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CONTENTS

Page

GOVERNMENT NOTICE

- No. 88 Promulgation of Sales Tax Amendment Act, 1993 (Act 12 of 1993),
of the National Assembly 1
-

Government Notice

OFFICE OF THE PRIME MINISTER

No. 88

1993

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

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

No. 12 of 1993: Sales Tax Amendment Act, 1993.

EXPLANATORY NOTE:

- Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.
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ACT

To amend the Sales Tax Act, 1992, so as to prescribe differentiated rates of sales tax; to restrict the exemption in respect of the purchase or importation of ships and aircraft to apply only to ships and aircraft intended to be used solely for foreign-going purposes; to provide for a further exemption from sales tax in respect of the donation of certain goods to the State or certain approved bodies or the importation of such goods by the State or such bodies; to make new provision for the determination of the gross value and taxable value of goods imported; to abolish the system (except in the case of auctioneers) whereby vendors may elect to recover the sales tax by adding it to the price or amount charged and to require that such tax shall be included in the price or amount charged; to effect certain textual changes to section 11; to make new provision for the date on which sales tax shall be paid in respect of certain taxable values; to remove the duty imposed on the Permanent Secretary to give prior written notice of his or her intention to make an assessment of the amount of sales tax payable; to fix the interest rate applicable to refunds of amounts paid in excess; to remove the exclusion from the definition of "taxable service" of certain services rendered by banking institutions and building societies; to include, for the purpose of the exemption applying in respect of imported goods, in the category of such goods which are not required to be cleared under the provisions of the Customs and Excise Act, 1964, goods imported for use solely for prospecting or mining operations for natural oil or gas; and to provide for incidental matters.

(Signed by the President on 11 August 1993)

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

Amendment of section 5 of Act 5 of 1992.

1. Section 5 of the Sales Tax Act, 1992 (hereinafter referred to as the principal Act), is hereby amended -

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

“Subject to the provisions of section 6, there shall be levied and paid, for the benefit of the State Revenue Fund, a tax (to be known as the sales tax), calculated at the appropriate rate [of 11 per cent of] specified in subsection (1A), on the taxable value of -”; and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The sales tax imposed by subsection (1) shall be calculated -

- (a) in the case of paragraphs (a) and (g) of that subsection, at the rate of 8 per cent of the taxable value concerned;
- (b) in the case of paragraphs (b), (c), (d), (e), (f) and (h) of that subsection, at the rate of 11 per cent of the taxable value concerned.”.

Amendment of section 6 of Act 5 of 1992.

2. Section 6 of the principal Act is hereby amended -

(a) by the substitution for subparagraph (i) of paragraph (ae) of subsection (1) of the following subparagraph:

“(i) any person who is ordinarily resident in Namibia or to or by any company which is a domestic company for the purposes of the Income Tax Act, of -

- (aa) any ship in respect of which the Permanent Secretary is satisfied that it will be a Namibian ship and will be used by such person or company [**wholly or mainly**] solely as a foreign-going ship; or

(bb) any aircraft in respect of which the Permanent Secretary is satisfied that it will be used by such person or company [**wholly or mainly**] solely as a foreign-going aircraft;”;

(b) by the addition of the following paragraph to subsection (1):

“(ai) the donation to the State or any body approved by the Minister of such goods as the Minister, in consultation with any other Minister whose ministry of State is concerned, may approve, or the importation by the State or such a body of any such goods so donated.”.

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

“(2) Where an exemption applies under subsection (1)(b), (c), (f), (m), (o), (p), (u), (x), (ab), [**or**] (ah) or (ai) in respect of a sale of goods or financial lease or rental consideration or the rendering of a taxable service or goods imported, the purchaser in relation to such sale or financial lease or rental consideration or service or the importer of the goods imported shall, subject to the provisions of sections 15 and 16, be entitled to purchase the goods which are the subject of such sale or to conclude such financial lease or to pay such rental consideration or to have such service rendered to him or her or to import the goods, as the case may be, free of tax.”.

Amendment of section 7
of Act 5 of 1992.

3. Section 7 is hereby amended by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) in relation to goods referred to in section 5(1)(g) -

(i) where such goods are cleared or will be required to be cleared under the Customs and Excise Act, 1964 (Act 91 of 1964), and are cleared for home consumption within Namibia, the value thereof for customs duty purposes, plus any duty levied under the said Act and the Additional Sales Duties Act,

1993, in respect of the importation of such goods, plus 10 per cent of the said value; or

- (ii) where such goods are not and will not be required to be so cleared, the free-on-board value of the goods plus any duty levied under the Additional Sales Duties Act, 1993; or”.

Amendment of section 10
of Act 5 of 1992.

4. Section 10 of the principal Act is hereby amended -

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

“(3) The tax so recoverable in the case of any sale (other than a sale referred to in subsection (1), financial lease, rental consideration, taxable service, board and lodging, or accommodation shall be recovered by including such tax as part of the price or amount charged by the seller to the purchaser under the relevant agreement.”;

- (b) by the deletion of subsection (4);

- (c) by the deletion of subsection (5);

- (d) by the substitution for subsection (6) of the following subsection:

“(6) Every auctioneer shall, at all entrances to the premises in which his or her enterprise is carried on and at all points in such premises where payments are effected, display prominently a notice, in such form as the Permanent Secretary may prescribe, indicating that tax at the appropriate rate will be added to the amount of the successful bid or, in the case of goods sold out of hand by the auctioneer, to the purchase price payable by the purchaser.”;

- (e) by the deletion of subsection (7);

- (f) by the deletion of subsection (8);

- (g) by the substitution for subsection (10) of the following subsection:

“(10) Every auctioneer who recovers the tax in the manner contemplated in subsection (1) **[and every vendor who recovers the tax in the manner contemplated in subsection (3)(b)]** shall be required to display the rounding-off tables referred to in subsection (9) at all points where payments are effected in the premises in which he or she carries on any enterprise.”; and

- (h) by the substitution for subsection (12) of the following subsection:

“(12) Any person who fails to comply with the provisions of subsection (3) **[(4), (6), (8)]** or (10) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.”.

Amendment of section 11
of Act 5 of 1992.

5. Section 11 of the principal Act is hereby amended -

- (a) by the substitution for subparagraph (dd) of paragraph (i) of subsection (2) of the following subparagraph:

“(dd) in consequence of a calculation or accounting error, if such **[account] amount** has been included in any taxable value taken into account under this subsection in respect of the said enterprise, whether for the tax period or any previous tax period;”;

- (b) by the substitution for the words preceding paragraph (a) of subsection (7) of the following words:

“(7) Subject to the provisions of subsection (6) where the tax period in relation to an enterprise is a period referred to in paragraph **[(iii)] (i)** of the proviso to paragraph (a) of subsection (1) of section 17 -”;

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

“(8) Where the tax period in relation to an enterprise is a period referred to in paragraph [(iii)] (i) of the proviso to paragraph (a) of subsection (1) of section 17 ending on the date of the vendor’s death or on the day before the date on which the disposal of a part interest in the enterprise takes effect or on the day before the date from which a partnership in respect of the enterprise is dissolved and the Permanent Secretary is satisfied that the enterprise has been or will be continued by the vendor’s heir or by a beneficiary in his or her estate to whom such enterprise is transferred or is to be transferred or by the person or persons who take over the enterprise by reason of the said disposal or dissolution of partnership, the Permanent Secretary may, if requested by such heir, beneficiary, person or persons, as the case may be, direct that, subject to any conditions the Permanent Secretary may impose, the provisions of this section (excluding subsection (7)) shall be applied in respect of the said enterprise as though no change in ownership of the enterprise had occurred, and in such case the provisions of subsection [(5)] (7) shall not apply.”.

Amendment of section 18
of Act 5 of 1992.

6. Section 18 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Subject to the provisions of sections 36 and 41, where tax in respect of any taxable value has become payable and such tax is not required to be calculated in the manner prescribed by section 11, the person liable for the payment of such tax shall -

- (a) furnish the Permanent Secretary with a declaration, in such form as the Permanent Secretary may prescribe, containing such information as may be required; and
- (b) calculate the tax on such taxable value at the appropriate rate of tax and pay such tax to the Permanent Secretary on the date on which it is payable in terms of section 8:

Provided that the Permanent Secretary may, having regard to the circumstances of any case, and on such conditions as may be determined by him or her, fix a later date on which such tax is to be paid.”.

Amendment of section 20
of Act 5 of 1992.

7. Section 20 of the principal Act is hereby amended -

(a) by the substitution for subsection (3) of the following subsection:

“(3) [**Subject to the provisions of subsection (5)**] The Permanent Secretary shall give the person concerned a written notice of such assessment stating the amount upon which tax is payable, the amount of tax payable and the amount of any penalty payable on such tax in terms of section 25: Provided that where the Permanent Secretary is satisfied that a failure by the person concerned or any other person under the control of that person to furnish an accurate return or declaration or to pay any amount of tax due was not due to an intent to avoid or postpone liability for the payment of tax or the Permanent Secretary is partly so satisfied, he or she may in such assessment remit such penalty in whole or in part.”;

(b) by the deletion of subsection (5).

Amendment of section 22
of Act 5 of 1992.

8. Section 22 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Permanent Secretary so directs, be suspended by any appeal or pending the decision of a court of law under section 76 of the Income Tax Act, as applied by subsection (4) of this section, but if any assessment is altered on appeal or in conformity with any such decision or any decision by the Permanent Secretary to concede the appeal to the special court or such court of law a due adjustment shall be made, amounts paid in excess being refunded with interest at the rate [**contemplated in paragraph (b) of the definition of “prescribed rate” in section 1 of the Income Tax Act, such interest being**] of 15 per cent per annum calculated from the date proved to the satisfaction of the Permanent

Secretary to be the date on which such excess was received and amounts shortpaid being recoverable with penalty calculated as provided in section 25(1).”.

Amendment of section 50 of Act 5 of 1992.

9. Section 50 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Where the Permanent Secretary is satisfied -

- (a) that the turnover of any enterprise consists wholly or mainly of amounts derived from sales of an essential commodity supplied in small measures;
- (b) that the price per measure is such that the tax thereon, calculated at the rate provided in section 5[(1)], amounts to one or more cents, plus a fraction of a cent; and
- (c) that by reason of the manner in which the vendor carries on such enterprise, the vendor will not be able to recover such fraction of a cent from purchasers without unduly increasing the price of the commodity,

the Permanent Secretary may in any agreement with the vendor under subsection (1) authorize the vendor to disregard such fraction in calculating his or her liability for tax.”.

Amendment of section 53 of Act 5 of 1992.

10. Section 53 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) amend the provisions of [subsection (1) of] section 5 so as to effect a variation or further variation of the rate of tax fixed by the said [subsection] section by increasing or reducing that rate: Provided that the rate fixed under the said [subsection] section shall not be varied under this paragraph so as to provide for an increase of more than two per cent in the rate so fixed;”.

Amendment of Schedule I to Act 5 of 1992.

11. Schedule I to the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph 1 of the following subparagraph:

“(i) Professional or other services, other than services referred to in paragraphs (g) and (h) rendered by any person for his or her own account in the ordinary course of his or her trade, business or occupation, including, without limiting the generality of this subparagraph, any services rendered by any banking institution, as defined in section 1 of the Banks Act, 1965 (Act 23 of 1965), any building society, as defined in section 1 of the Building Societies Act, 1986 (Act 2 of 1986), any bookkeeper, financial adviser, insurance broker in relation to the provision, or transfer of ownership, of life policies in the course of any business other than long-term insurance business, as defined in section 1 of the Insurance Act, 1943 (Act 27 of 1943), share broker, or any executor, administrator, trustee or provisional trustee of a deceased or insolvent estate, or any liquidator, provisional liquidator or judicial manager or provisional judicial manager of a company, or any auctioneer, but excluding -

[(aa) any services rendered by any banking institution as defined in section 1 of the Banks Act, 1965 (Act 23 of 1965), or any building society as defined in section 1 of the Building Societies Act, 1986 (Act 2 of 1986), in the ordinary course of its business as such banking institution or building society other than services so rendered which may ordinarily be rendered by any financial adviser, insurance broker, share broker, or any executor, administrator, trustee or provisional trustee of a deceased or insolvent estate, or any liquidator or provisional liquidator or judicial manager or provisional judicial manager of a company;]

(bb) the provision, or transfer of ownership, of life policies in the course of any long-term insurance business, as defined in section 1 of the Insurance Act, 1943 (Act 27 of 1943), carried on by or on behalf of a registered insurer, as so defined;

(cc) any services rendered by any travel agent in the ordinary course of his or her business as such travel agent.”.

Amendment of Schedule 5 of Act 5 of 1992, as amended by section 3 of Act 31 of 1992.

12. Schedule 5 to the principal Act is hereby amended by the substitution for subparagraph (a) of paragraph 1 of Part B of the following subparagraph:

“(a) Goods referred to in paragraph 1 of Part A of this Schedule under items 405.04, 406.00, 407.01, 407.02, 407.06, 412.02, 412.03, 412.04, 412.10, 412.11, 412.12, 460.17, 460.23, 470.01, 470.02, 480.00 and 490.00 and Headings 49.11.60, 72.01.20 and 87.11 to the extent indicated.”.

Short title and commencement.

13. (1) This Act shall be called the Sales Tax Amendment Act, 1993.

(2) The amendments effected to the principal Act by -

(a) sections 1 and 3 to 9 shall come into operation on 1 September 1993;

(b) section 2 shall come into operation on the day of promulgation of this Act.
