this Act will come into force on the date of its [application-publication](#) in the Gazette.
- (2) Except as otherwise provided in this Act, this Act applies to:
- (a) Any supply of goods or services made on or after 1 August 1998; and
  - (b) Any importation of goods into Vanuatu if the goods are entered through customs on or after 1 August 1998.

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~~This Act is administered by the Department of Customs and Taxes~~

~~PORT VILA, VANUATU: Printed by the Government of Vanuatu—1998~~

**FIRST SCHEDULE**

**Section 10(3)(a)**

**Exempt supplies**

1. Financial services, being any one or more of the following services:
  - (a) Exchanging currency;
  - (b) Issuing, paying, collecting or transferring ownership of a cheque or letter of credit;
  - (c) Issuing, allotting, transferring ownership of, renewing or varying a debt instrument, a share in the capital of a company, an interest in a unit trust or similar contributory scheme, or any interest in such property;
  - (d) Underwriting the issue of a debt instrument, share in the capital of a company or interest in a unit trust or similar contributory scheme;
  - (e) Providing credit or varying a contract for the provision of credit;
  - (f) Providing, taking, varying or releasing a guarantee, indemnity, security or bond in respect of the performance of obligations under a cheque, letter of credit, debt instrument, share in the capital of a company, interest in a unit trust or similar contributory scheme, or contract for the provision of credit;
  - (g) Providing, or transferring ownership of, a life insurance contract or a life reinsurance contract;
  - (h) Providing, or transferring ownership of, an interest in a superannuation scheme;
  - (i) Providing, or transferring ownership of, a futures contract through a recognised futures exchange;
  - (j) Paying or collecting any amount of interest, principal, dividend or other amount in respect of any debt instrument, share in the capital of a company, interest in a unit trust or similar contributory scheme, contract for the provision of credit, life insurance contract, interest in a superannuation scheme or futures contract;
  - (k) Agreeing to do, or arranging, any of the services specified in the preceding paragraphs of this section, other than merely advising on those services.
2. A supply of donated goods or services by a non-profit body.
3. The supply of accommodation in a residential dwelling by way of hire.

4. The supply of leasehold land by way of rental (not being a grant or sale of the lease of that land) to the extent that the land is used for the principal purpose of accommodation in a dwelling erected on that land.
5. The supply, being a sale, by any registered person in the course or furtherance of any taxable activity of –
  - (a) Any dwelling; or
  - (b) The reversionary interest in the fee simple estate of any leasehold land,-

that has been used by the registered person for a period of 5 years or more before the date of the supply exclusively for the making of any supply or supplies referred to in paragraphs 3 or 4 of this Schedule.

6. The supply of education by an educational institution, including the supply of any goods and services incidental thereto.
7. The supply of services by a person being the direct operation of local tours, bookings of tours within Vanuatu and the renting of motor cars and motorcycles before 30 June 1999 ~~by-awhere the~~ person ~~who~~ held a business licence under categories E5, E9 or E10 of the Business Licence Act [CAP 173] on 30 April 1998 unless the person elects in writing to the Director that this clause not apply to such supplies made by the person.

8 ~~Payments to an instrument or agency of the State made on or before 31 December 1998 that represent appropriations under an Appropriation Act.~~

9 ~~A payment in the nature of a grant or subsidy by the State to a person that is treated as a supply in the course of the person's taxable activity under section 3(2) of this Act that is made on or before 31 December 1998.~~

108 For the purposes of this Schedule the terms:

“Donated goods and services” means goods and services that are gifted to a non-profit body and are intended for use in carrying on or carrying out of the purposes of that non-profit body;

“Dwelling” means any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling;

“Educational institution” means any pre-school, primary school or secondary school registered by the Department of Education, the University of the South Pacific or any other similar educational institute approved by the Director.

## SECOND SCHEDULE

## Section 10(3)(b)

### **Exempt importations**

Goods admitted free of duty ~~free of duty~~ under the following provisions of the Import Duties Act [CAP 91]:

- (a) X.20 relating to certain personal and household reliefs;
- (b) X.21 relating to certain photographic film, negatives and audio or video recordings;
- (c) X.22 relating to legacies and inheritances;
- (d) X.23 relating to certain post and airfreight packages;
- (e) X.24 relating to certain wedding presents and other unsolicited goods;
- (f) X.30 relating to charities;
- (g) X.31 relating to trophies;
- (h) X.33 relating to uniforms, medals and decorations;
- (i) X.35 relating to certain school supplies;
- (j) X.40 relating to visiting vessels and aircraft;
- (k) X.41 relating to certain goods imported for display or use at exhibitions, fairs, meetings or similar events;
- (l) X.42 relating to certain goods imported for hire or loan;
- (m) X.43 relating to certain tools of trade and professional equipment;
- (n) X.44 relating to certain scientific and pedagogic material and equipment;
- (o) X.45 relating to certain commercial samples;
- (p) X.46 relating to inward processing relief;
- (q) X.47 relating to goods imported for duty free sale to tourists and departing passengers;
- (r) ~~(r)~~ X.48 relating to certain goods imported temporarily for supply to foreign-going vessels and aircraft;
- ~~(r)~~
- (s) ~~(r)~~ X.54 relating to certain items associated with funeral services;
- ~~(ts)~~ X.60 relating to returned goods;
- ~~(ut)~~ X.61 relating to certain containers, crates and the like;
- ~~(v+)~~ X.64 relating to certain goods that not in accordance with the terms of a contract of sale imported by persons who are not registered persons; and
- ~~(wv)~~ paragraphs (a) to (h) of X.65 relating to certain goods admitted under an international convention or agreement.

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**THIRD SCHEDULE**

**Section 11(2)**

**Zero-rated supplies**

1. Any supply of goods if the registered person -
  - (a) Exports the goods from Vanuatu in the course of the supply; or
  - (b) Satisfies the Director that the goods have been exported from Vanuatu by the registered person; or
  - (c) Satisfies the Director that the goods have been supplied to a person for consumption or use outside Vanuatu (including as stores on departing ships or aircraft or where the acquirer of the goods is a departing sea or air traveller); or
  - (d) Sells the goods, to an air traveller arriving in Vanuatu, within an area under the control of the Director of Customs as a customs examining place under the Customs Act [CAP 3], -

Provided that this paragraph will not apply to a supply of goods by a registered person -

- (e) Being goods in respect of which a deduction under section [4619](#)(4)(c) of this Act has been allowed to the registered person; or
  - (f) Being goods which have been or will be reimported into Vanuatu by the supplier.
2. Any supply of goods situated outside Vanuatu at the time of supply.
3. Any supply of services being the transportation of passengers or goods (including ancillary insurance or the arranging of the insurance or the arranging of the transport of passengers or goods) -
  - (a) From Vanuatu to a place outside Vanuatu;
  - (b) From a place outside Vanuatu to Vanuatu;
  - (c) Within Vanuatu if part of the supply of transport services to which subparagraph (a) or (b) of this paragraph applies.
4. Any supply of services physically performed outside Vanuatu.
5. Any supply of services to a person who is not a resident of Vanuatu and who is outside Vanuatu at the time the services are performed, not being services which are supplied directly in connection with tangible property situated in Vanuatu at the time the services are performed.
6. Any supply of the following goods or services to an educational institution that provides education that is exempt under clause 6 of the First Schedule to this Act:

- (a) Building materials, including paint, for the erection, maintenance or repair of, and electricity supplied to, any school or building attached to or in close proximity to a school and which is to be used exclusively in relation to the accommodation of boarding pupils or permanent members of teaching staff;
- (b) School furniture including desks, chairs, whiteboards and blackboards;
- (c) Educational supplies, including books, stationery, maps, charts, pencils, rulers and equipment for technical education; and
- (d) Office equipment, generators, lawn mowers, kitchen equipment and any goods intended exclusively for use in schools;

Provided that:

- (e) The institution holds a certificate that is given by an official of the institution (such official having been specifically nominated for this purpose) to the registered person at the time of supply, stating that the goods or services are solely for use in or by the institution for the purposes of providing education and that they are not intended to be resold or disposed of (otherwise than to the pupils of the institution) in any other manner;
- (f) The certificate referred to in paragraph (e) details the goods and services to be supplied; and
- (g) The Director is satisfied, upon the advice of the Director General of Education, that the goods and services meet the requirements specified in paragraph (e) and are reasonable having regard to relevant circumstances, such as the value of the supply and the value of previously zero-rated supplies to the institution.

7. Any supply of goods or services by a person in respect of an approved aid project where the person is paid for those goods and services directly by a Diplomatic Mission of a foreign state or an international organisation.

8 For the purposes of this Schedule the term "approved aid project" means an aid project in respect of which a signed copy of an agreement under X.65 of the Import Duties Act [CAP 91] had been lodged with the Minister of Finance before ~~31 December~~ July 1998.

**FOURTH SCHEDULE**

**Section 74**

**Enactments repealed or amended**

1. The following enactments are repealed with effect from 1 August 1998:
  - (a) The Hotel and Licensed Premises Tax Act [CAP 141];
  - (b) The Amusement Machines Act [CAP 33]; and
  - (c) The Video Cassettes (Tax on Hiring) Act [CAP 180].
2. The Rent Taxation Act [CAP 196] is amended, with effect from 1 August 1998, by repealing section 4 and substituting the following section:

“4 The tax shall, subject to the provisions of this Act, be charged to and paid by each person who derives rent from any leases, other than a person who is a registered person under the Value Added Tax Act 1998 to the extent that the registered person derives rent which is subject to value added tax.”
3. The Rent Taxation Act [CAP 196] is further amended, with effect from 1 August 1998, by deleting the term “15%” where it appears in Schedule 1 and substituting the term “12.5%”.
4. The Gaming Control Act [CAP 172] is amended, with effect from 1 August 1998, by repealing section (5)(1) and substituting the following section:

“5(1) Subject to the provisions of this Act, there shall be charged a gaming duty calculated on the gross profit derived in each month from every gaming machine and gaming table at:

  - (a) 25% on any premises specified in paragraphs (a) and (c) of section 3: and
  - (b) 5% on any premises specified in paragraph (b) of ~~sub~~section 3.”
- (5) Schedule ~~19~~ of the Export Duties Act [CAP 31] is repealed and the following schedule is substituted:

“Schedule 1

Unworked shells	30%
Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared	15% plus VT3,000 per cubic meter
Other goods of any description	Free”

