

ACT NO. 9 OF 2001

**Value Added Tax Act**

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## ACT NO. 9 OF 2001

**Value Added Tax Act 2001**

An Act to make provision for the law relating to Value Added Tax.

Enacted by the Parliament of Lesotho.

## CHAPTER I - PRELIMINARY

**Short Title**

1. This Act may be cited as the Value Added Tax Act, 2001.

**Commencement**

2. This Act shall come into operation on a date to be appointed by the Minister by notice published in the Gazette.

**Interpretation**

3. In this Act, unless the context otherwise requires –

“application to own use”, in relation to goods or services, means applying the goods or services to a non-business use (including such use by a relative);

“associate”, in relation to a person, means any other person who acts or is likely to act in accordance with the directions, requests, suggestions, or wishes of the first-mentioned person whether or not they are communicated to that other person, and in this case the second-mentioned person is an associate of the first-mentioned person;

“auction” includes the sale of goods out-of-hand by the auctioneer;

“auctioneer” means a person licensed as an auctioneer under the Auction Sales Proclamation, 1919<sup>1</sup>;

“capital goods” means plant and equipment (including spare parts therefor, but not including registrable motor vehicles) for use directly

in manufacturing;

“Commissioner” means the Commissioner of Value Added Tax appointed under section 74;

“company” means a body corporate or unincorporate, whether created or recognised under a law in force in Lesotho or elsewhere, but does not include a partnership or trust;

“consideration”, in relation to a supply or import, means the total amount in money or kind paid or payable for the supply or import by any person, directly or indirectly, including any duties, levies, fees, or charges paid or payable on, or by reason of, the supply or import other than value added tax, reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import;

“enterprise” means any undertaking in the ordinary course of which goods or services are supplied;

“exempt import” has the meaning in section 6(4);

“exempt supply” has the meaning in section 6(2);

“export” means -

- (a) in the case of goods, the delivery of the goods to, or the making available of the goods at, an address outside Lesotho as evidenced by documentary proof acceptable to the Commissioner; or
- (b) in the case of services, the supply of the services for use or consumption outside Lesotho as evidenced by documentary proof acceptable to the Commissioner, not being services which are supplied directly in connection with any movable or immovable property situated in Lesotho at the time of the supply;

“finance lease”, in relation to goods, means the lease of the goods where -

- (a) the lease term exceeds 75% of the effective life of the goods for income tax purposes;
- (b) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or
- (c) the estimated residual value of the goods to the lessor at the expiration of the lease term (including the period of any option to renew) is less than 20% of its fair market value at the commencement of the lease;

“goods” means all kinds of tangible movable and immovable property, but does not include money;

“hire purchase agreement” means an agreement that is a hire purchase agreement for the purposes of the Hire-Purchase Act, 1974<sup>2</sup>;

“import” has the meaning in section 11(1);

“importer” means -

- (a) in relation to an import of goods, any person who owns, possesses, or has a beneficial interest in the goods at the time of the import; and
- (b) in relation to an import of services, the person to whom the services are provided;

“input tax” means value added tax paid or payable in respect of a taxable supply to, or a taxable import by, any person, but does not include additional tax;

“international agreement” means an agreement between Lesotho and a foreign government or a public international organisation;

“manufacturer” means a vendor who is licensed as a manufacturing enterprise under the Industrial Licensing Act, 1969<sup>3</sup>;

“manufacturing” means the substantial transformation of tangible



movable property, but does not include construction, installation, assembly, transportation, power generation, or the provision of public utility services;

“Minister” means the Minister of Finance;

“money” means -

- (a) coins or paper currency that the Central Bank of Lesotho has issued as legal tender;
- (b) coins or paper currency of a foreign country which is used or circulated as currency; or
- (c) a bill of exchange, promissory note, bank draft, postal order, or money order,

other than coins or paper currency that is a collector’s piece or is otherwise of numismatic interest;

“nominated person” has the meaning in section 79;

“objection decision” means a decision of the Commissioner on an objection filed by a person;

“officer” means the Commissioner, any person in the service of the Government who is appointed to an office or is employed in the Department of Value Added Tax, and any other person appointed by the Commissioner to perform functions related to the enforcement and administration of this Act;

“person” includes a partnership, company, trust, government, political subdivision of a government, or public international organisation;

“public international organisation” means an organisation listed in Schedule I to this Act;

“raw materials” means goods or services used directly in manufacturing that form part of the finished goods;

“relative”, in relation to an individual, means an ancestor of the individual, a descendant of the individual’s grandparents, or the spouse of the individual or of any of the foregoing;

“services” means anything that is not goods or money;

“tax” or “value added tax” means the tax chargeable under this Act;

“taxable import” has the meaning in section 13;

“taxable supply” has the meaning in section 12;

“taxable transaction” means a transaction subject to value added tax under this Act;

“taxable value”, in relation to a taxable supply or taxable import, is determined under Chapter V of this Act;

“tax period” means the period of one month ending on the last day of each of the twelve months of the calendar year;

“trust” means any relationship where property is under the control or management of a trustee;

“trustee” includes -

- (a) an executor, administrator, tutor, or curator;
- (b) a liquidator or judicial manager;
- (c) a person having or taking on the administration or control of property subject to another person having a beneficial interest in the property;
- (d) a person acting in a fiduciary capacity; or
- (e) a person having the possession, control, or management of the property of a person under a legal disability;

“value added tax invoice” means an invoice required to be provided under section 24; and

“vendor” means a person who is, or is treated as, registered under this Act.

### **Fair Market Value**

4. (1) In this section, “similar supply or import”, in relation to a taxable supply or taxable import, means a supply or import that is identical to, or closely or substantially resembles, the first-mentioned supply or import, having regard to the characteristics, quality, quantity supplied, place of supply, functional components, and reputation of, and materials comprising, the goods or services the subject of that supply or import.

(2) For the purposes of this Act, the fair market value of a taxable supply or taxable import at any date is the consideration in money which a similar supply or import would generally fetch if supplied or imported in similar circumstances at that date, being a supply or import freely offered and made between persons who are not associates.

(3) Where the fair market value of a taxable supply or taxable import cannot be determined under subsection (2) for lack of a similar supply or import, the fair market value of the supply or import shall be such amount that, in the opinion of the Commissioner having regard to all the facts and circumstances of the supply or import, is the fair market value of the supply or import.

### **Levy of Value Added Tax**

5. Subject to this Act, value added tax is hereby imposed on –

- (a) every taxable supply; and
- (b) every taxable import.

## CHAPTER II - VALUE ADDED TAX

**Exempt Supplies and Exempt Imports**

6. (1) In this section,

“education services” means education provided by -

- (a) a pre-primary, primary, or secondary school;
- (b) a college or university; or
- (c) an institution established for the promotion of adult education, vocational training, technical education, or the education or training of physically or mentally handicapped persons, which is registered with the Ministry of Education;

“financial services” means -

- (a) granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor;
- (b) transactions concerning deposit and current accounts, payments, transfers, debts, cheques, and negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to shares, stocks, bonds, and other securities, other than custodial services;
- (d) management of investment funds; and

“transportation services” means the transportation of fare-paying passengers and their personal effects by road.

(2) Subject to subsection (4), the following supplies are exempt supplies -

- (a) a supply of public postal, transportation, medical or dental, financial, insurance, or education services;
- (b) a supply of unimproved land;
- (c) a supply by way of lease or letting of immovable property where -
  - (i) the tenant is a manufacturer; and
  - (ii) the property is used by the manufacturer principally for carrying on a manufacturing enterprise;
- (d) a supply of water; and
- (e) any supply prescribed by the Minister in regulations as an exempt supply.

(3) Where subsection (2)(a) applies, both vendors shall immediately notify the Commissioner in writing of the details of the transfer, including in particular the quantities and value of goods on hand (including raw materials) at the date of the transfer on which value added tax has been credited as input tax.

(4) The following imports are exempt imports -

- (a) an import of goods prescribed in Schedule II; and
- (b) an import of goods or services that would be exempt under subsection (2) if supplied in Lesotho.

(5) Where, in the absence of this section, a supply of goods or services is a taxable supply subject to a zero rate, the supply shall not be treated as an exempt supply.

### **Persons Liable to Pay Tax**

7. (1) Except as otherwise provided by or under this Act, the value added tax payable -

- (a) in the case of a taxable supply, is to be accounted for by the vendor making the supply; or
- (b) in the case of a taxable import, is to be paid by the importer.

(2) This Act shall bind the State, and no provision contained in any other law providing for an exemption from any tax or duty shall be construed as applying or referring, as the case may be, to the tax leviable under this Act unless such tax is specifically mentioned in such provision.

### CHAPTER III - SUPPLIES AND IMPORTS

#### Supply of Goods or Services

8. (1) In this section -

“benefit” includes any advantage or facility;

“employee” includes an office-holder; and

“employer” means any person who employs or remunerates an employee.

(2) Except as otherwise provided by or under this Act, a supply of goods means any arrangement under which the owner of the goods parts or will part with possession of the goods including an agreement of sale and purchase, but does not include consignments or a transfer of possession of goods to a person in a representative capacity.

(3) An application by a vendor of goods to own or exempt use is a supply of the goods, but only if the vendor has been allowed an input tax credit in respect of those goods.

(4) Except as otherwise provided by or under this Act, a supply of services means anything done that is not a supply of goods or money including -

- (a) the performance of services for another person;

- (b) the making available of any facility or advantage;
  - (c) the toleration of any situation or the refraining from the doing of any act; or
  - (d) the application by a vendor of services to own or exempt use, but only if the vendor has been allowed an input tax credit in respect of those services.
- (5) A supply of services made by an employee to an employer by reason of employment is not a supply made by the employee.
- (6) A benefit provided by a vendor to an employee of the vendor that consists of a supply of goods or services is only treated as a supply of goods or services for the purposes of this Act if the vendor supplies the same goods or services for consideration in the course or furtherance of an enterprise carried on by the vendor.
- (7) A supply of services incidental to the supply of goods is part of the supply of goods.
- (8) A supply of goods incidental to the supply of services is part of the supply of services.
- (9) A supply of services incidental to the import of goods is part of the import of goods.
- (10) Regulations may provide that a supply is a supply of goods or services.
- (11) Subject to subsections (12) and (13), a supply of goods or services -
- (a) made by a person as agent for another person (“the principal”) is a supply by the principal; or
  - (b) made to a person as agent for a principal is a supply to the principal.
- (12) Subsection (11) does not apply to an agent’s supply of servic-

es to the agent's principal.

(13) A supply of goods by auction is treated as a supply of goods for consideration by the auctioneer as vendor made in the course or furtherance of an enterprise carried on by the auctioneer.

### **Time of Supply**

9. (1) In this section, "rental agreement" means any agreement for the letting of goods other than a hire purchase agreement or finance lease.

(2) Subject to subsections (3) and (4), a supply of goods or services occurs -

- (a) where goods are supplied by auction (other than by way of a sale out-of-hand), on the date of the auction;
- (b) where the goods or services are applied to own or exempt use, on the date on which the goods or services are first applied to own or exempt use;
- (c) where the goods or services are supplied by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed; or
- (d) in any other case, on the earliest of -
  - (i) the date on which the goods are delivered or made available, or the performance of the services is completed;
  - (ii) the date on which the invoice for the supply is issued; or
  - (iii) the date on which payment (including part payment) for the supply is made.

(3) The supply of goods under a hire purchase agreement or finance lease occurs on the date of commencement of the hire or lease.



(4) Where -

- (a) goods are supplied under a rental agreement; or
- (b) goods or services are completed on a continuous basis under an agreement or law which provides for periodic payments, the goods or services are treated as successively supplied for successive parts of the period of the agreement or as determined by such law, and each successive supply occurs on the earlier of the date on which the payment is due or received.

(5) A person making a supply to which subsection (2)(b) or (c) applies, shall keep a record of the date on which the supply occurred as determined under this section.

### **Place of Supply**

10. (1) Except as otherwise provided by or under this Act, a supply of goods occurs at the place where the goods are delivered or made available by the supplier or, if the delivery or making available involves the goods being transported, the place where the goods are when the transportation commences.

(2) Except as otherwise provided by or under this Act, a supply of services occurs at the place of business from which the services are supplied.

(3) The supply of the following services occurs where the recipient uses or obtains the advantage of the services -

- (a) a transfer or assignment of, or grant of a right to use, a copyright, patent, license, trademark, or similar right;
- (b) the service of a consultant, engineer, lawyer, architect, or accountant, the processing of data or supplying information, or any similar service;
- (c) an advertising service;
- (d) the toleration of any situation or the refraining from the

doing of any act;

- (e) the supply of personnel; or
- (f) the service of an agent in procuring for the agent's principal a service described in this subsection.

(4) The supply of cultural, artistic, sporting, educational, or similar activities, or services connected with movable property, occurs where the service is physically carried out, unless the service is described in subsection (3).

(5) A supply of services in connection with immovable property occurs at the place where the property is located, unless the service is described in subsection (3).

(6) A supply of services of, or incidental to, transport takes place where the transport occurs, unless the service is described in subsection (3).

(7) Services supplied from a place of business in Lesotho which would be treated as supplied outside Lesotho under subsections (3), (4), (5) or (6) are considered as supplied in Lesotho and are considered exported from Lesotho for the purposes of section 19(2).

## Imports

11. (1) Import means -

- (a) in the case of goods, to bring or cause to be brought into Lesotho from a foreign country or place; or
- (b) in the case of services, a supply of services by a person in the course or furtherance of an enterprise carried on outside Lesotho where the services are for use or consumption in Lesotho.

(2) An import of goods occurs -

- (a) where the goods require clearance under the Customs and Excise Act, 1982<sup>4</sup>, on the date on which the clear-

ance is made; or

(b) in any other case, on the date the goods are brought into Lesotho.

(3) An import of services occurs -

(a) in the case of services related to an import of goods, on the date of the import of goods; or

(b) in any other case, on the date determined by applying section 9 to the import on the basis that the import is a supply of services.

## CHAPTER IV - TAXABLE SUPPLIES AND TAXABLE IMPORTS

### Taxable Supply

12. (1) A taxable supply means a supply of goods or services (other than an exempt supply) made in Lesotho by a vendor for consideration in the course or furtherance of an enterprise carried on by the vendor.

(2) A taxable supply includes a supply by way of an export of goods or services by a vendor for consideration in the course or furtherance of an enterprise carried on by the vendor.

(3) A supply is made in the course or furtherance of an enterprise carried on by a vendor if the supply is made by the vendor as part of, or incidental to, any independent economic activity of the vendor, whatever the purposes or results of that activity.

(4) An enterprise does not include -

(a) in the case of an individual, any activities carried on by that individual only as part of that individual's hobby or leisure activities; or

(b) in the case of any other person, any activities which, if carried on by an individual would come within paragraph (a).

(5) A supply is made for consideration if the person making the supply receives, directly or indirectly, payment for the supply, whether from the person supplied or any other person, including any payment wholly or partly in money or kind.

(6) A supply of goods or services referred to in section 8(3) or (4)(d) by a vendor is treated as a supply of the goods or services, as the case may be, in Lesotho by the vendor for consideration in the course or furtherance of an enterprise carried on by the vendor.

(7) If goods have been supplied to a vendor for the purpose of the vendor's enterprise, the vendor's supply of those goods for reduced consideration is treated as a supply for consideration.

(8) A supply of services by a vendor for reduced consideration being services ordinarily supplied by the vendor in the course or furtherance of an enterprise carried on by the vendor is treated as a supply for consideration.

(9) A supply is made for reduced consideration if the supply is made for no consideration or for a consideration that is less than the fair market value of the supply to -

- (a) an associate;
- (b) an employee where section 8(6) applies; or
- (c) any other person other than a supply of goods for use only as trade samples.

### **Taxable Import**

13. An import of goods or services is a taxable import unless it is an exempt import.

## **CHAPTER V - TAXABLE VALUE**

### **Taxable Value of a Taxable Supply**

14. (1) Except as otherwise provided by or under this Act, the taxable value of a taxable supply is the consideration for that supply.

(2) The taxable value of -

- (a) a taxable supply of goods under a hire purchase agreement or finance lease; or
- (b) a taxable supply for reduced consideration within section 12(7), (8) and (9), is the fair market value of the supply at the time of the supply.

(3) The taxable value of a taxable supply by way of an application of goods or services to own or exempt use is the lesser of -

- (a) the consideration paid or payable by the vendor for those goods or services; or
- (b) the fair market value of the supply.

(4) Subject to subsection (5), the taxable value of a taxable supply of used goods purchased from a person who is not a vendor by a vendor whose enterprise involves the re-supply of such goods in substantially the same state is equal to the excess (if any) of -

**A - B**

where,

**A** is the consideration for which the goods are supplied by the vendor;  
and

**B** is the consideration for which the goods were acquired by the vendor.

(5) The Minister may make Regulations for the determination of the taxable value of a taxable supply of used goods.

(6) If a taxable supply is made without a separate amount of the price being identified as a payment of tax, the taxable value of that supply is the price reduced by an amount equal to the price multiplied by the tax fraction.

(7) For the purposes of subsection (1), consideration in kind, is valued at fair market value at the time of the supply.

(8) In this section, "tax fraction", in relation to a taxable supply, means the fraction calculated in accordance with the following formula -

$$\frac{r}{(100+r)}$$

where  $r$  is the rate of tax applicable under section 19(1) to the supply.

### Adjustments

15. (1) This section applies where, in relation to a taxable supply by a vendor -

- (a) the supply is cancelled;
- (b) the taxation of the supply changes because the nature of the supply has been fundamentally varied or altered;
- (c) the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason; or
- (d) the goods or part thereof have been returned to the vendor, and the vendor making the supply has -

provided a value added tax invoice in relation to the supply and the amount shown therein as the value added tax charged on the supply is incorrect as a result of the occurrence of any one or more of the above-mentioned events; or

- (e) filed a value added tax return for the tax period in which the supply occurred and has accounted for an incorrect amount of value added tax on that supply as a result of the occurrence of any one or more of the above-mentioned events.

(2) Where subsection (1) applies, the vendor making the supply shall make an adjustment as specified in subsection (3) or (4).

(3) Where the value added tax properly chargeable in respect of the supply exceeds the value added tax paid by the vendor making the supply, the amount of the excess shall be accounted for by the vendor in respect of a taxable supply made in the tax period in which the event referred to in subsection (1) occurred.

(4) Subject to subsection (5), where the value added tax paid by the vendor making the supply exceeds the value added tax properly chargeable in respect of the supply, the vendor making the supply shall be allowed an input tax credit for the amount of the excess in the tax period in which the event referred to in subsection (1) occurred.

(5) No credit is allowed under subsection (4) unless the amount of the excess value added tax has been repaid by the vendor to the recipient of the supply, whether in cash or as a credit against any amount owing to the vendor by the recipient.

### **Taxable Value of a Taxable Import**

16. (1) Subject to subsection (4), the taxable value of a taxable import of goods is the sum of -

- (a) the value of the goods ascertained for the purposes of customs or excise duty under the Customs and Excise Act, 1982 whether or not any duty is payable on those goods;
- (b) the amount of customs or excise duty, or any other fiscal charge (other than value added tax payable under this Act), if any, payable on those goods; and
- (c) the value of any services to which section 8(9) applies which is not otherwise included in the taxable value under paragraph (a), including any services giving rise to commission, packaging, transportation, insurance, or warranty expenses payable on, or by reason of, the import.

(2) Subject to subsection (3), the taxable value of a taxable import of services is the consideration for the import.

(3) The taxable value of a taxable import of services from an associate for no consideration or for a consideration that is less than fair market value is the fair market value of the import at the time of the import.

(4) The taxable value of a taxable import of goods for no consideration or for a consideration that is less than fair market value is the fair market value at the time of the import.

## CHAPTER VI - VENDORS

### Registration of Vendors

17. (1) A person who is not already registered is required to apply to be registered as a vendor -

- (a) within fourteen days of the end of any period of twelve months if during that period the person made taxable supplies the taxable value of which exceeded the registration threshold set out in subsection (2); or
- (b) at the beginning of any period of twelve months where there are reasonable grounds to expect that the total taxable value of taxable supplies to be made by the person during that period will exceed the registration threshold set out in subsection (2).

(2) The registration threshold is the amount prescribed for the time being by the Minister by notice in the Gazette and the Minister may prescribe different registration thresholds in respect of the supply of goods and the supply of services.

(3) Notwithstanding subsection (1), a national, regional, or local public authority or body that carries on an enterprise is required to apply for registration at the date of commencing to carry on the enterprise.

(4) For purposes of subsection (1) and paragraphs (b) and (c) of this subsection -

- (a) the term "taxable supplies" means supplies that would be taxable supplies if the person making the supply



were a vendor;

- (b) the taxable value of the person's supplies is determined under section 14; and
- (c) in determining whether the registration threshold is exceeded, regard shall be had to the value of taxable supplies made by the person and associates of the person.

(5) A person supplying goods or services for consideration in the course or furtherance of an enterprise carried on by the person, other than a person solely making exempt supplies, who is not required by subsection (1), (3), or (6) to apply for registration may apply to the Commissioner to be registered and, at the discretion of the Commissioner, the Commissioner may register the person and issue the person with a value added tax registration certificate.

(6) Notwithstanding subsection (1), a person who is an auctioneer is required to apply for registration on the date on which the person becomes an auctioneer.

(7) An application for registration shall be in the form approved by the Commissioner and the applicant shall provide such further information as the Commissioner may require.

(8) The Commissioner shall register a person who applies for registration in accordance with subsection (1), (3), or (6) and issue to the person a value added tax registration certificate unless the Commissioner is satisfied that the person is not eligible to apply for registration for the purposes of the Act.

(9) A value added tax registration certificate issued under this section shall state the name and other relevant details of the vendor, the nature of the vendor's trading activities, the date on which the registration takes effect, the taxpayer identification number of the vendor, and any other matters as the Commissioner may prescribe.

(10) The Commissioner may register a person whom the Commissioner has reasonable grounds to believe is required to apply for reg-

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istration under this section but who has failed to do so.

(11) Registration under this section takes effect from the date of registration as specified in the value added tax registration certificate or such later date as the Commissioner may determine.

(12) A person who is required to apply to be registered under this section but who has failed to do so is treated as registered for the purposes of this Act (other than subsection (1)) from the beginning of the tax period immediately following the period in which the requirement to apply for registration arose or from such other time as the Commissioner may determine.

(13) The Commissioner may -

- (a) impose conditions or limitations on a registration; or
- (b) suspend, or modify the conditions or limitations on a registration.

(14) The Commissioner shall serve a notice in writing on a person of -

- (a) a decision to refuse to register the person under subsection (5) or (8);
- (b) a decision to register a person under subsection (10); or
- (c) a decision under subsection (13) relating to the person's registration, within twenty one days of making the decision.

(15) A person dissatisfied with a decision referred to in subsection (14) may only challenge the decision under Part II of Chapter VIII of this Act on the basis that the decision is an assessment.

(16) A vendor shall notify the Commissioner in writing of any change in the name, commercial name, address or place of business of the vendor and such notification shall be made within fourteen days of the change occurring.

## Cancellation of Registration

18. (1) A vendor is required to apply in writing to the Commissioner to have the vendor's registration cancelled if the vendor has ceased to make taxable supplies.

(2) An application under subsection (1) shall be made within fourteen days after ceasing to make such supplies.

(3) Subject to subsection (4), a vendor (other than a vendor required to apply for registration under section 17(3) or (6)) may apply in writing to have the vendor's registration cancelled if, with respect to the most recent twelve month period, the taxable value of taxable supplies made by the vendor during that period does not exceed the registration threshold in section 17.

(4) In the case of a vendor who applied for registration under section 17(5), an application under subsection (3) may only be made after the expiration of two years from the date of registration.

(5) The Commissioner shall cancel the registration of -

- (a) a vendor who has properly applied for cancellation of registration under subsection (1) or (3); or
- (b) a vendor who has not applied for cancellation of registration but, in relation to whom, the Commissioner is satisfied that the vendor is neither required nor entitled under section 17 to apply for registration.

(6) The Commissioner may cancel the registration of a vendor who is not required to apply for registration under section 17 where the vendor -

- (a) is in breach of the conditions or limitations attaching to the registration;
- (b) has no fixed place of abode or business;
- (c) has not kept proper accounting records relating to any enterprise carried on by the vendor;

- (d) has not submitted regular and reliable value added tax returns as required by section 27; or
- (e) is not, in the opinion of the Commissioner, a fit and proper person to be registered.

(7) The Commissioner shall give a vendor notice in writing of a decision to cancel or to refuse to cancel a registration within fourteen days of making the decision.

(8) The cancellation of a registration takes effect from the date specified by the Commissioner in the notice of cancellation.

(9) A person dissatisfied with a decision referred to in subsection (7) may only challenge the decision under Part II of Chapter VIII of this Act on the basis that the decision is an assessment.

(10) A vendor whose registration is cancelled under this section is treated as having made a taxable supply equal to the fair market value of all goods on hand (including raw materials) at the date the registration is cancelled, but only if an input tax credit was claimed with respect to the goods.

(11) The obligations and liabilities under this Act (including the filing of returns required by section 27) of any person in respect of anything done or omitted to be done by that person while the person is a vendor is not affected by cancellation of the person's registration.

## CHAPTER VII - CALCULATION OF VALUE ADDED TAX PAYABLE

### Calculation of Value Added Tax Payable on a Taxable Transaction

19. (1) Subject to subsection (2), the value added tax payable on a taxable transaction is calculated by applying the relevant rate of value added tax to the taxable value of the transaction.

(2) The rate of value added tax imposed on an export of goods or services from Lesotho by a vendor is zero.

(3) The rates of value added tax shall be prescribed by regulation but shall not exceed four rates, including a zero rate.

### **Calculation of Value Added Tax Payable on the Invoice Method for a Tax Period**

20. (1) Subject to sections 21 and 22, the value added tax payable by a vendor for a tax period is calculated according to the following formula:

$$A - B$$

where,

- A** is the total value added tax payable in respect of taxable supplies made by the vendor during the tax period; and
- B** is the total input tax payable by the vendor during the tax period and allowed as a credit under this Act.

(2) In the event of **B** exceeding **A** in subsection (1), a refund of value added tax is only allowed pursuant to section 46.

(3) For the purposes of subsection (1), a taxable supply is made on the date determined under section 9.

### **Calculation of Value Added Tax Payable on the Cash Method for a Tax Period**

21. (1) Where ninety per cent or more of the total taxable value of taxable supplies made by a vendor consists of the supply of services, the vendor may apply, in writing, to the Commissioner to calculate value added tax payable under the cash method as provided for in this section and, if the Commissioner considers it appropriate to do so, the Commissioner may grant the application by notice in writing with effect from the date specified in the notice.

(2) If a vendor has been granted permission under subsection (1), the value added tax payable by the vendor for a tax period is calculated on a cash basis according to the following formula -

$$A - B$$

where -

A is the total value added tax received by the vendor during the tax period in respect of taxable supplies made by the vendor; and

B is the total input tax paid by the vendor during the tax period and allowed as a credit under this Act.

(3) For the purposes of subsection (2) -

(a) value added tax on a taxable supply shall be accounted for in the tax period in which the tax attributable to any payment or other consideration for the supply is received; and

(b) input tax shall be claimed as a credit in the tax period in which the tax attributable to any payment or the consideration for the supply or import is made and the credit is otherwise allowable under this Act.

(4) Where a vendor who has been granted permission under subsection (1) to use the cash method becomes insolvent, the vendor must, within two months of the date of insolvency, account for the tax payable on all taxable supplies made up to the date of insolvency that has not otherwise been accounted for, less any credit for input tax allowable under this Act that has not been claimed before the date of insolvency.

(5) A vendor who has been granted permission under subsection (1) may apply in writing to the Commissioner for permission to cease using the cash method and, if the Commissioner considers it appropriate to do so, the Commissioner may grant the application by notice in writing with effect from the date specified in the notice.

(6) A vendor may not make an application under subsection (5) within two years of being granted permission under subsection (1) to use the cash method.

(7) A vendor who has been granted permission under subsection (1) shall notify the Commissioner immediately if the taxable value of the vendor's taxable supplies of services is less than ninety per cent of the total taxable value of all taxable supplies made by the vendor and, if the Commissioner considers it appropriate to do so, the Commissioner may, by notice in writing,

require the vendor to account for tax under section 20 from the date specified in the notice.

(8) A person dissatisfied with a decision referred to in subsections (1), (5), or (7) may only challenge the decision under Part II of Chapter VIII of this Act on the basis that the decision is an assessment.

### **Consequences of a Change in Accounting Method**

22. (1) If a vendor changes from the method of accounting provided under section 20 (referred to as the "invoice method") to the method of accounting provided under section 21 (referred to as the "cash method"), the vendor is liable in the first tax period in which the change occurs for an amount of tax calculated in accordance with the following formula -

#### **C - D**

where -

**C** is the total amount of input tax credited in relation to amounts due by the vendor but not paid at the time of the change in accounting method; and

**D** is the total amount of value added tax accounted for in relation to amounts due to the vendor but not received at the time of the change in accounting method.

(2) The amount determined under subsection (1) is in addition to the amount determined under section 21 for that tax period.

(3) If a vendor changes from the cash method of accounting provided under section 21 to the invoice method of accounting provided under section 20, the vendor is liable in the first tax period in which the change occurs for an amount of tax calculated in accordance with the following formula -

#### **E - F**

where -

- E** is the total tax on taxable supplies that would have been accounted for on amounts due to the vendor at the time of change in accounting method if the vendor had been accounting for tax under the invoice method; and
- F** is the total input tax that would have been credited on amounts due by the vendor at the time of change in accounting method if the vendor had been accounting for tax under the invoice method.

(4) The amount determined under subsection (3) is in addition to the amount determined under section 20.

(5) If the amount determined under subsection (1) or (3) is a negative amount, the amount shall be refunded to the vendor by the Commissioner in accordance with section 46.

(6) The Commissioner may impose conditions on the approval of a change in accounting method from the invoice method to the cash method or from the cash method to the invoice method, including a requirement that the vendor submit a list of its debtors and creditors as of the end of the tax period immediately preceding the period in which the change occurs.

### **Credit for Input Tax**

23. (1) A credit is allowed to -
- (a) a vendor for input tax payable or paid in respect of -
    - (i) where the vendor is a manufacturer, a taxable supply to, or a taxable import by, the vendor for use in manufacturing goods to be supplied by the vendor in taxable supplies; or
    - (ii) where the vendor makes taxable supplies of construction services, a taxable supply to, or a taxable import by, the vendor for use in making those supplies; or
    - (iii) in any other case, a taxable supply to, or taxable import by the vendor where, in the course



of making taxable supplies, the vendor acquires the goods or services for re-supply in substantially the same state.

- (b) a person on becoming registered under section 17 for input tax paid in respect of -
- (i) goods on hand at the date of registration held for re-supply in substantially the same state in the course of making taxable supplies on or after the date of registration;
  - (ii) a supply to, or an import by, the person before the date of registration of goods or services used as raw materials in manufacturing goods supplied by the person in a taxable supply on or after the date of registration;
  - (iii) a supply to, or an import by, the person before the date of registration of services held for re-supply in substantially the same state in a taxable supply on or after the date of registration;
  - (iv) a supply to, or an import by, the vendor before the date of registration of goods or services for use by the person in making taxable supplies of construction services on or after the date of registration:

Provided the goods or services were acquired by that person not more than two months before the date of registration and an application for the credit is made within two months after the registration date.

(2) Where a supply to, or an import by, a person or goods or services is partly for a use set out in subsection (1) and partly for another use, the amount of the input tax allowed as a credit is that part of the input tax that relates to the use set out in subsection (1).

(3) An input tax credit allowed -

- (a) under subsection (1)(a) -
  - (i) where the vendor accounts for tax under section 20, arises on the date the goods or services are supplied to, or imported by, the vendor; or
  - (ii) where the vendor accounts for tax under section 21, arises on the date the tax is paid; or
- (b) under subsection (1)(b) arises on the date where registration takes effect.

(4) Subject to subsection (5), an input tax credit allowed under subsection (1) may not be claimed until the tax period in which the vendor has -

- (a) a value added tax invoice; or
- (b) a bill of entry or other document prescribed under the Customs and Excise Act, 1982, evidencing the amount of input tax payable or paid.

(5) Where a vendor to whom subsection (1) applies does not have a value added tax invoice evidencing the input tax payable or paid, the Commissioner may allow an input tax credit in the tax period in which the credit arises where the Commissioner is satisfied -

- (a) that the vendor took all reasonable steps to acquire a value added tax invoice;
- (b) that the failure to acquire a value added tax invoice was not the fault of the vendor; and
- (c) that the amount of input tax claimed by the vendor is correct.

(6) For the purposes of this section, no input tax credit is allowable -

- (a) for tax on purchases of used goods if the taxable value of a taxable supply of those goods is determined under

section 14(4); or

(b) for any tax that is refundable under section 47.

(7) In this section "construction services" means any services forming an integral part of, are preparatory to, or are for rendering complete, the construction, alteration, repair, extension, or demolition of buildings, structures, or any works forming part of immovable property.

(8) No input tax credit is allowed to the extent provided for in the Regulations made under this Act.

### Value Added Tax Invoices

24. (1) A vendor making a taxable supply to another vendor shall provide that other vendor, at the time of the supply, with an original value added tax invoice for the supply.

(2) The vendor making a supply referred to in subsection (1) shall retain one copy of the value added tax invoice for the supply.

(3) A vendor who has not received a value added tax invoice as required by subsection (1) may request the vendor who has made the supply to provide a value added tax invoice in respect of the supply.

(4) A vendor to whom section 23(1)(b) applies (referred to as a "newly registered vendor") may request a vendor, who has supplied goods or services to the newly registered vendor in the circumstances specified in section 23(1)(b), to provide a value added tax invoice in respect of the supply.

(5) A request for a value added tax invoice -

(a) under subsection (3), shall be made within sixty days after the date of the supply; or

(b) under subsection (4), shall be made within sixty days of the date of registration.

(6) A vendor who receives a request under subsection (3) or (4) shall comply with the request within fourteen days after receiving that request.

(7) A value added tax invoice shall not be provided to a person in circumstances other than those specified in subsection (1) or (6).

(8) A value added tax invoice is an invoice containing the particulars specified in Schedule III.

(9) Where a vendor claims to have lost the original tax invoice for a taxable supply to the vendor, the supplier may provide a copy clearly marked "copy".

### **Credit and Debit Notes**

25. (1) Where a value added tax invoice has been issued in the circumstances specified in section 15(1)(e) and the amount shown in that value added tax invoice as value added tax charged for the supply exceeds the value added tax properly chargeable for the supply, the vendor making the supply shall provide the recipient of the supply with a credit note containing the particulars specified in Schedule III.

(2) Where a value added tax invoice has been issued in the circumstances specified in section 15(1)(e) and the value added tax properly chargeable for the supply exceeds the amount shown in that invoice as value added tax charged for the supply, the vendor making the supply shall provide the recipient of the supply with a debit note containing the particulars specified in Schedule III.

(3) A credit or debit note shall not be provided to a person in circumstances other than those specified in this section, except that a copy clearly marked as such may be provided if the person receiving the original credit or debit note so requests because the original has been lost.

(4) A vendor who has not received a credit or debit note within sixty days of the occurrence of the event giving rise to the application of section 15 may request the vendor making the supply to provide a credit or debit note as required under this section.

(5) A vendor who receives a request under subsection (4) shall comply with the request within fourteen days after receiving the request.

## Bad Debts

26. (1) Subject to subsection (6), a vendor is allowed a credit for the value added tax paid in respect of a taxable supply made by the vendor where the whole or part of the consideration for the supply is subsequently treated as a bad debt.

(2) The amount of the credit allowed under subsection (1) is the amount of the value added tax paid in respect of the supply which corresponds to the amount of the debt treated as bad.

(3) The credit arises on the latter of -

- (a) the date on which the bad debt was written off in the accounts of the vendor; or
- (b) twelve months after the end of the tax period in which the value added tax was paid in respect of the supply.

(4) Where any amount in respect of which a credit has been allowed in accordance with subsection (1) is at any time wholly or partly recovered by the vendor, the vendor is treated as having charged value added tax in respect of a taxable supply made during the tax period in which the bad debt is wholly or partly recovered, being an amount of value added tax calculated according to the following formula -

$$\frac{A \times B}{C}$$

where,

**A** is the amount allowed as a credit under subsection (1);

**B** is the amount of the bad debt recovered; and

**C** is the amount of the bad debt written off.

(5) The credit allowed under this section is to be added to component **B** in the formula in section 20(1) for the purposes of calculating the tax payable by the vendor for the tax period in which the credit arises and for the purposes of the application of section 46(3).

- (6) A credit is allowed under subsection (1) only if -
- (a) the taxable supply was made to a person other than a vendor; or
  - (b) the taxable supply was made to a purchaser who is a vendor and the person claiming the credit under subsection (1) issues a credit note to the purchaser listing the amount of the bad debt claimed under the formula in subsection (2).

## CHAPTER VIII - PROCEDURE AND ADMINISTRATION

### PART I - RETURNS AND ASSESSMENTS

#### Returns

27. (1) A vendor shall file a value added tax return for each tax period with the Commissioner within twenty days after the end of the period.

(2) A value added tax return shall be in the form prescribed by the Commissioner and state the value added tax payable by the vendor for the tax period to which it relates.

(3) In addition to any return required under subsection (1), the Commissioner may require any person, whether or not a vendor, to file with the Commissioner (whether on that person's behalf or as agent or trustee of another person) such further or other return, in the prescribed form, as and when required by the Commissioner for the purposes of this Act.

(4) Upon application in writing by a person, the Commissioner may, where good cause is shown by the person, extend the period in which a value added tax return is to be filed.

(5) The granting of an extension of time under subsection (4) shall not alter the due date for payment of tax under section 37.

(6) A person dissatisfied with a decision of the Commissioner under subsection (3) or (4) relating to any return required to be furnished by that person may challenge the decision only under Part II of Chapter VIII on

the basis that the return is an assessment.

### Assessments

28. (1) Where -

- (a) a person fails to file a return as required by section 27;
- (b) the Commissioner is not satisfied with a return filed by a person; or
- (c) the Commissioner has reasonable grounds to believe that a person will become liable to pay value added tax under this Act but is unlikely to pay the amount due,

the Commissioner may make an assessment of the amount of value added tax payable by the person.

(2) An assessment under subsection (1)(a) or (c) may be made at any time.

(3) An assessment under subsection (1)(b) -

- (a) where fraud, or gross or wilful neglect has been committed by, or on behalf of, the person, may be made at any time; or
- (b) in any other case, shall be made within four years after the date the return was filed by the person.

(4) The Commissioner may, based on the information available, estimate the value added tax payable by a person for the purposes of making an assessment under subsection (1).

(5) Where an assessment has been made under this section, the Commissioner shall serve notice of the assessment on the person assessed, which notice shall state -

- (a) the value added tax payable;

- (b) the date the value added tax is due and payable; and
- (c) the time, place, and manner of objecting to the assessment.

(6) The Commissioner may, within the time limits set out in subsection (7), amend an assessment by making such alterations or additions to the assessment as the Commissioner considers necessary, and the Commissioner shall serve notice of the amended assessment on the person assessed.

(7) The time limits for amending an assessment are -

- (a) where fraud, or gross or wilful neglect has been committed by, or on behalf of, the person assessed in respect of the period of assessment, the assessment may be amended at any time; or
- (b) in any other case, the assessment may be amended within four years after service of the notice of assessment.

(8) An amended assessment is treated in all respects as an assessment under this Act.

### **Deemed Assessments**

29. (1) Where a vendor has filed a value added tax return for a tax period, the Commissioner is deemed to have made an assessment of the value added tax payable by the vendor for that tax period, being the amount so specified in the return.

(2) Where an importer has paid value added tax pursuant to section 37(1)(c) in respect of a taxable import, the Commissioner is deemed to have made an assessment of the value added tax payable by the importer in respect of the import, being the amount of value added tax so paid.

(3) A deemed assessment under subsection (1) is treated as served on the vendor on the due date for filing of the value added tax return, or the actual date the return is filed, whichever is the latter; and a deemed assessment under subsection (2) is treated as served on the importer on the due date for



payment of the value added tax, or the actual date the value added tax is paid, whichever is the latter.

(4) A vendor or importer may, within four years after service of the deemed notice of assessment, apply to the Commissioner for an amendment of the assessment.

(5) An application under subsection (4) shall be in writing and specify in detail the grounds upon which it is made; and after considering the application, the Commissioner may amend the assessment or disallow the application.

(6) The Commissioner shall serve the vendor or importer with a notice in writing of the decision on the application for amendment of an assessment.

(7) If the Commissioner has not made a decision under subsection (5) within sixty days of the application being filed, the Commissioner is deemed to have made a decision to disallow the application and to have served notice of the decision on the sixtieth day.

(8) For all purposes of this Act -

(a) an application under subsection (4) is treated as an objection; and

(b) the Commissioner's decision under subsection (5) or deemed decision under subsection (7) is treated as an objection decision.

### **General Provisions Relating to Assessments**

30. (1) The production of a notice of assessment or a certified copy of a notice of assessment is receivable in any proceedings as conclusive evidence of the due making of the assessment and, except in proceedings under Part II of Chapter VIII relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued, or executed under this Act shall -

- (a) be quashed or deemed to be void or voidable for want of form; or
- (b) be affected by reason of mistake, defect, or omission therein, if it is, in substance and effect, in conformity with this Act and the person assessed, or intended to be assessed or affected by the document is designated in it according to common understanding.

## PART II – OBJECTIONS AND APPEALS

### **Interpretation**

31. In this Part, “Tribunal” means the Administrative Tribunal for Tax Appeals established under section 203 of the Income Tax Act, 1993<sup>5</sup>.

### **Objection to Assessment**

32. (1) A person who is dissatisfied with an assessment may file an objection to the assessment with the Commissioner within thirty days after the service of the notice of assessment.

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

(3) After considering the objection, the Commissioner may allow the objection in whole or part and amend the assessment accordingly, or disallow the objection.

(4) The Commissioner shall serve the person objecting with notice in writing of the objection decision.

(5) If the Commissioner has not made an objection decision within sixty days of the objection being filed, the Commissioner is deemed to have made a decision to disallow the objection and to have served the person objecting with notice of the decision on the sixtieth day.

### **Appeal to Tribunal**

33. (1) The Tribunal shall hear and consider appeals from persons with

respect to objection decisions.

(2) A person dissatisfied with an objection decision may, within thirty days after being served with notice of the objection decision, file a notice of appeal with the Tribunal and shall serve a copy of the notice of appeal on the Commissioner.

(3) In an appeal to the Tribunal against an objection decision, the person appealing is limited to the grounds set out in the person's objection, unless the Tribunal grants the person leave to add new grounds.

(4) In deciding an appeal, the Tribunal may make an order -

- (a) affirming, reducing, increasing, or varying the assessment under appeal; or
- (b) remitting the assessment for reconsideration by the Commissioner in accordance with the directions or recommendations of the Tribunal.

(5) No member of the Tribunal shall be an officer of the Department of Value Added Tax.

(6) A member assigned under section 206(2) of the Income Tax Act, 1993 to hear an appeal under this section shall have significant experience in value added tax matters.

### **Appeal to High Court of Lesotho**

34. (1) A party to a proceeding before the Tribunal who is dissatisfied with the decision of the Tribunal may, within thirty days after being notified of the decision, file a notice of appeal with the Registrar of the High Court; and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the Tribunal.

(2) An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

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### **Appeal to Court of Appeal**

35. (1) A party to a proceeding before the High Court may, with special leave of the Court of Appeal, appeal the decision of the High Court to the Court of Appeal.

(2) Notice of an appeal under subsection (1) shall be filed with the Registrar of the Court of Appeal by the party appealing within thirty days of being notified of the decision of the High Court; and that party shall serve a copy of the notice of appeal on the other party to the proceeding before the High Court.

### **Burden of Proof**

36. The burden of proving that an assessment is excessive is on the person assessed.

## **PART III – COLLECTION AND RECOVERY**

### **Due Date for Payment of Value Added Tax**

37. (1) Value added tax payable under this Act is due and payable -
- (a) in the case of a taxable supply by a vendor in respect of a tax period, on the date the return for the tax period is to be filed;
  - (b) in the case of an assessment issued under this Act, on the date specified in the notice of assessment; or
  - (c) in any other case, on the date the taxable transaction occurs as determined under this Act.

(2) The value added tax payable by a vendor under subsection (1)(a) is determined in accordance with Chapter VII of this Act.

(3) Where an objection to, or notice of appeal against, an assessment has been filed, the value added tax payable under the assessment is due and payable, and may be recovered, notwithstanding that objection or appeal.

(4) Upon written application by a person liable for value added tax, the Commissioner may, where good cause is shown, extend the time for payment of the tax beyond the date on which it is due and payable under this section, or make such other arrangements as appropriate to ensure payment of the value added tax due.

(5) If a person liable for value added tax fails to pay the tax by the due date, the Director of Immigration shall, on the written direction of the Commissioner, prevent the person from leaving Lesotho until the person makes -

- (a) payment in full; or
- (b) an arrangement satisfactory to the Commissioner for the payment of the tax.

(6) A letter by the Commissioner to the Director of Immigration that value added tax, for an amount specified in the letter, is due and payable by the person referred to in subsection (5) is sufficient authority for the Director of Immigration to act in pursuance of that subsection.

(7) Payment of the tax specified in the letter referred to in subsection (6) to a customs or immigration officer or the production of a document signed by the Commissioner stating that the tax has been paid or secured shall be sufficient authority for allowing such person to leave Lesotho.

### **Value Added Tax as a Debt Due to the Lesotho Government**

38. (1) Value added tax due and payable under this Act is a debt due to the Government of Lesotho and is payable to the Commissioner by the person liable for the tax as determined under the Act.

(2) The Commissioner, the Director of Customs and Excise, and the Director of Postal Services may make such arrangements as they consider appropriate to facilitate the collection of value added tax on the import of goods.

(3) If a person fails to pay value added tax when it is due and payable, the Commissioner may institute an action in a court of competent jurisdiction for the recovery of the value added tax and where the

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Commissioner institutes an action under this section, judgement shall be delivered within sixty days from the date of institution of the action.

(4) The action referred to in subsection (3) may be instituted in the Subordinate Court having jurisdiction over the person, notwithstanding any provision of the Subordinate Courts Order, 1988<sup>6</sup> to the contrary.

(5) The Commissioner may take any action as is reasonably necessary to ensure the collection and recovery of value added tax.

(6) A person against whom an action is brought under subsection (3) may only challenge the correctness of the amount due under an assessment in accordance with Part II of Chapter VIII or under a deemed assessment in accordance with section 29.

### Security

39. (1) Where it appears to the Commissioner as necessary to do so for the protection of the revenue, the Commissioner may require any person, as a condition of the person making a taxable supply or taxable import, to give security of such amount and in such manner as the Commissioner may determine for the payment of value added tax which is or may become due by the person.

(2) Where it appears to the Commissioner as necessary to do so for the protection of the revenue, the Commissioner may require any person, as a condition of the person claiming a refund of overpaid tax under section 46 resulting from excess credits for input tax under section 23(1)(a)(ii), to give security of such amount and in such manner as the Commissioner may determine for the payment of value added tax which is or may become due by the person.

(3) Where any security is required to be given under this Act, the security may be given by bond, cash, or both bond and cash and is subject to such conditions as the Commissioner may reasonably require.

(4) Security payable under this Act shall, for all purposes of this Act, be treated as value added tax and may be assessed by the Commissioner in the same manner as any other value added tax payable under this Act and an assessment under this subsection shall, for all purposes, be treated as an assess-

ment under this Act.

### Preferential Claim to Assets

40. From the date on which value added tax becomes due and payable, the Commissioner has a preferential claim, as provided in the Insolvency Proclamation, 1957<sup>6</sup>, upon the assets of the person liable to pay the tax until the tax is paid.

### Seizure of Goods

41. (1) The Commissioner may seize any goods in respect of which the Commissioner has reasonable grounds to believe that value added tax that is, or will become, due and payable in respect of the supply or import of those goods has not been, or will not be, paid.

(2) The Commissioner may seize any vehicle used in the removal or carriage of goods liable to be seized under subsection (1) unless it is shown that such vehicle was so used without the consent or knowledge of the owner of that vehicle or other person lawfully in possession or charge thereof; and at the discretion of the Commissioner, the vehicle may be sold by public auction or may be dealt with in such other manner as the Commissioner may direct.

(3) Goods that have been seized under this section shall be stored in a place approved by the Commissioner for the storage of such goods.

(4) Where goods have been seized under subsection (1), the Commissioner shall, as soon as practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing -

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms of subsections (7), (8), and (9).

(5) The Commissioner is not required to serve a notice under subsection (4) if, after making reasonable enquiries, the Commissioner does not

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have sufficient information to identify the person on whom the notice should be served.

(6) Where subsection (5) applies, the Commissioner may serve a notice under subsection (4) on a person claiming the goods, provided the person has given the Commissioner sufficient information to enable such a notice to be served.

(7) The Commissioner may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (4) has been served where that person has paid, or gives security (in accordance with section 39) for the payment of, the value added tax that is, or will become, due and payable in respect of the supply or import of the goods.

(8) Where subsection (7) does not apply, the Commissioner shall detain the goods seized under subsection (1) -

- (a) in the case of perishable goods, for such period as the Commissioner considers reasonable having regard to the condition of the goods; or
- (b) in any other case, until the later of -
  - (i) twenty-one days after the seizure of the goods; or
  - (ii) twenty-one days after the due date for payment of the value added tax on the supply or import of the goods.

(9) Where the detention period in subsection (8) has expired, the Commissioner may sell the goods in the manner specified in section 42(4) and apply the proceeds of sale as set out in section 42(5).

(10) Nothing in this section precludes the Commissioner from proceeding under section 38 with respect to any balance owed if the proceeds of disposal are not sufficient to meet the costs of disposal and the value added tax due.



## Distress Proceedings

42. (1) The Commissioner may recover unpaid value added tax by distress proceedings against the movable property of the person liable to pay value added tax (the "person liable") by issuing an order in writing, specifying the person against whose property the proceedings are authorised, the location of the property, and the value added tax liability to which the proceedings relate; and may require a police officer to be present while the distress is being executed.

(2) For the purposes of executing distress under subsection (1), the Commissioner may, at any time, enter any house or premises described in the order authorising the distress proceeding.

(3) Property upon which a distress is levied under this section (other than perishable goods) shall be kept for twenty-one days either at the premises where the distress was levied or at such other place as the Commissioner may consider appropriate, at the cost of the person liable.

(4) Where the person liable does not pay the tax due, together with the costs of the distress -

- (a) in the case of perishable goods, immediately after the distress is levied; or
- (b) in any other case, within twenty-one days after the distress is levied,

the property distrained upon may be sold by public auction, or in such other manner as the Commissioner may direct.

(5) The proceeds of a disposal under subsection (4) shall be applied by the auctioneer or seller -

- (a) first towards the cost of taking, keeping, and selling the property distrained upon;
- (b) then towards the outstanding liability under this Act of the person liable;

- (c) then towards any outstanding liability under the Income Tax Act, 1993 of the person liable; and
- (d) refund the remainder of the proceeds, if any, to the person liable.

(6) Nothing in this section precludes the Commissioner from proceeding under section 38 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the value added tax due.

(7) All costs incurred by the Commissioner in respect of any distress may be recovered by the Commissioner from the person liable and such costs shall be treated as value added tax and may be assessed by the Commissioner in the same manner as any other value added tax payable under this Act and an assessment under this subsection shall, for all purposes, be treated as an assessment under this Act.

#### **Recovery of Value Added Tax from Recipient of the Supply**

43. (1) Where, in respect of a taxable supply by a vendor, the vendor has, in consequence of a fraudulent action or misrepresentation by the recipient of the supply (the "recipient"), incorrectly treated the supply as an exempt supply, the Commissioner may raise an assessment upon the recipient for the amount of value added tax payable together with any additional tax that has become payable under section 55.

(2) The Commissioner shall serve notice of an assessment under subsection (1) on the recipient specifying -

- (a) the value added tax payable;
- (b) the date the value added tax is due and payable; and
- (c) the time, place, and manner of objecting to the assessment.

(3) An assessment raised under subsection (1) is treated as an assessment for all purposes of this Act.

(4) Subsection (1) does not preclude the Commissioner from recovering the value added tax and additional tax from the vendor and -

- (a) any amount recovered from the recipient is to be credited against the liability of the vendor; and
- (b) any amount recovered from the vendor is to be credited against the liability of the recipient.

(5) Where an amount of value added tax and additional tax referred to in subsection (1) is paid by the vendor, the vendor may recover the amount paid from the recipient.

### **Recovery of Tax from Third Parties**

44. (1) Where a person liable to pay value added tax (the "person liable") fails to pay the tax on the date on which it is due and payable, the Commissioner may, by notice in writing, require a person -

- (a) owing or who may owe money to the person liable; or
- (b) holding or who may subsequently hold money for, or on account of, the person liable; or
- (c) having authority from some other person to pay money to the person liable to pay the money to the Commissioner on the date set out in the notice, up to the amount of the value added tax due.

(2) The date specified in the notice under subsection (1) shall not be a date before the money becomes due to the person liable, or held on that person's behalf.

(3) A copy of a notice issued under subsection (1) shall be forwarded by the Commissioner to the person liable.

(4) A person making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the person liable and of all other persons concerned and is hereby indemnified in respect of the payment.

## Duties of Receivers

45. (1) In this section, "receiver" means a person who, with respect to an asset in Lesotho, is -

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee for an unrehabilitated insolvent;
- (d) a mortgagee in possession;
- (e) an executor of a deceased estate; or
- (f) any other person conducting the business of a person legally incapacitated.

(2) A receiver shall notify the Commissioner in writing within fourteen days after being appointed as receiver or of taking possession of an asset in Lesotho, whichever first occurs.

(3) The Commissioner may in writing notify a receiver of the amount which appears to the Commissioner to be sufficient to provide for any value added tax which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver shall not part with any asset in Lesotho which is held by the receiver in his or her capacity as receiver without the prior written permission of the Commissioner.

(5) A receiver -

- (a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Commissioner under subsection (3), or such lesser amount as is subsequently agreed on by the Commissioner;
- (b) is liable to the extent of the amount set aside for the value added tax of the person who owned the asset; and

- (c) may pay any debt that has priority over the value added tax referred to in this section notwithstanding any provision of this section.

(6) A receiver is personally liable to the extent of any amount required to be set aside under subsection (5) for the value added tax referred to in subsection (3) if, and to the extent that, the receiver fails to comply with the requirements of this section.

#### PART IV – REFUND OF VALUE ADDED TAX

##### **Refund of Overpaid Value Added Tax**

46. (1) Subject to subsection (3), a person may apply to the Commissioner for a refund of any value added tax paid in excess of the amount due under this Act.

(2) Where the Commissioner is satisfied that value added tax has been overpaid, and that the person applying for the refund has repaid the overpaid value added tax to the recipient of the supply to which the application for a refund relates either in cash or as a credit against any amount owing by the recipient, the Commissioner shall -

- (a) apply the amount of tax overpaid against any outstanding liability of the person under this Act;
- (b) apply the balance of the tax overpaid against any outstanding liability of the person under the Income Tax Act, 1993; and
- (c) refund the remainder to the person applying under subsection (1).

(3) Subject to subsection (4), if, for any calendar quarter, the total input tax credit allowed to a vendor under this Act exceeds the vendor's liability for value added tax for that period -

- (a) the excess is credited against any outstanding liability of the vendor under this Act; and

- (b) the remainder of the excess shall, upon application by the vendor, be refunded to the vendor.

(4) Where the excess referred to in subsection (3) is due to excess input tax credits which are a regular feature of the area of business activity in which the vendor is engaged, the vendor may apply to the Commissioner in writing for a refund to be made at the end of each tax period of the amount of the excess.

(5) An application for a refund under this section shall be made to the Commissioner in writing -

- (a) in the case of an application under subsection (3)(b), within twenty days after the end of the calendar quarter; or
- (b) in any other case, within four years after the tax is due and payable under section 37.

(6) The Commissioner shall serve on a person applying for a refund a notice in writing of a decision in respect of the application.

(7) A person dissatisfied with a decision referred to in subsection (6) may only challenge the decision under Part II of Chapter VIII of this Act on the basis that the decision is an assessment.

(8) In this section, "calendar quarter" means the period of three months ending on the last day of March, June, September, and December.

### **Refund of Value Added Tax to Diplomats, Contractors and Certain Organisations**

47. (1) In this section -

"aid project" means a project for the benefit of Lesotho provided for in an international agreement and which is financed by way of grant by a public international organisation or foreign government;

"charitable activities" means activities consisting of the provision of food, meals, board, lodging, clothing or other necessities, comforts, or

amenities to any persons whom the Commissioner is satisfied are in need;

“contractor” means a person engaged by the Lesotho Government, a public international organisation, or a foreign government to provide construction, transportation, or any other service prescribed by Regulations;

“Lesotho Government” does not include a statutory corporation or any other body in which the Government or a statutory corporation has a controlling interest; and

“permanent resident” means a person who is not a citizen of Lesotho but who has been resident in Lesotho for a period or periods in total of seven years or more.

(2) Subject to subsection (6), the following persons are exempt from value added tax -

- (a) any person enjoying full or limited immunity, rights or privileges under the Diplomatic Privileges Act 1969<sup>7</sup>, or under recognized principles of International law;
- (b) any diplomatic or consular mission of a foreign country established in Lesotho, relating to transactions concluded for the official purposes of such mission.

(3) Subject to subsections (5), (7) and (8), the following persons are exempt from value added tax in the manner set out in subsection (4) -

- (a) a public international organisation or foreign government in accordance with an international agreement; and
- (b) a contractor entitled to exemption from value added tax under an aid project, to the extent provided for under the international agreement establishing the project.

(4) The exemption referred to in subsection (3) shall only operate by way of a refund of the value added tax paid or borne by the persons referred

to in that subsection.

(5) The Minister may authorise the granting of a refund in respect of value added tax paid or borne by an organisation of a public character and permanent nature where the goods or services are for supply by the organisation in the course of providing charitable activities.

(6) The exemption referred to in subsection (2)(a) and (b) shall be made only where the foreign country which the diplomat, diplomatic or consular official or employee, or diplomatic or consular mission represents accords similar or equivalent relief to any diplomat, diplomatic or consular official or employee, or diplomatic or consular mission of the Government of Lesotho or, where the Government of Lesotho does not have a diplomatic or consular mission in the foreign country, that the country would accord such relief if there was such a mission in that country.

(7) Subsection (3)(b) does not apply to a person who is a citizen or permanent resident of Lesotho.

(8) Any claim for refund of tax under this section is to be made in such a form and such a time as the Commissioner may prescribe and shall be accompanied by proof of tax paid or such certification as the Commissioner may require.

## PART V – RECORDS AND INVESTIGATION POWERS

### Accounts and Records

48. (1) A person liable for value added tax under this Act shall maintain in Lesotho in the Sesotho or English languages -

- (a) original value added tax invoices, credit notes, and debit notes received by the person;
- (b) a copy of all value added tax invoices, credit notes, and debit notes issued by the person;
- (c) customs documentation relating to imports and exports by the person; and



- (d) such other accounts and records as may be prescribed by the Commissioner.

(2) Every vendor shall maintain up to date books of accounts in Lesotho in the Sesotho or English languages which -

- (a) correctly record and explain the transactions entered into by the vendor;
- (b) will, at any time, enable the financial position of the vendor to be determined with reasonable accuracy;
- (c) will enable the accounts of the vendor to be readily and properly audited; and
- (d) will enable the directors of a vendor which is a company to ensure that any balance sheet, profit and loss account, or income and expenditure statement of the vendor complies with the requirements applicable under all relevant laws of Lesotho.

(3) Records or accounts required to be maintained under this section shall be retained for as long as they remain material in the administration of this Act.

### **Access to Books, Records and Computers**

49. (1) In order to enforce a provision of this Act, the Commissioner, or an officer authorised in writing by the Commissioner -

- (a) shall have at all times and without any prior notice to any person full and free access to any premises, place, book, record or computer;
- (b) may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a);
- (c) may seize any book or record that, in the opinion of the Commissioner or authorised officer, affords evidence

that may be material in determining the liability of any person under this Act;

- (d) may retain any such book or record for as long as is required for determining a person's liability or for any proceeding under this Act;
- (e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required; and
- (f)
  - (i) may station, on the premises to which access is gained under paragraph (a), an officer to collect data on a vendor's supply of goods and services in order to ascertain the tax payable; and
  - (ii) the officer shall fill in the data on a form prescribed by the Commissioner.

(2) An officer who attempts to exercise a power under subsection (1) on behalf of the Commissioner is not entitled to enter or remain on any premises or at any place if, upon being requested by the occupier of the premises or place, the officer does not produce an authorisation in writing from the Commissioner to the effect that the officer is authorised to exercise that power under this section.

(3) The owner, manager, or any other person on the premises or at the place entered or proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise of power under this section.

(4) A person whose books, records or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Commissioner may determine.

(5) For the purposes of engaging in any audit or enforcement activity under this Act, including the exercise of powers under this section, the Commissioner may require a police officer to be present while such activity is

being conducted.

### **Notice to Obtain Information or Evidence**

50. (1) The Commissioner may, by notice in writing, require a person, whether or not liable for value added tax under this Act -

- (a) to furnish such information as may be required by the notice; or
- (b) to attend at the time and place designated in the notice for the purpose of being examined on oath before the Commissioner or an officer authorised by the Commissioner for this purpose concerning the value added tax affairs of that person or any other person, and for that purpose the Commissioner or an authorised officer may require the person examined to produce any book, record or computer-stored information in the control of the person.

(2) Where the notice requires the production of a book or record, it is sufficient if such book or record is described in the notice with reasonable certainty.

(3) A notice issued under this section shall be served by or at the direction of the Commissioner by a signed copy delivered by hand to the person to whom it is directed, or left at the person's last and usual place of abode, and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

### **Books and Records not in Sesotho or English Language**

51. Where any book or record referred to in sections 49 or 50 is not in the Sesotho or English language, the Commissioner may, by notice in writing, require the person keeping the book or record to provide at that person's expense a translation into the Sesotho or English language by a translator approved by the Commissioner for this purpose.

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## PART VI – TAXPAYER IDENTIFICATION NUMBER

### **Taxpayer Identification Number**

52. The Commissioner may require a person to include the taxpayer identification number issued by the Commissioner to that person in any return, notice, or other document used for the purposes of this Act.

## PART VII – ADDITIONAL TAX AND OFFENCES

### **Division I: Additional Tax**

#### **Additional Tax for Failure to Apply for Registration**

53. A person who fails to apply for registration as required by section 17(1), (3) or (6) is liable for additional tax equal to double the amount of value added tax payable during the period commencing on the day by which the person was required to apply for registration under section 17(1), (3) or (6) until either the person files an application for registration with the Commissioner or the Commissioner registers the person under section 17(10).

#### **Additional Tax for Failure to File a Return**

54. A person who fails to file a return within the time required under this Act is liable for additional tax on the value added tax payable for the period of the return at the rate of 3% per month or part of the month the return is outstanding.

#### **Additional Tax for Failure to Pay Value Added Tax When Due**

55. (1) A person who fails to pay value added tax imposed by this Act on or before the due date is liable for additional tax on the unpaid value added tax at the rate of 3% per month or part of the month the value added tax is outstanding.

(2) If a person pays additional tax under subsection (1) and the value added tax to which it relates is found not to have been due and payable by the person and is refunded, then the additional tax, or that much of the additional tax as relates to the amount of the refund, shall also be refunded to that person.

### **Additional Tax in Relation to Records**

56. A person who fails to maintain proper records in a tax period in accordance with the requirements of this Act is liable for additional tax equal to double the amount of value added tax payable by the person for the tax period.

### **Additional Tax in Relation to False or Misleading Statements**

57. (1) Where a person knowingly or recklessly -
- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
  - (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

and the value added tax properly payable by the person exceeds the tax that would have been payable if the person was assessed on the basis that the statement was not false or misleading, the person is liable for additional tax equal to double the amount of the excess.

(2) Section 70(3) applies in determining whether a person has made a statement to a taxation officer.

### **Recovery of Additional Tax**

58. (1) Where good cause is shown, in writing, by the person liable for additional tax, the Commissioner may remit in whole or part any additional tax payable.

(2) Subject to subsection (3), the imposition of additional tax is in addition to any penalty imposed as a result of a conviction for an offence under Division II.

(3) No additional tax is payable under sections 53, 56 or 57 where the person has been convicted of an offence under sections 59, 64 or 70 in respect of the same act or omission.

(4) If additional tax under sections 53, 56 or 57 has been paid and

the Commissioner institutes a prosecution proceeding under sections 59, 64 or 70 in respect of the same act or omission, the Commissioner shall refund the amount of additional tax paid; and that additional tax is not payable unless the prosecution is withdrawn.

(5) Additional tax shall for the purposes of Chapter VIII be treated as value added tax of the same nature as the value added tax to which it relates and shall be payable in and for the same tax period as that value added tax.

(6) Additional tax shall be assessed by the Commissioner in the same manner as the value added tax to which it relates and an assessment of additional tax shall be treated for all purposes as an assessment under this Act.

## **Division II: Offences**

### **Offences Related to Registration**

59. A person who fails -

- (a) to apply for registration as required by section 17(1), (3), or (6);
- (b) to notify the Commissioner of a change in circumstances as required by section 17(16); or
- (c) to apply for cancellation of registration as required by section 18(1),

commits an offence and is liable on conviction to -

- (i) where the failure is deliberate or reckless, a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years, or both; or
- (ii) in any other case, a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years, or both.

## Offences Related to Value Added Tax Invoices, Credit Notes and Debit Notes

60. (1) A vendor who fails to provide a value added tax invoice as required by section 24(1) or (6), or a credit or debit note as required by section 25, commits an offence and is liable on conviction to a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years, or both.

(2) A person who provides a value added tax invoice otherwise than as provided for in section 24(1) or (6), or a credit or debit note otherwise than as provided for in section 25, commits an offence and is liable on conviction to -

- (a) where the provision of the value added tax invoice, credit note or debit note otherwise than as required is deliberate or reckless, a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years, or both;
- (b) in any other case, a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years, or both.

## Failure to File a Return or Pay Value Added Tax When Due

61. (1) Any person who fails -

- (a) to file a return or other document; or
- (b) to pay value added tax when due,

as required by this Act commits an offence and is liable on conviction to a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years, or both.

(2) If a person convicted of an offence under subsection (1) fails to file the return or document or pay the value added tax due within the period specified by the Commissioner, that person commits an offence and is liable on

conviction to a fine of M1,000 for each day during which the failure continues and, in addition, to imprisonment for three months.

### **Failure to Give Security**

62. Any person who, without any reasonable cause, fails to give security as required by section 39, commits an offence and is liable on conviction to a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years, or both.

### **Failure to Comply with Recovery Provisions**

63. (1) A person who fails to comply with -

(a) a notice under section 44; or

(b) the requirements of section 45,

commits an offence and is liable on conviction to a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years, or both.

(2) Where a person is convicted of an offence under subsection (1)(a), the Court may, in addition to imposing a penalty, order the convicted person to pay to the Commissioner an amount not exceeding the amount which the person failed to pay as required by section 44.

### **Failure to Maintain Proper Records**

64. A person who fails to maintain proper records in accordance with the requirements of this Act commits an offence and is liable on conviction to -

(a) where the failure was deliberate or reckless, a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years, or both; or

(b) in any other case, a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years, or both.



**Failure to Provide Reasonable Assistance**

65. A person who fails to provide the Commissioner or an authorised officer with all reasonable facilities and assistance as required by section 49(3) commits an offence and is liable on conviction to a fine not less than M6,000 but not exceeding M12,000 or to imprisonment for a term not less than 3 years but not exceeding 6 years, or both.

**Failure to Comply with Section 50 Notice**

66. A person who fails to comply with a notice issued under section 50 commits an offence and is liable on conviction to a fine not less than M6,000 but not exceeding M12,000 or to imprisonment for a term not less than 3 years but not exceeding 6 years, or both.

**Improper Use of Taxpayer Identification Number or Value Added Tax Number**

67. (1) A person who knowingly uses a false taxpayer identification number or value added tax number (including the taxpayer identification number or value added tax number of another person) on a return or document prescribed or used for the purposes of this Act, commits an offence and is liable on conviction to a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years, or both.

(2) Subsection (1) does not apply to a person who has used the taxpayer identification number or value added tax number of another person with the permission of that other person on a return or document relating to the value added tax affairs of that other person.

**Failure to Maintain Secrecy**

68. A person who contravenes section 76, commits an offence and is liable on conviction to a fine not less than M8,000 but not exceeding M24,000 or to imprisonment for a term not less than 4 years but not exceeding 12 years or both.

### Breach of Section 86

69. (1) A person who contravenes section 86(1), commits an offence and is liable on conviction to a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years or both.

(2) A person who charges value added tax in the circumstances specified in section 86(3), commits an offence and is liable on conviction to a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years or both.

### False or Misleading Statements

70. (1) A person who -

- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

commits an offence and is liable on conviction to -

- (i) where the statement or omission was made knowingly or recklessly, a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years or both; or
- (ii) in any other case, a fine not less than M2,000 but not exceeding M6,000 or to imprisonment for a term not less than 1 year but not exceeding 3 years or both.

(2) It is a defence to a prosecution under subsection (1) if it is proved that the person did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

(3) A reference in this section to a statement made to a taxation

officer is a reference to a statement made orally, in writing, or in any other form to that officer acting in the performance of his or her duties under this Act, and includes a statement made -

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed or furnished under this Act;
- (b) in information required to be furnished under this Act;
- (c) in a document furnished to a taxation officer otherwise than pursuant to this Act;
- (d) in answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

### **Obstructing Taxation Officers**

71. A person who obstructs the Commissioner or an authorised officer in the performance of his or her duties under this Act, commits an offence and is liable on conviction to a fine not less than M4,000 but not exceeding M12,000 or to imprisonment for a term not less than 2 years but not exceeding 6 years or both.

### **Impersonating an Officer**

72. Any person who holds out that he or she is an officer engaged in carrying out the provisions of this Act or an officer authorised by the Commissioner for the purposes of entry and search as contemplated in section 49, commits an offence and is liable on conviction to a fine not less than M6,000 but not exceeding M20,000 or to imprisonment for a term not less than 3 years but not exceeding 10 years or both.

### **Offences by Companies**

73. (1) Where an offence under this Division has been committed by a

company, every person who at the time of the commission of the offence -

- (a) was a nominated person, director, general manager, secretary, member of the committee of management, or other similar officer of the company; or
  - (b) was acting or purporting to act in such capacity, is deemed to have committed the offence.
- (2) Subsection (1) does not apply where -
- (a) the offence was committed without such person's consent or knowledge; and
  - (b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

## PART VIII – ADMINISTRATION

### Division I: Office of the Commissioner of Value Added Tax

#### Appointment of Commissioner and Deputy Commissioner of Value Added Tax

74. (1) The offices of Commissioner of Value Added Tax and Deputy Commissioner of Value Added Tax shall be offices in the Public Service and the appointments shall be in accordance with the provisions of the Constitution.

(2) The Commissioner has the general administration of this Act.

(3) The Deputy Commissioner shall perform, under the direction of the Commissioner, such general official duties as is required to be performed by this Act or by the Commissioner; and shall, in the case of illness, absence, or temporary incapacity of the Commissioner, act in the office of the Commissioner.

(4) A notice in the Gazette that a person has been appointed to hold

an office under subsection (1) is conclusive evidence of that appointment.

### Delegation

75. The Commissioner may delegate to any officer of the Department of Value Added Tax any power or duty conferred or imposed on the Commissioner by this Act, other than this power of delegation.

### Secrecy

76. (1) Subject to subsections (3) and (4), a person appointed under or employed in the carrying out of this Act, shall preserve secrecy with regard to all information or documents which may come to his or her knowledge in an official capacity in the performance of duties under this Act, and shall not communicate such information or the contents of such documents to any other person except in the performance of his or her duties under this Act or by order of a competent court.

(2) A person appointed to audit the assessments and accounts of the Commissioner, is, for the purposes of this section, deemed to be a person employed in carrying out the provisions of this Act.

(3) Subsection (1) does not prohibit the disclosure of information or documents -

- (a) to the Minister or any other person where that disclosure is necessary for the purposes of this Act or any other law;
- (b) to the Auditor-General or a person authorised by the Auditor-General; or
- (c) to an authorised officer of the government of a country with which an agreement for the avoidance of double taxation or for reciprocal administrative assistance exists, to the extent permitted under that agreement.

(4) The information obtained by the Commissioner in the performance of the Commissioner's duties under this Act may be used by the Commissioner for the purposes of any other fiscal law administered by the

Commissioner or under which the Commissioner is appointed collector of tax.

(5) No officer or employee of the Department of Value Added Tax may assume his or her duties unless he or she has first taken and subscribed before a Commissioner of Oaths the prescribed oath of secrecy.

(6) Any person receiving documents or information under subsection (3) is required to keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure was necessary.

## **Division II: Forms and Notices**

### **Forms and Notices; Authentication of Documents**

77. (1) Forms, notices, returns, statements, tables and other documents prescribed or published by the Commissioner may be in such form as the Commissioner determines for the efficient administration of this Act and publication of such documents in the Gazette is not required.

(2) The Commissioner shall make the documents referred to in subsection (1) available to the public at the Value Added Tax Office and at any other locations, or by mail, as the Commissioner determines.

(3) A notice or other document issued, served, or given by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or authorised officer, is printed, stamped, or written on the document.

### **Service of Notices and Other Documents**

78. Unless otherwise provided in this Act, a notice or other document required or authorised by this Act to be served -

- (a) on a person being an individual other than in a representative capacity, is considered sufficiently served if -
  - (i) personally served on that person;
  - (ii) left at the person's usual or last known place of abode,

office or place of business in Lesotho; or

- (iii) sent by registered post to such place of abode, office, or place of business or to the person's usual or last known address in Lesotho; or
- (b) on any other person, is considered sufficiently served if -
  - (i) personally served on the person's nominated person;
  - (ii) left at the registered office of the person or the person's address for service of notices under this Act; or
  - (iii) there is no such office or address, it is left at or sent by registered post to any office or place of business of the person in Lesotho.

### **Division III: Nominated Person**

#### **Nominated Person**

79. (1) Every vendor being a partnership, trust, company, or an individual whose principal place of business is outside Lesotho or who is outside Lesotho for more than one tax period shall have a nominated person for value added tax purposes who is an individual who resides in Lesotho.

(2) The name of the nominated person shall be notified to the Commissioner -

- (a) in the case of a partnership, trust, company, or an individual whose principal place of business is outside Lesotho, in the first tax period in which the partnership, trust, company, or individual becomes a vendor; or
- (b) in the case of an individual who is outside Lesotho, in the first tax period in which the individual is outside Lesotho.

(3) Where a vendor fails to comply with subsection (2), the nominated person will be a person specified by the Commissioner.

(4) A vendor may by notice in writing to the Commissioner change the nominated person.

(5) Subject to section 80, the nominated person is responsible for any obligation imposed on the partnership, trust, company, or individual under this Act.

#### **Division IV: Application of Act to Partnerships, Unincorporated Associations, Trustees and Agents**

##### **Application of Act to Partnerships and Unincorporated Associations**

80. (1) This Act applies to a partnership as if the partnership were a person, but with the following changes -

- (a) obligations that would be imposed on the partnership are instead imposed on each partner, but may be discharged by any of the partners;
- (b) the partners are jointly and severally liable to pay any amount due under this Act that would be payable by the partnership; and
- (c) any offence under this Act that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

(2) This Act applies to an unincorporated association as if it were a person, but the obligations that would be imposed on the association are imposed instead on each member of the committee of management of the association, but may be discharged by any of those members.

(3) In a prosecution of a person for an offence that the person is taken to have committed under subsection (1)(c), it is a defence if the person proves that the person -

- (a) did not aid, abet, counsel or procure the relevant act or omission; and



- (b) was not in any way knowingly concerned in, or party to, the relevant act or omission.

(4) Any person responsible, on behalf of the State, for accounting for the receipt and payment of moneys under the provisions of any law or for the receipt and payment of public funds or of funds voted by Parliament shall be responsible for performing any duties (including the payment of tax) imposed by this Act on the State.

(5) Any person who is responsible for accounting for the receipt and payment of moneys or funds on behalf of a regional or local public authority or body shall be responsible for performing any duties (including the payment of tax) imposed by this Act on the authority or body.

### **Trustees**

81. A person who is a trustee in more than one capacity is treated for the purposes of this Act as a separate person in relation to each of those capacities.

### **Agents and Auctioneers**

82. (1) Where a taxable supply has been made in the circumstances specified in section 8(11)(a) and the recipient of the supply is a vendor, the agent may issue a value added tax invoice in accordance with this Act in relation to the supply as if the agent had made the supply; and the principal shall not also issue a value added tax invoice in relation to the supply.

(2) Where a taxable supply has been made in the circumstances specified in section 8(11)(b) and the principal is a vendor, at the request of the agent, a value added tax invoice in relation to the supply may be issued to the agent; and a value added tax invoice shall not be issued to the principal in relation to the supply.

(3) Where value added tax is payable by an auctioneer in respect of the supply of goods specified under section 8(13), the auctioneer shall charge the purchaser the amount of value added tax payable in respect of the sale by adding the value added tax to the amount of a successful bid, or, in the case of sales out-of-hand, to the purchase price and shall recover that tax from the purchaser.

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## CHAPTER IX - MISCELLANEOUS PROVISIONS

### Currency Conversion

83. (1) For the purposes of this Act, all amounts of money are to be expressed in Maloti.

(2) If an amount is expressed in a currency other than Maloti, the amount shall be converted at the exchange rate applying between the currency and Maloti at the time the amount is taken into account under this Act.

### Schemes for Obtaining Undue Value Added Tax Benefits

84. (1) In this section -

“scheme” includes any agreement, arrangement, promise or undertaking whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, and any plan, proposal, course of action or course of conduct; and

“tax benefit” includes -

- (a) a reduction in the liability of any person to pay value added tax;
- (b) an increase in the entitlement of a person to a credit or refund; or
- (c) any other avoidance or postponement of liability for the payment of value added tax.

(2) Notwithstanding anything in this Act, if the Commissioner is satisfied that a scheme has been entered into or carried out where -

- (a) a person has obtained a tax benefit in connection with the scheme; and
- (b) having regard to the substance of the scheme, it could be concluded that the person, or one of the persons,

who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,

the Commissioner may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Commissioner considers appropriate for the prevention or reduction of the tax benefit.

### **Goods Requiring Registration or Clearance**

85. (1) Where goods require registration under any law, that registration shall not be effected unless the person seeking registration under that law proves to the registering authority that value added tax has been paid in respect of the supply of those goods to, or import by, the person, or the supply is exempt from, or otherwise not subject to, value added tax under this or any other law.

(2) If goods imported into Lesotho have to be cleared under the Customs and Excise Act, 1982, the goods shall not be cleared for collection unless the importer produces proof that value added tax has been paid or that the goods are exempt from value added tax.

(3) Registration or clearance in contravention of this section is null and void.

### **Prohibition on Advertising; Pricing on Tax-Exclusive or Tax-Inclusive Basis**

86. (1) A person shall not advertise or hold out to the public or to a purchaser that the value added tax payable in respect of a supply shall be borne or absorbed by the person, or that value added tax will not be considered as an element in the price, or that if value added tax is included in the price it shall be refunded.

(2) Except as provided under subsection (3), a taxable supply shall be priced exclusive of tax and the value added tax payable shall -

(a) form a part of the price of the transaction;

- (b) be entered in a different column on the invoice; and
- (c) be recovered from the purchaser by the seller.

(3) A vendor making taxable supplies to a person who is not a vendor shall state the price for the supply as inclusive of tax and the vendor -

- (a) shall display a sign in a prominent location on the business premises, or disclose prominently on its invoices that the supplies are made inclusive of tax; and
- (b) shall disclose prominently on its invoices that the supplies are taxable or exempt from tax and, if taxable, the rate charged.

(4) Notwithstanding section 5 and subject to this Act, where any person who is not a vendor states that value added tax is charged in respect of a supply of goods or services, the person shall be liable to pay the tax to the Commissioner within seven days of the date of the supply and the tax shall be treated as value added tax for all purposes of the Act.

(5) Subject to section 15, where the amount of value added tax that a vendor states has been charged in respect of a taxable supply exceeds the tax properly chargeable in respect of the supply, the value added tax payable in respect of the supply is the amount stated as charged on the supply.

### **International Agreements**

87. (1) The Minister may, on behalf of the Government, enter into an agreement with the Government of another country on a reciprocal basis for the prevention of fiscal evasion or avoidance, the rendering of assistance and co-operation and the establishment of a refund system in respect of general sales tax or value added tax collected in the participating countries.

(2) An agreement entered into under subsection (1) may be laid before the National Assembly as soon as may be after the agreement is entered into.

(3) The Minister may, at any time, amend or terminate an agree-

ment entered into under subsection (1).

(4) An agreement made under this section may be published in the Gazette.

(5) Where an international agreement provides for reciprocal assistance in the collection of tax and the Commissioner has received a request from a country pursuant to that agreement for the collection from any person in Lesotho of an amount due by that person under the tax laws of the country, the Commissioner may, by notice in writing, require the person to pay the amount on a date specified in the notice to the Commissioner for transmission to the proper authority in that other country.

(6) If a person fails to comply with a notice under subsection (5), the amount in question may be recovered by commissioner for transmission to the proper authority in that country as if it were a tax payable by the person under this Act.

### **Regulations and Amendment of Schedules**

88. (1) The Minister may make regulations -
- (a) for the better carrying into effect of the purposes of this Act;
  - (b) to amend a Schedule to this Act;
  - (c) to amend any monetary amount set out in this Act;
  - (d) to amend the time for filing a value added tax return under section 27; or
  - (e) to amend the rate of additional tax imposed under sections 54 and 55.
- (2) The regulations may -
- (a) contain a provision of a saving or transitional nature; or
  - (b) prescribe specific offences for breach of the regula-

tions.

(3) If the regulations so provide, they may take effect from the date on which this Act comes into effect or a later date, regardless of whether they are published in the Gazette after a notice under this Act is published in the Gazette.

### Repeal

89. Subject to section 90, the Sales Tax Act, 1995<sup>8</sup> is repealed.

### Transitional

90. (1) In this section -

“commencement date” means the date on which this Act comes into operation under section 2;

“qualifying goods or services”, in relation to a vendor, means -

- (a) goods on hand at the commencement date held for re-supply by the vendor in substantially the same state in the course of making taxable supplies on or after the commencement date;
- (b) goods on hand at, or services acquired before, the commencement date held for use by the vendor as raw materials in manufacturing goods to be supplied in taxable supplies on or after the commencement date; or
- (c) services acquired before the commencement date and held for re-supply by the vendor in substantially the same state in the course of making taxable supplies on or after the commencement date:

Provided the goods or services were acquired by the vendor not more than two months before the commencement date; and

“Repealed Legislation” means the legislation repealed under section 89.

(2) The Repealed Legislation continues to apply to a supply or import of goods or services prior to the commencement date.

(3) All appointments made under the Repealed Legislation and subsisting at the date of commencement of this Act are deemed to be appointments made under this Act; and an oath of secrecy taken under the Repealed Legislation is treated as having been taken under this Act.

(4) All forms and documents used in relation to the Repealed Legislation may continue to be used under this Act and all references in those forms and documents to provisions of and expressions appropriate to the Repealed Legislation are taken to refer to the corresponding provisions and expressions of this Act.

(5) A supply to, or import by, the Lesotho Government is an exempt supply until the Minister provides otherwise in a notice published in the Gazette.

(6) A vendor may make an application in writing to the Commissioner that sales tax paid by the vendor in respect of the acquisition of qualifying goods or services is allowed as a credit under section 23 in the first tax period of the vendor under the Act.

(7) An application under subsection (6) -

(a) shall be made within two months after the commencement date; and

(b) shall include documentary proof that sales tax has been paid in respect of the acquisition of the goods or services to which the application relates.

(8) Subject to subsection (9), the Commissioner may grant an application under subsection (6) where the Commissioner is satisfied that the goods or services to which the application relates are qualifying goods or services and that sales tax has been paid in respect of the acquisition of the goods or services.

(9) The sales tax allowed as a credit under subsection (8) shall not exceed the amount of value added tax which would have been payable had the

goods or services been acquired on or after the commencement date.

(10) A vendor dissatisfied with a decision of the Commissioner under subsection (8) may only challenge the decision under Part II of Chapter VIII on the basis that the decision is an assessment.

## NOTES

1. Proclamation No. 5 of 1919 [Auction Sales Proclamation 1919]
2. Act No. 24 of 1974 [Hire Purchase Act 1974]
3. Act No. 27 of 1969 [Industrial Licensing Act 1969]
4. Act No. 10 of 1982 [Customs and Excise Act 1982]
5. Act No. 9 of 1993 [Income Tax Act 1993]
6. Proclamation No. 51 of 1957 [Insolvency Proclamation 1957]
7. Act No. 31 of 1969 [Diplomatic Privileges Act 1969]
8. Act No. 14 of 1995 [Sales Tax Act 1995]

## SCHEDULES

### SCHEDULE I

(Section 3)

#### Public International Organisations

African Development Bank  
 African Development Fund  
 Anglo De Beers Forest Services (Lesotho)  
 Catholic Relief Services  
 Co-operative for American Remittances Everywhere  
 Crown Agents/Customs Cooperative Council  
 Customs Cooperation Council  
 Development Bank of South Africa  
 European Bank for Reconstruction and Development  
 European Development Fund  
 European Union  
 Food and Agriculture Organisation  
 Intergovernmental Maritime Consultative Organisation  
 International Atomic Energy Agency  
 International Bank for Reconstruction and Development  
 International Centre for Settlement of Investment Disputes



International Civil Aviation Organisation  
International Committee of the Red Cross  
International Criminal Police Organisation  
International Development Association  
International Finance Corporation  
International Fund for Agricultural Development  
International Labour Organisation  
International Maritime Satellite Organisation  
International Monetary Fund  
International Secretariat for Volunteer Services  
International Telecommunications Satellite Organisation  
International Telecommunications Union  
International Voluntary Service  
International Wheat Advisory Committee  
Multilateral Investment Guarantee Agency  
Multinational Programming and Operational Centre  
Organisation for Economic Co-operation and Development  
Organisation of African Unity  
Overseas Development Administration  
Preferential Trade Agreement for Eastern and Southern African States  
Skillshare Africa  
The Southern African Development Community  
United International Bureau for the Protection of Intellectual Property  
United Nations related Agencies and Specialised Agencies of that  
Organisation  
United States Peace Corps  
Universal Postal Union  
Voluntary Service Overseas  
World Food Programme  
World Health Organisation  
World Intellectual Property Organisation  
World Meteorological Organisation  
World Tourism Organisation  
World Trade Organisation  
World University Services

SCHEDULE II  
(Section 6)

**Goods Prescribed for the Purposes of Section 6(4)**

The following goods are prescribed for the purposes of section 6(4):

1. Goods imported into Lesotho in respect of which no customs duty is payable in terms of the Customs and Excise Act, 1982, being -
  - (a) goods for Heads of State, Diplomatic, and other Foreign Representatives;
  - (b) used personal effects and sporting or recreational equipment, imported as passengers' baggage;
  - (c) goods imported as accompanied passengers' baggage by any person (other than an import from the Republic of South Africa) and cleared at the place where he or she enters Lesotho, being per person -
    - (i) wine, not exceeding the duty free limit specified in the Customs and Excise Act, 1982;
    - (ii) spirituous and other alcoholic beverages, a total quantity not exceeding the duty free limit specified in the Customs and Excise Act, 1982;
    - (iii) manufactured tobacco, not exceeding the duty free limits as specified in the Customs and Excise Act, 1982;
    - (iv) perfumery, not exceeding the duty free limit as specified in the Customs and Excise Act, 1982; or
    - (v) other new or used goods of a total value not exceeding the duty free limit as specified in the Customs and Excise Act, 1982;
  - (d) household furniture and effects, and other removable articles, including one motor vehicle per household and equipment nec-

essary for the exercise of the calling, trade, or profession, being the *bona fide* property of a natural person (including a returning resident of Lesotho and members of his or her family), imported for own use on a change of residence to Lesotho, but not including -

- (i) industrial, commercial, or agricultural plant;
  - (ii) alcoholic beverages; or
  - (iii) tobacco goods;
- (e) *bona fide* unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed the limit specified in the Customs and Excise Act, 1982 consigned by natural persons abroad to natural persons in Lesotho, but not including goods contained in passengers' baggage, wine, spirits, and manufactured tobacco including cigarettes and cigars;
- (f) goods imported -
- (i) for the relief of distressed persons in cases of famine or other national disasters; or
  - (ii) in terms of an obligation under any multilateral international agreement to which Lesotho is a party;
- (g) goods imported for any purpose agreed upon between the Governments of Lesotho, the Republic of South Africa, Botswana, Swaziland, and Namibia;
- (h) goods temporarily admitted for specific purposes; and
- (i) goods temporarily admitted subject to exportation in the same state -
  - (ii) publications and other advertising matter relating to fairs, exhibitions, and tourism in foreign countries, when imported by a tourist agency of a foreign gov-

ernment recognised by the Commissioner for the purposes of this exemption; or

- (iii) invalid carriages, whether or not motorised or otherwise mechanically propelled.

2. Goods imported into Lesotho in respect of which the Director of Customs and Excise has, in terms of the provisions of the Customs and Excise Act, 1982, granted permission that entry need not be made, being -

- (a) containers temporarily imported;
- (b) human remains;
- (c) goods that, in the opinion of the Director for Customs and Excise, are of no commercial value;
- (d) goods imported under an international carnet; or
- (e) goods of a value for customs duty purposes not exceeding M500, and on which no such duty is payable in terms of the said Act.

3. An import of goods by an employee of a foreign government or public international organisation seconded to Lesotho if -

- (a) the goods are personal effects;
- (b) the import takes place within six months of the employee's arrival in Lesotho; and
- (c) the exemption is provided for in an international agreement.

4. An import of goods, other than registrable goods as referred to in section 85(1), by an individual on which value added tax has been imposed under the law of the Republic of South Africa, provided -

- (a) the goods are for use or consumption by the individual importing the goods and are not for re-supply or for use in any business of the individual or any other person;

- (b) the individual has taken delivery of the goods in the Republic of South Africa;
- (c) the individual has provided the Commissioner with documentary evidence that value added tax has been paid in the Republic of South Africa and a declaration that the tax has not and will not be refunded to the individual; and
- (d) the total value of the goods does not exceed the limit set out by the Minister in Regulations.

**SCHEDULE III**  
(Sections 24 and 25)

**Value Added Tax Invoices, Credit Notes and Debit Notes**

1. A value added tax invoice as required by section 24 shall, unless the Commissioner provides otherwise, contain the following particulars -
- (a) the words "value added tax invoice" written in a prominent place;
  - (b) the commercial name, address, place of business, and taxpayer identification number of the vendor making the supply;
  - (c) the commercial name, address, place of business and taxpayer identification number of the vendor to whom the supply is made;
  - (d) the individualised invoice number and the date on which the value added tax invoice is issued;
  - (e) a description of the goods or services supplied and the date on which the supply is made;
  - (f) the quantity or volume of the goods or services supplied; and
  - (g) either -
    - (i) where a taxable supply is made without a separate

amount of being identified as a payment of tax, a statement that the consideration for the supply includes a charge in respect of the tax and the rate at which the tax was charged; or

- (ii) in any other case, the total amount of the tax charged, the consideration for the supply, and the consideration inclusive of tax.

2. A credit note as required by section 25(1) shall, unless the Commissioner provides otherwise, contain the following particulars -

- (a) the words "credit note" in a prominent place;
- (b) the commercial name, address, place of business, and the taxpayer identification number of the vendor making the supply;
- (c) the commercial name, address, place of business, and the taxpayer identification number of the vendor to whom the supply is made;
- (d) the date on which the credit note was issued;
- (e) a brief explanation of the circumstances giving rise to the issuing of the credit note;
- (f) information sufficient to identify the taxable supply to which the credit note relates; and
- (g) the taxable value of the supply shown on the value added tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the value added tax charged that relates to that difference.

3. A debit note as required by section 25(2) shall, unless the Commissioner provides otherwise, contain the following particulars -

- (a) the words "debit note" in a prominent place;
- (b) the commercial name, address, place of business, and the tax-

- payer identification number of the vendor making the supply;
- (c) the commercial name, address, place of business, and the taxpayer identification number of the vendor receiving the supply;
  - (d) the date on which the debit note was issued;
  - (e) a brief explanation of the circumstances giving rise to the issuing of the debit note;
  - (f) information sufficient to identify the taxable supply to which the debit note relates; and
  - (g) the taxable value of the supply shown on the value added tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the value added tax charged that relates to that difference.
-