

Bill No. 39 of 2025

VALUE ADDED TAX BILL, 2025
(Published on 15th December, 2025)

MEMORANDUM

1. A draft of the above Bill, which is intended to be presented to the National Assembly, is set out below.

2. The object of the Bill is to repeal and re-enact, with amendments, the Value Added Tax Act (Cap. 50:03) in order to modernise and widen the scope of the Act, including application to digital services and products. The Bill further removes the administrative and penal provisions from the Act as these will be provided under the Tax Administration Act.

3. Part I of the Bill contains preliminary provisions, including the definitions of terms used in the Bill.

4. Part II of the Bill provides for the imposition of VAT at the standard rate of 14 per cent on taxable supplies, taxable imports, and reverse charged supplies. The Bill further provides for taxable supplies subject to a zero-rate of VAT and exempt supplies on which VAT is not chargeable, at either the standard rate or zero-rate.

5. Part III of the Bill provides for VAT registration. The Bill makes it compulsory for persons making taxable supplies with an annual value above the VAT registration threshold to apply for registration. Persons making taxable supplies below the threshold may voluntarily apply to register for VAT. The manner of registration, obligations of registered persons, application for cancellation of registration, if the person has ceased to make taxable supplies or where the value of taxable supplies made by the person is below the registration threshold are also provided for under this Part. The Bill further provides for rules relating to pricing of a taxable supply, advertising and display of prices of a taxable supply. The Bill provides that the prices shall be advertised or quoted as inclusive of the VAT, if any, chargeable on a taxable supply.

6. Part IV of the Bill provides for general rules relating to supplies. The Bill sets out the rules for determining when a supply of goods, supply of services, or a reverse charged supply occurs as the liability for VAT arises at the time of supply. The Bill further sets out the rules for determining the value and place of a supply of goods and services, for purposes of imposing VAT on the supply of goods and services.

7. Part V of the Bill provides for general rules relating to imports; namely the time of an import and the value of an import. The Bill provides that an import of goods occurs at the time the goods are cleared by customs for goods placed under customs control. For any other goods, it is at the time the goods are brought into Botswana. The Part further provides for the calculation of VAT payable on taxable imports.

9. Part VI of the Bill provides for the claiming of input tax credits by a registered person for purposes of computing the amount of VAT payable by the person for a tax period in which the supply or import occurred. A registered person is allowed a credit for the input tax in respect of a creditable acquisition that was made for the purpose

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of making a taxable supply. However, a registered person, is not allowed input tax credit for input tax payable in respect of certain creditable acquisitions mainly of recreational or consumption nature. The Bill further provides a special input tax credit rule applicable to a newly registered person for VAT-paid stock on hand at the time of registration.

10. Part VII of the Bill provides general rules for particular types of supplies. These rules relate to the making of the supply or the allowance of input tax credits in relation to the receipt of the supply. These supplies include self-supplies, supplies of second-hand goods, supplies paid for through the use of vouchers, supplies of short-term insurance, gambling supplies, and supplies of employee benefits, amongst others.

11. Part VIII of the Bill provides for the treatment of adjustments made to a supply after the time of the supply. An adjustment occurs where a registered person has accounted for VAT on a supply, but the nature of the supply changes or the consideration for the supply subsequently becomes a bad debt. An adjustment event may result in VAT being undercharged or being overcharged. Where the adjustment has resulted in VAT being undercharged, the amount of excess is treated as output tax of the supplier for the tax period in which the adjustment event occurred. Where an adjustment has resulted in VAT being overcharged, the supplier is allowed an input tax credit for the amount of the excess in the tax period in which the adjustment event occurred. A corresponding adjustment is made to the VAT position of the recipient of the supply if they are registered. Further, the Part provides for the recovery of the adjustment for bad debts.

12. Part IX of the Bill provides for the calculation of the VAT payable by a registered person and the tax period of a registered person. The Part further provides for the treatment of an excess input tax credit of a registered person for a tax period and for the interest payable on late refunds.

13. Part X of the Bill provides for general rules relating to the issue and maintenance of VAT documentation. A registered person is required to provide the recipient with a tax invoice for the taxable supply. For post-supply adjustments to a supply and bad debt adjustments, the registered person is required to issue a tax credit and a tax debit note, as the case may be.

14. Part XI of the Bill provides for VAT-specific procedural rules relating particularly to the filing of returns and payment of tax. The Bill further provides for the due date for payment of VAT by registered persons, Government entities and importers. The recovery of VAT on taxable imports and from recipient in case of misrepresentation by the recipient of the nature of the supply, and the refund of VAT on a taxable supply made to the President, Diplomats, public international organisations and other persons is also provided for under this Part.

15. Part XII of the Bill provides for special cases relating to business or entity structure. Where a taxable activity is carried on by a registered person in branches or divisions, the registered person is treated as carrying on a single taxable activity, unless a registered person applies to register one or more branches or divisions as separate registered persons. The Part further provides that where a registered person dies or the estate of a registered person has been sequestered, the transfer of the assets of the taxable activity of the registered person to the executor or trustee of the

person's estate is not to be treated as a supply, and the estate of the registered person, as represented by the executor or trustee of the estate, is treated as continuing to carry on the taxable activity of the registered person. Further, 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.

16. Part XIII of the Bill provides for general provisions such as transitional arrangements and regulations. The Bill extends the application of the Tax Administration Act to this Act. The Bill provides for a variation to be made to the consideration for a supply, where there has been a change in the VAT rate after the consideration has been agreed. Rules to counter VAT avoidance arrangements and the variation in the rate of VAT are also provided for under this Part. The Bill further empowers the Minister, on behalf of the Government, to enter into an agreement with the government of a foreign country or territory concerning VAT.

NDABAN. GAOLATHE,
Minister of Finance.

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SCHEDULES

A Bill
— entitled —

An Act to re-enact the Value Added Tax Act with amendments to provide for the imposition and collection of value added tax; and for matters connected thereto.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Value Added Tax Act, 2025, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. (1) In this Act, unless the context otherwise requires —
“adjustment event”, in relation to a supply, means —

Interpretation

- (a) for the purposes of sections 49 and 50, any of the following —
- (i) the supply is cancelled,
 - (ii) the nature of the supply is fundamentally varied or altered,
 - (iii) the consideration for the supply is altered, whether due to an offer of a discount or for any other reason, or
 - (iv) for a supply of goods, the goods or some of the goods that are the subject of the supply are returned to the supplier;
- (b) for the purposes of section 52, where a registered person who made the supply treats the whole or part of consideration for the supply as a bad debt in the person’s financial accounts; or
- (c) for the purposes of section 53, where a registered person who made the supply recovers the whole or part of the consideration for the supply that was previously written off as a bad debt in the person’s financial accounts;

“approved form” has the meaning assigned to the term under the Tax Administration Act;

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“associate” has the meaning assigned to the term under section 4 of the Tax Administration Act;

“auctioneer” means a person engaged in a taxable activity that includes the supply of goods by auction as an auctioneer for or on behalf of another person;

“capital goods” means any asset that has a useful life of more than one year and that is used in the course or furtherance of a taxable activity;

“Commissioner General” means the Commissioner General of the Revenue Service appointed under section 22(1) of the Botswana Unified Revenue Service Act;

Cap. 53:03

“consideration” has the meaning assigned to the term in section 3;

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- Cap. 53:01 “creditable acquisition”, in relation to a registered person, means a —
- (a) taxable supply made to the person by another registered person;
 - (b) reverse charged supply made to the person;
 - (c) taxable import made by the person; or
 - (d) transfer duty paid by the registered person for the acquisition of immovable property under the Transfer Duty Act;
- “Customs” means a division of the Revenue Service responsible for the administration of the customs legislation, and includes premises or other areas designated for that purpose;
- “customs control” means measures applied by a customs officer to ensure compliance with customs legislation;
- Cap. 50:02 “customs legislation” means —
- Cap. 50:01
- (a) the Customs Act;
 - (b) the Excise Duty Act; or
 - (c) any other written law relating to customs or excise duty;
- “customs officer” means an employee of the Revenue Service who is appointed by the Commissioner General to perform any duty relating to customs legislation;
- Act No. 21 of 2024 “Deputy Sheriff” means a person appointed as a Deputy Sheriff under the Deputy Sheriffs Act;
- “digital currency” means a digital unit of value, other than money, that —
- (a) is fungible;
 - (b) can be provided as consideration for a supply;
 - (c) is generally available to members of the public without any substantial restrictions on its use as consideration;
 - (d) is not denominated in the currency of any country;
 - (e) does not have a value that depends on or is derived from the value of anything else; and
 - (f) does not give an entitlement to receive or to direct the supply of a particular thing, unless the entitlement is incidental to the holding of a digital unit of value or using digital unit of value as consideration;
- “duty”, in relation to an import of goods, means a duty or levy payable under any customs legislation in respect of the import of goods;
- “exempt import” means an import under section 10 and listed under Schedule 3;
- “exempt supply” means a supply under section 9 (1) and listed under Schedule 2;
- “export country” means any country other than Botswana, and includes any territory that is not situated in Botswana, but does not include any specific country or territory that the Minister, by Order published in the *Gazette*, designates as not being an export country;
- “exported from Botswana”, in relation to goods, means —
- (a) consigned or delivered to a recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner General; or

(b) stores for consumption or use on a journey by a ferry, an aircraft, or cross-border bus or train that is an international transportation service under Schedule 1;

“fair market value” has the meaning assigned to the term in section 4;

“goods” means corporeal movable or immovable property including capital goods, but does not include —

(a) money or digital currency; or

(b) a product that is transmitted by means of a wire, cable, radio, optical, or other electromagnetic system or by means of a similar technical system;

“Government entity” means a —

(a) Government ministry, department, agency, institution, a company or other entity controlled by the Government; or

(b) local authority;

“hire-purchase agreement” means any agreement whereby goods are sold subject to the condition that ownership in the goods shall not pass merely by the transfer of the possession of the goods and the purchase price is to be paid in instalments, and includes a lease of movable property where the lease payments include an implicit or explicit credit charge;

“immovable property” means —

(a) land, whether covered by water or not, and includes any estate, right, interest or servitude on or over any land and anything attached to land or permanently fastened to anything attached to land;

(b) any unit as defined in section 2 (1) of the Sectional Titles Act; or

(c) any real right in any such property;

“import”, in relation to goods, means to bring the goods or cause the goods to be brought into Botswana from a foreign country or territory;

“importer”, in relation to an import of goods, includes any person who at the time of an import of the goods —

(a) owns the imported goods;

(b) carries the risk of the imported goods;

(c) represents that or acts as if he or she is the importer or owner of the imported goods;

(d) brings the goods into Botswana;

(e) is beneficially interested in any way whatsoever in the imported goods; or

(f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

“inbound tourism product” means accommodation, meals, transportation, tours, and other tourist activities in Botswana;

“input tax”, in relation to a registered person, means —

(a) the VAT payable by the person in respect of a creditable acquisition made by the person, but does not include a penalty or late payment interest payable under the Tax Administration Act; and

(b) an amount that is treated for the purposes of this Act as input tax payable by the person;

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- “input tax credit” means the credit for input tax allowed under this Act;
- “invoice” means any document, including in electronic format, stating an obligation to make a payment and includes a tax invoice;
- “large unregistered person” means a person —
- (a) making supplies with a total annual value in excess of the amount specified in paragraph 1 of Schedule 5; and
 - (b) who is not a registered person or Government entity;
- “late payment interest” means the late payment interest that is payable under the Tax Administration Act;
- “late payment penalty” means the late payment penalty that is payable under the Tax Administration Act;
- Cap. 40:01 “local authority” includes a council established under the Local Government Act;
- “manufacture” means the application of any operation or process for the conversion by manual or mechanical means of materials by changing the composition, shape, size, nature or quality of such material, including the assembly of parts or components, into a new product or article, but does not include the installation of machinery or equipment for the purpose of construction, or the packing, dividing into lots, sorting, grading, or marking of any material, product, or article;
- Cap. 55:01 “money” means —
- (a) a coin or note that is legal tender in Botswana under the Bank of Botswana Act or is a legal tender in a foreign country or territory, except where the coin or note is a collector’s piece, an investment article, or an item of numismatic interest;
 - (b) a bill of exchange, bank draft, promissory note, postal order, or money order;
 - (c) a stamp, form, or card that has a money value and has been sold or issued by the State for the payment of any fiscal charge levied under any written law for the benefit of the Consolidated Fund; and
 - (d) an amount provided as payment by way of —
 - (i) a credit card or debit card, or
 - (ii) the crediting or debiting of an account operated by any person;
- “output tax”, in relation to a registered person, means —
- (a) the VAT receivable on a taxable supply made; or
 - (b) an amount that is treated as output tax for the purposes of this Act;
- “person” includes a natural person, partnership, trust, estate, Government entity, company or international organisation;
- Cap. 72:01 “Post” means the Botswana Postal Services established under section 3 of the Botswana Postal Services Act;
- “prepaid telecommunications product” means a phone card, prepaid card, recharge card or any other form of prepayment for telecommunications services, including in electronic format;
- “received”, in relation to a person, includes —
- (a) applied on behalf of the person either at the instruction of the person or under any written law; or
 - (b) otherwise made available to the person;

“recipient”, in relation to a supply, means the person to whom the supply is made;

“registered person” means a person who is —

- (a) registered under this Act; or
- (b) required to apply for registration but who has not done so within the time specified in section 12;

“remote services” means services that, at the time of the supply of the services, there is no necessary connection between the place where the services are physically performed by the supplier; and the location of the recipient of the services, but excludes an accredited degree or diploma programme;

“resident in Botswana” has the meaning assigned to the term under the Income Tax Act;

Cap. 52:01

“returnable container” means a container in which goods are supplied and in relation to which, at the time of delivery of the contents of the container —

- (a) ownership of the container is not transferred to the recipient of the supply of the contents of the container; and
- (b) a specifically identified amount is charged as a deposit by the supplier with the agreement of the supplier that on the return of the container the deposit shall be refunded or allowed as a credit to the recipient or any other person returning the container;

“Revenue Service” means the Botswana Unified Revenue Service established under section 3 of the Botswana Unified Revenue Service Act;

“reverse charged supply” has the meaning assigned to the term under section 28;

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

“short-term insurance contract” means a contract for general insurance business listed in Schedule 1 of the Insurance Industry Act;

Cap. 46:01

“stock” has the meaning assigned to the term under the Income Tax Act;

“stores” has the meaning assigned to the term under the Customs Act;

“supplier”, in relation to a supply, means the person making the supply;

“supply” means a supply of goods, a supply of services, or a reverse charged supply;

“supply of goods” means —

- (a) a sale, exchange or other transfer of the right to dispose of goods as the owner; or
- (b) the hire or lease of goods under a hire-purchase agreement;

“supply of services” means anything done that is not a supply of goods, money, or digital currency, and includes —

- (a) a lease of, or right to use any goods under a rental agreement, freight contract, agreement for charter, whether with or without a driver, pilot, crew, or operator, or any other similar agreement other than a hire-purchase agreement;

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- (b) the transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water;
 - (c) the grant, assignment, cessation, or surrender of any right;
 - (d) making available any facility or advantage;
 - (e) refraining from undertaking any activity;
 - (f) tolerating any activity; and
 - (g) the transmission of a product by means of a wire, cable, radio, optical, or other electromagnetic system or by means of a similar technical system;
- “tax credit note” means a document provided by a registered person as required under section 60;
- “tax debit note” means a document provided by a registered person as required under section 60;
- “tax fraction”, in relation to a taxable supply, means the fraction calculated in accordance with the following formula —
- $$r/(100 + r)$$
- where “r” is the rate of VAT applicable to the supply under section 7(2);
- “tax invoice” means a document provided by a registered person as required under section 59;
- “tax period”, in relation to a registered person, means the person’s tax period as determined under section 54;
- “taxable activity” has the meaning assigned to the term in section 5;
- “taxable import” means an import of goods other than an exempt import;
- “taxable supply” means —
- (a) a supply of goods or services that is made in Botswana by a person in the course or furtherance of a taxable activity carried on by the person, other than an exempt supply; or
 - (b) anything treated as a taxable supply under this Act;
- “taxpayer identification number” or “TIN” means a taxpayer identification number issued to a taxpayer under section 10 of the Tax Administration Act;
- “telecommunications intermediary” means a person who acts as a distributor, representative, agent, or other intermediary in relation to the supply of a prepaid telecommunications product;
- “telecommunications services” means the emission, transmission or reception of information, including voice, sound, data, internet and electronic communication, text, video, animation, visual images moving images and pictures, signal or a combination thereof by means of magnetism, radio or other electronic waves, optical, electromagnetic system whether with or without the aid of tangible or intangible conduct but does not include content service and includes any service ancillary thereto such as the —
- (a) installation, maintenance, adjustment, repair, alteration, removal, relocation or replacement of telecommunications equipment related to a telecommunications system;

- (b) related transfer or assignment of the right to use capacity for such transmission, emission, or reception; and
- (c) provision of access to global or local information networks, but does not include the supply of the underlying writing, images, sounds, or information;

“telecommunications services supplier” means a person licensed in Botswana or elsewhere to make supplies of telecommunications services;

“trustee” has the same meaning assigned to the term in the Trust Property Control Act;

Cap. 31:05

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

“VAT manufacturing warehouse” means a facility operated by a registered person that is certified by the Commissioner General under section 47, as a VAT manufacturing warehouse; and

“zero-rated supply” means a supply that by virtue of section 8 (1) is a zero-rated supply listed under Schedule 1.

(2) A reference in this Act to a period of days shall be a reference to a consecutive period of days, unless this Act provides otherwise.

3. (1) Subject to this Act, the consideration for a supply shall be the total of —

Consideration

- (a) the amount in money or digital currency paid or payable by any person, directly or indirectly for the supply;
- (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly for the supply;
- (c) a deposit on a returnable container given in connection with the supply;
- (d) a service charge paid or payable in respect of the supply; and
- (e) any taxes, duties, levies, fees, and charges, other than VAT, paid or payable by the supplier on or by reason of the supply.

(2) The consideration for a supply calculated under subsection (1) shall be reduced by any price discount or rebate allowed and accounted for at the time of the supply.

(3) A discount, rebate or any other adjustment to the price of a supply allowed or made after the time of the supply shall be accounted for under the adjustment rule in section 50.

(4) The consideration for a supply —

- (a) shall not include a deposit other than a deposit on a returnable container, whether refundable or not, given in connection with a supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited; and
- (b) of goods under a hire-purchase agreement to which section 22 (6) applies shall not include any amount payable in relation to a supply of credit under the agreement.

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Fair market value

4. (1) For the purposes of this Act, the fair market value of a supply shall be the consideration that the supply would ordinarily fetch in an open market transaction made in Botswana at the time of the supply between persons who are not associates.

(2) Where the fair market value of a supply, referred to in this section as the “actual supply”, cannot be determined under subsection (1), the fair market value for the supply shall be the consideration that a similar supply would ordinarily fetch in an open market transaction made in Botswana at the time of the actual supply between persons who are not associates, adjusted to take account of the differences between the similar supply and the actual supply.

(3) Where the fair market value of a supply cannot be determined under subsections (1) and (2), the fair market value shall be determined in accordance with any method approved by the Commissioner General that —

- (a) is consistent with generally accepted valuation principles; and
- (b) provides a sufficiently objective approximation of the consideration that could be obtained for the supply had the supply been freely offered and made between persons who are not associates.

(4) Where a provision of this Act requires the fair market value to be determined at a particular time for particular goods or services, the value of the goods or services shall be worked out by reference to the fair market value of a supply of those goods or services at that time, as determined under this Act.

(5) In this section, “similar supply”, in relation to an actual supply means a supply that is the same as or closely or substantially resembles the actual supply, taking into account the characteristics of the goods or services supplied in the actual supply.

Taxable activity

5. (1) Subject to this section, “taxable activity” means —

- (a) an activity that is carried on continuously or regularly, by a person, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for consideration;
- (b) an activity of a Government entity that involves the supply of goods or services for consideration; or
- (c) the activity of an auctioneer or a Deputy Sheriff.

(2) Anything done in connection with the commencement, re-organisation or termination of a taxable activity shall be treated as carried on in the course or furtherance of that taxable activity.

(3) A taxable activity shall not include the following —

- (a) an employment within the meaning in the Income Tax Act;
- (b) an activity carried on by a natural person as a private recreational pursuit or as a hobby; or
- (c) any activity carried on by a person other than a natural person which would, if carried on by a natural person, be carried on as a private recreational pursuit or as a hobby.

(4) Subject to subsection (5), a supply is made for consideration if the supplier directly or indirectly receives any payment for the supply from the recipient or any other person, including any payment wholly or partly in money or kind.

(5) A supply made for consideration includes the following —

- (a) a supply made between associates for no consideration;
- (b) a supply of goods for use only as trade samples; and
- (c) a supply referred to in section 34(1).

6. This Act binds the State.

Act binds
State

PART II — *Imposition of VAT*

7. (1) Subject to this Act, there shall be levied and paid a tax to be known as the “value added tax” or “VAT” at the rate specified in subsection (2) on a —

Imposition of
VAT

- (a) taxable supply made by a registered person;
- (b) taxable import made by any person; and
- (c) reverse charged supply made to a registered person, Government entity, or a large unregistered person.

(2) The rate of VAT shall be, for —

- (a) a taxable supply that is a zero-rated supply, zero per cent; and
- (b) any other taxable supply, a taxable import, or a reverse charged supply, a rate of 14 per cent.

(3) The amount of VAT payable in respect of a taxable supply, taxable import, or reverse charged supply shall be calculated by applying the rate specified in subsection (2) to the value of the supply or import.

(4) The liability for VAT on a taxable supply, shall arise at the time of the supply and shall be accounted for to the Commissioner General by the registered person making the supply in accordance with section 66 (1).

(5) Notwithstanding anything contained in any written law or agreement, but subject to subsection (6), the VAT payable by a registered person in respect of a taxable supply shall be recoverable by the registered person from the recipient of the supply.

(6) Subsection (5) shall not apply to a taxable supply made by a person registered by the Commissioner General under section 15 (2) that was made by the person prior to the date that the person is registered by the Commissioner General.

(7) The liability for VAT on a taxable import shall arise at the time of the import and shall be payable by the importer in accordance with section 66 (3).

(8) The liability for VAT on a reverse charged supply shall arise at the time of the supply and shall be accounted for to the Commissioner General by the registered person, Government entity, or large unregistered person receiving the supply in accordance with section 66 (1) or section 66 (2), as the case may be.

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Zero-rated supply

8. (1) A supply specified in Schedule 1 shall be a zero-rated supply.

(2) Where a registered person has treated a supply as a zero-rated supply, the registered person shall obtain and retain such documentary proof acceptable to the Commissioner General substantiating the person's entitlement to treat the supply as a zero-rated supply.

(3) Notwithstanding any provision of this Act, the Minister may, by Order published in the *Gazette* —

(a) deny zero rating of goods exported from Botswana as specified in Schedule 1, if such action is necessary to protect the revenue or to offset restrictions placed on zero rating of comparable goods by an export country; or

(b) designate a non-export country.

Exempt supply

9. (1) Subject to subsection (2), a supply listed in Schedule 2 shall be an exempt supply.

(2) A supply that is both a zero-rated supply under Schedule 1 and an exempt supply under Schedule 2 shall be treated only as a zero-rated supply for the purposes of this Act.

Exempt import

10. An import of goods shall be an exempt import if the import —

(a) is specified in Schedule 3;

(b) would be a zero-rated supply under section 8 or an exempt supply under section 9 if it were a supply of goods in Botswana; or

(c) is prescribed as an exempt import.

Exemptions and concessions in other laws not effective

11. (1) A provision in any other law, whether enacted before or after this Act, specifying that —

(a) a supply or class of supply, or an import or class of import, is an exempt or zero-rated supply, an exempt import or subject to a reduced rate of VAT, has no legal effect unless also provided for in this Act; and

(b) a person or class of persons is exempted from paying VAT or is liable for a reduced rate of VAT, has no legal effect unless also provided for in this Act.

(2) In this section, "reduced rate of VAT" means a rate of VAT lower than the rate specified in section 7 (2) (b).

PART III — VAT Registration

Application for compulsory registration

12. (1) A person shall be liable to apply for compulsory registration —

(a) at the end of any 12-month or lesser period if, in that period, the total value of taxable supplies made by the person exceeds the registration threshold;

(b) at the beginning of any 12-month period, if there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed the registration threshold; or

(c) if the person is —

(i) a Government entity making taxable supplies, at the time the Government entity commenced to make taxable supplies,

- (ii) a Government entity or large unregistered person for the purposes of accounting for a reverse charged supply, at the time the Government entity or large unregistered person commenced to receive reverse charged supplies,
- (iii) an auctioneer, at the time the person commenced to carry on a taxable activity as an auctioneer, or
- (iv) a Deputy Sheriff, at the time that the person commenced to carry on a taxable activity as a Deputy Sheriff.

(2) The registration threshold referred to in subsection (1) shall be the amount specified in paragraph 2 of Schedule 5.

(3) In determining whether a person is liable to apply for registration under subsection (1) (a) or (b), the Commissioner General may have regard to the value of taxable supplies made by an associate of the person.

(4) A person shall not become liable to apply for registration under subsection (1) (a) or (b), if the Commissioner General is satisfied that the value of taxable supplies made by the person exceeded the registration threshold solely as a consequence of –

- (a) any cessation or substantial and permanent reduction in the size or scale of any taxable activity carried on by the person; or
- (b) the replacement of capital goods used in the taxable activity carried on by the person.

(5) An application for compulsory registration by a person under this section shall be –

- (a) made in an approved form; and
- (b) lodged with the Commissioner General within 21 days of the date that the person became liable to apply for registration.

13. (1) A person who supplies remote services shall be liable to apply for registration –

- (a) at the end of any period of 12 months or lesser period if, in that period, the total value of taxable supplies made exceeds the registration threshold; or
- (b) at the beginning of any period of 12 months, if there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed the registration threshold.

(2) The registration threshold referred to in subsection (1) shall be the amount specified in paragraph 3 of Schedule 5.

(3) The Minister may prescribe conditions for the registration of a supplier of remote services.

14. (1) Subject to subsection (2), a person making or who intends to make taxable supplies but who is not liable to apply for registration under section 12, may apply, in the approved form, to the Commissioner General for registration under this Act.

(2) An application for registration under subsection (1) shall be made where the annual value of taxable supplies made or to be made by the person exceeds the amount specified in paragraph 4 of Schedule 5.

Registration
of remote
service
supplier

Application
for voluntary
registration

B.1112

Registration

(3) Notwithstanding subsection (2), the following persons may apply to the Commissioner General for registration —

- (a) a person carrying on a manufacturing business;
- (b) a person carrying on a construction business; and
- (c) a licensee undertaking mining or petroleum operations.

15. (1) The Commissioner General shall register a person who has applied for compulsory registration under section 12, if the Commissioner General is satisfied that a person is required to apply for registration.

(2) Where the Commissioner General is satisfied that the person who is required to apply for compulsory registration has not done so within the time limit specified in section 12, the Commissioner General shall register the person on his or her own motion.

(3) The Commissioner General shall register a person who has applied for voluntary registration under section 14 if the Commissioner General is satisfied that —

- (a) the person is making or will make taxable supplies;
- (b) the person satisfies the requirements of section 14(2);
- (c) the person has a fixed place from which the person's taxable activity is carried on or the business is carried on through a website or social media account; and
- (d) there are reasonable grounds to believe that the person will keep proper records and lodge regular and reliable returns as required under this Act.

(4) The Commissioner General shall, within 21 days after receipt of an application under section 12 or 14, serve a notice in writing, on an applicant of the decision taken on the application.

(5) For purposes of this section, registration shall take effect —

- (a) for a person referred to in section 12 (1) (a), from the beginning of the second tax period immediately following the date that the person became liable to apply for registration or such later date as specified in the person's VAT registration certificate;
- (b) for a person referred to in section 12 (1) (b), from the beginning of the 12-month period;
- (c) for a Government entity referred to in section 12 (1) (c) (i), from the commencement of making taxable supplies;
- (d) for a Government entity or large unregistered person referred to in section 12 (1) (c) (ii), from the commencement of receiving reversed charged supplies;
- (e) for an auctioneer referred to in section 12 (1) (c) (iii), from the date of commencement of the taxable activity as an auctioneer;
- (f) for a Deputy Sheriff referred to in section 12 (1) (c)(iv), from the date of appointment as a Deputy Sheriff; or
- (g) for a person making an application under section 14, from the date specified on the person's VAT registration certificate.

(6) The Commissioner General shall issue a registered person with a VAT registration certificate in the prescribed form.

(7) A registered person shall notify the Commissioner General, in writing, of —

- (a) any change in the name, address, place of business, constitution, or nature of the principal taxable activity or activities of the person; and
- (b) any change of address from which, or name in which, a taxable activity is carried on by the registered person, within 21 days of the change occurring.

16. (1) A registered person shall display in a conspicuous place —

- (a) the original copy of the VAT registration certificate at the principal place at which the person carries on a taxable activity; and
- (b) a certified copy of the certificate obtained from the Commissioner General at every place at which the person carries on his or her taxable activity.

Display of
certificate

(2) A registered person shall specify their VAT registration details on any website or social media account through which the person carries on their taxable activity.

17. (1) Subject to subsection (2), any price advertised or quoted by a registered person in respect of a taxable supply shall include VAT.

VAT-inclusive
pricing

(2) A registered person may advertise or quote a price in respect of a taxable supply as exclusive of VAT where —

- (a) the advertisement or quotation states the amount of VAT charged on the supply, the price inclusive of VAT, and the price exclusive of VAT; and
- (b) the price inclusive of VAT and the price exclusive of VAT shall be advertised or quoted with equal prominence or impact.

(3) Subject to subsection (5), the price ticket on goods supplied by a registered person does not need to state that the price includes VAT if this is stated by way of a notice prominently displayed at all entrances to the premises, in which the registered person carries on a taxable activity and at all points in such premises where payments are effected.

(4) The Commissioner General may, in the case of any registered person or class of registered persons, approve any other method of displaying prices of goods or services by such persons.

(6) Where a person who is not registered for VAT bids for a tender —

- (a) the person shall quote in the tender, a price without VAT; and
- (b) and if, as a result of being awarded the tender, the person is required to apply for registration under section 12, the person shall recover VAT on taxable supplies made in relation to the tender.

18. (1) A registered person shall notify the Commissioner General if he or she has ceased to make taxable supplies.

Notification by
registered
person ceasing
to make taxable
supplies

(2) A notification by a registered person under subsection (1) shall —

- (a) be made in the approved form;
- (b) state the date upon which the person has ceased to make taxable supplies;
- (c) state whether or not the person intends to make taxable supplies within 12 months from the date in paragraph (b); and

B.1114

(d) be lodged with the Commissioner General within 21 days of the date the person ceased to make taxable supplies.

(3) Subject to subsection (4), the Commissioner General shall, by notice in writing, cancel the registration of a person who has ceased to make taxable supplies either on notification by the person or on the Commissioner General's own motion.

(4) The Commissioner General shall not cancel the registration of a registered person under subsection (3), where the Commissioner General has reasonable grounds to believe that the person shall recommence making taxable supplies at any time within 12 months from that date of cessation of making taxable supplies.

(5) Subject to subsection (6), the Commissioner General shall cancel a person's registration under subsection (3) with effect from the last day of the tax period during which the person ceased to make taxable supplies, or from such later date as the Commissioner General may specify in the notice of cancellation of registration.

(6) If the Commissioner General is satisfied that the person did not, from the date of registration, make taxable supplies, the Commissioner General may specify in the notice of cancellation that the person's registration is cancelled on the date on which the person was registered under this Act.

Application for
cancellation of
registration
when below
registration
threshold

19. (1) Subject to subsections (2) and (3), a registered person may apply, in the approved form, to the Commissioner General to have the person's registration cancelled when the annual value of the taxable supplies made by the person is below the registration threshold.

(2) An application by a registered person under subsection (1) may be made after the expiration of two years from the date the person's registration took effect, unless the Commissioner General permits the application to be made at an earlier time.

(3) Subsection (1) shall not apply to a person who was liable to apply for registration under section 12 (1) (c).

(4) An application under subsection (1) shall be compulsory where the annual value of the taxable supplies made by a registered person is below the amount specified in paragraph 2 of Schedule 5, unless the Commissioner General is satisfied that there are reasonable grounds to believe that this will only be a temporary occurrence.

(5) Where the Commissioner General is satisfied that a person who has applied for cancellation of registration under subsection (1) or (4) is not required to be registered, the Commissioner General shall, by notice in writing, cancel the registration of the person.

(6) The Commissioner General may, on his or her own motion and by notice in writing, cancel the registration of a person who is not required to be registered, if the Commissioner General is satisfied that the person has not —

(a) kept proper VAT records; or

(b) lodged regular and reliable tax returns.

(7) The cancellation of a person's registration under this section shall take effect from the date specified in the notice of cancellation.

20. (1) Where a person's registration is cancelled under section 18 or 19, the person shall —

- (a) immediately cease to represent themselves as a registered person, including on any documentation used by the person and on any website or social media account through which the person carries on their taxable activity; and
- (b) lodge a final tax return and pay all VAT due, including the VAT due under section 21, within 14 days after the date of cancellation of the person's registration.

(2) The obligations and liabilities of a person under this Act, including the lodging of tax returns and payment of VAT, in respect of anything done or omitted to be done by that person while being a registered person shall not be affected by cancellation of the person's registration.

(3) Where a person's registration is cancelled under section 18(6) with effect from the original date of registration, the —

- (a) cancellation shall not affect the person's liability to account to the Commissioner General for any VAT charged on supplies made by the person; and
- (b) Commissioner General shall recover from the person the amount of any input tax credit allowed to the person during the period in which the person was registered.

21. (1) A person whose registration is cancelled under section 18 or 19 shall be treated as having made a taxable supply of any goods on hand or services available for use at the time that the registration is cancelled, but only if the person was allowed an input tax credit in respect of the acquisition or import of the goods or of inputs that have been subsumed into the goods or acquisition of services.

(2) A taxable supply of goods or services under subsection (1) shall be treated as having been made by the person immediately before the cancellation of the person's registration for a consideration equal to the lesser of —

- (a) the consideration paid or payable by the person for the acquisition of the goods or services; or
- (b) the fair market value of the goods or services at the time of cancellation of the person's registration.

(3) Where the person deemed to have made a taxable supply under this section was not allowed an input tax credit for the full amount of the input tax paid in respect of an acquisition or import of the goods or of inputs subsumed into the goods or services, the amount calculated under subsection (2) (b) shall be reduced by the proportion of the input tax that was not allowed as a credit.

Obligations of person on cancellation of registration

Deemed taxable supply on cancellation of registration

PART IV — *General Rules Relating to Supplies*

Mixed
supplies

22. (1) A supply of goods that is incidental to a supply of services shall be treated as part of the supply of services.

(2) A supply of services that is incidental to a supply of goods shall be treated as part of the supply of goods.

(3) A supply of services that is incidental to an import of goods shall be treated as part of the import.

(4) Subsection (5) shall apply where a supply consists of the following —

(a) a supply that is charged with VAT at the standard rate;

(b) a zero-rated supply; or

(c) an exempt supply.

(5) Where subsection (4) applies and subject to subsection (6), each part of the supply shall be treated as a separate supply.

(6) The supply of goods under a hire-purchase agreement shall be treated as a supply of goods and a supply of credit under the agreement provided that the credit is specified as a separate charge and is disclosed to the recipient of the supply.

(7) A supply of goods made in exchange for goods or services shall be treated as a supply of goods.

(8) A supply of services made in exchange for a supply of goods or services shall be treated as a supply of services.

(9) The Minister may make regulations providing that a supply of goods and services is a supply of goods or a supply of services.

Time of
supply

23. (1) Subject to this Act, a supply shall occur on the earlier of the date on which —

(a) the invoice for the supply is issued by the supplier; or

(b) any payment, including a part payment, for the supply is received.

(2) A supply between associates or by way of a gift shall occur, for —

(a) goods, on the date the goods are delivered or otherwise made available to the recipient of the supply; or

(b) services, on the date the performance of the services is complete.

(3) Notwithstanding subsection (2), subsection (1) shall apply to a supply between associates to the extent that an invoice is issued or a payment received for the supply on or before the earlier of the —

(a) date on which the tax return is lodged for the tax period in which the supply would, but for subsection (2), have been made; or

(b) last day under section 65 for lodging the tax return for the tax period in which the supply would, but for subsection (2), have been made.

(4) A supply by means of any machine, meter, or any other device operated by a coin, note, or token shall occur on the date that any such coin, note, or token is taken from that machine, meter, or any other device by or on behalf of the supplier.

(5) A periodic supply shall be treated as a series of separate, successive supplies corresponding to the successive parts of the period of the lease or agreement under which the supply is made or as determined by any written law, as the case may be and each successive supply shall be treated as occurring on the earlier of the date on which the payment for that successive supply is due or received.

(6) In this section, “periodic supply” means —

(a) a supply of goods under a hire-purchase agreement; or

(b) a supply of services —

(i) by way of a lease of goods, other than a lease under paragraph (a), or

(ii) made progressively under an agreement or any written law that provides for periodic payments.

24. (1) Subject to this Act, the value of a supply shall be the consideration for the supply.

Value of supply

(2) The value of a supply shall be the fair market value of the supply determined at the time of the supply where the —

(a) supply is made by a person to an associate for a consideration that is less than the fair market value of the supply, including a supply made for no consideration; and

(b) recipient is not entitled to an input tax credit for the whole of the input tax payable in respect of the supply.

(3) Except as otherwise provided under this Act, the value of a supply made for no consideration shall be nil.

(4) If a taxable supply is made by a registered person without a separate amount being identified as VAT, the value of the supply shall be calculated according to the following formula —

$$A - (A \times B)$$

where —

A is the total amount charged for the supply;

and

B is the tax fraction.

(5) If subsection (4) applies to a taxable supply made by a registered person to another registered person, the input tax payable by the registered person receiving the supply is calculated based on the value of the supply determined under subsection (4).

25. A supply of goods occurs in Botswana if —

Supply of goods in Botswana

(a) for a supply of goods that involves transportation, the goods are in Botswana when the transportation commences; or

(b) for any other supply of goods, the goods are made available in Botswana by the supplier.

26. (1) A supply of services shall occur in Botswana if the place of business of the supplier from which the services are supplied is in Botswana.

Supply of services in Botswana

B.1118

(2) Notwithstanding subsection (1) and subject to section 27, a supply of services, other than a reverse charged supply, by a person who does not have a place of business in Botswana occurs in Botswana if the service —

- (a) is physically performed in Botswana by a person who is in Botswana at the time of the supply;
- (b) relates to immovable property in Botswana;
- (c) is a remote service supplied to a person who is resident in Botswana as determined under subsection (3);
- (d) is an inbound tourism product, agency, or booking services relating to a supply of an inbound tourism product;
- (e) is a telecommunication service that can be used only in Botswana; or
- (f) is a telecommunication service supplied to a person resident in Botswana as determined under subsection (5), except where paragraph (c) applies.

(3) For the purposes of subsection (2) (c) and subject to subsection (4), a recipient of a supply of remote services shall be treated as resident in Botswana if at least two of the following factors support the conclusion that the person is resident in Botswana —

- (a) the recipient's billing address;
- (b) the Internet Protocol address of the device used by the recipient or any other geo-location method;
- (c) the recipient's bank account details, including the account the recipient uses for payment or the billing address held by the bank;
- (d) the mobile country code of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) used by the recipient;
- (e) the location of the recipient's fixed land line through which the service is supplied to the recipient; or
- (f) any other relevant information.

(4) Where there are two factors on the list in subsection (3) supporting that the recipient is resident in Botswana and two factors supporting residence in another country, the recipient's residence shall be based on the factors that, in the circumstances, are the most reliable indicators of the recipient's residence.

(5) For the purposes of subsection (2) (f), a recipient of a supply of telecommunications services shall be treated as resident in Botswana if the mobile country code of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) used by the recipient is Botswana.

(6) Where a supplier has established that the recipient of a supply is resident in Botswana under subsection (3) or (5), the supplier shall treat the recipient as not being a registered person, unless the recipient has notified the supplier that the recipient is a registered person as required under section 64.

- 27.** (1) This section shall apply when —
- (a) a supply of remote services is made by a supplier, referred to in this section as the “underlying supplier”, through an electronic marketplace;
 - (b) the marketplace is operated by a person, referred to in this section as the “operator”, who does not have a place of business in Botswana, but who —
 - (i) authorises the charge to the recipient of the supply,
 - (ii) authorises the delivery of the supply to the recipient of the supply, or
 - (iii) sets the terms and conditions under which the supply is made; and
 - (c) the recipient of the supply is resident in Botswana as determined under section 26 (3) and is not a registered person, Government entity, or a large unregistered person.
- (2) Where the conditions in subsection (1) are satisfied and subject to subsection (3), section 26 (2) (c) applies on the basis that the operator of the electronic marketplace shall be treated as having made the supply of remote services in the course or furtherance of a taxable activity carried on by the operator.
- (3) Except as prescribed in the Regulations, this section shall not apply when the underlying supplier is registered for VAT under this Act.
- (4) In this section, “electronic marketplace” —
- (a) means a market place that is operated by electronic means through which the underlying supplier makes a supply of remote services through the operator of the market place to the recipient of the supply;
 - (b) includes a website, internet portal, gateway, store, distribution platform, or other similar marketplace or platform; and
 - (c) does not include a market place that solely processes payments.
- 28.** (1) A reverse charged supply shall be a supply of services where the supply —
- (a) is made by a person, whether or not registered, who does not conduct a taxable activity from a place of business in Botswana;
 - (b) is made to a registered person, Government entity, or a large unregistered person; and
 - (c) would have been a taxable supply if the supply had been made from a place of business in Botswana.
- (2) If a registered person or a large unregistered person conducts a taxable activity both in and outside Botswana, an internal provision of services from the part of the taxable activity conducted outside Botswana to the part of the taxable activity conducted in Botswana shall be treated as a reverse charged supply to the registered person or large unregistered person, as the case may be.
- (3) Subsection (2) shall not apply if a supply of the services would be an exempt supply.

Supply of
remote services
through
electronic
marketplace

Reverse
charged
supply

B.1120

(4) The time of a reverse charged supply under subsection (2), shall be the time that the services are provided and the value of the supply shall be the fair market value of the services at the time of the supply.

PART V — General Rules Relating to Imports

Time of
import

29. (1) An import of goods occurs —

- (a) for goods placed under customs control, at the time the goods are cleared under the customs legislation; or
- (b) in any other case, at the time the goods are brought into Botswana.

(2) If any goods have been imported into a licensed Customs warehouse under the Customs Act or a licensed excise warehouse under the Excise Duty Act, but have not been cleared by customs officer, any supply of such goods before the goods are cleared by customs officer shall be disregarded for the purposes of this Act.

Value of
import

30. (1) Subject to this section, the value of an import of goods shall be the total of the following amounts —

- (a) the value of the goods for duty purposes under the customs legislation, whether or not any duty is payable on the import;
- (b) to the extent not included under paragraph (a) —
 - (i) the cost of insurance and freight incurred in bringing the goods to Botswana, and
 - (ii) the cost of services treated as part of the import of the goods under section 22(3); and
- (c) the amount of any duty and other fiscal charge, other than VAT, and any fee or other charge payable in respect of the import.

(2) Notwithstanding subsection (1), where a motor vehicle is imported by a natural person for his or her own use and not for sale, the Commissioner General may determine the value of the imported motor vehicle.

(3) Where goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, the value of the import shall be the amount of the increase in value of the goods as a result of the repair, renovation, or improvement:

Provided that —

- (a) the form and character of the goods has not changed; and
- (b) the ownership of the goods has not changed since the goods were exported.

(4) Where the cost of freight and insurance of the import is not provided, the Commissioner General shall determine the fair market value.

(5) The value of an import of goods to which section 29 (2) applies shall be the higher of the —

- (a) value determined under subsection (1); or
- (b) value of the supply of the goods referred to in section 29 (2).

PART VI — *Input Tax Credit*

31. (1) Subject to subsections (2), (3), and (4), a registered person shall be allowed a credit for the input tax payable by the registered person in respect of a creditable acquisition made by the registered person to the extent that the acquisition was for the purpose of making taxable supplies as determined at the time of the supply or import comprising the acquisition.

Allowance of
input tax
credit

(2) The input tax credit allowed to a registered person for creditable acquisitions made by the registered person during a tax period partly to make taxable supplies and partly to make other supplies shall be calculated according to the following formula —

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

where —

- A is the total amount of input tax payable in respect of creditable acquisitions made by the registered person during the tax period partly to make taxable supplies and partly to make other supplies;
- B is the total value of taxable supplies made by the registered person during the tax period; and
- C is the total value of all supplies made by the registered person during the tax period.

(3) Where the fraction $\frac{B}{C}$ in subsection (2) is more than 0.90, the registered person shall be allowed a credit for the total amount of input tax in respect of creditable acquisitions referred to in that subsection.

(4) Subject to this Act, a registered person shall be allowed an input tax credit in the tax period in which the supply or import to which the creditable acquisition relates occurred:

Provided the registered person is in possession of the following documentation —

- (a) for a creditable acquisition that is a taxable import, a customs import declaration document issued by a customs officer as evidence of the payment of VAT in respect of the import;
- (b) for a creditable acquisition that is a taxable supply, the tax invoice for the taxable supply to which the acquisition relates;
- (c) for a creditable acquisition that is a reverse charged supply or a supply subject to section 59 (5), the recipient-created tax invoice for the supply as required under section 59 (4) or (5);
- (d) for an input tax credit allowed in respect of input tax referred to in section 49 (3) (b), the tax debit note required to be issued under section 49 (3) (a);
- (e) for an input tax credit allowed under section 50 (2) where the recipient of the supply to which the adjustment event relates is a registered person, a copy of tax credit note issued to the recipient of the supply under section 50 (3) (a);
- (f) for an input tax credit allowed under section 52 (1) and section 52 (3), a copy of the tax credit note required to be issued under section 52 (3); or

B.1122

Denial of
input tax
credit

(g) for an input tax credit allowed under section 53 (3), the tax debit note required to be issued under section 53 (3).

32. (1) A registered person shall not be allowed an input tax credit under this Act for input tax payable by the registered person, in respect of —

(a) a creditable acquisition by the person of a passenger vehicle, unless the —

(i) person's taxable activity involves dealing in or hiring of such vehicle and the vehicle was acquired for the purpose of such taxable activity, or

(ii) person acquires the vehicle for the supply to a customer for promotional, marketing, advertising or similar purpose for the furtherance of a taxable activity of the person:

Provided, the customer is not an employee or associate of the person;

(b) 50 per cent of the cost of a creditable acquisition of repair, maintenance and other services for a passenger vehicle for which no input tax credit is allowed under paragraph (a);

(c) a creditable acquisition by the person of goods or services acquired for the purposes of entertainment or providing entertainment, unless —

(i) the person's taxable activity is the providing of entertainment and the creditable acquisition relates to the provision of taxable supplies of entertainment in the ordinary course of that taxable activity,

(ii) the person's taxable activity is the providing of taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service; or

(iii) the entertainment is food and beverages provided while the recipient of the entertainment is away from home for the purposes of the taxable activity of the recipient or the recipient's employer; or

(d) fees or subscriptions paid by the person in respect of membership of any person in a club, association, or a society of a sporting, social, or recreational nature.

(2) A registered person who supplies goods or services and a deduction for input tax paid on acquisition of such goods or services was denied, the supply by the registered person is a supply of goods or services otherwise than in the course or furtherance of a taxable activity.

(3) Section 31 applies in determining whether, and to the extent that, an input tax credit shall be allowed for a creditable acquisition that is not denied as a result of the operation of subsection (1) (a), (b), or (c).

(4) A registered person who does not conduct a taxable activity through a fixed place of business in Botswana shall not be allowed any input tax credit in relation to the making of taxable supplies.

- (5) In this section –
- (a) “entertainment” means the provision of food, beverages, recreation, tobacco and tobacco products, or hospitality of any kind;
 - (b) “passenger vehicle” means a road vehicle designed or adapted for the transport of nine or fewer seated persons, including double cab vehicles, but not including a safari vehicle; and
 - (c) “safari vehicle” means a vehicle designed or adapted for use in and is used in, transporting tourists in a game reserve, national park, sanctuary, or safari area, by a holder of a valid licence to operate a tourist enterprise, but does not include a saloon car, a station wagon, or similar passenger vehicle.

33. (1) A registered person may claim an input tax credit determined in accordance with sections 31 and 32 for the input tax paid or payable in respect of goods held at the date of registration for the purpose of making taxable supplies, if –

Input tax credit for newly registered person

- (a) at the end of the last day before the date of the person’s registration, the person held the goods as stock;
- (b) the stock was acquired by the registered person in a creditable acquisition made by the person;
- (c) the creditable acquisition occurred no more than four months prior to the date of the person’s registration; and
- (d) the person can provide documentary evidence to the satisfaction of the Commissioner General that the input tax has been paid on the acquisition.

(2) An input tax credit under subsection (1) shall be allowed in the first tax return lodged by the person after registration.

(3) Section 31 (4) shall not apply for the purposes of an input tax credit allowed under this section.

PART VII — *General Rules Relating to Particular Supplies*

34. (1) An application of goods or services by a registered person to a non-creditable use shall be treated as a taxable supply made by the person, but only if the person has been allowed an input tax credit in respect of the acquisition or import of the goods or services.

Self-supplies

(2) A taxable supply under subsection (1) shall be made by the registered person at the time that the goods or services are first applied to a non-creditable use.

(3) The amount of output tax payable by a registered person in respect of a taxable supply under subsection (1) shall be the amount of input tax credit allowed to the registered person for the acquisition or import of the goods or services that have been applied to a non-creditable use.

(4) In this section, “non-creditable use”, in relation to goods or services, means the use of the goods or services other than to make taxable supplies.

B.1124

Supply of
second-hand
goods

- 35.** (1) This section shall apply where —
- (a) a second-hand goods supplier has purchased second-hand goods from an unregistered person;
 - (b) the second-hand goods supplier did not import the goods;
 - (c) the supply of second-hand goods to the second-hand goods supplier was not an exempt or zero-rated supply; and
 - (d) the second-hand goods supplier has —
 - (i) supplied the second-hand goods in a taxable supply by way of sale or exchange, and
 - (ii) supplied the goods in substantially the same state as the goods were in at the time that the second-hand goods supplier purchased the goods.
- (2) Where this section applies, the second-hand goods supplier shall be —
- (a) treated as having acquired the second-hand goods in a creditable acquisition;
 - (b) treated as having paid an amount of input tax credit in respect of the acquisition of the second-hand goods equal to the tax fraction of the consideration paid for the second-hand goods; and
 - (c) allowed an input tax credit for the input tax treated as having been paid under paragraph (b) in the tax period in which the second-hand goods supplier makes the supply referred to in subsection (1) (d).
- (3) Where the second-hand goods supplier receives second-hand goods, referred to in this section as “traded-in goods”, as part payment for a supply the supplier makes to an unregistered person, the fair market value of the traded-in goods used to determine the price for the supply shall be the same as the fair market value used to determine the price paid by the supplier to purchase the traded-in goods.
- (4) A second-hand goods supplier receiving a supply of second-hand goods from an unregistered person shall maintain sufficient records to enable the following particulars to be ascertained —
- (a) the name and address of the person supplying the goods to the second-hand goods supplier;
 - (b) the date on which the second-hand goods were supplied to the second-hand goods supplier;
 - (c) a description of the goods supplied;
 - (d) the quantity or volume of the goods supplied; and
 - (e) the consideration for the supply.
- (5) In this section —
- (a) “second-hand goods” means goods that have previously been owned or used in Botswana by an unregistered person, but does not include livestock, domestic animals, or wild animals; and
 - (b) “second-hand goods supplier” means a registered person whose taxable activity principally involves the sale or exchange of second-hand goods in substantially the same state as the goods were in when purchased by the person.

- 36.** (1) This section applies where —
- (a) there is a supply of a right or option; and
 - (b) another supply, referred to in this section as “the subsequent supply”, is made on the exercise of the right or option.
- (2) Where this section applies and the supply of the right or option —
- (a) is a taxable supply, the amount of the consideration for the subsequent supply shall be limited to the additional consideration, if any, given for the subsequent supply or in connection with the exercise of the right or option; or
 - (b) is not a taxable supply but the subsequent supply is a taxable supply, the amount of the consideration for the subsequent supply shall include any consideration given for the supply of the right or option.
- 37.** (1) The issue of a voucher shall not be a supply where the voucher —
- (a) entitles the holder to receive supplies of goods or services up to a monetary amount on redemption of the voucher; and
 - (b) is issued for an amount in money.
- (2) Where a voucher referred to in subsection (1) is redeemed for a taxable supply, other than a zero-rated supply, made by a registered person, the amount referred to in subsection (1) (b) shall be treated as comprising two components, being an amount as the —
- (a) consideration or part of the consideration for the supply calculated as the amount referred to in subsection (1) (b) reduced by the tax fraction of that amount; and
 - (b) VAT or part of the VAT payable in respect of the supply calculated as the tax fraction of the amount referred to in subsection (1) (b).
- (3) Where the voucher referred to in subsection (1) expires without being used or fully used, the expiration of the voucher shall be treated as a supply of services by the supplier of the voucher to the person to whom the voucher is issued.
- (4) Where subsection (3) applies —
- (a) the time of the supply of services under subsection (3) shall be the time when the voucher expired; and
 - (b) the value of the supply of services under subsection (3) shall be —
 - (i) for a supplier who is a registered person at the time of expiration of the voucher, the unused amount of the voucher reduced by an amount equal to the unused amount multiplied by the tax fraction, or
 - (ii) for any other supplier, the unused amount of the voucher.
- (5) Subsection (6) shall apply where the following conditions are satisfied —
- (a) a registered person issues a voucher for no charge;
 - (b) the voucher entitles the holder to a discount on the price of goods or services supplied by another person; and
 - (c) the voucher is redeemed for a taxable supply, other than a zero-rated supply.

Supplies of rights and options

Vouchers

B.1126

(6) Where the conditions in subsection (5) are satisfied, the consideration for the supply referred to in subsection (5)(c) shall include the monetary value of the voucher reduced by an amount equal to the monetary value multiplied by the tax fraction.

(7) A registered person shall be entitled to an input tax credit for any amount paid to a supplier in respect of the redemption by the supplier of a voucher referred to in subsection (6).

(8) The amount of the input tax credit referred to in subsection (7) shall be the amount paid to the supplier multiplied by the tax fraction and the input tax credit shall be allowed in the tax period in which the amount is paid to the supplier.

(9) In this section, “voucher” means a stamp, token, coupon or similar article, including an article issued electronically that can be redeemed by the holder only for supplies of goods or services and includes a prepaid telecommunications product, but does not include a postage stamp.

Prepaid
supplies of
utility services

38. (1) Subject to subsection (2), this section shall apply to a supply by a —

- (a) telecommunications services supplier of a prepaid telecommunications product; or
- (b) person who acts as a telecommunications intermediary of a telecommunications services supplier for the supply of a prepaid telecommunications product.

(2) Subsection (1) shall not apply to a supply by one telecommunications services supplier to another telecommunications services supplier.

(3) If a telecommunications services supplier supplies a prepaid telecommunications product to a telecommunications intermediary at a discount from the intended retail price, the consideration for the supply shall be calculated as if the telecommunications intermediary had paid the intended retail price.

(4) If a telecommunications intermediary purchases and on-sells a prepaid telecommunications product —

- (a) the acquisition by the telecommunications intermediary shall be treated as if it were not an acquisition; and
- (b) the supply by the telecommunications intermediary shall be treated as if it were not a supply.

(5) Where a telecommunications services supplier supplies a prepaid telecommunications product through a telecommunications intermediary acting as agent for the telecommunications services supplier, the consideration for the supply shall not be reduced by the commission paid to the telecommunications intermediary.

(6) This section shall apply, with the necessary modifications, to prepaid electricity, water or any other utility services provided by supplier, a distributor or agent.

39. (1) A supply of goods pursuant to a lay-by agreement shall occur when the goods are delivered to the purchaser. Lay-by sales

(2) Where a lay-by agreement is cancelled and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under the agreement, the cancellation of the agreement shall be treated as a supply of services by the seller at the time of cancellation of the agreement.

(3) A supply under subsection (2), shall have the same VAT treatment as the supply of the goods under the lay-by agreement would have had if the agreement had not been cancelled.

(4) The value of the supply under subsection (2) shall be —

(a) where the seller is a registered person at the time of cancellation, the amount retained or recovered by the seller reduced by an amount equal to the amount retained or recovered multiplied by the tax fraction; or

(b) in any other case, the amount retained or recovered by the seller.

(5) In this section, “lay-by agreement” means a sale and purchase agreement for goods under which the —

(a) price is payable by at least one additional payment after the payment of a deposit;

(b) purchaser takes possession of the goods after full payment is made for the goods; and

(c) ownership of the goods is transferred at the time that the purchaser takes possession of the goods.

40. (1) Subject to subsection (2), where a registered person is an employer who makes a taxable supply to an employee as part of the employee’s remuneration, the supply shall be treated as having been made for consideration equal to the fair market value of the supply. Employee benefits

(2) A supply made by an employer to an employee shall be treated as having a nil value if the employer is not entitled to an input tax credit in respect of a creditable acquisition to make the supply to the employee.

(3) In this section, “employee” and “employer” have the same meanings assigned to the terms in the Income Tax Act.

41. (1) Subject to subsection (2), if a registered person receives a payment of a claim or is otherwise indemnified under a short-term insurance contract for a loss to the extent incurred in the course or furtherance of the person’s taxable activity, whether or not the person is a party to the contract, the payment or indemnity shall be treated as consideration for a supply of services made by the registered person in the course or furtherance of the person’s taxable activity. Short-term insurance

(2) Subsection (1) shall not apply where the —

(a) supply of the short-term insurance contract to which the payment relates was a zero-rated supply or exempt supply; or

(b) payment is for a loss of earnings for accidental personal injury.

B.1128

(3) The supply under subsection (1) shall occur on the date that the person receives the payment or indemnity and the value of the supply shall be the amount received reduced by the tax fraction of that amount.

(4) If a registered person that is an insurer makes a payment to another person to indemnify that other person under a short-term insurance contract, the insurer shall be allowed an input tax credit for an amount equal to the tax fraction of the amount paid where —

- (a) supply of the short-term insurance contract was a taxable supply;
- (b) payment is not in respect of a supply to, or an import by, the insurer;
- (c) supply of the short-term insurance contract is not a zero-rated supply and at the time the amount was paid, the other person was not a resident person and not a registered person; and
- (d) payment does not result from a supply of goods or services to that other person where those goods are situated outside Botswana at the time of the supply or those services are physically performed elsewhere than in Botswana.

(5) The input tax credit under subsection (4) shall be allowed in the tax period in which the insurer makes the payment.

(6) If a registered person that is an insurer recovers an amount, other than as aggravated or exemplary damages, as a result of the exercise of rights acquired by subrogation under a short-term insurance contract and subsection (4) applies to the payment to which the recovered amount relates, the payment shall be treated as consideration for a supply of services made by the insurer in the course or furtherance of the insurer's taxable activity.

(7) The supply under subsection (6) shall occur on the date that the insurer receives the payment.

Treatment of grants, subsidies and rates by registered persons

42. (1) A payment in the nature of a grant or subsidy made by a Government entity to or for the benefit of, a person carrying on a taxable activity to assist the person to make particular taxable supplies shall be treated as a consideration for a supply made by the person in the course or furtherance of the taxable activity.

(2) Rates payable by a person to a local authority shall not be treated as the consideration for a supply made by the local authority.

(3) In this section, "grant or subsidy" does not include a payment made by a Government entity that is an income transfer payment, a loan or advance, an equity injection, or a payment made to a person as general budget support for the person's taxable activity.

Supplies by auctioneer or Deputy Sheriff

43. (1) A supply of goods by auction shall be treated as a supply of goods for consideration made by an auctioneer as supplier in the course or furtherance of a taxable activity carried on by the auctioneer.

(2) Where VAT is payable by an auctioneer in respect of a supply of goods specified in subsection (1), the auctioneer shall —

- (a) charge the purchaser the amount of VAT payable in respect of the supply by adding the VAT to the purchase price;

- (b) recover the VAT from the purchaser; and
- (c) provide the purchaser with a tax invoice for the supply.

(3) A supply by a Deputy Sheriff of goods belonging to a debtor in execution of a judgement debt against the debtor shall be treated as a supply of the goods for consideration made by the Deputy Sheriff as the supplier of the goods in the course or furtherance of a taxable activity carried on by the Deputy Sheriff.

(4) Where VAT is payable by a Deputy Sheriff in respect of a supply of goods specified in subsection (3), the Deputy Sheriff shall —

- (a) charge the purchaser the amount of VAT payable in respect of the supply by adding the VAT to the purchase price;
- (b) recover the VAT from the purchaser; and
- (c) provide the purchaser with a tax invoice for the supply.

(5) The treatment of a supply of goods by an auctioneer or Deputy Sheriff under this section shall be separate from the treatment of the supply of services by the auctioneer or Deputy Sheriff.

44. (1) Where a creditor supplies the property of a debtor to a third person in full or partial satisfaction of a debt owed by the debtor to the creditor —

Sale of
property of
debtor

- (a) the supply to the third person shall be treated as having been made by the debtor and the nature of the supply is to be determined accordingly;
- (b) the creditor shall be liable to pay the VAT payable on the supply, unless the debtor provides the creditor with a written statement that the supply is not subject to VAT; and
- (c) the creditor shall provide the recipient of the supply with a tax invoice for the supply where VAT is payable on the supply and notwithstanding section 62 (2).

(2) A statement provided by a debtor under subsection (1) (b) shall set out the reasons why the supply is not subject to VAT.

(3) A creditor who has not received a statement under subsection (1) (b), shall treat the supply as a supply that would have been subject to VAT if the supply had been made by the debtor, unless there is clear evidence available to the creditor that the supply would not be subject to VAT if made by the debtor.

(4) The VAT payable under subsection (1) (b) shall be paid in priority to —

- (a) the satisfaction of the debt; and
- (b) any balance of amount due to the debtor, or any other person, of any part of the proceeds that is surplus to the debt.

(5) A creditor making a supply of the property of a debtor shall not be allowed a credit for any input tax incurred by the creditor against the output tax referred to in subsection (1) (b).

(6) A creditor who is required to pay VAT by the operation of subsection (1), shall —

B.1130

- (a) lodge a return in the approved form, and pay the VAT on or before the 28th day of the month following the month in which the supply occurred; and
- (b) notwithstanding section 59(1), provide a recipient who is a registered person with a tax invoice containing the prescribed particulars.
- Supplies made by or to agents
- 45.** (1) A supply by a person as agent for another person, referred to in this section as the “principal”, shall be treated as a supply made by the principal.
- (2) A supply made to a person as agent for a principal shall be treated as a supply made to the principal.
- (3) Subsections (1) and (2) shall not apply to a —
- (a) supply of services made by the agent to the principal; or
- (b) supply referred to in section 43.
- Gambling supplies
- 46.** (1) The amount of VAT imposed on a taxable gambling supply made by a registered person shall be determined on a periodic basis under this section for each tax period rather than separately for each taxable gambling supply.
- (2) The output tax of a registered person making taxable gambling supplies for a tax period shall include an amount calculated in accordance with the following formula —
- $(A - B) \times C$
- where —
- A is the total amount wagered in the period;
- B is the total monetary prizes paid out in the period; and
- C is the tax fraction.
- (3) Where the amount calculated under subsection (2) for a tax period is a negative amount, no amount shall be included under this section in the output tax of the registered person for that period.
- (4) A registered person making taxable gambling supplies may claim an input tax credit in accordance with this Act for input tax paid or payable on a creditable acquisition, including in acquiring a non-monetary prize, to make taxable gambling supplies.
- (5) A registered person —
- (a) acquiring a gambling supply, shall not be allowed an input tax credit in relation to the acquisition; and
- (b) making a gambling supply, shall not issue a tax invoice for the supply.
- (6) In this section —
- (a) “casino game” has the same meaning assigned to the term in the Gambling Act;
- (b) “gambling event” means —
- (i) the conduct in Botswana of a lottery, raffle, or similar undertaking; or
- (ii) a race, game, including a card or casino game, sporting event, or other event in Botswana that has or is intended to have an outcome;
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- (c) “gambling supply” means —
- (i) the supply of a ticket, however described, in a lottery, raffle, or similar undertaking, or
 - (ii) the acceptance of a bet or wager, however described, relating to the outcome of a gambling event;
- (d) “taxable gambling supply” means a gambling supply that is a taxable supply;
- (e) “total amount wagered”, in relation to a registered person for a tax period, means the sum of —
- (i) the consideration for all the gambling supplies made by the registered person in the period, and
 - (ii) any amount recovered by the registered person in the tax period, in respect of an amount written off in the current or a previous tax period that were included in the total monetary prizes under subparagraph (iv) of the definition of “total monetary prizes; and
- (f) “total monetary prizes”, in relation to a registered person for a tax period, is the sum of the following amounts, whether or not the relevant gambling events, gambling supply or gambling loss occurred during the period —
- (i) the monetary prizes paid by the registered person in the tax period as a result of the outcome of the gambling event,
 - (ii) the amount of money paid in the tax period by the registered person to a recipient of the registered person’s gambling supplies as a result of an agreement between them requiring the registered person to repay a proportion of the recipient’s losses from those supplies,
 - (iii) the amount, if any, referred to in subsection (3) arising in the immediately preceding tax period, and
 - (iv) an amount that the person writes off as a bad debt in relation to all or a part of the consideration for a gambling supply made by the person that is due as a debt to the person and has not been received within 12 months of the debt being incurred.

(7) A payment referred to in subsection (6) (f) (ii) of the definition of “total monetary prizes” shall be treated as if it were not consideration for a supply.

47. (1) A registered person may apply, in the approved form, to the Commissioner General for a facility operated by the person for the manufacture of goods for export to be certified as a VAT manufacturing warehouse.

VAT
manufacturing
warehouse

(2) The Commissioner General may approve an application under subsection (1), if he or she is satisfied that the applicant is operating the facility principally for the manufacture of goods for export from Botswana.

B.1132

(3) Where the Commissioner General approves an application under subsection (2), the Commissioner General shall issue a certificate to the registered person and the approval of the application shall be subject to such conditions as may be specified by the Commissioner General in the certificate or as otherwise notified, in writing to the registered person.

(4) The following rules shall apply to a registered person operating a facility as a certified VAT manufacturing warehouse —

- (a) the removal of the goods from the warehouse by any person shall be treated as a supply of the goods by the registered person in the course or furtherance of a taxable activity carried on by the registered person in Botswana;
- (b) the supply referred to in paragraph (a) shall occur when the goods are removed from the warehouse; and
- (c) the value of the supply referred to in paragraph (a) shall be the fair market value of the supply at the time the goods are removed from the warehouse.

(5) The Commissioner General shall cancel a certificate issued to a registered person under subsection (3), if he or she is satisfied that the facility operated by the person no longer satisfies the requirements of subsection (2) or the person no longer satisfies the conditions attached to the certificate.

(6) The following rules shall apply to a registered person whose certificate is cancelled under subsection (5) —

- (a) the registered person shall be deemed to have made a taxable supply of goods on hand, including capital goods, that were imported into Botswana by the registered person as an exempt import;
- (b) the deemed taxable supply under paragraph (a) shall occur at the time the certificate is cancelled; and
- (c) the value of the deemed taxable supply shall be the fair market value of the goods at the time the certificate is cancelled.

Forfeited
deposits

48. (1) If a supplier has received a deposit in connection with a supply of goods or services and the deposit is forfeited to the supplier, the forfeiture of the deposit shall be treated as a supply of services by the supplier at the time the deposit is forfeited.

(2) A supply of services under subsection (1), shall have the same character as the supply to which the forfeited deposit relates would have had.

(3) The value of a supply of services under subsection (1) shall be —

- (a) for a supplier who is a registered person at the time of forfeiture of the deposit, the forfeited amount reduced by an amount equal to the forfeited amount multiplied by the tax fraction; or
- (b) for any other supplier, the amount of the forfeited deposit.

(4) This section shall not apply to a deposit on a returnable container.

PART VIII — *Post-Supply Adjustments*

- 49.** (1) This section shall apply where —
- (a) a registered person has made a supply;
 - (b) an adjustment event has occurred in relation to the supply; and
 - (c) as a result of the occurrence of the adjustment event under paragraph (b), the correct amount of output tax payable in respect of the supply exceeds the output tax that the registered person accounted for to the Commissioner General, in respect of the supply.
- (2) Where this section applies, the amount of the excess referred to in subsection (1)(c) shall be treated as output tax of the supplier for the tax period in which the adjustment event occurred.
- (3) If the recipient of a supply to which this section applies is a registered person and the supplier has provided the recipient with an original tax invoice for the supply —
- (a) the supplier shall provide the recipient with a tax debit note specifying the additional VAT payable in respect of the supply;
 - (b) subject to section 32, the recipient shall be allowed an input tax credit for the additional VAT specified in the tax debit note to the extent that the recipient used the supply to make taxable supplies; and
 - (c) the recipient shall be allowed the input tax credit referred to in paragraph (b) in the tax period in which the recipient received the tax debit note.
- 50.** (1) This section shall apply where —
- (a) a registered person has made a supply;
 - (b) an adjustment event has occurred in relation to the supply; and
 - (c) as a result of the occurrence of the adjustment event under paragraph (b), the output tax that the registered person accounted for to the Commissioner General for the supply, exceeds the correct amount of output tax payable in respect of the supply.
- (2) Subject to subsection (4), where this section applies, the supplier shall be allowed an input tax credit for the amount of the excess in the tax period in which the adjustment event occurred.
- (3) If the recipient of the supply to which this section applies is a registered person and the supplier has provided the recipient with an original tax invoice for the supply —
- (a) the supplier shall provide the recipient with a tax credit note specifying the amount by which the VAT payable in respect of the supply is reduced; and
 - (b) the amount referred to in paragraph (a) shall be treated as output tax of the recipient for the tax period in which the recipient received the tax credit note.

Adjustment
event resulting
in VAT being
under-charged

Adjustment
event resulting
in VAT being
over-charged

B.1134

(4) If the recipient of a supply to which this section applies is not a registered person, the supplier shall not be allowed the input tax credit referred to in subsection (2) until the supplier has repaid the excess VAT to the recipient of the supply, whether in cash or as a credit against an amount owing to the registered person by the recipient.

Adjustment
for remote
services

51. Where a registered supplier of remote services has overpaid or underpaid tax, the supplier shall make an adjustment in the subsequent return and the supplier shall state the reason for the adjustment in the return.

Adjustment for
bad debts

52. (1) Subject to subsection (3), where a registered person has accounted for output tax payable on a taxable supply made by the person and the whole or a part of the consideration for the supply is subsequently treated in the financial accounts of the person as a bad debt, the person shall be allowed an input tax credit for the amount of output tax accounted for to the Commissioner General in respect of the supply that corresponds to the amount of the debt treated as bad debt.

(2) An input tax credit under subsection (1) shall be allowed on the later of the —

(a) date on which the bad debt was written off in the financial accounts of the registered person; or

(b) 12 months after the end of the tax period in which the output tax was accounted for to the Commissioner General by the registered person in respect of the supply.

(3) If the recipient of a taxable supply to which subsection (1) applies is a registered person that is still in existence at the time the input tax credit arises under subsection (2), the input tax credit shall be allowed only if the supplier issues a tax credit note to the recipient specifying the amount of the VAT that relates to the bad debt calculated in accordance with subsection (1).

(4) The recipient of a taxable supply issued with a tax credit note under subsection (3) shall treat the amount of VAT specified in the tax credit note as output tax payable by the recipient in the tax period in which the credit note was received.

Adjustment
for bad debt
recovered

53. (1) If an amount in respect of which an input tax credit has been allowed in accordance with section 52 is, at any time, wholly or partly recovered by the registered person, the registered person shall be treated as having charged output tax in respect of a taxable supply made by the person during the tax period in which the bad debt is wholly or partly recovered, being an amount of output tax calculated according to the following formula —

$$A \times B/C$$

where —

A is the amount allowed as credit under section 52(2);

B is the amount of the bad debt recovered; and

C is the amount of the bad debt written off.

(2) Subsection (3) shall apply where —

- (a) section 52 applies in respect of a taxable supply, referred to in this section as the “original taxable supply”;
 - (b) subsection (1) applies to an amount that the supplier of the original taxable supply has recovered from the recipient of the original taxable supply; and
 - (c) the recipient of the original taxable supply was a registered person at the time of the original taxable supply and at the time of the deemed taxable supply under subsection (1).
- (3) Where the conditions in subsection (2) are satisfied, the supplier shall issue a tax debit note in accordance with section 60 to the recipient stating the amount of output tax referred to in subsection (1) and the recipient shall be allowed an input tax credit for that amount to the extent that the original taxable supply was used by the recipient to make taxable supplies.
- (4) The input tax credit under subsection (3) shall be allowed in the tax period in which the recipient receives the tax debit note.

PART IX — Calculation of VAT Payable by Registered Person

- 54.** (1) For the purposes of this Act —
- (a) “Category A” means the category of a registered person whose tax period is a period of two months ending on the last day of January, March, May, July, September and November of each year;
 - (b) “Category B” means the category of a registered person whose tax period is a period of two months ending on the last day of February, April, June, August, October and December of each year; and
 - (c) “Category C” means the category of a registered person whose tax period is a period of one month ending on the last day of each month of the calendar year.
- (2) The Commissioner General —
- (a) shall allocate registered persons as Category A or Category B registered persons so that approximately an equal number of registered persons fall within each category; and
 - (b) may reallocate a registered person from Category A to Category B, or vice versa by notice in writing to the registered person, and the change in the category shall —
 - (i) take effect from the date specified in the notice, and
 - (ii) be subject to the conditions specified in the notice.
- (3) A registered person shall be a Category C registered person where —
- (a) the total value of the taxable supplies made by the person —
 - (i) at the end of any 12-month period or lesser period, exceeds the amount specified in paragraph 5 of Schedule 5, or
 - (ii) at the beginning of any 12-month period, is reasonably expected to exceed the amount specified in paragraph 5 of Schedule 5;

Tax period

B.1136

- (b) the Commissioner General, upon application, in writing by the registered person, authorises the person to be a Category C registered person; or
- (c) the Commissioner General, by notice in writing, requires the person to be a Category C registered person because the person has regularly defaulted in performing his or her obligations under this Act.

(4) A registered person who is not a Category C registered person under subsection (3), shall be a Category A registered person or Category B registered person as determined by the Commissioner General by notice in writing to the registered person.

(5) Section 12 (3) and (4) shall apply, with the necessary changes made in determining the total value of taxable supplies by a registered person for the purposes of this section.

(6) A Category A or B registered person shall, by notice in writing, immediately notify the Commissioner General if he or she satisfies one of the requirements in subsection (4) (a).

(7) The Commissioner General may, either on notification under subsection (6), or on his or her own motion, direct that a Category A or Category B registered person be changed to a Category C registered person —

- (a) with effect from the date specified in the notice; and
- (b) subject to the conditions specified in the notice.

(8) The Commissioner General may, upon application in writing by a Category A, B, or C registered person and by notice in writing, grant the person approval to end their tax period within 10 days before or after the last day of the calendar month where —

- (a) the change is consistent with the registered person's accounting period; and
- (b) the registered person complies with the conditions imposed by the Commissioner General as set out in the approval notice.

(9) The tax period of a —

- (a) Government entity or a large unregistered person liable for VAT under section 7 (1) (c) shall be two calendar months; and
- (b) non-resident supplier whose only supplies are remote services to which section 27 (2) (c) applies shall be the period of three months ending on 31st March, 30th June, 30th September, and 31st December of each calendar year.

55. (1) The net VAT payable by a registered person for a tax period shall be calculated according to the following formula —

$$(A + B) - C$$

where —

A is the total amount —

- (i) of the output tax receivable by the registered person in respect of taxable supplies made by the person during the period, and
- (ii) treated as the output tax of the person for the period;

VAT payable
by registered
person for a
tax period

- B is the total reverse charged VAT that the registered person is liable for under section 7 (1) (c) and 7 (8) in respect of reverse charged supplies made to the person during the period; and
- C is the total input tax credit allowed to the person for the period under this Act.

(2) Notwithstanding subsection (1) and subject to subsection (3), where a registered person fails to include an input tax credit allowed to the person under this Act in the net VAT calculation for the tax period in which the credit is allowed under section 31, the person can claim the credit in the net VAT calculation for a tax period —

- (a) for a Category A or Category B registered person, that is no later than six tax periods after the tax period in which the input tax credit arose; or
- (b) for a Category C registered person, that is no later than twelve tax periods after the tax period in which the input tax credit arose.

(3) Where the input tax credit to which subsection (2) applies relates to a creditable acquisition that is a taxable import by a registered person, the registered person shall claim the input tax credit no later than in the net VAT calculation for tax period following the tax period in which the taxable import occurred.

56. (1) Subject to section 57, where component “C” of the formula in section 55 for a registered person for a tax period exceeds component “(A + B)” for the person for the period —

- (a) the excess shall be carried forward and allowed as an input tax credit in the next following tax period; and
- (b) any amount of the excess not credited in that period shall be carried forward to the next following tax period and allowed as an input tax credit in that period, and so on until the excess has been fully credited.

(2) Where a registered person has an excess input tax credit carried forward under this section for more than one tax period, the excess credit of the earliest tax period shall be allowed first.

(3) Notwithstanding subsection (1), where an excess input tax credit for a Category “A” or “B” registered person for a tax period has not been fully credited after being carried forward for two tax periods, the registered person may apply to the Commissioner General, in the approved form, for a refund of the amount of the uncredited excess.

(4) Notwithstanding subsection (1), where an excess input tax credit for a Category “C” registered person for a tax period has not been fully credited after being carried forward for four tax periods, the registered person may apply to the Commissioner General, in the approved form, for a refund of the amount of the uncredited excess.

(5) Where a registered person has made an application under subsection (3) or (4) and the Commissioner General is satisfied that a refund is due to the person, the Commissioner General shall apply the amount of the uncredited excess in accordance with section 54 (5) of the Tax Administration Act.

Carry forward
of excess input
tax credit

B.1138

(6) An application under this section by a registered person for a refund of excess input tax credit for a tax period shall be made for a refund under —

- (a) subsection (3), within two years after the end of the second tax period referred to in subsection (3); or
- (b) subsection (4), within two years after the end of the fourth tax period referred to in subsection (4).

Refund of
excess input
tax credit
without carry
forward

57. Where a registered person who primarily makes zero-rated supplies has an excess input tax credit for a tax period, the Commissioner General shall apply the excess in accordance with section 54(5) of the Tax Administration Act and refund the remainder, if any, within 28 days after the person has lodged the tax return for the tax period.

Interest
payable on
late refunds

58. (1) Subject to subsection (3), where the Commissioner General fails to apply a refund amount as required under section 56 (5) within 60 days after the refund application was lodged, the Commissioner General shall be liable to pay the registered person interest at the rate specified in paragraph 6 of Schedule 5 for the period commencing on the 60th day after the refund application was lodged and ending when the refund amount is applied as required under section 56 (5).

(2) Subject to subsection (3), where the Commissioner General fails to pay a refund referred to in section 57 to the registered person for a tax period within the time specified in the section, the Commissioner General shall be liable to pay the registered person interest at the rate specified in paragraph 6 of Schedule 5 for the period commencing on the 28th day after the tax return for the period was lodged and ending when the refund is paid.

(3) If, within the period specified under subsection (1) or (2) for the payment of a refund, the Commissioner General requests the registered person to provide further information relating to the person's entitlement to the refund, the period for which interest is payable by the Commissioner General commences on the later of —

- (a) the date that the registered person provided the requested information to the Commissioner General;
- (b) for an application under subsection (1), the 60th day after the registered person lodged the refund application; or
- (c) for an application under subsection (2), the 60th day after the registered person lodged the tax return to which the refund relates.

(4) If the whole or part of the principal amount to which interest paid to a registered person under this section is subsequently found not to have been refundable to the person, the person shall repay the interest, or part of the interest, relating to that amount to the Commissioner General.

PART X — VAT Documentation

59. (1) Subject to subsection (2), and section 15 of the Tax Administration Act, a registered person making a taxable supply shall, at the time of the supply, provide the recipient with the original tax invoice for the taxable supply.

Tax invoices

(2) A registered person shall not be required to provide a tax invoice if the total consideration for the taxable supply is in cash and does not exceed the amount specified in paragraph 7 of Schedule 5.

(3) A registered person who makes a reverse charged supply that is subject to VAT under section 7 (1) (c), shall not provide a tax invoice to the registered person receiving the supply.

(4) A registered person liable for VAT under section 7 (1) (c) and 7 (8) in respect of a reverse charged supply made to the person shall, at the time of the supply, prepare a recipient-created tax invoice for the supply.

(5) A registered person may prepare a recipient-created tax invoice in respect of a taxable supply made to the person by a registered person that shall be treated, for the purposes of this Act, as a tax invoice issued by the supplier to the recipient if —

- (a) the Commissioner General has granted the recipient or class of recipients, written approval to prepare a recipient-created tax invoice for specified taxable supplies;
- (b) the supplier and the recipient agree, in writing, that the supplier shall not issue a tax invoice with respect to such taxable supplies;
- (c) the original of the recipient-created invoice is provided to the supplier and a copy is retained by the recipient; and
- (d) the recipient complies with any other conditions that may be imposed by the Commissioner General in relation to the preparation of recipient-created invoices under this subsection.

(6) Where a recipient-created tax invoice relates to a taxable supply referred to in subsection (5), any tax invoice issued by the supplier in respect of the taxable supply shall not be treated as a tax invoice for the purposes of this Act.

(7) A tax invoice and a recipient-created tax invoice shall include the particulars specified in Schedule 4.

(8) Subject to section 15 of the Tax Administration Act, a registered person shall issue tax invoices electronically under the electronic billing system.

60. (1) A registered person shall issue a tax credit note or a tax debit note, as the case may be, to a registered person in the circumstances specified in Part VIII.

Tax credit notes and tax debit notes

(2) A tax credit note or a tax debit note, required to be issued by a registered person under Part VIII shall be issued to the recipient of a supply by the end of the tax period in which the adjustment event to which the tax credit note or a tax debit note relates occurred.

B.1140

(3) A tax credit note and a tax debit note, shall include the particulars specified in Schedule 4.

(4) Subject to section 15 of the Tax Administration Act, a registered person shall issue tax credit and debit notes electronically under the electronic billing system

Request for
VAT
documentation

61. (1) A registered person who, for any reason, has not received an original tax invoice, tax credit note, or tax debit note as required under this Act, may make a written request to the supplier to issue the tax invoice, tax credit note, or tax debit note.

(2) A request under subsection (1) shall be made for a —

(a) tax invoice, within 60 days of the time of the supply; and

(b) tax credit note or tax debit note, within 60 days of the date of the adjustment event to which the tax credit note or tax debit note relates.

(3) A registered person receiving a request under subsection (1), shall comply with the request within 14 days after receiving the request.

Maintenance
of VAT
documentation

62. (1) A registered person shall issue only one original tax invoice for a taxable supply or one original tax credit note, or a tax debit note for an adjustment event, but a copy clearly marked as such may be issued to a registered person who claims to have lost the original document.

(2) A person shall not issue a tax invoice, tax credit note, or tax debit note other than in the circumstances specified in this Act.

(3) The following documents shall be maintained by a registered person for the purposes of this Act and the Tax Administration Act —

(a) the original of a tax invoice, tax credit note, and a tax debit note received by the person;

(b) a copy of a tax invoice, tax credit note, and tax debit note received by the person;

(c) a copy of a tax invoice, tax credit note, and tax debit note issued by registered the person;

(d) documentation relating to any import and export of goods by the person;

(e) a recipient-created tax invoice prepared by the registered person in respect of a reverse charged supply received by the person; and

(f) a recipient-created tax invoice prepared by the registered person in accordance with section 59 (5).

(4) The documents referred to in subsection (3) (c) shall be maintained in chronological order.

(5) A supplier of remote services may maintain VAT documentation outside Botswana and shall make the documentation available to the Commissioner General on request by notice in writing and by the date specified in the notice.

VAT
documentation
for supplies
by agents

63. (1) Where a taxable supply is made by an agent on behalf of a principal and both the agent and principal are registered persons, any tax invoice, tax credit note, or tax debit note required to be issued by the principal may be issued by the agent using the name, address, and VAT registration number of the agent.

(2) Where a taxable supply is made to an agent on behalf of a principal and both the agent and principal are registered persons, any tax invoice, tax credit note, or tax debit note required to be issued to the principal may be issued to the agent using the name, address, and VAT registration number of the agent.

(3) Where a taxable supply is made by an agent on behalf of a principal and the principal is a registered person but the agent is not, any tax invoice, tax credit note, or tax debit note required to be issued by the principal may be issued by the agent using the name, address, and VAT registration number of the principal.

(4) Where a taxable supply is made to an agent on behalf of a principal and the principal is a registered person but the agent is not, any tax invoice, tax credit note, or tax debit note required to be issued to the principal may be issued to the agent, using the name, address, and VAT registration number of the principal.

(5) Where a taxable supply is made by, or to, an agent on behalf of a principal, any tax invoice, tax credit note, or tax debit note required to be issued under this Act shall be issued once only and shall not be issued by, or to, both the agent and the principal.

(6) A tax invoice, tax credit note, or tax debit note issued by, or to, an agent in accordance with this section shall be treated as having been issued by, or to, the principal, as the case may be, for the purposes of this Act.

64. (1) A registered person receiving a supply of remote services from a person who does not have a fixed place of business in Botswana shall notify the supplier that he or she is a registered person.

(2) A notification under subsection (1) shall be provided in writing to the supplier of the remote services at, or before, the time of supply.

Registered person receiving supplies of remote services

PART XI — VAT Procedure

65. (1) A registered person shall lodge with the Commissioner General, a tax return for each tax period within 28 days after the end of the tax period, whether or not VAT is payable by the person in respect of such period.

(2) A large unregistered person or Government entity that is not a registered person and that is liable for VAT for a tax period under sections 7 (1) (c) and 7 (8) shall lodge a tax return with the Commissioner General for the tax period within 28 days after the end of the period.

Tax returns

66. (1) The net VAT payable by a registered person for a tax period, as calculated under section 55, shall be payable by the due date for lodging the tax return for the period.

(2) The VAT payable by a Government entity or a large unregistered person for a tax period under section 7 (1) (c) and 7 (8) shall be payable by the due date for lodging the return for the period.

Due date for payment of VAT

B.1142

Collection of
VAT on
taxable
imports

(3) Subject to section 67 (4), the VAT payable by an importer in respect of a taxable import shall be payable at the time of the import.

67. (1) Subject to subsection (4), where VAT is payable by an importer on a taxable import —

- (a) for goods required to be entered under the customs legislation, the importer shall, at the time of entering the goods, lodge an import declaration with the Commissioner General and pay the VAT due on the import in accordance with the arrangements referred to in subsection (6);
 - (b) for goods imported from Eswatini, Lesotho, Namibia, or South Africa, the importer shall, at the time of import, lodge an import declaration with the Commissioner General and pay the VAT due in respect of the import in accordance with the arrangements referred to in subsection (6); or
 - (c) for any other goods, the importer shall, at the time of the import, lodge an import declaration with the Commissioner General and pay the VAT due in respect of the import.
- (2) Subject to subsection (4), the Commissioner General —
- (a) shall collect, at the time of import, any VAT due under this Act on an import of goods and, at that time, obtain the name and the VAT registration number, if any, of the importer, and the invoice values in respect of the import; and
 - (b) may make, an arrangement with the Post to perform such functions on his or her behalf in respect of imports through postal services.
- (3) An employee of the Post performing functions under an arrangement referred to in subsection (2) (b) shall —
- (a) be treated as a “tax officer” for the purposes of sections 82, 103, 104, 118, 119 and 120 of the Tax Administration Act; and
 - (b) not be liable for any damage to mail that occurred in the course of performing functions under the arrangement, where any force used was reasonably necessary to gain access to the contents of the mail.
- (4) The Commissioner General may authorise, by notice in writing, an importer who is a registered person to pay VAT on a taxable import within 28 days after the end of the month in which the taxable import occurred where —
- (a) the importer posts security as required by the Commissioner General, by notice in writing; or
 - (b) the Commissioner General is satisfied that the importer has regularly paid all VAT due on imports for the previous two years, from the date of the import.
- (5) Subject to sections 31 and 32, a registered person to whom subsection (4) applies shall be allowed an input tax credit for the VAT paid on a taxable import in the tax period in which the VAT is paid.

(6) Except where the contrary intention appears, the provisions of the customs legislation relating to the import, transit, coastwise carriage, clearance of goods, and payment and recovery of duty shall, with such exceptions, modifications, and adaptations as may be prescribed, apply insofar as it is relevant, to the VAT charged under this Act on the import of goods.

(7) For the purposes of the collection of the VAT payable on a taxable import, the Commissioner General may exercise any power conferred on him or her by the customs legislation, as if the reference to import duty in that legislation included a reference to VAT payable on a taxable import under this Act.

68. (1) This section shall apply where a registered person has, as a consequence of fraud or misrepresentation by the recipient of a supply, incorrectly treated the supply as —

- (a) an exempt supply;
- (b) a zero-rated supply; or
- (c) not otherwise subject to VAT.

(2) Where this section applies, the Commissioner General may raise an assessment upon the recipient of the supply for the amount of unpaid VAT in respect of the supply, together with any late payment interest and the late payment penalty payable under the Tax Administration Act.

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

- (a) the reason for the assessment as set out in subsection (1);
- (b) the VAT, late payment interest, and late payment penalty payable;
- (c) the due date for payment of VAT, late payment interest, and late payment penalty; and
- (d) the time, place, and manner of objecting to the assessment.

(4) Subsection (2) shall not preclude the Commissioner General from recovering the VAT, late payment interest, and late payment penalty assessed to the recipient of a supply under subsection (2) from the registered person making the supply, but the Commissioner General shall not recover more than the VAT, late payment interest, and late payment penalty payable in respect of the supply.

(5) Any amount recovered from the —

- (a) recipient, shall be credited against the liability of the registered person making the supply; and
- (b) registered person making the supply, shall be credited against the liability of the recipient of the supply.

(6) Where an amount of VAT, late payment interest, or late payment penalty assessed to a recipient of a supply under subsection (2) is paid by the registered person, the registered person may recover the amount paid from the recipient of the supply.

(7) An amount assessed under this section shall be treated, for all purposes of this Act and the Tax Administration Act, as VAT charged under this Act.

Recovery of
VAT from
recipient of
supply

B.1144

Refund of VAT
to President,
diplomats,
public
international
organisations
and other
persons
Cap. 39:01

Cap. 39:05

(8) Nothing in the Tax Administration Act shall limit the power of the Commissioner General to amend an assessment, including a self-assessment, of the registered person making the supply to give effect to subsection (4).

69. (1) The Minister may authorise the granting of a refund of VAT paid or borne on a taxable supply made —

(a) for the personal or official use of the President or any dependent member of the President's family;

(b) to a person to the extent exempt from VAT as provided under —

(i) the Diplomatic Immunities and Privileges Act,

(ii) an international convention having force of law in Botswana,

(iii) the recognised principles of international law, or

(iv) the International Financial Organizations Act;

(c) to a diplomatic or consular mission of a foreign country established in Botswana, relating to transactions concluded for the official purposes of such mission;

(d) to an international organisation or foreign government to the extent provided under a technical assistance or humanitarian assistance agreement entered into between the Government of Botswana and the organisation or foreign government;

(e) to a non-resident individual in relation to prescribed goods that are exported from Botswana as accompanied baggage, but only if the total VAT paid on such goods exceeds the amount specified in paragraph 8 of Schedule 5;

(f) to a person not required to apply for registration under section 12 who exports goods within a period of three months from the date such goods were imported and subject to VAT if, at the port of exit, the person identifies the goods and presents, to the customs officer, the documentary proof required by the Commissioner General; or

(g) to a non-resident, who is not a registered person, in respect of goods acquired by, and delivered to the non-resident in Botswana that are exported from Botswana by the non-resident.

(2) The refund provided for in subsection (1) (e) or (g) shall not be available to any citizen or an individual resident in Botswana.

(3) The Minister may prescribe the conditions to be met and the restrictions to apply for the claiming of a refund under this section.

(4) Subject to subsection (5), where the grant of a refund of VAT is authorised by the Minister under subsection (1), a person may apply to the Commissioner General for a refund under this section and the application shall be —

(a) made in the approved form;

(b) made within four months after the time of the taxable supply to which the refund relates; and

(c) accompanied by —

- (i) a tax invoice or other proof of payment of VAT, and
- (ii) evidence of the applicant's entitlement to make an application for the refund under subsection (1).

(5) An application for a refund under subsection (1) (e) shall be made before the non-resident departs Botswana.

(6) Where the grant of a refund of VAT is authorised by the Minister under subsection (1) and the Commissioner General is satisfied that an applicant under subsection (4) qualifies for the refund, the Commissioner General shall make the refund within 28 days of the refund application being lodged with the Commissioner General.

70. (1) Where there are reasonable grounds to believe that a person who is required to apply for registration but who does not carry on a taxable activity through a fixed place of business in Botswana is unable to comply with their obligations under this Act, the Commissioner General may require the person to —

- (a) appoint a VAT representative in Botswana; or
- (b) lodge security with the Commissioner General in accordance with the Tax Administration Act.

(2) The Minister may prescribe the mode, manner, and requirements for the appointment of a VAT representative and the responsibilities of the representative.

(3) A VAT representative appointed under subsection (1) shall be responsible for doing all things required of the person he or she represents under this Act or the Tax Administration Act, including applying for registration, the lodging of returns, and the payment of VAT.

(4) The registration of a VAT representative under subsection (1) shall be in the name of the person he or she represents.

(5) A person may be a VAT representative under subsection (1), for more than one person but the VAT representative shall maintain a separate registration of each person he or she represents.

- (6) The VAT representative of a person under this section shall be —
- (a) a representative of the person for the purposes of the Tax Administration Act; and
 - (b) personally liable for the VAT liability of the person he or she represents and this liability shall be treated as a secondary liability for the purposes of the Tax Administration Act.

VAT
representatives
of foreign
service
providers

PART XII — *Special Cases*

71. (1) Subject to subsections (3) and (6), where a taxable activity is carried on by a registered person in branches or divisions, the registered person shall be treated as carrying on a single taxable activity for purposes of this Act.

(2) Subject to subsections (3) and (6), a registered person who carries on a taxable activity in branches or divisions under subsection (1) shall be registered in the name of the registered person and not in the names of its branches and divisions.

Branches and
divisions

B.1146

(3) The Commissioner General may, upon application, in writing by a registered person, authorise the registered person to register one or more of its branches or divisions as separate registered persons where the Commissioner General is satisfied that the branch or division —

- (a) maintains an independent accounting system; and
- (b) can be separately identified by the nature of its activities or location.

(4) The registration of a branch or division under subsection (3), shall be subject to such conditions and restrictions as the Commissioner General may specify in a notice in writing, to the registered person.

(5) Where a branch or division of a registered person is separately registered under subsection (3) —

- (a) the branch or division shall be treated as a separate person for the purposes of this Act; and
- (b) the registered person and the branch or division of that registered person shall be treated as associates.

(6) A Government entity may register its branches or divisions separately as if they were separate persons for the purposes of this Act.

Unincorporated
bodies of
persons

72. (1) This Act shall apply to an unincorporated body of persons on the following basis —

- (a) the body shall be treated as a person separate from the members of the body;
- (b) the registration of the body shall be separate from the registration of any of its members in respect of any other taxable activity carried on by the member;
- (c) the liability for VAT in respect of taxable supplies made by, or reverse charged supplies made to, the body shall be determined and calculated in respect of the taxable activity of the body independently of any taxable activity carried on by any of its members;
- (d) any refund under section 56 or 57 relating to that body's taxable activity shall be paid to the body; and
- (e) any duties and obligations imposed by this Act on a body as a registered person shall be separate from the duties and obligations imposed on any of its members in relation to a separate taxable activity of the member.

(2) Subsection (3) shall apply where —

- (a) an unincorporated body of persons is dissolved in consequence of —
 - (i) the retirement or withdrawal of one or more, but not all, of its members, or
 - (ii) the admission of a new member;
- (b) as a result of the change referred to in paragraph (a), a new body comes into existence consisting of —
 - (i) the remaining members, or
 - (ii) one or more of the remaining members and one or more new members; and

(c) the new body under paragraph (b) continues to carry on the taxable activity of the dissolved body as a going concern.

(3) Where the conditions in subsection (2) are satisfied, the dissolved body of persons and the new body of persons shall, for the purposes of this Act, be treated as one and the same body, unless the Commissioner General, having regard to the circumstances of the case, otherwise directs by notice in writing.

(4) In this section —

(a) “member”, in relation to a body of persons, includes a partner in a partnership; and

(b) “unincorporated body of persons” includes a partnership.

73. (1) Subsection (2) shall apply where —

(a) a registered person has died or the estate of a registered person has been sequestered; and

(b) either of the following applies —

(i) a taxable activity previously carried on by the registered person is carried on by, or on behalf of, the executor or trustee of the person’s estate, or

(ii) anything is done by the executor or trustee of the person’s estate in connection with the termination of the taxable activity of the registered person.

(2) Where the conditions in subsection (1) are satisfied —

(a) the transfer of the assets of the taxable activity of the registered person to the executor or trustee of the person’s estate shall not be treated as a supply; and

(b) the estate of the registered person, as represented by the executor or trustee, shall, for the purposes of this Act, be treated as continuing to carry on the taxable activity of the registered person.

(3) Subsection (4) shall apply where —

(a) a mortgagee takes possession of land or any other property previously mortgaged by the mortgagor who is a registered person; and

(b) the mortgagee continues to carry on the taxable activity of the mortgagor in relation to the land or any other property.

(4) Where the conditions in subsection (3) are satisfied, the mortgagee shall, from the date the mortgagee took possession of the land or other property until the date the mortgagee ceases to be in possession of the land or other property, be treated as the registered person carrying on the taxable activity in relation to the land or other property.

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

Death or
insolvency of
registered
person;
mortgagee in
possession

Trustee

PART XIII — *General Provisions*

Administration
of Act

75. The Commissioner General shall be responsible for the administration of this Act.

Application of
Tax
Administration
Act

76. The Tax Administration Act shall apply for the purposes of the administration of this Act.

Variation of
consideration
on change in
VAT rate

77. (1) Subsection (2) shall apply where —

- (a) a registered person has entered into an agreement for a supply of goods or services; and
- (b) subsequent to entering into the agreement referred to in paragraph (a), VAT is imposed on the supply or the rate of VAT applicable to the supply is increased.

(2) Where the conditions in subsection (1) are satisfied, the supplier may, notwithstanding anything to the contrary in the agreement or any written law, recover from the recipient, in addition to the amount payable by the recipient of the supply, an amount equal to the amount of VAT imposed or the amount by which VAT was increased, as the case may be.

(3) Subsection (4) shall apply where —

- (a) an agreement for a supply of goods or services by a registered person has been entered into; and
- (b) subsequent to entering into the agreement referred to in paragraph (a), VAT on the supply is withdrawn or the rate of VAT applicable to the supply is decreased.

(4) Where the conditions in subsection (3) are satisfied, the supplier shall, notwithstanding anything to the contrary in any agreement or any written law, reduce the amount payable by the recipient by an amount equal to the amount of VAT withdrawn or the amount by which VAT was decreased, as the case may be.

(5) Subsection (6) shall apply where —

- (a) the VAT payable in respect of a supply of goods or services has been increased under subsection (2) or decreased under subsection (4); and
- (b) the supply of the goods or services is subject to —
 - (i) any fee, charge, or other amount, whether a fixed, maximum, or minimum fee, charge or other amount, or
 - (ii) any charge or other amount, prescribed by, or determined pursuant to, any written law.

(6) Where the conditions in subsection (5) are satisfied and subject to subsections (7) and (8), the fee, charge, or other amount may be increased or decreased, as the case may be, by the amount of VAT or additional VAT chargeable or the amount of VAT no longer chargeable.

(7) Subsection (6) shall not apply if the fee, charge, or other amount has been altered in any written law to take account of any imposition, increase, decrease, or withdrawal of VAT.

(8) Nothing in subsection (6) shall be construed so as to permit any further increase or require any further decrease, as the case may be, in a fee, charge, or other amount where the fee, charge, or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money for a taxable supply.

78. (1) Subsection (2) shall apply where —

(a) goods, other than immovable property, are supplied by a supplier before the date on which —

(i) a change in the rate of VAT applicable to the supply becomes effective,

(ii) VAT is imposed in respect of the supply, or

(iii) VAT is withdrawn in respect of the supply; and

(b) the time of the supply of the goods under section 23 is on or after the date referred to in paragraph (a).

(2) If the conditions in subsection (1) are satisfied then —

(a) for a change in VAT rate referred to in subsection (1) (a) (i), the VAT rate applicable to the supply shall be the rate applicable immediately before the date referred to in subsection (1) (a);

(b) for the imposition of VAT referred to in subsection (1) (a) (ii), the supply shall be treated as not being subject to VAT; and

(c) for the withdrawal of VAT referred to in subsection (1) (a) (iii), the supply shall be treated as being subject to VAT, as if VAT had not been withdrawn.

(3) Subsection (4) shall apply, where —

(a) services are performed or goods, other than immovable property, are supplied in respect of a periodic supply referred to in section 23 (5) during a period beginning and ending before the date on which —

(i) a change in the rate of VAT applicable to the supply becomes effective,

(ii) VAT is imposed in respect of the supply, or

(iii) VAT is withdrawn in respect of the supply; and

(b) the time of the supply of the goods or services under section 23 is on or after the date referred to in paragraph (a).

(4) If the conditions in subsection (3) are satisfied, then —

(a) for a change in the VAT rate, the VAT rate applicable to the supply shall be the rate applicable immediately before the date referred to in subsection (3)(a)(i);

(b) for the imposition of VAT, the supply shall be treated as not being subject to VAT; or

(c) for the withdrawal of VAT, the supply shall be treated as being subject to VAT as if VAT had not been withdrawn.

(5) Subsection (6) shall apply where —

(a) services are performed or goods, other than immovable property, are supplied in respect of a periodic supply referred to in section 23 (5) during a period beginning before and ending on or after the date on which —

Application
of increased
or reduced
VAT rate

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- (i) a change in the VAT rate applicable to the supply becomes effective,
 - (ii) VAT is imposed in respect of the supply, or
 - (iii) VAT is withdrawn in respect of the supply; and
- (b) the time of supply of the goods or services is on or after the date referred to in paragraph (a).
- (6) If the conditions in subsection (5) are satisfied, then the value of the supply shall, on the basis of a fair and reasonable apportionment, be treated as consisting of a part, referred to in this section as the “first part”, relating to the performance of services or provision of goods before the date referred to in subsection (5) (a), and a part, referred to in this section as the “second part”, relating to the performance of services or provision of goods on or after that date and —
- (a) for a change in the VAT rate, the VAT payable in respect of the first part, shall be determined at the rate applicable before the date referred to in subsection (5)(a), and the VAT payable in respect of the second part shall be determined at the rate applicable on that date;
 - (b) for the imposition of VAT, the first part shall not be subject to VAT; or
 - (c) for the withdrawal of VAT, the first part shall be subject to VAT as if VAT had not been withdrawn.
- (7) For purposes of subsections (1), (3) and (5), goods —
- (a) shall be treated as supplied by the supplier when the goods are delivered to the recipient; and
 - (b) supplied under a rental agreement shall be treated as provided to the recipient when the recipient takes possession or occupation of the goods.
- (8) Subsection (9) shall apply where —
- (a) a written agreement is concluded for the sale of immovable property or the construction of a new dwelling by a registered person carrying on a construction business;
 - (b) the written agreement is concluded before the date on which an increase in the VAT rate becomes effective;
 - (c) the price of the sale or construction referred to in paragraph (a) was determined and stated in the written agreement which was in force before the date referred to in paragraph (b) and signed by the parties to the agreement before that date; and
 - (d) the time of supply of the immovable property or construction services under the agreement under section 23 is on or after the date referred to in paragraph (b).
- (9) If the conditions in subsection (8) are satisfied, the VAT rate levied under section 7 on the supply shall be the VAT rate that would have been levied had the supply taken place on the date on which such agreement was concluded.
- (10) In this section, “immovable property” means —
- (a) any dwelling together with land on which it is erected, or of any real right conferring a right of occupation of a dwelling, or of any unit as defined in section 2 of the Sectional Titles Act, such unit being a dwelling; or

- (b) land, or of any real right conferring a right of occupation of land for the sole or principal purpose of the erection by or for the purchaser of any dwelling on the land, as confirmed by the purchaser, in writing.

79. (1) This section shall apply where the Commissioner General is satisfied that —

VAT avoidance schemes

- (a) a scheme has been entered into or carried out;
 (b) a person has obtained a tax benefit in connection with the scheme; and
 (c) having regard to the substance of the scheme, it would be reasonably 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 referred to in paragraph (b) to obtain a tax benefit.

(2) Where this section applies, the Commissioner General may determine the VAT liability of the person who has obtained the tax benefit and of any other person connected with the scheme, as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Commissioner General considers appropriate for the prevention or reduction of the tax benefit.

(3) The Commissioner General shall give effect to a determination made under subsection (2) by serving the person affected by the determination with a notice of a tax assessment, including an amended assessment, giving effect to the determination.

(4) Where the tax assessment under subsection (3) is an amended assessment, notice of the amended assessment shall be served on the person affected by the decision within the time limits for amended assessments specified in the Tax Administration Act.

(5) In this section —

- (a) “scheme” includes —
- (i) any agreement, arrangement, or promise, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings, or
 - (ii) any undertaking, plan, proposal, course of action, or course of conduct, whether undertaken unilaterally or by two or more persons; and
- (b) “tax benefit” includes —
- (i) a reduction in the liability of any person to pay VAT,
 - (ii) an increase in the entitlement of a person to an input tax credit,
 - (iii) an entitlement of a person to a VAT refund,
 - (iv) a postponement of liability for the payment of VAT,
 - (v) an acceleration of an entitlement to an input tax credit,
 - (vi) anything that causes a taxable supply, taxable import, or reverse charged supply not to be a taxable supply, taxable import, or a reverse charged supply, as the case may be, or
 - (vii) anything that gives rise to an entitlement to an input tax credit for an acquisition or import that is used, or is to be used, other than in making taxable supplies.

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Currency
translation

80. (1) For the purposes of this Act, all amounts of money shall be expressed in Pula.

(2) Subject to subsection (3), where an amount is expressed in a currency other than Pula —

(a) in the case of an import of goods, the amount shall be translated to Pula at the exchange rate applicable under the customs legislation for calculating the import duty payable on the import; or

(b) in any other case, the amount shall be translated to Pula at the exchange rate applying between the foreign currency and Pula on the date that the amount is taken into account under this Act.

(3) A supplier of remote services to which section 26 (2) (c) applies may, with the permission of the Commissioner General, report and pay VAT in United States Dollars, Euros, Great Britain Pounds, or other foreign currency as may be approved by the Commissioner General.

(4) A supplier of remote services to which section 26 (2) (c) applies, may elect to translate any foreign currency amounts to Pula —

(a) in accordance with subsection (2) (b);

(b) at the exchange rate applicable on the last day of the relevant tax period; or

(c) on such other basis as agreed with the Commissioner General.

(5) A supplier of remote services may not revoke an election made under subsection (4), until at least one year after making the election, unless the Commissioner General agrees otherwise.

(6) In this section, “exchange rate” means the telegraphic transfer buying rate issued by a financial institution.

International
agreements

81. (1) The Minister may, on behalf of the Government, enter into an agreement with the government of a foreign country or territory, referred to in this section as the “other Contracting State”, to make arrangements for —

(a) the prevention, mitigation, or discontinuance of the levying, under the laws of Botswana and the other Contracting State, of VAT or any similar tax when a supply of goods or services is subject to such tax in both Botswana and the other Contracting State, when such goods or services are imported into Botswana or the other Contracting State, as the case may be;

(b) the refunding of VAT or any similar tax, or any portion of such tax, levied under the laws of Botswana and the other Contracting State, in respect of the supply of goods or services in Botswana or the other Contracting State, as the case may be, when such goods or services are imported into Botswana or the other Contracting State, as the case may be;

(c) regulating or coordinating any matter with regard to the levying and collection under the laws of Botswana or the other Contracting State of VAT or any similar tax; or

(d) the rendering of reciprocal assistance in the administration and collection of VAT or any similar tax under the laws of Botswana and the other Contracting State, or in respect of the execution of the arrangements provided for in an agreement entered into in terms of this section.

(2) As soon as may be possible after the conclusion of an agreement referred to in subsection (1), the agreement shall be laid before the National Assembly, but shall not take effect unless or until it is approved by resolution of the National Assembly, when it shall come into operation or be deemed to have come into operation from the date specified in the agreement.

(3) The Minister may, at any time by Order published in the *Gazette*, amend or cancel an agreement entered into under subsection (1), and if the amendment or cancellation is approved by resolution of the National Assembly, the agreement shall stand amended or cancelled from the date specified in such Order.

(4) The cancellation of an agreement under this section shall not affect the validity of anything previously done thereunder.

82. (1) A registering authority shall not register registrable goods imported or acquired by a person unless the person provides the registering authority with the following —

Prohibition of registration of certain goods

(a) for registrable goods imported into Botswana by the person, a customs document, or a receipt or certificate issued by the Commissioner General stating that —

- (i) VAT has been paid in respect of the import, or
- (ii) the import is an exempt import; or

(b) for registrable goods acquired by the person in a supply —

- (i) a declaration, in the approved form, issued by the registered person making the supply of the registrable goods certifying that the VAT payable in respect of the supply has been, or shall be, paid by the person, or
- (ii) a certificate issued by the Commissioner General stating that the supply is an exempt supply.

(2) In this section —

- (a) “registering authority” means an authority responsible for the registration of registrable goods; and
- (b) “registrable goods” means an aircraft, boat, fishing vessel, ship, yacht, motor cycle, motor vehicle, tractor, caravan, or trailer requiring registration under any written law.

83. (1) Where the Commissioner General is satisfied that, because of the manner in which any person carries on business activities, difficulties or anomalies may arise with regard to the application of any of the provisions of this Act, the Commissioner General and that person may enter into an arrangement on the manner in which those provisions shall be applied in order to overcome those difficulties or anomalies.

Arrangement to overcome difficulties or anomalies

(2) An arrangement under subsection (1) shall not have the effect of substantially reducing or increasing the ultimate liability for VAT levied under this Act.

84. (1) Notwithstanding section 85 and subject to subsection (2), the Minister may, including when Parliament is not in session, by Order published in the *Gazette*, increase or decrease a rate of VAT under section 7(2) by not more than two percentage points.

Variation in VAT rate

(2) Where the Minister changes a rate as specified under subsection (1) before Parliament has met for the first time for the dispatch of business in any session during which the Minister introduces the Appropriation Bill, the change in rate shall lapse six months after the effective date specified in the Order unless, within that time, the amended rate is confirmed by resolution of Parliament.

(3) Where a change in rate lapses under subsection (2), the amended rate shall be valid for the period prior to lapsing.

(4) Where, during the sitting of Parliament, the Minister tables a tax proposal to increase or decrease a rate of VAT under section 7 (2) and publishes an Order of the proposal in the Gazette, the increased or decreased rate shall apply for the purposes of determining the amount of VAT payable under this Act on any date on or after the effective date which the Minister has specified in the Order of any such increase or decrease in the VAT rate, as the case may be:

Provided that the amended rate shall lapse six months after the effective date specified in the Order unless, within that time, the amended rate is confirmed by resolution of Parliament.

(5) Where, in any legal proceedings, a question arises as to whether the Minister has tabled a taxation proposal referred to in subsection (4), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein.

Regulations

85. (1) The Minister may make regulations —

- (a) for matters prescribed to be made under this Act;
- (b) concerning particular types of supplies or the allowance of an input tax credit;
- (c) concerning the licensing and operation of VAT manufacturing warehouses;
- (d) for the provision of remote service supplies;
- (e) for low value imported goods;
- (f) for the supply of foodstuffs in their natural state and not mixed with other products set out under paragraph 1(b) of Schedule 1 in Part III;
- (g) for the procedure for the approving of a non-profit body by the Commissioner General under paragraph 2 of Schedule 2;
- (h) prescribing substances as precious metal under paragraph 2 of Schedule 2;
- (i) for the import of goods which are not entered or are required to be entered in terms of the Customs Act, where the goods are imported into Botswana under paragraph (d) (i) and (ii) of Schedule 3;
- (j) for the proper and efficient administration of this Act;
- (k) of a saving or transitional nature consequent upon the making of this Act;

- (l) provide for the imposition by the Commissioner General of administrative penalties not exceeding P500,000; and
- (m) provide for the imposition by a court of fines not exceeding P500,000, imprisonment for a period not exceeding two years, or to both.

(2) Transitional regulations made within six months after the commencement of this Act, may provide that they take effect from the date on which this Act comes into force.

86. The Minister may amend Schedules 4 and 5 by Order published in the *Gazette*.

Amendment
of Schedules
4 and 5

87. The Value Added Tax Act (hereinafter referred to as the “repealed Act”) is hereby repealed.

Repeal of Cap.
50:03

88. (1) Any subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as such legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.

Savings and
transitional
provisions

(2) Any taxes which, before the coming into operation of this Act, were pending shall be enforced by the Revenue Service in the same manner as they would have been enforced before the coming into operation of this Act.

(3) A reference in this Act to a previous tax period shall include, where the context requires, a reference to a tax period under the repealed Act.

(4) The repealed Act shall continue to apply to supplies and imports occurring prior to the commencement of this Act.

(5) Any certificate, authorisation, or any other documentation which were issued under the repealed Act shall remain valid until they expire as if they were issued under this Act.

(6) Any action, suit, or legal proceedings commenced under the repealed Act shall be continued and disposed of by or against the Revenue Service in terms of the provisions of this Act.

(7) Any right of appeal which subsisted immediately before the commencement of this Act is to be treated as subsisting by virtue of the corresponding provisions of this Act.

(8) Any appeal which commenced under the repealed Act shall be prosecuted and disposed of as though commenced in terms of the provisions of this Act.

SCHEDULES

SCHEDULE 1

(section 8)

ZERO-RATED SUPPLIES

Part 1

Exports of Goods

1. Subject to paragraph 2, the following supplies of goods are zero-rated supplies for the purposes of section 8 —

- (a) a supply of goods where the supplier has entered the goods for export to an export country, pursuant to the customs legislation and the goods have been exported from Botswana by the supplier;
- (b) a supply of goods where the Commissioner General is satisfied that the goods have been exported from Botswana to an export country, even though the goods have not been entered for export;
- (c) a supply of goods where the goods are not situated in Botswana at the time of supply and are not to be entered into Botswana for home consumption pursuant to the customs legislation by the supplier of the goods; and
- (d) a supply of goods in the course of repairing, renovating, modifying, or treating temporarily admitted goods, if the goods —
 - (i) are wrought into, affixed to, attached to, or otherwise form part of those other goods, or
 - (ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process.

2. Paragraph 1 shall not apply in respect of any export of goods that have been, or will be, re-imported to Botswana by the supplier.

3. Paragraph 1 (a) shall apply where a registered person carrying on a taxable activity in Botswana transfers goods from Botswana to a branch or main business permanently located outside Botswana:

Provided the following conditions are satisfied —

- (a) the branch or main business can be separately identified; and
- (b) the branch or main business maintains a separate system of accounting.

Part II
Exports of Services

1. Subject to paragraph 2, the following supplies of services are zero-rated supplies for the purposes of section 8 —

- (a) a supply of services for use or consumption in an export country by the recipient of the supply as evidenced by documentary proof acceptable to the Commissioner General;
- (b) a supply of services in connection with temporarily admitted goods;
- (c) a supply of international transport services;
- (d) a supply of services to a person outside Botswana without a place of business in Botswana and who is not a registered person comprising the arranging for the person of —
 - (i) a supply of goods referred to in paragraph 1(a) of Part I,
 - (ii) a supply of services to which paragraph (b) applies, or
 - (iii) a supply of ancillary transport services; and
- (e) a supply of telecommunications services by a resident telecommunications services provider to a non-resident telecommunications services provider, without a place of business in Botswana.

2. The following shall not be a zero-rated supply under paragraph (1) (a) —

- (a) a supply of services directly in relation to immovable property in Botswana;
- (b) a supply of services directly in relation to movable property situated in Botswana at the time that the services were supplied, unless the movable property is exported from Botswana subsequent to the supply of services;
- (c) a supply of services comprising the refraining from undertaking any taxable activity in Botswana;
- (d) a supply of services comprising the tolerating of another person undertaking any taxable activity in Botswana; or
- (e) a supply of an inbound tourism product or a supply that consists of the facilitation of inbound tour operations.

3. Paragraph 1 (a) shall apply where a registered person carrying on a taxable activity in Botswana transfers services from Botswana to a branch or main business permanently located outside Botswana:

Provided the following conditions are satisfied —

- (a) the branch or main business can be separately identified; and
- (b) the branch or main business maintains a separate system of accounting.

4. For the purposes of paragraph 2 (e), services that consist of the facilitation of inbound tour operations are services provided in packaging one or more inbound tourism product or products in Botswana and selling them to a person who is outside Botswana and who is not a registered person.

Part III
Domestic Zero-Rated Supplies

1. The following supplies are zero-rated supplies for the purposes of section 8 —
 - (a) a supply of goods or services as part of the transfer of a taxable activity or a part of a taxable activity as a going concern by a registered person to another registered person if —
 - (i) all the goods or services necessary for the continued operation of the taxable activity, or the part of the taxable activity, are supplied to the transferee,
 - (ii) the transferor carries on the taxable activity until the day of transfer,
 - (iii) the transferee shall not carry on the taxable activity to make exempt supplies and shall not use the goods or services for private use,
 - (iv) the transferor and transferee agree in writing, on or before the date of the transfer, that the transfer shall be treated as a transfer of a taxable activity or a part of a taxable activity as a going concern for the purposes of this Act, and
 - (v) the transferor notifies the Commissioner General, in the approved form and within 28 days of the transfer or within such further time as the Commissioner General may allow, that the transfer is treated as a transfer of a taxable activity, or a part of a taxable activity, as a going concern for the purposes of this Act;
 - (b) a supply of the following foodstuffs in their natural state and not mixed with other products —
 - (i) sorghum or maize meal for human consumption but not including maize meal for human consumption when it is furnished or served as a meal or as cooked or prepared food,
 - (ii) millet grain as specified under the Customs Tariff Heading 1008.29,
 - (iii) millet meal as specified under the Customs Tariff Heading 1103.19.91,
 - (iv) wheat grain as specified under the Customs Tariff Heading 1001.19 and 1001.99.10,
 - (v) maize cobs as specified under the Customs Tariff Heading 1005.90.90, and
 - (vi) sugar as specified under the Customs Tariff Heading 1701.13 and 1701.14;
 - (c) a supply of —
 - (i) brown bread as specified under the Customs Tariff Heading 1905.90.40,
 - (ii) fresh vegetables as specified under Customs Tariff headings 0701.90.00, 0702.00.00, 0703.10.00, 0704.90.00, 0709.99.00, 0706.90.00, 0706.10.00, 0709.70.00, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding dehydrated, dried, canned or bottled vegetables,
 - (iii) fresh fruit as specified under Customs Tariff Headings 0805.10.10, 0808.10.00, 0803.10.10, not cooked or treated in any manner except for the purpose of preserving such fruit in its natural state, but excluding dehydrated, dried, canned or bottled fruit and nuts,
 - (iv) rice as specified under the Customs Tariff Heading 1006, whether husked, milled, polished, glazed, parboiled or broken,

- (v) samp as specified under the Customs Tariff Heading 1104.23.10, not further prepared or processed,
 - (vi) bread flour as specified under the Customs Tariff Headings 1101.10 and 1101.90, whether white, brown or whole wheat,
 - (vii) cooking oil as specified under Customs Tariff Headings 15.07, 15.08, 15.09, 15.10, 15.11, 15.12, 15.13, 15.14 and 15.15,
 - (viii) liquid petroleum gas as specified under Customs Tariff Headings 2711.11.00, 2711.12.00, 2711.13.10, 2711.13.90, 2711.14.00 and 2711.19.00,
 - (ix) infant formula as specified under Customs Tariff Heading 1901.10.00,
 - (x) baby diapers as specified under Customs Tariff Heading 9619.00.00,
 - (xi) sanitary pads or tampons as specified under Customs Tariff Heading 9619.00.00;
 - (xii) pesticides as specified under Customs Tariff Heading 38.08,
 - (xiv) the first 5000 litres of water per month by Water Utilities Corporation to a residential dwelling, excluding water commonly supplied in bottles or other packaging suitable for supply to consumers;
- (d) a supply of the following agricultural farming implements —
- (i) disc harrows as specified under Customs Tariff Heading 8432.21.00,
 - (ii) ploughs as specified under Customs Tariff Heading 8432.10.00,
 - (iii) seeders, planters and transplanters under the Customs Tariff Heading 8432.30,
 - (iv) harrows, scarifiers, cultivators, weeders, hoes as specified under Customs Tariff Heading 8432.20.00,
 - (v) manure spreaders as specified under Customs Tariff Heading 8432.41.00,
 - (vi) fertilizers distributors as specified under Customs Tariff Heading 8432.42.00,
 - (vii) rotavators as specified under Customs Tariff Heading 8432.29.00,
 - (viii) rippers as specified under Customs Tariff Heading 8432.29.00,
 - (ix) cutter bars for tractor mounting as specified under Customs Tariff Heading 8433.20.00,
 - (x) hay making machinery as specified under Customs Tariff Heading 8433.30.00,
 - (xi) straw of fodder balers and pick up balers as specified under Customs Tariff Heading 8433.40.00,
 - (xii) combine harvesters-threshers as specified under Customs Tariff Heading 8433.51.00,
 - (xiii) threshing machinery as specified under Customs Tariff Heading 8433.52.00,
 - (xiv) root or tuber harvesting machinery as specified under Customs Tariff Heading 8433.53.00,
 - (xv) forage harvester as specified under Customs Tariff Heading 8433.59.00,
 - (xvi) tractors of an engine power not exceeding 18 kW as specified under Customs Tariff Heading 8701.91.00,
 - (xvii) tractors of an engine power exceeding 18 kW but not exceeding 37 kW as specified under Customs Tariff Heading 8701.92.00,
 - (xviii) tractors of an engine power exceeding 37 kW but not exceeding 75 kW as specified under Customs Tariff Heading 8701.93.00,
 - (xix) tractors of an engine power exceeding 75 kW but not exceeding 130 kW as specified under Customs Tariff Heading 8701.94.00,

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- (xx) tractors of an engine power exceeding 130 kW as specified under Customs Tariff Heading 8701.95.00, and
- (xxi) trailers as specified under Customs Tariff Heading 8716.20.00;
- (e) a supply of leaded petrol, unleaded petrol, diesel oil and illuminating paraffin, which consist of fuel levy goods as defined in section 2 of the Excise Duty Act;
- (f) a supply of condoms as specified under the Customs Tariff Heading 3926.90.87;
- (g) a supply of prescription medicines for humans that can be dispensed only under a written prescription as specified in Schedules 1A, 1B, 1C, and 2 referred to in the Medicines and Related Substances Act.

2. Where paragraph 1 (a) has applied to a supply of goods or services and, after the supply, the transferee does not satisfy paragraph 1 (a) (iii), the transferee is treated as having made a taxable supply of the goods or services to which paragraph 1 (a) applied and —

- (a) the taxable supply shall be treated as taking place at the time that paragraph 1(a) (iii) was not satisfied; and
- (b) the value of the taxable supply shall be the fair market value of the goods or services at the time specified in paragraph (a).

Part IV
Interpretation

In this Schedule —

“ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and storage of transported goods or goods to be transported;

“international transport services” means —

- (a) the services, other than ancillary transport services, of transporting passengers or goods by road, rail, water, or air —
 - (i) from a place outside Botswana to another place outside Botswana where the transport or part of the transport is across the territory of Botswana,
 - (ii) from a place outside Botswana to a place in Botswana, or
 - (iii) from a place in Botswana to a place outside Botswana;
- (b) the services of transporting passengers from a place in Botswana to another place in Botswana to the extent that transport is by aircraft and constitutes “international carriage” as defined under the Convention for the Unification of Certain Rules Relating to International Carriage by Air;

- (c) the services, other than any ancillary transport services, of transporting goods from a place in Botswana to another place in Botswana, to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or
 - (d) the services of insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which paragraphs (a) to (c) applies;
- “maize meal for human consumption” means —
- (a) maize meal graded as super maize meal, special maize meal, sifted maize meal, unsifted maize meal, samp, or mealie rice, but only when provided for human consumption; and
 - (b) maize intended to be used for the production of maize meal contemplated in paragraph (a);
- “sorghum” means sorghum or sorghum meal, but only if provided for human consumption; and
- “temporarily admitted goods” means goods temporarily admitted into Botswana under sub-part G of Part VII of the Customs Act and includes an aircraft or train in Botswana in transit.

SCHEDULE 2
(section 9)

EXEMPT SUPPLIES

1. The following supplies are exempt supplies for the purposes of section 9 —

- (a) a supply of financial services;
- (b) a supply of a precious metal;
- (c) a supply of services specified in the regulations by a person in the ordinary course of operating a public medical facility, including a hospital, maternity home, nursing home, convalescent home, hospice or clinic;
- (d) a supply of donated goods or services by a non-profit body;
- (e) a supply of education services;
- (f) a supply of public transport services;
- (g) a supply of a services by a home owners' association to any of its members in the course of the management of the association, where the cost of supplying such services is met out of contributions made by the members to the association;
- (h) a supply of any goods or services by a Government entity or a non-profit body, where the consideration for the goods or services is nominal in amount or not intended to recover the cost of such goods or services; and
- (i) a supply by way of a lease of residential premises, other than a lease for a term of less than 45 days.

2. In this Schedule —

“custody services” means the service of holding securities (in physical or electronic form), cash, valuables or other similar items for safe-keeping and includes providing access to a safety deposit box;

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

“education services” means education and hostel facilities for students and scholars, as prescribed, provided by —

- (a) a pre-primary, primary, or secondary school;
- (b) a technical 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;

“financial services” means any of the following services except to the extent that the service is rendered for a fee, commission, or other similar charge, other than a discounting cost —

- (a) the granting, negotiating, or dealing with loans, credit, credit guarantees, or any security for money, including the management of loans, credit, or credit guarantees by the grantor;
- (b) transactions concerning money, including deposits and current accounts, payments, transfers, debts, cheques, or negotiable instruments, but not including debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, treasury bills, unit portfolios, or other debt or equity securities, but not including custody services;
- (e) the management of investment funds;
- (f) the provision or transfer of ownership of a life insurance contract or the provision of reinsurance in respect of any such contract;
- (g) the provision, or transfer of ownership, of an interest in a scheme for the payment or granting of benefits by a benefit fund (including a medical aid or other similar fund), provident fund, pension fund, retirement annuity fund, or preservation fund;
- (h) a supply of credit under a hire-purchase agreement, but only if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods;
- (i) the provision of intermediation services by a medical aid or similar fund; or
- (j) the arranging of any of the services referred to in paragraphs (a) to (i);

“holiday or hotel accommodation” means —

- (a) a supply of accommodation in a building, part of a building, or a group of buildings, including all structures within the immediate surrounds of the building, that constitute a hotel, motel, inn, boarding house, guest house, hostel or similar establishment in which in which lodging is regularly or normally provided to five or more persons at daily, weekly, monthly or other periodic charge; or
- (b) a supply of accommodation not covered by paragraph (a) if the accommodation is held out for use for short term occupation by a natural person other than as his or her main residence;

“home owners association” means —

- (a) an association established under section 39 of the Sectional Titles Act; or

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- (b) any other association of home owners with responsibility to provide services to members of the association;
- “life insurance contract” means a contract of insurance made or agreed to be made by an insurer as transacting long-term insurance business;
- “non-profit body” means a body or association corporate or unincorporated, or an irrevocable trust —

 - (a) that is established solely —

 - (i) to provide relief to those suffering from poverty, distress, or the effects of a natural disaster, or
 - (ii) for the advancement of education, religion, or amateur sport;
 - (b) in relation to which, no part of the income or other funds, or assets, of the body or trust are used or are available for use for the private benefit of a member of the body or beneficiary of the trust; and
 - (c) that has been approved by the Commissioner General, in accordance with the procedure as may be prescribed, as a non-profit body;
- “precious metal” means —

 - (a) gold, in any form, being gold of a fineness of not less than 99.5 per cent;
 - (b) silver, in any form, being silver of a fineness of not less than 99.9 per cent;
 - (c) platinum, in any form, being platinum of a fineness of not less than 99.0 per cent; or
 - (d) any other substance prescribed as a precious metal;
- “public medical facility” means a Government operated medical facility or Government aided medical facility;
- “public transport services” means the transportation, regulated by Government, of fare-paying passengers and their personal effects in Botswana by road or rail, other than the transportation of tourists; and
- “residential premises” means land or building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation.

SCHEDULE 3
(*section 10*)

EXEMPT IMPORTS

1. The following imports are specified as exempt imports for the purposes of section 10 —

- (a) an import of goods for the personal or official use of the President or any dependent member of the President's family;
- (b) an import of goods by a registered person operating a VAT manufacturing warehouse under a certificate described in section 47, for use in connection with the manufacturing operations covered by that certificate;
- (c) an import of services where the recipient of the services received the services in respect of a technical assistance or humanitarian assistance agreement referred to in section 69 (1) (d);
- (d) an import of goods that are entered, or are required to be entered, under the Customs Act and the Excise Duty Act, where —
 - (i) the goods fall under any heading and description and such extent as may be provided under the Customs Act and the Excise Duty Act and subject to the Notes set out in Schedule No. 4 to the Excise Duty Act and in respect of which either no customs duty is payable or a rebate of customs duty is granted in terms of the said Act including —

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405.04 Goods for welfare of charitable purposes.

406.00 Goods for Heads of State, Diplomatic and other Foreign Representatives.

407.04 Motor vehicles imported by natural persons on change of permanent residence.

407.06 Household furniture, other household effects and other removable articles, including equipment necessary for the exercises of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the bona fide property of a natural person (including a returning resident of Botswana after an absence of 6 months or more) and members of his or her family, imported for own use on change of his or her residence to Botswana:

Provided these goods are not disposed of within a period of 6 months from the date of entry.

408.01 Cups, medals and other trophies awarded abroad to any person, imported by him or her or on his or her behalf, and such articles imported for presentation:

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- i. as prices at public exhibitions or shows, at public examinations or examinations in any educational institution, or for skill or sport in public competition or competition in any educational institution;
- ii. as prices for target shooting by air, military, naval or police forces; or
- iii. for bravery, good conduct, humanity, for excellence in art, industry, invention, manufactures, learning, science, or for honourable or meritorious public services.

409.01 Imported goods (including packing containers) re-exported, thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation and without a permanent change of ownership:

Provided that the exemption shall not apply if at the time of export of such goods —

(1) the supply of the goods was charged with tax at the rate of zero percent under section 10; or

(2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 10, if the supply had taken place on or after the commencement date.

409.02 Goods (including packing containers) produced or manufactured in Botswana, exported therefrom and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation (excluding excisable goods exported ex a customs and excise warehouse warehouse):

Provided that the exemption shall not apply if at the time of such goods —

(1) the supply of the goods was charged with tax at the rate of zero percent under section 8; or

(2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 8, if the supply had taken place on or after the commencement date.

409.04 Imported or locally manufactured articles sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place, and can be identified on re-importation:

Provided that the exemption shall apply only to the extent of the value of the goods sent from Botswana on the day the goods left Botswana.

409.06 Excisable goods exported ex a customs and excise warehouse and thereafter returned or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and without a permanent change in ownership having taken place:

Provided that the exemption shall not apply if at the time of export of such goods —

(1) the supply of the goods was charged with tax at the rate of zero percent under section 8; or

(2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 8, if the supply had taken place on or after the commencement date.

409.07 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Permanent Secretary, Ministry responsible for commerce and industry:

Provided that —

(1) the specific permit is obtained before the temporary exportation of the goods;

(2) any additional conditions which may be stipulated in the said permit are complied with; and

(3) the exemption shall apply only to the extent of the value of the goods sent from Botswana on the day the goods left Botswana.

412.03 Used personal or household effects (excluding motor vehicles bequeathed to persons residing in Botswana.

412.04 Used property of a person normally resident in Botswana who dies while temporarily outside Botswana.

412.10 Bonafide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed UA 400, excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars) consigned by natural persons abroad to natural persons in Botswana.

412.11 Goods imported —

(1) for the relief of distress of persons in cases of famine or other national disaster;

(2) under any technical assistance agreement; or

(3) in terms of an obligation under any multilateral international agreement to which Botswana is a party.

412.12 Goods imported for any purpose agreed upon between the Governments of Botswana, Lesotho, South Africa, Eswatini, and Namibia.

470.01 Goods temporarily admitted for processing:

Provided that such goods do not become the property of the importer.

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470.02 Goods (including parts thereof) temporarily admitted for repair, cleaning or reconditioning.

470.03 Goods cleared in terms of a permit issued by the Permanent Secretary, Ministry responsible for commerce and industry for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export.

480.00 Goods temporarily admitted for specific purposes.

490.00 Goods temporarily admitted subject to exportation in the same state.

- (ii) the goods are any of the following in respect of which the Commissioner General has in terms of section 41 (1) of the Excise Duty Act, granted permission that entry need not be made —
 - (aa) containers temporarily imported;
 - (bb) human remains;
 - (cc) goods which in the opinion of the Commissioner General are of no commercial value; or
 - (dd) goods imported under an international carnet; or
- (iii) the goods are printed books, newspapers, journals and periodicals imported into Botswana by post;
- (e) an import of goods which are not entered or are not required to be entered in terms of the Customs Act, where the goods are imported into Botswana from any specified country and are —
 - (i) goods referred to in paragraph (d) (i) under Item Nos. 405.04, 406.00, 407.01, 407.02, 407.06, 412.02, 412.03, 412.04, 412.10, 412.11, 412.12, 470.01, 470.02, 480.00 and 490.00, or
 - (ii) goods referred to in paragraph (d) (ii) or (iii);
- (f) goods imported into or produced or manufactured in Botswana, exported therefrom to any specified country and thereafter directly returned to or brought back by the exporter without having been subjected to any manufacturing process, manipulation or modification and without a change in ownership, and tax under this Act or the Act repealed under section 87, was paid in respect of the acquisition thereof;
- (g) goods which are shipped or conveyed to Botswana for transhipment or conveyance to any other country; or
- (h) goods in a passenger's accompanying baggage —
 - (i) 2 litres of wine,
 - (ii) 1 litre of spirits or other alcoholic beverage,
 - (iii) 200 cigarettes,
 - (iv) 20 cigars,
 - (v) 250 grams of cigarette or pipe tobacco,
 - (vi) 50 millilitres of perfume,
 - (vii) 250 millilitres of toilet water,
 - (viii) other new or used goods of a total value not exceeding P3 000 for passengers arriving from a specified country, and
 - (ix) other new or used goods of a total value not exceeding P5 000 for passengers arriving from a country other than a specified country.

2. In this Schedule, “specified country” means Namibia, Lesotho, South Africa, and ESwatini.

SCHEDULE 4
(sections 59 (7) and 60 (3))

TAX INVOICES, TAX CREDIT NOTES,
AND TAX DEBIT NOTES

1. Except as the Commissioner General may otherwise allow, a tax invoice required to be provided by a registered person under section 59, shall contain the following particulars —

- (a) the words “original tax invoice” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) the name, address, and VAT registration number of the registered person receiving the supply;
- (d) the individualised serial number and the date on which the tax invoice is issued;
- (e) a description of the goods or services supplied;
- (f) the quantity or volume of the goods or services supplied; and
- (g) the total amount of the VAT charged, the consideration for the supply, and the consideration including VAT.

2. A tax invoice provided to a non-registered person may omit the details specified in paragraph 1(c).

3. Except as the Commissioner General may otherwise allow, a recipient-created tax invoice for a supply required to be prepared by a registered person under section 59, shall contain the following particulars —

- (a) the words “recipient-created tax invoice” in a prominent place;
- (b) the name, address, and TIN of the recipient of the supplier;
- (c) the individualised serial number and the date on which the recipient-created tax invoice is issued;
- (d) the description of the goods or services that are the subject of the supply and the date on which the supply was made; and
- (e) the consideration for the supply and the amount of VAT charged.

4. Except as the Commissioner General may otherwise allow, a tax credit note required to be provided by a registered person under section 60, shall contain the following particulars —

- (a) the words “original tax credit note” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) the name, address, and VAT registration number of the registered person receiving the supply;
- (d) the date on which the tax credit note was issued;

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- (e) the value of the supply shown on the tax invoice for the supply, the correct amount of the value of the supply, the difference between those two amounts and the VAT charged that relates to that difference;
- (f) a brief explanation of the adjustment event giving rise to the issuing of the tax credit note; and
- (g) any information sufficient to identify the taxable supply to which the tax credit note relates.

5. Except as the Commissioner General may otherwise allow, a tax debit note required to be provided by a registered person under section 60, shall contain the following particulars —

- (a) the words “original tax debit note” in a prominent place;
- (b) the name, address and VAT registration number of the registered person making the supply;
- (c) the name, address and VAT registration number of the registered person receiving the supply;
- (d) the date on which the tax debit note was issued;
- (e) the value of the supply shown on the tax invoice for the supply, the correct amount of the value of the supply, the difference between those two amounts, and the VAT that relates to that difference; and
- (f) a brief explanation of the adjustment event giving rise to the issuing of the tax debit note; and
- (g) any information sufficient to identify the taxable supply to which the tax debit note relates.

SCHEDULE 5
(sections 2, 12, 13, 14, 54, 58, 59, 69)

REGISTRATION THRESHOLD AND OTHER AMOUNTS

1. For purposes of section 2, for large unregistered person, the amount is P 1000 000.
2. For purposes of section 12 (2), the amount is P1 000 000.
3. For the purposes of section 13 (2), the amount is P500 000.
4. For the purposes of section 14 (2), the amount is P500 000.
5. For the purposes of section 54 (3), the amount is P12 000 000.
6. For the purposes of section 58 (1) and (2), the rate of interest is 1 per cent per month or part thereof, compounded monthly.
7. For the purposes of section 59 (2), the amount is P20.
8. For the purposes of section 69 (1)(e), the minimum amount is P600.