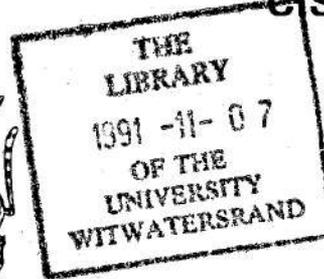
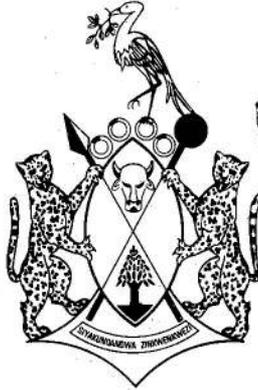


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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 55 OF 1991

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information: -

VALUE-ADDED TAX DECREE, 1991
(Decree No. 17 of 1991)

COUNCIL OF STATE — REPUBLIC OF CISKEI

VALUE-ADDED TAX DECREE, 1991

DECREE

To impose a tax, to be known as value-added tax, in respect of the supply of certain goods and services and the importation of goods, to amend the Stamp Duties Act, 1968, to repeal the Sales Tax Act, 1978 and to provide for incidental matters.

[English text signed by the Chairman of the Council of State. Assented to on 24 September 1991.]

ARRANGEMENT OF DECREE

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BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. **Definitions.-** In this decree unless the context indicates otherwise-

"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;

"association not for gain" means-

(a) any religious institution of a public character; or

(b) any other society, association or organization, whether incorporated or not, which-

(i) is carried on otherwise than for the purposes of profit or gain to any proprietor, member or shareholder; and

(ii) is, in terms of its memorandum, articles of association, rules or other document constituting or governing the activities of that society, association or organization, required to utilize any property or income solely in the furtherance of its aims and objects and is prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by way of the payment in good faith of reasonable remuneration to any officer or employee of the society, association or organization for any services actually rendered to such society, association or organization, and upon the winding-up or liquidation of such society, association or organization it will be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other society, association or organization with objects similar to those of the said society, association or organization;

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"business day" means any day which is not a Saturday, Sunday or public holiday;

"cash value", in relation to the supply of goods supplied under an instalment credit agreement, means-

- (a) where the seller or lessor is a banker or financier, an amount equal to or exceeding the sum of the cost to the banker or financier of the goods, including any cost of erection, construction, assembly or installation of the goods borne by the banker or financier and the tax leviable under section 7(1)(a) in respect of such supply by the banker or financier; or
- (b) where the seller or lessor is a dealer, an amount equal to or exceeding the price (including tax) at which the goods are normally sold by him for cash or may normally be acquired from him for cash (including tax) and any charge (including tax) made by the seller or lessor in respect of the erection, construction, assembly or installation of the goods if such charge is financed by the seller or lessor under the instalment credit agreement:

"close corporation" means a close corporation as defined in any law relating to close corporations;

"commencement date" means the date fixed by the Minister by notice in the **Gazette**;

"commercial rental establishment" means-

- (a) the business of any hotel, motel, inn, boarding house, hostel or similar establishment in which lodging is regularly or normally provided to five or more persons at a daily, weekly, monthly or other periodic charge; or
- (b) any business undertaking (not being any business referred to in paragraph (a) in the course of which accommodation in any house, flat, apartment, room, caravan or houseboat or on any caravan or camping site is regularly or systematically let or held for letting by that undertaking for continuous periods not exceeding 45 days in the case of each occupant, if the total annual receipts and accruals from the supply of domestic goods and services in the course of carrying on such business undertaking have exceeded R24 000 or there are

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- reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; or
- (c) any hospital, nursing home, hospice, convalescent home or rest home, but does not include-
- (i) any boarding establishment or hostel operated by any employer solely or mainly for the benefit of the employees of such employer or of a connected person in relation to such employer or of their dependants, provided such establishment or hostel is not operated for the purpose of making profits from such establishment or hostel for the employer or such connected person;
- (ii) any boarding establishment or hostel operated by any local authority otherwise than for the purpose of making profits from such establishment or hostel;

"Commissioner" means the Commissioner for Inland Revenue;

"company" means a company as defined in section 1 of the Income Tax Act;

"connected person" means-

- (a) any natural person and-
- (i) any relative of that natural person; or
- (ii) any trust fund in respect of which any such relative is or may be a beneficiary; or
- (b) any trust fund and any person who is or may be a beneficiary in respect of that fund; or
- (c) any partnership or close corporation and-
- (i) any member thereof; or
- (ii) any other person where that person and a member of such partnership or close corporation, as the case may be, are connected persons in terms of this definition; or
- (d) any company (other than a close corporation) and-
- (i) any person (other than a company) where that person, his spouse or minor child or any trust fund in respect of which that person, his spouse or minor child is or may be a

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- beneficiary, is separately interested or two or more of them are in the aggregate interested in 10 per cent or more of the company's paid-up capital or 10 per cent or more of the company's equity share capital or 10 per cent or more of the voting rights of the shareholders of the company, whether directly or indirectly; or
- (ii) any other company the shareholders in which (being the registered holders of any share or like interest) are substantially the same persons as the shareholders in the first-mentioned company, or which is controlled by the same persons who control the first-mentioned company; or
 - (iii) any person where that person and the person referred to in subparagraph (i) or his spouse or minor child or the trust fund referred to in that subparagraph or the other company referred to in subparagraph (ii) are connected persons in terms of this definition; or
 - (e) any separate enterprise, branch or division of a vendor which is separately registered as a vendor under the provisions of section 50 and any other such enterprise, branch or division of the vendor; or
 - (f) any branch, division or separate enterprise of an association not for gain which is deemed by subsection (5) of section 23 to be a separate person for the purposes of that section and any other branch, division or separate enterprise of that association, whether or not such other branch, division or separate enterprise is a vendor;

"consideration", in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit) on any returnable container and tax), whether in money or otherwise, or any decree or forbearance, whether or not voluntary, in respect of, in response to, or

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for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as an unconditional gift to any association not for gain: Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

"consideration in money" includes consideration expressed as an amount of money;

"Customs and Excise Act" means the Customs and Excise Act, 1964 (Act 91 of 1964);

"domestic goods and services" means the provision to a natural person of the right to occupy for residential purposes the whole or part of the accommodation provided in any commercial rental establishment, including, where it is provided as part of the right of occupation, the provision of-

- (a) cleaning and maintenance;
- (b) electricity, gas, air conditioning or heating;
- (c) a telephone, television set, radio or other similar article;

"donated goods or services" means goods or services which are donated to an association not for gain and are intended for use in the carrying on or carrying out of the purposes of that association;

"dwelling" means any building, premises, structure or any other place (or any part thereof) used predominantly as a place of residence or abode of any natural person, together with any appurtenances belonging thereto and enjoyed therewith, but does not include any accommodation in or intended to be used in a commercial rental establishment;

"enterprise" means-

- (a) in the case of any vendor other than a local authority, any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit, including any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern or any other

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- concern of a continuing nature or in the form of an association or club;
- (b) without limiting the applicability of paragraph (a) in respect of any activity carried on in the form of a commercial financial, industrial, mining, farming, or professional concern-
- (i) the making of supplies by any public authority of goods or services which the Minister, having regard to the circumstances of the case, is satisfied are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such public authority in the course or furtherance of any enterprise, if the Commissioner in pursuance of a decision of the Minister under this subparagraph, has notified such public authority that its supplies of such goods or services are to be treated as supplies made in the course of furtherance of an enterprise; (ii) the activities of any welfare organization as respects activities referred to in the definition of 'welfare organization' in this section;
- (c) in the case of a vendor which is a local authority any activity in the course or furtherance of which any of the following supplies of goods or services are made:
- (i) The supply of electricity, gas or water;
- (ii) the supply of services consisting of the drainage, removal or disposal of sewage or garbage;
- (iii) the supply of goods or services incidental to or necessary for the supply of goods or services in respect of which the provisions of subparagraph (i) or (ii) apply;
- (iv) the making of supplies of goods or services in the course of any business carried on by such local authority, if-
- (aa) such supplies are of the

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- same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such local authority in the course or furtherance of any enterprise; and
- (bb) the revenue normally derived by such local authority for its own benefit from making such supplies, together with any grant or subsidy paid to that local authority by the State or any person for the purposes of such business, is, or may reasonably be expected to be, sufficient to fund the expenditure (excluding expenditure of a capital nature but including a reasonable provision for depreciation in the value of the assets of the business by reason of wear and tear and obsolescence) incurred by that local authority in the production of such revenue; and
- (cc) (A) such business falls within a category of businesses which the Minister, having regard to the provisions of items (aa) and (bb) as generally applicable, has by notice in the Gazette determined to be a category of businesses in respect of which the provisions of this subparagraph shall be deemed to apply; or
- (B) such business (not being a business falling within a category referred to in subitem (A)) is determined by the Minister, having regard to the provisions

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of items (aa) and (bb) as applicable in the case of such business, to be a business in respect of which the provisions of this subparagraph shall be deemed to apply and the Commissioner, in pursuance of the Minister's determination under this subitem, has notified such local authority accordingly;

"entertainment" means the provision of any food, beverage, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him;
"exempt supply" means a supply that is exempt from tax under section 12;

"export country" means any country other than the Republic and any specified country;

"exported", in relation to any movable goods supplied by any vendor under a sale or an instalment credit agreement, means-

(a) consigned or delivered by the vendor to the recipient and an address in an export country as evidenced by documentary proof acceptable to the Commissioner; or

(b) delivered by the vendor to the owner or character of any foreign-going ship contemplated in paragraph (a) of the definition of "foreign-going" or to a foreign-going aircraft when such ship or aircraft is going to a destination in an export country and such goods are for use or consumption in such ship or aircraft, as the case may be; or

(c) delivered by the vendor to the owner or character of any foreign-going ship contemplated in paragraph (b) of the definition of "foreign-going ship" for use in such ship; or

(d) removed from the Republic by the recipient for conveyance to an export country, if-

(i) the recipient is ordinarily resident or carries on business in such country;

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- (ii) the removal of such goods from the Republic if effected in a manner prescribed in terms of an export incentive scheme approved by the Minister;
- (iii) the vendor has been authorized by the Commissioner to participate in such scheme;
- (iv) the goods are of a kind to which such scheme applies; and
- (v) any conditions prescribed under such scheme have been complied with;

"financial services" means the activities which are deemed by section 2 to be financial services;

"fixed property" means land (together with improvements affixed thereto), any unit as defined in section 1 of the Sectional Titles Act, 1971 (Act 66 of 1971), any share in a share block company as defined in section 1 of the Share Block Control Act, 1980 (act 59 of 1980), which confers a right to or an interest in the use of immovable property and, in relation to a property time-sharing scheme, any time-sharing interest within the meaning of any law relating to the control of property time-sharing;

"foreign-going aircraft" means any aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in the Republic or a specified country and airports in export countries or between airports in export countries;

"foreign-going ship" means-

- (a) any ship or other vessel engaged in the transportation for reward of passengers or goods wholly or mainly on voyages between ports in the Republic or a specified country and ports in export countries or between ports in export countries; or
- (b) any ship or other vessel registered in an export country where such ship or vessel is utilized for the purposes of a commercial, fishing or other concern conducted outside the Republic and any specified country by a person who is not a vendor and is not a resident of the Republic or any specified country;

"goods" means corporeal movable things, fixed property and any real right in any such thing or fixed property, but excluding-

- (a) money;
- (b) any right under a mortgage bond or

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- pledge of any such thing or fixed property; and
- (c) any stamp, form or card which has a money value and has been sold or issued by the State for the payment of any tax or duty levied under any law except when subsequent to its original sale or issue it is disposed of or imported as a collector's piece or investment article;

"imported services" means a supply of services that is made by a supplier who is resident or carries on business outside the Republic to a recipient who is a resident of the Republic to the extent that such services are utilized or consumed in the Republic otherwise than for the purpose of making taxable supplies;

"Income Tax Act" means the Income Tax Act, 1984 (Act 44 of 1984);

"input tax" in relation to a vendor, means-

- (a) tax charged under section 7 and payable in terms of that section by-
- (i) a supplier on the supply of goods or services made by that supplier to the vendor; or
 - (ii) the vendor on the importation of goods by him; or
 - (iii) the vendor under the provision 7(3);
- (b) an amount equal to the tax fraction (being the tax fraction applicable at the time of payment) of any amount paid in respect of any consideration in money given by the vendor for the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic of any second-hand goods situated in the Republic: Provided that where, in relation to such supply, the parties are connected persons, such consideration in money shall be deemed to be the amount paid for the goods to the extent that it does not exceed the open market value of such goods; and
- (c) an amount equal to the tax fraction of the consideration in money deemed by section 10(16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement: Provided that the

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tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in section 9(3)(c),

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose;

"instalment credit agreement" means any agreement entered into on or after the commencement date whereby any goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable-

- (a) are supplied under a sale under which-
 - (i) the goods are sold by seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; and
 - (ii) such sum of money includes finance charges stipulated in the agreement of sale; and
 - (iii) the aggregate of the amounts payable by the purchaser to the seller under such agreement exceeds the cash value of the supply; and
 - (iv)
 - (aa) the purchaser does not become the owner of those goods merely by virtue of the delivery to or the use, possession or enjoyment by him thereof; or
 - (bb) the seller is entitled to the return of those goods if the purchaser fails to comply with any term of that agreement; or
- (b) are supplied under a lease under which-
 - (i) the rent consists of a stated or determinable future date or

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- periodically in whole or in part in instalments over a period in the future; and
- (ii) such sum of money includes finance charges stipulated in the lease; and
 - (iii) the aggregate of the amounts payable under such lease by the lessee to the lessor for the period of such lease (disregarding the right of any party thereto to terminate the lease before the end of such period) and any residual value of the leased goods on termination of the lease, as stipulated in the lease, exceeds the cash value of the supply; and
 - (iv) the lessee is entitled to the possession, use or enjoyment of those goods for a period of at least 12 months; and
 - (v) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, those goods and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of those goods while the agreement remain in force;

"insurance" means insurance or guarantee against loss, damage, injury or risk of any kind whatever, whether pursuant to any contract or law, and includes reinsurance; and **"contract of insurance"** includes a policy of insurance, an insurance cover, and a renewal of a contract of insurance: Provided that nothing in this definition shall apply to any insurance specified in section 2;

"invoice" means a document notifying an obligation to make payment;

"local authority" means-

- (a) any municipal or township council;
- (b) any other body, council, board, committee or institution established or deemed to be established by or under any law which has functions similar to those of the councils mentioned in paragraph (a) and which may levy rates on the value of immovable property within its area of jurisdiction or receive payments for services rendered or to be rendered;

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and

- (c) any water board or water services corporation or any other institution which has powers similar to those of any such board or corporation;

"Minister" means the Minister of Finance;

"money" means-

- (a) coins (other than coins made wholly or mainly from a precious metal other than silver) which the South African Bank has issued or which remain in circulation and any paper currency which by law is legal tender;
- (b) (i) any coin (other than a coin made wholly or mainly from a precious metal) or paper currency of any country other than the Republic of South Africa which is used or circulated or is intended for use or circulation as currency;
- (ii) any bill of exchange, promisory note, bank draft, postal order or money order,

except when disposed of or imported as a collector's piece, investment article or item of numismatic interest;

"motor car" includes any motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or adapted wholly or mainly for the carriage of passengers, but does include-

- (a) vehicles capable of accommodating only one person or suitable for carrying more than 16 persons; or
- (b) vehicles of an unladen mass 3 500 kilograms or more; or
- (c) caravans and ambulances; or
- (d) vehicles constructed for a special purpose other than the carriage of persons and having no accommodation for carrying persons other than such as is incidental to that purpose;

"open market value" in relation to the supply of goods or services, means the open market value thereof determined in accordance with the provisions of section 3;

"output tax", in relation to any vendor, means the tax charged under section 7(1)(a) in respect of the supply of goods and services by that vendor;

"person" includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund;

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"precious metal" means gold, silver, platinum, iridium and any other metals of the platinum group and any other metal which the Head of State has by proclamation in the **Gazette** declared to be a precious metal for the purpose of this decree;

"prescribed tax rate" means rate of tax, expressed as a percentage, fixed by State Council;

"public authority" means any department or division of the public service (including the Defence Force, the Police and the Prisons' Service;

"recipient", in relation to any supply of goods or services, means the person to whom the supply is made;

"registration number" as respects any vendor, means the number allocated to him by the Commissioner for the purposes of this decree;

"relative", in relation to a natural person, means the spouse of that person or anybody related to him or to his spouse within the third degree of consanguinity or the spouse of anybody so related, and includes an adopted child;

"rental agreement" means-

- (a) any agreement entered into before, on or after the commencement date for the letting of goods, other than a lease referred to in paragraph (b) of the definition of "instalment credit agreement" in this section or a financial lease as defined in the Sales Tax Act, 1978 (Act 103 of 1978) prior to its repeal; and
- (b) any rental agreement, as defined in the said Act where such agreement is in force on or after the commencement date;

"Republic", in the geographical sense, means the territory of the Republic of Ciskei and includes the territorial waters, the exclusive economic zone and the continental shelf referred to respectively in section 2, 3 and 4 of the Territorial Waters Act, 1986 (Act 12 of 1986);

"residential rental establishment" means any commercial rental establishment in which not less than 70 per cent of the persons to whom domestic goods and services are supplied reside, or are expected to reside, for a period of 45 days or longer;

"resident of the Republic" means a person (other than a company) who is ordinarily resident in the Republic or a company which is a domestic company: Provided that any other person or any other company shall be deemed to be a resident of the Republic to the extent that such person or company carries on in that Republic any enterprise or other activity

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and has a fixed or permanent place in the Republic relating to such enterprise or other activity;

"returnable container" means any container belonging to a class of container in relation to which, at the time of delivery of the contents thereof, ownership of that container is not transferred to the recipient of the contents and a specifically identified amount is usually charged as a deposit by the supplier of the contents upon the express undertaking of the supplier that upon the return of that container such deposit will be refunded or allowed as a credit to such recipient or any other person returning such container;

"Revenue Fund" means the Ciskeian Revenue Fund;

"sale" means an agreement of purchase and sale and includes any transaction or act whereby or in consequence of which ownership of goods passes or is to pass from one person to another;

"second-hand goods" means goods which were previously owned and used, excluding livestock;

"services" means anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods or money;

"specified country" means the Republic of South Africa, the Republic of Bophuthatswana, the Republic of Transkei or the Republic of Venda;

"supplier", in relation to any supply of goods or services, means the person supplying the goods or services;

"supply" includes all forms of supply, irrespective of where the supply is effected, and derivative of "supply" shall be construed accordingly;

"tax" means the tax leviable under section 7;

"taxable supply" means any supply of goods or services which is chargeable with tax under the provisions of section 7(1)(a), including tax chargeable at the rate of zero per cent under section 11;

"tax fraction" means the fraction calculated in accordance with the formula;

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

in which formula "r" is the rate of tax applicable under section 7(1);

"tax invoice" means a document provided as required by section 20;

"tax period", in relation to a vendor, means a tax period determined under section 27;

"this decree" includes the regulations;

"trust fund" means any fund consisting of cash or other assets the administration and control of which is entrusted to any person acting in a

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fiduciary capacity by any person, whether under a deed of trust or by agreement, or by a deceased person under a will made by that person; **"unconditional gift"** means a payment voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment, but does not include any payment made by a public authority or a local authority;

"vendor" means any person who is or is required to be registered under this decree: Provided that, where the Commissioner has under section 23 determined the date from which a person is a vendor, that person shall be deemed to be a vendor from that date;

"welfare organization" means any association not for gain which is registered as a welfare organization under the National Welfare Act, 1987 (Act 18 of 1987) if it carries on or intends to carry on activities consisting of the provision of food, meals, board, lodging, clothing or other necessaries, comforts or amenities to aged or indigent persons, children or physically or mentally handicapped persons.

2. **Financial services.-** (1) For the purposes of this decree the following activities shall be deemed to be financial service:
- (a) The exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise);
 - (b) the issue, payment, collection or transfer of ownership of a cheque or letter of credit;
 - (c) the issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debt security;
 - (d) the issue, allotment or transfer of ownership of an equity security or a participatory security;
 - (e) underwriting or subunderwriting the issue of an equity security, debt security or participatory security;
 - (f) the provision by any person of credit under an agreement (in this subsection referred to as a credit agreement) whereby money or money's worth is provided by that person to another person who agrees to pay in the future a sum or sums exceeding in the aggregate the amount of such money or money's worth;

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- (g) the renewal or variation of a debt security, equity security, participatory security or credit agreement;
 - (h) the provision, taking, variation or release of a guarantee, indemnity, security or bond in respect of the performance of obligations under a cheque, credit agreement, equity security, debt security or participatory security, or in respect of the activities specified in paragraphs (b) to (g);
 - (i) the provision, or transfer of ownership, of a life insurance policy or the provision of reinsurance in respect of any such policy;
 - (j) the provision, or transfer of ownership, of an interest in a superannuation scheme, or the management of a superannuation scheme;
 - (k) the provision or assignment of a futures contract through a futures exchange;
 - (l) the activities of any fund, established under any law for the purpose of promoting horse racing and controlled by the State;
 - (m) the payment or collection on someone else's behalf of any amount of interest, principal, dividend or other amount whatever in respect of any debt security, equity security, participatory security, a credit agreement, any life insurance policy, superannuation scheme or futures contract;
 - (n) agreeing to do, or arranging, any of the activities specified in paragraphs (a) to (m): Provided that the service of providing advice directly in connection with any of the activities specified in paragraph (a) to (m), for which a separate fee is charged, shall not be deemed to be a financial service.
- (2) For the purposes of subsection (1)-
- (i) "cheque" means a cheque as defined in section 1 of the Stamp Duties Act, 1968 (Act 77 of 1968), a postal order, a money order, a traveller's cheque, or any order or authorization (whether in writing, by electronic means, or otherwise) to a financial institution to credit or debit any account;
 - (ii) "currency" means any banknote or other currency of any country, other than when used as a collector's piece, investment article, item of numismatic interest, or otherwise than as a medium of exchange;
 - (iii) "debt security" means any interest in or right to be paid money that is, or is to be, owing by any person, but does not include a cheque;
 - (iv) "equity security" means any interest in or

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- right to a share in the capital of a juristic person or the interest in a close corporation of a member thereof;
- (v) "life insurance policy" means a life policy as defined in section 1 of the Insurance Act, 1943 (Act 27 of 1943) and includes a funeral policy, a home service policy and an industrial policy, also as so defined;
 - (vi) "participatory security" means a unit as defined in section 1 of the Unit Trusts Control Act, 1981 (Act 54 of 1981) but does not include an equity security, a debt security, money or a cheque;
 - (vii) "superannuation scheme" means a scheme whereby provision is made for the payment of benefits by any benefit fund, pension fund, provident fund or retirement annuity fund;
- (3) Notwithstanding the provisions of subsection (2), the terms : debt security", "equity security" and "participatory security" do not include any of the following:
- (a) A life insurance policy or any other policy of insurance;
 - (b) any ownership or interest in land, other than an interest as mortgagee;
 - (c) a share in the share capital of a share block company as defined in section 1 of the Share Blocks Control Act, 1980;
 - (d) any interest of a member of a close corporation which confers on the member a time-sharing interest on the terms and conditions contained in the association agreement of such close corporation;
 - (e) an interest in a superannuation scheme.

3. **Determination of "open market value".-** (1) For the purposes of this section-
- (a) "similar supply", in relation to a supply of goods or services, means any other supply of goods or services that, in respect of the characteristics, quality, quantity, functional components, material and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services;
 - (b) the open market value of a supply shall include any tax charged under section 7(1)(a) on that supply.
- (2) The open market value of any supply of goods or service at any date shall be the consideration in money which the supply of those goods or services

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would generally fetch if supplied in similar circumstances at that date in the Republic, being a supply freely offered and made between persons who are not connected persons.

(3) Where the open market value of any supply of goods or services cannot be determined under subsection (2), the open market value shall be the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in the Republic, being a supply freely offered and made between persons who are not connected persons.

(4) Where the open market value of any supply of goods or services cannot be determined in terms of subsection (2) or (3), the open market value shall be determined in accordance with a method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply of those goods or services.

(5) the open market value of any consideration, not being consideration in money, for a supply of goods or services shall be ascertained in the same manner, with any necessary modifications, as the open market value of any supply of goods or services is ascertained under the provisions of this section.

PART 1

ADMINISTRATION

4. **Decree to be administered by Commissioner.-** (1) The Commissioner shall be responsible for carrying out the provisions of this decree.
(2) A notice in the Gazette that any person has been appointed to hold office as Commissioner for Inland Revenue or to act in that capacity shall be conclusive evidence of such appointment without further proof.
5. **Exercise of powers and performance of duties.-**
(1) The powers conferred and the duties imposed upon the Commissioner by or in terms of the provisions of this decree or any amendment thereof may be exercised or performed by the Commissioner personally or by any officer engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner.
(2) Any decision made and any notice or communication issued or signed by any such officer may be withdrawn or amended by the Commissioner or by the officer concerned and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner.
6. **Secrecy.-** (1) A person employed in carrying out the provisions of this decree shall not-
(a) disclose to any person or his representative any matter in respect of any other person that may in the exercise of his powers or the performance of his duties under the said provisions come to his knowledge; or
(b) permit any person to have access to any records in the possession or custody of the Commissioner,
except in the exercise of his powers or the performance of his duties in terms of this Act or by order of a competent court: Provided that the Auditor-General shall if the performance of his duties in terms of section 41 of the Exchequer and Audit Act, 1985 (Act 28 of 1985) have access to all records and documents in the possession or custody of the Commissioner for the purposes of this decree.
(2) The provisions of subsection (1) shall not be construed as preventing the Commissioner from-
(a) using any information obtained by him in the

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- exercise of his powers or the performance of his duties under this decree for the purposes of any other fiscal law administered by him;
- (b) disclosing such information to the Commissioner for Customs and Excise if he is satisfied that it is required for the prevention or combating of the evasion of any tax, duty or levy imposed under any fiscal law administered by that Commissioner;
 - (c) disclosing to the Head of the department charged with the collection of statistics the name and addresses of vendors who, according to the Commissioner's records, carry on enterprises falling within categories designated by the said Head.
- (3) No person shall in any manner publish or make known to any other person (not being an officer performing his duties under the control, direction or supervision of the Commissioner or the Commissioner for Customs and Excise or the Postmaster-General) the contents or tenor of any instruction or communication given or made by the Commissioner or the Commissioner for Customs and Excise or the Postmaster-General or any such officer in the performance of his or their duties in terms of this decree for or concerning the examination or investigation of the affairs of any person or class of persons or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a person or class of persons: Provided that the provisions of this subsection shall not be construed-
- (a) as preventing any person or his representative who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning his own tax matters; or
 - (b) subject to the provisions of subsections (1) and (4), as in any way limiting the duties or powers of the Commissioner or the Commissioner for Customs and Excise or the Postmaster-General or any such officer; or
 - (c) as preventing any person from publishing or making known anything which has been published or made known by that person or his representative as contemplated in paragraph (a) or by the Commissioner or the Commissioner for Customs and Excise or the Postmaster-General or any such officer in the exercise of his duties or powers.
- (4) The Commissioner for Customs and Excise or any other person employed in carrying out the provisions of any fiscal law administered by the

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said Commissioner shall not disclose any information supplied to that Commissioner under subsection (2)(b) to any person or permit any person to have access thereto, except in the exercise of his powers or the performance of his duties under such a law or by order of a competent court.

- (5) The Head of the department charged with the collection of statistics or any person acting under his direction and control shall not disclose any information supplied to that Head under subsection (2)(c) to any person or permit any person to have access thereto, except in the exercise of his powers or the performance of his duties to collect statistics or to publish statistics in any anonymous form.
- (6) Any person who contravenes the provisions of subsection (1), (3), (4) or (5) shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART II

Value-added tax

- 7. Imposition of value-added tax.-** (1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this decree, there shall be levied and paid for the benefit of the Revenue Fund a tax, to be known as the value-added tax-
- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him,
- (b) on the importation of any goods into the Republic by any person on or after the commencement date, and
- (c) on the supply of any imported services by any person on or after the commencement date,
- calculated at the rate of 10 per cent on the value of the supply concerned or the importation, as the case may be.
- (2) Except as otherwise provided in this decree, the tax payable in terms of paragraph (a) of subsection (1) shall be paid by the vendor referred to in that paragraph, the tax payable in terms of paragraph (b) of that subsection shall be paid by the person referred to in that paragraph and the tax payable in terms of paragraph (c) of that subsection shall be paid by the recipient of the imported services.

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(3) (a) Where any goods manufactured in the Republic, being of a class or kind subject to excise duty under Part 2 of Schedule No.1 to the Customs and Excise Act, have been supplied at a price which does not include such excise duty and tax has become payable in respect of the supply in terms of subsection (1)(a), value-added tax shall be levied and paid at the rate of 10 per cent for the benefit of the Revenue Fund on an amount equal to the amount of such excise duty which, subject to any rebate of such excise duty under the said Act, is paid.

(b) The tax payable in terms of paragraph (a) shall be paid by the person liable in terms of the Customs and Excise Act for the payment of the said excise duty.

(c) The Commissioner and the Commissioner for Customs and Excise shall make such arrangements as they deem necessary-

(i) for the collection (in such manner as they may determine) by the Commissioner for Customs and Excise on behalf of the Commissioner of the tax payable in terms of this subsection; and

(ii) for the exchange of such information as is necessary for the carrying out of such arrangements.

(d) Subject to this decree, the provisions of the Customs and Excise Act relating to the clearance of goods subject to excise duty and the payment of such excise duty shall mutatis mutandis have effect as if enacted in this decree.

8. **Certain supplies of goods or services deemed to be made or not made.**- (1) For the purposes of this decree where-

(a) goods acquired, manufactured, assembled, constructed or produced by a person are sold, under a power exercisable by another person, in or towards satisfaction of a debt owed by the person whose goods are sold, and

(b) the person whose goods are sold has not furnished to the person exercising the power of sale a statement in writing that the supply of those goods would not be a taxable supply if those goods were sold by the person whose goods are sold and stating fully the reasons why that supply would not be a taxable supply,

those goods shall be deemed to be supplied in the course of an enterprise.

(2) Where a person ceases to be a vendor, any goods (other than any goods in respect of the acquisition

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of which by the vendor a deduction of input tax under section 16(3) was denied in terms of section 17(2)) or right capable of assignment, cession or surrender which in either case then forms part of the assets of his enterprise, shall be deemed to be supplied by him in the course of his enterprise immediately before he ceased to be a vendor, unless the enterprise is carried on by another person who in terms of section 53 is deemed to be a vendor: Provided that where such right is so deemed to be supplied that supply shall be deemed to a supply of a service.

(3) A credit agreement to which section 13 of the Credit Agreements Act, 1980 applies shall be deemed not to be a supply of goods or services unless the credit receiver has failed to exercise the right under that section to terminate the agreement within the period available to him under that section.

(4) (a) Any lay-by agreement (as defined in Government Notice No.R1234 of 13 June 1980, as amended by Government Notice No.1814 of 29 August 1980, issued in terms of section 9 of the Price Control Act, 1964 (Act 25 of 1964)) whereby goods are sold for a consideration not exceeding R10 000 and are reserved by deposit for delivery when the purchase price or a determined portion thereof is paid shall not be deemed to be a supply of goods or services unless and until the goods are delivered to the purchaser. (b) Where such agreement is cancelled or terminates for any other reason and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under such agreement, the seller shall for the purposes of this decree be deemed to have supplied a service in respect of such agreement.

(5) A vendor shall be deemed to supply services to any public authority or local authority to the extent of any payment made by the authority concerned to or on behalf of the vendor in respect of the taxable supply of goods or services by the vendor to any person.

(6) Where a local authority makes any supply to any person of goods or services contemplated in paragraph (c)(i), (ii) or (iii) of the definition of "enterprise" in section 1 and no consideration relating specifically to such supply is payable to such local authority by such person, the local authority shall be deemed to make such supply to that person where any amount of rate on the value of fixed property is payable by that person to such local authority.

(7) The disposal of an enterprise as a going concern, or a part thereof which is capable of separate operation, shall be deemed to be a supply

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of goods made in the course or furtherance of such enterprise.

(8) For the purposes of this decree, except section 16(3), where a vendor receives any indemnity payment under a contract of insurance that payment shall, to the extent that it relates to a loss incurred in the course of carrying on an enterprise, be deemed to be consideration received for a supply of services performed on the day of receipt of that payment by that vendor in the course or furtherance of his enterprise: Provided that this subsection shall not apply in respect of any indemnity payment received under a contract of insurance where the supply of services contemplated by that contract is not a supply subject to tax under section 7(1)(a).

(9) Where any vendor in carrying on an enterprise in the Republic transfers goods or provides any service to his branch in respect of which the provisions of paragraph (ii) of the proviso to the definition of "enterprise" in section 1 are applicable, the vendor shall be deemed to supply such goods or service in the course or furtherance of his enterprise.

(10) Where any goods are repossessed under an instalment credit agreement, a supply of such goods shall be deemed to be made by the debtor under such instalment credit agreement to the person exercising his right or repossession and, where such debtor is a vendor, the supply shall be deemed to be made in the course or furtherance of his enterprise unless such goods did not form part of the sales held or used by him for the purposes of his enterprise.

(11) A supply of the use or right to use or the grant of permission to use any goods (whether with or without a driver, pilot, crew or operator) under any rental agreement, instalment credit agreement, charter party, agreement for chartering or any other agreement under which such use or permission to use is granted, shall be deemed to be a supply of goods.

(12) The return of any returnable container in the circumstances as contemplated in the definition of "returnable container" in section 1 shall be deemed not to be a supply of goods or services.

(13) Where any person bets an amount on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed shall be deemed to supply a service to such first-mentioned person.

(14) Where any goods are supplied by a vendor to a person and a deduction under section 16(3) in respect of the acquisition by the vendor of such goods was denied in terms of section 17(2) or would have been denied if section 7 had applied prior to the commencement date, the vendor shall be deemed to have supplied the goods otherwise than in the course or furtherance of his enterprise.

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(15) Where a single supply of goods or services or of goods and services would, if separate considerations had been payable, have been charged with tax in part at the rate applicable under section 7(1)(a) and in part at the rate applicable under section 11, each part of the supply concerned shall be deemed to be a separate supply.

(16) The supply by a vendor-

(a) of any goods (other than fixed property acquired prior to the commencement date by a vendor who is a natural person if such property was used by him mainly as his private residence and no deduction of any amount has been made under section 16(3) in respect of such property); or

(b) of services,

where such goods or services were acquired or imported by him partly for the purpose of consumption, use or supply in the course of making taxable supplies (including supplies which would have been taxable supplies if section 7 had been applicable prior to the commencement date) and were held or utilized by him partly for the said purpose immediately prior to the supply by him of such goods or services, shall be deemed to be made wholly in the course or furtherance of his enterprise.

9. **Time of supply.**- (1) Except as otherwise provided in this decree a supply of goods or services shall be deemed to take place at the time an invoice is issued by the supplier or the recipient in respect of that supply or the time any payment of consideration is received by the supplier in respect of that supply, whichever time is earlier.

(2) A supply of goods or services shall be deemed to take place-

(a) where the supplier and the recipient are connected persons-

(i) in the case of a supply of goods which are to be removed, at the time of the removal; and

(ii) in the case of a supply of goods which are not to be removed, at the time when they are made available to the recipient; and

(iii) in the case of a supply of services, at the time the services are performed:

Provided that this paragraph shall not apply in any case where an invoice is issued in respect of that supply or any payment is made in respect of that supply on or before-

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- (aa) the day on which the return is furnished for the tax period during which that supply would, but for this proviso, have been made; or
- (bb) the last day prescribed by this decree for furnishing the return for the tax period during which that supply would, but for this proviso, have been made;
- (b) where that supply is a supply to which section 8(3) refers, on the day after the last day of the period during which the recipient may exercise the right under section 13 of the Credit Agreements Act, 1980 to terminate the agreement;
- (c) where that supply is a supply to which section 8(4) refers, at the time at which the goods are delivered to the recipient: Provided that, in any case in which a supply of services is deemed to take place under section 8(4)(b), that supply of services shall be deemed to take place at the time that the agreement of sale is cancelled or terminates:
- (d) where the supply is for a consideration in money received by the supplier by means of any machine, meter or other device operated by a coin or token-
 - (i) in the case of such supplier, at the time any such coin or token is taken from that machine, meter or other device by or on behalf of the supplier; and
 - (ii) in the case of the recipient of such supply at the time the coin or token is inserted into that machine, meter or other device by or on behalf of the recipient;
- (e) where the provisions of section 8(9) are applicable in respect of a transfer of goods or the provision of any service by a vendor to his branch at the time the goods are removed and delivered to such branch or the service is performed, as the case may be.
- (3) Notwithstanding anything in subsection (1) or (2) of this section-
 - (a) where goods are supplied under any rental agreement or where services are supplied under any agreement or law which provides for periodic payments, they shall be deemed to be successively supplied for successive parts of the

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- period of the agreement as determined by such law, and each of the successive supplies shall be deemed to take place when payment becomes due or is received, whichever is the earlier;
- (b) where and to the extent that-
- (i) goods are supplied progressively or periodically under any agreement or law which provides for the consideration for that supply to be paid in instalments or periodically and in relation to the progressive or periodic supply of those goods; or
 - (ii) goods or services supplied directly in the construction, repair, improvement, erection, manufacture, assembly or alteration of goods are supplied under any agreement or law which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of the work, those goods or services shall be deemed to be successively supplied, and each such successive supply shall; be deemed to take place whenever any payment in respect of any supply becomes due, is received, or any invoice relating only to that payment is issued, whichever is the earliest;
- (c) where goods are supplied under an instalment credit agreement, that supply shall subject to the provisions of subsection (2)(b), be deemed to take place at the time the goods are delivered or the time any payment of consideration is received by the supplier in respect of that supply, whichever time is earlier;
- (d) where goods consisting of fixed property or any real right therein are supplied under a sale, that supply shall be deemed to take place-
- (i) on the date occurring at the end of the period of six months reckoned from the date on which such sale is entered into: Provided that where the recipient acquires such goods by the exercise of an option to purchase or a right of pre-

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emption, the date on which the sale is entered into shall be deemed to be the date on which the option or right of pre-emption was exercised, or

(ii) where registration of transfer of the goods is effected in a deeds registry, on the date of such registration, or

(iii) on the date on which any payment is made in respect of the consideration for such supply,

whichever date is earliest;

(e) where any supply of a service is deemed to be made as contemplated in section 8(13), the service shall be deemed to be supplied to the extent that payment of any amount of the bet is made and each supply shall be deemed to take place whenever any payment in respect of such supply is received by the supplier.

(4) Subject to the provisions of subsections (2)(a) and (6), where goods are supplied under an agreement, other than an instalment credit agreement or rental agreement, and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time they are appropriated, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest.

(5) Where any goods or any right capable of assignment, cession or surrender is deemed to be supplied by a vendor in the course of his enterprise as contemplated in section 8(2), the time of supply shall be deemed to be the time contemplated in that section.

(6) Where any supply of goods or services is deemed to be made as contemplated in section 18(1), the time of supply shall be deemed to be the time that the goods or services are applied as contemplated in the said subsection.

(7) The supply of goods or services which is deemed to be made by any vendor as contemplated in section 18(3) shall be deemed to take place at the end of the month in respect of which the cash equivalent of the benefit or advantage concerned or a portion of such cash equivalent, is required to be included in the remuneration of the employee or office holder to whom the benefit or advantage is granted or,

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where such cash equivalent is not required to be included in the remuneration of the employee or office holder on the last day of the year of assessment as applicable to that employee or office holder, during which the benefit or advantage was granted to him.

(8) Where a supply of repossessed goods is deemed by section 8(10) to be made by a debtor under an instalment credit agreement, the time of that supply shall be deemed to be the day on which the goods are repossessed or, where the debtor may under any law be reinstated in his rights and obligations under such agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.

10. Value of supply of goods or services.- (1) For the purposes of this decree the following provisions of this section shall apply for determining the value of any supply of goods or services.
- (2) The value to be placed on any supply of goods or services shall, save as is otherwise provided in this section, be the value of the consideration for such supply, as determined in accordance with the provisions of subsection (3), less so much of such value as represents tax: Provided that
- (i) there shall be excluded from such consideration the value of any postage stamp as defined in section 1 of the Post Office Act, 1958 (Act 44 of 1958), when used in the payment of consideration for any service supplied by the Department of Posts and Telecommunications;
 - (ii) where the portion of the value of the said consideration which represents tax is not accounted for separately by the vendor, the said portion shall be deemed to be an amount equal to the tax fraction of that consideration.
- (3) The value of any consideration referred to in this section shall be-
- (a) to the extent that such consideration is in money, the amount of the money; and
 - (b) to the extent that such consideration is not a consideration in money, the open market value of that consideration.
- (4) Where-
- (a) a supply is made by a vendor for no consideration or for a consideration in money which is less than the open market value of the supply, and
 - (b) the supplier and recipient are connected

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- persons in relation to each other, and
- (c) the recipient is not entitled under section 16(3) to make a deduction in respect of that supply,

the consideration in money for the supply shall be deemed to be the open market value of the supply: Provided that this subsection shall not apply to the supply of a benefit or advantage of employment contemplated in section 18(3).

(5) Where goods or services are deemed to be supplied by a vendor in terms of section 8(2) or (9), the supply shall be deemed to be made for a consideration in money equal to the lesser of-

- (a) the cost to the vendor of the acquisition, manufacture, assembly, construction or production of such goods or services, including-

(i) any tax charged in respect of the supply to the vendor of such goods or services or of any components, materials or services utilized by him in such manufacture, assembly, construction or production;

(ii) where such goods or any right referred to in section 8(2), when held by the vendor, constituted trading stock, any further costs (including tax) incurred by him in respect of such goods or right; and

(iii) any costs (including tax) incurred by the vendor in respect of the transportation or delivery of such goods or the provision of such services in connection with the transfer of such goods or the provision of such services as contemplated in section 8(9); or

- (b) the open market value of such supply.

(6) Where goods are supplied under an instalment credit agreement, the consideration in money for the supply shall be deemed to be the cash value of that supply.

(7) Where goods or services are deemed by section 8(1) to be supplied by a vendor, the supply shall, subject to the provisions of subsection (8), be deemed to be made for consideration in money equal to the open market value of such supply.

(8) Where any repairs, maintenance or insurance in respect of a motor vehicle are deemed to be supplied by a vendor by section 18(1), such supply shall be deemed to be made for a consideration in money equal to the cost (including tax) to such vendor of acquiring such repairs, maintenance or

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insurance: Provided that, where such vendor does not maintain accurate data for the purposes of calculating such consideration in money, such supply shall be deemed to be made for a consideration in money equal to the amount determined in the manner prescribed by the Minister in the Gazette for the category of motor vehicle concerned.

(9) Where goods or services are deemed by section 18(2) to be supplied by a vendor, the supply shall be deemed to be made for a consideration in money determined in accordance with the formula

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

in which formula-

"A" represents the lesser of-

- (i) (aa) the cost of those goods or services, including any tax charged in respect of those goods or services; or
- (bb) where the vendor was at some time after the acquisition of such goods or services deemed by section 18(4) to have been supplied with such goods or services, the amount which was represented by "B" in the formula contemplated in section 18(4) when such goods or services were deemed to be supplied to the vendor; or
- (cc) where the vendor was at some time after the acquisition of the goods or services required to make an adjustment contemplated in section 18(2) or (5), the amounts then represented by "A" in the said formula or by "B" in the formula contemplated in section 18(5) respectively, in the most recent adjustment made under section 18(2) or (5) by the vendor prior to such deemed supply of goods or services; and
- (ii) the open market value of the supply of those goods or services at the time any reduction in the extent of the consumption or use of the goods is deemed by section 18(6) to take place;

"B" represents the percentage that the use or application of the goods or services for the purposes of making taxable supplies was of the total use or application of such goods

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or services determined under section 17(1), section 19(4) or (5) or this subsection, whichever was applicable in the period immediately preceding the 12 month period contemplated in "C": and

"C" represents the percentage that, during the 12 month period during which the decrease in use or application of the goods or services is deemed to take place, the use or application of the goods or services for the purposes of making taxable supplies was of the total use or application of the goods: Provided that, where the percentage contemplated in "B" does not exceed the said percentage by more than 10 per cent of the total use or application the said percentage shall be deemed to be the percentage determined in "B":

- (10) For the purposes of this decree-
- (a) where domestic goods and services are supplied by a commercial rental establishment for a period exceeding 45 days the value of the portion of the supply as relates to that part of the period of the supply as exceeds 45 days shall (unless the provisions of paragraph (b) are applicable) be deemed to be 60 per cent of the value of the supply for the said part, as determined before applying this paragraph;
 - (b) where domestic goods and services are, by agreement between the supplier and the recipient, supplied by a residential rental establishment for a period of 45 days or longer or for successive periods which will in the aggregate exceed 45 days, the value of the supply of such goods and services shall, as from the commencement of the supply, be deemed to be 60 per cent of the value of the supply, as determined before applying this paragraph;
 - (c) where goods and services are supplied by a commercial rental establishment at an inclusive charge for domestic goods and services and also for meals or other services, such inclusive charge shall be apportioned between-
 - (i) such domestic goods and services, and
 - (ii) such meals and other services,and the respective value of the supply of such domestic goods and services and the supply of such meals or other services

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shall be determined accordingly: Provided that the amount apportioned to such meals or other services shall, unless the Commissioner, having regard to the circumstances of the case, otherwise directs, not be less than 20 per cent of such inclusive charge.

(11) Where a service is under section 8(4)(b) deemed to be supplied, the consideration in money for the supply shall be deemed to be an amount equal to the amount retained or recovered as contemplated in that section.

(12) Where any supply of goods is a supply which would, but for the proviso to section 11(1), be charged with tax at the rate of zero per cent, the consideration in money for that supply shall be deemed to be an amount equal to the purchase price of those goods to the supplier: Provided that in any case where the deduction of input tax referred to in that proviso has been made by any other person (where that supplier and that other person are connected persons), the consideration in money for that supply shall be deemed to be an amount equal to the greater of the purchase price of those goods to that supplier and the purchase price of those goods to that other person: Provided further that for the purposes of this subsection the purchase price of any goods shall not be reduced by any amount of input tax deducted under section 16(3) by the supplier or, as the case may be, any other person where the supplier and that other person are connected persons.

(13) Where goods or services are deemed to be supplied by a vendor under section 18(3) the consideration in money for the supply shall be deemed to be an amount equal to the cash equivalent of the benefit or advantage granted to the employee or office holder, as contemplated in section 9(7): Provided that where-

- (i) such benefit or advantage consists of the right to use a motor car, and
- (ii) the vendor was in terms of section 17(2) not entitled to deduct the full amount of input tax in terms of section 16(3) in respect of the acquisition of such motor car,

the consideration in money for the supply shall be deemed to be the amount determined in the manner prescribed by the Minister in the Gazette for the category of motor car used in respect of repairs, maintenance and insurance.

(14) Where services are or are deemed by section 8(5) to be supplied to any public authority or local authority by any vendor, the consideration in money

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for such supply shall be deemed to be the amount of any payment made from time to time by the authority concerned to or on behalf of the vendor as contemplated in the said section.

(15) Where a supply of goods or services is deemed by section 8(6) to be made to any person by any local authority the consideration in money for such supply shall be deemed to be the amount of any payment together with tax made from time to time by such person in respect the rate or levies referred to in section 8(6)(a) or in respect of the levy referred to in section 8(6)(b), as the case may be.

(16) Where by reason of the repossession of goods from a debtor under an instalment credit agreement a supply of such goods is deemed by section 8(10) to be made by that debtor, the consideration in money for that supply shall be deemed to be an amount equal to the balance of the cash value of the goods (being the cash value thereof applied under subsection (6) in respect of the supply of the goods to the debtor under the said agreement) which has not been recovered on the date on which the supply of the goods by the debtor is deemed by section 9(8) to be made: Provided that the said balance shall be deemed to be the amount remaining after deducting from the cash value so much of the sum of the payment made by the debtor under the said agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said instalment credit agreement, may properly be regarded as having been made in respect of the cash value.

(17) Where a service is deemed by section 8(13) to be supplied to any person, the consideration in money for such supply shall be deemed to be the amount that is received in respect of the bet.

(18) Where a right to receive goods or services to the extent of a monetary value stated on any token, voucher or stamp (other than a postage stamp as defined in section 1 of the Post Office Act, 1958 and any token, voucher or stamp contemplated in subsection (19) is granted for a consideration in money, the supply of such token, voucher or stamp shall be disregarded except to the extent (if any that such consideration exceeds such monetary value.

(19) Where any token, voucher or stamp (other than a postage stamp as defined in section 1 of the Post Office Act, 1958) is issued for a consideration in money and the holder thereof is entitled on the surrender thereof to receive goods or services specified on such token, voucher or stamp or which by usage or arrangement entitles the holder to specified goods or services, without any further

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charge, the value of the supply of the goods or services made upon the surrender of such token, voucher or stamp shall be deemed to be nil.

(20) Where any token, voucher or stamp is issued by any vendor for no consideration and the holder thereof is entitled on surrender thereof to a supplier of goods or services to a discount on the price of goods or services supplied to the holder, the value of the supply of such goods or services shall be deemed to exclude the monetary value stated on such token, voucher or stamp.

(21) Where any supply of entertainment is made by a vendor and in terms of section 17 no deduction of input tax was made in terms of section 16(3) in respect of the acquisition by the vendor of goods or services for the purpose of such entertainment, the value of such supply shall be deemed to be nil.

(22) Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

(23) Save as otherwise provided in this section, where any supply is made for no consideration the value of that supply shall be deemed to be nil.

11. **Zero rating.**- (1) Where but for the provisions of this section a supply of goods would be charged with tax under section 7(1)(a), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where-
- (a) the supplier has supplied the goods (being movable goods) in terms of a sale or instalment credit agreement and has exported the goods; or
 - (b) the goods have been supplied in the course of repairing, renovating, modifying, or treating any goods to which subsection 2(ii) or refers and the goods supplied-
 - (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; or
 - (c) the goods are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country; or
 - (d) the goods are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if such goods are

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- used by such lessee or other person exclusively in any commercial, financial, industrial, mining, farming, fishing or professional concern conducted in an export country and payment of rent or other consideration under such agreement is effected from such export country; or
- (e) the supply is to a registered vendor of an enterprise as a going concern or of a part of an enterprise where that part is capable of separate operation; or
 - (f) the supply is to the South African Reserve Bank, the South African Mint Company (Proprietary) Limited or any deposit-taking institution registered in accordance with law, of gold in the form of bars, ingots, buttons, wire, plate or granules or in solution, which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of such bars, ingots, buttons, wire, plate, granules or solution; or
 - (g) the supply is of such goods used or consumed for agricultural, pastoral or other farming purposes as are set forth in Schedule 2, provided such supply is made in compliance with such conditions as may be prescribed in that Schedule; or
 - (h) the goods consist of fuel levy goods as defined in section 1 of the Customs and Excise Act; or
 - (hA) the goods consist of petroleum oil and oils obtained from bituminous minerals known as crude, when supplied for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the Customs and Excise Act and any by-product; or
 - (i) the goods are supplied, as contemplated in section 8(9), by a vendor to his branch situated in an export country in respect of which the provisions of paragraph (ii) of the proviso to the definition of "enterprise" in section 1 are applicable; or
 - (j) the goods consists of-
 - (i) brown bread being wheaten bread comprising a baked or partially baked product consisting mainly of brown wheaten meal and which-
 - (aa) is normally sold as bread or under that designation or is intended for use as bread;
 - (bb) is of any form, shape or size; and
 - (cc) has a mass of more than 100g;

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Provided that such a product which is intended to be used as confectionery shall not be regarded as bread notwithstanding and designation thereof which includes the word "bread" or "loaf"; or

- (ii) maize meal graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal:

Provided that paragraphs (a), (b), (c), (d) and (I) of this subsection shall not apply in respect of any supply of goods by a vendor if in respect of such goods input tax contemplated in paragraph (b) of the definition of "input tax" in section 1 has been deducted in terms of section 16(3) by that vendor or any other person where that vendor and that other person are connected persons.

(2) Where but for this section a supply of services would be charged with tax under section 7(1)(a), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where-

- (a) the services (not being ancillary transport services) comprise the transport of passengers or goods-
 - (i) from a place outside the Republic or a specified country to another place outside the Republic and such countries; or
 - (ii) from a place in the Republic or a specified country to a place in an export country; or
 - (iii) from a place in an export country to a place in the Republic or a specified country; or
- (b) the services comprise the transport of passengers from a place in the Republic or a specified country to another place in the Republic or a specified country to the extent that transport is by aircraft and constitutes "international carriage" as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act 17 of 1946); or
- (c) the services (including any ancillary transport services) comprise the transport of goods from a place in the Republic or a specified country to another place in the Republic or a specified country 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 comprise the insuring or the

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- arranging of the insurance or the arranging of the transport of passengers or goods to which any provision of paragraph (a), (b) or (c) applies; or
- (e) the services comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from or the importation into the Republic or a specified country of goods or the movement' of goods through the Republic or any specified country from one export country to another export country, where such services are supplied directly to a person who is not a resident of the Republic, is not resident nor carrying on business in a specified country and is not a vendor otherwise than through an agent or other person; or
 - (f) the services are supplied directly in connection with land, or any improvement thereto, situated in any export country; or
 - (g) the services are supplied directly in respect of-
 - (i) movable property situated in any export country at the time the services are rendered; or
 - (ii) goods temporarily admitted into the Republic from an export country which are exempt from tax on importation under Item 470.01, 470.02 or 480.00 of Schedule 1; or
 - (iii) goods in respect of which the provisions of paragraph (b) or (c) of the definition of "exported" in section 1 apply; or
 - (iv) the repair, maintenance, cleaning or reconditioning of a foreign-going ship or foreign-going aircraft; or
 - (h) the services comprise-
 - (i) the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while situated in the Republic or a specified country; or
 - (ii) services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft, where the services are supplied directly to a person who is not a resident of the republic, is not resident nor carrying on business in a specified country and is not a vendor otherwise than through an agent or other person; or
 - (i) the services of arranging-
 - (i) the supply of goods as contemplated in paragraph (b) or (c) of the definition

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- of "exported", or
- (ii) the supply of services referred to in paragraph (g)(iv) or (h), or
 - (iii) the transport of goods (including ancillary transport services) within the Republic and the specified countries, for a person who is not a resident of the Republic, is not resident nor carrying on business in a specified country and is not a vendor; or
- (j) the services comprise the repair, maintenance, cleaning or reconditioning of a railway train operated by a person who is not a resident of the Republic, is not resident nor carrying on business in a specified country and is not a vendor; or
- (k) the services are physically rendered elsewhere than in the Republic or a specified country; or
- (l) the services are supplied for and to a person who is not a resident of the Republic or a specified country and who is outside the Republic and the specified countries at the time the services are rendered, not being services which are supplied directly in connection with-
- (i) land or any improvement thereto situated inside the Republic or a specified country; or
 - (ii) movable property situated inside the Republic or a specified country at the time the services are rendered,
- and not being services which are the acceptance by any person of an obligation to refrain from carrying on any enterprise, to the extent that the carrying on of that enterprise would have occurred within the Republic or a specified country; or
- (m) the services comprise-
- (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of intellectual property rights, including patents, designs, trade marks, copyrights, know-how, confidential information, trade secrets or similar rights, or
 - (ii) the acceptance by any person of an obligation to refrain from pursuing or exercising in whole or in part any such rights,
- where and to the extent that those rights are for use outside the Republic and a specified country; or
- (n) the services comprise the carrying on by a

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- welfare organization of the activities referred to in the definition of "welfare organization" in section 1 and those services are in terms of section 8(5) deemed to be supplied by that organization to a public authority or local authority; or
- (o) the services are supplied, as contemplated in section 8(9), by a vendor to his branch situated in an export country in respect of which the provisions of paragraph (ii) of the proviso to the definition of "enterprise" in section 1 are applicable.
 - (p) the services are supplied, as contemplated in section 8(13), by a vendor to any person referred to in that section.
- (3) Where a rate of zero per cent has been applied by any vendor under a provision of this section, the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under that provision as is acceptable to the Commissioner.

12. **Exempt supplies.**- The supply of any of the following goods or services shall be exempt from the tax imposed under section 7(1)(a):
- (a) The supply of any financial services, not being a supply of financial services which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11(2):
 - (b) the supply by any association not for gain of any donated goods or services or any other goods made or manufactured by such association if at least 80 per cent of the value of the materials used in making or manufacturing such other goods consists of donated goods;
 - (c) the supply of any accommodation in a dwelling-
 - (i) under an agreement for the letting and hiring of the accommodation; or
 - (ii) where the supplier is the employer of the recipient, the recipient is entitled to occupy the accommodation as a benefit of his office or employment and his right thereto is limited to the period of his employment or the term of his office or a period agreed upon by the supplier and the recipient;
 - (d) the supply of leasehold land by way of letting (not being a grant or sale of the lease of that land) to the extent that the land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land;

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- (e) the supply of land (together with any improvements to such land existing on the date on which the supplier became contractually obliged to supply such land and such existing improvements to the recipient) where such land is situated outside the Republic and such supply is made by way of sale or by way of letting;
- (i) a body corporate as defined in section 1 of the Share Titles Act, 1986; or
 - (ii) a share block company as defined in section 1 of the Share Blocks Control Act, 1980;
 - (iii) any housing development scheme for retired persons,
- where the cost of supplying such services is met out of contributions levied by such body corporate or share block company or under such housing development scheme, as the case may be: Provided that this paragraph shall not apply where such body corporate or share block company applies in writing to the Commissioner and the Commissioner, having regard to the circumstances of the case, directs that the provisions of this paragraph shall not apply to that body corporate or share clock company: Provided further that this paragraph shall not apply to the services supplied by any body corporate or share block company which manages any property time-sharing scheme;
- (g) the supply by any person in the course of a transport business of any service comprising the transport by that person in a vehicle operated by him of fare-paying passengers and their personal effects by road or railway, not being a supply of any such service which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11 (2) (a);
- (h) (i) the supply by the State or any institution of a public character of any educational services-
- (aa) in respect of primary or secondary educational in any school or pre-primary school education provided in any institution which meets the requirements of any recognized educational authority; or
 - (bb) in any technikon established or deemed to have been established under the Technikon Act, 1984 (Act 15 of 1984);
 - (cc) in any educational institution established by or under any other

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- law of the Republic which is in all material respects similar to a technikon referred to in subparagraph (bb); or
- (dd) in any university established by any law; or
 - (ee) in any permanent institution in the Republic approved by the Minister and which has been formed-
 - (A) for the promotion of adult education, vocational training or technical education; or
 - (B) to promote the education and training of religious or social workers; or
 - (C) for the education or training of physically or mentality handicapped persons;
 - (ii) the supply by the State or any institution of a public character solely or mainly for the benefit of pupils or students of such school, technikon, university or institution of any goods or services necessary for and subordinate and incidental to the supply of any services contemplated in subparagraph (i) of this paragraph (including the supply of board or lodging) where such goods or services are not supplied for a consideration other than the payment of school fees or tuition fees or fees for board or lodging.
 - (iii) the supply by any person of any goods or the supply of services directly connected with such supply of goods, provided the Minister approves that the provisions of this subparagraph may be applied in relation to such person and upon such conditions and subject to such restrictions as the Minister may prescribe.

- 13. Collection of tax on importation of goods, determination of value thereof and exemptions from tax.-** (1) For the purposes of this decree goods shall be deemed to be imported into the Republic on the date on which goods are imported: Provided that goods which are entered for home consumption in terms of the Customs and Excise Act shall be deemed to have been imported on the date on which they are so entered: Provided further that, where any goods have been imported and entered in a licensed Customs and Excise warehouse but have not been entered for whom consumption, any supply of

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such goods before they are entered for home consumption shall be disregarded for the purposes of this decree.

(2) The value to be placed on the importation of goods into the Republic shall be deemed to be-

- (a) where such goods are entered or are required to be entered for home consumption in terms of the Customs and Excise Act, the value thereof for customs duty purposes, plus any duty levied in terms of the said Act in respect of the importation of such goods, plus 10 per cent of the said value; or
- (b) where such goods are not required to be so entered, the amount of the value which would have been used for customs duty purposes had they been subject to customs duty.

(3) The importation of the goods set forth in Schedule 1 to this decree shall be exempt from the tax imposed in terms of section 7(1)(b): Provided that for the purposes of Part A of that Schedule-

- (i) the exemption in respect of the importation into the Republic of such goods as fall under the Items 409.01, 409.02 and 409.06 set out in the said Part shall not apply it at the time of export of such goods-
 - (aa) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or
 - (bb) 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 per cent in terms of section 11, if the supply had taken place on or after the commencement date;
 - (ii) the exemption in respect of the importation of goods contemplated in Item 409.07 of the said Part shall apply only if such goods are not sold by the person sending or removing the goods from the Republic;
 - (iii) the exemption in respect of the importation of goods contemplated in Items 409.04 and 409.07 of the said Part shall apply only to the extent of the value of the goods sent from the Republic on the day they left the Republic.
- (4) Where tax is payable in respect of the importation of goods into the Republic and such goods are not entered and will not require to be entered for home consumption in terms of the Customs and Excise Act and tax has not been paid to the Commissioner for Customs and Excise when the goods were imported, the importer shall within 30 days after the importation of the goods-
- (a) furnish the Commissioner with a declaration (in such form as the Commissioner may

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prescribe) containing such information as may be required; and

- (b) calculate the tax payable on the relevant value at the rate of tax in force on the date of importation of the goods and pay such tax to the Commissioner:

Provided that this subsection shall not apply in respect of the importation by a vendor in the circumstances contemplated in this subsection if the tax payable would be allowable as a deduction in terms of section 16(3)(a)(iii) or section 16(3)(b)(ii).

(5) Except as contemplated in subsection (4) the Commissioner, the Commissioner for Customs and Excise and the Postmaster-General may make such arrangements as they may deem necessary-

- (a) for the collection (in such manner as they may determine) by the Commissioner for Customs and Excise and the Postmaster-General on behalf of the Commissioner of the value-added tax payable in respect of the importation of any goods into the Republic; and
- (b) for the exchange of such information as is necessary for the carrying out of such arrangements.

(6) Subject to the provisions of this decree, the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty shall mutatis mutandis apply as if enacted in this decree, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs and Excise Act.

14. **Collection of value-added tax on imported services, determination of value thereof and exemptions from tax.-** (1) Where tax is payable in terms of section 7(1)(c) in respect of the supply of imported services, the recipient shall within 30 days of the date referred to in subsection (2)-

- (a) furnish the Commissioner with a declaration (in such form as the Commissioner may prescribe) containing such information as may be required; and
- (b) calculate that tax payable on the value of the imported services at the rate of tax in force on the date of supply of the imported services and pay such tax to the Commissioner.

(2) A supply of imported services shall be deemed to take place at the time an invoice is issued by the supplier or recipient in respect of that supply or the time any payment is made by the recipient in respect of the supply, whichever time is the

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earlier.

(3) The value to be placed on the supply of imported services shall, save as otherwise provided in this section, be the value of the consideration for the supply, as determined in terms of section 10(3) or the open market value of the supply, whichever is the greater.

(4) Where a person carries on activities outside the Republic which do not form part of the activities of any enterprise carried on by him and in the course of such first-mentioned activities services are rendered for the purposes of such enterprise which, if rendered by anybody other than the said person, would be imported services, such services shall for the purposes of section 7(1)(c) be deemed to be imported services supplied and received by that person in respect of such enterprise.

(5) The tax chargeable in terms of section 7(1)(c) shall not be payable in respect of-

- (a) a supply which is chargeable with tax in terms of section 7(1)(a) at the rate provided in section 7; or
- (b) a supply which, if made in the Republic, would be charged with tax at the rate of zero per cent applicable in terms of section 11 or would be exempt from tax in terms of section 12.

15. Accounting basis.- (1) Except as hereinafter provided every vendor shall account for tax payable on an invoice basis for the purposes of section 16.

(2) Subject to the provisions of subsection (3) the Commissioner may, on application in writing by a vendor, direct that the vendor account for the tax payable on a payments basis for the purposes of section 16 with effect from the vendor's registration in terms of this decree or, where he has accounted for tax payable on an invoice basis prior to making an application under this subsection, from the commencement of the tax period immediately following the tax period during which that direction is made by the Commissioner, if-

- (a) the vendor is a public authority, local authority or association not for gain; or
- (b) (i) the total value of the vendor's taxable supplies in the period of 12 months ending at the end of any tax period has not exceeded R1 million; or
(ii) the total value of the vendor's taxable supplies in the period of 12 months beginning on the first day of any month

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is not likely to exceed the amount specified in subparagraph (i):

Provided that the provisions of this decree relating to the determination of the value of any supply of goods or services, whether such supply is made before or on or after the commencement date, shall apply for the purposes of this subsection, but no regard shall be had to any tax charged in respect of such supply.

(3) Where the Commissioner has under subsection (2) directed that a vendor account for tax payable on a payments basis and-

(a) the vendor has ceased to satisfy the conditions of subsection (2) under which any such direction may be given and-

(i) the vendor notifies the Commissioner thereof as required by section 25(c);

or

(ii) the Commissioner is otherwise satisfied thereof, or

(b) the vendor has made an application in writing to the Commissioner to account for tax payable on an invoice basis,

the Commissioner shall direct that the vendor account for the tax payable on an invoice basis with effect from the commencement of a future tax period approved by the Commissioner (hereinafter referred to as the changeover period): Provided that for the purposes of paragraph (a) any such vendor shall not cease to satisfy the requirements of subsection (2) where the total value of the vendor's taxable supplies has exceeded or, as the case may be, will exceed the amount specified for the purposes of subsection (2)(b) solely as a consequence of-

(aa) any cessation of or any substantial and permanent reduction in the size or scale of any enterprise carried on by the vendor; or

(bb) the replacement of any plant or other capital asset used in any enterprise carried on by the vendor; or

(cc) abnormal circumstances of a temporary nature.

(4) Where a vendor changes from an invoice basis to a payments basis or from a payments basis to an invoice basis he shall furnish to the Commissioner particulars in the prescribed form calculating the tax payable or refundable in respect of the change in the basis of accounting.

(5) Any vendor to whom subsection (4) applies shall, within the time allowed under this decree for the payment of tax in respect of the changeover period, pay to the Commissioner the tax payable as calculated in accordance with this section.

(6) Where a vendor changes from an invoice basis to

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payments basis, the tax payable shall for the purposes of subsection (5) be-

(a) an amount equal to the aggregate of the input tax deducted under section 16(3) in relation to the tax periods up to and including the tax period immediately preceding the changeover period to the extent that that amount exceeds the aggregate amount of input tax that would have been deducted if the vendor had, for those tax periods, been accounting for tax payable on a payments basis,

reduced by-

(b) an amount equal to the aggregate of the output tax accounted for under section 16(3) in relation to the tax periods up to and including the tax period immediately preceding the changeover period, to the extent that the amount exceeds the aggregate amount of output tax that would have been accounted for if the vendor had, for those tax periods, been accounting for tax payable of a payments basis.

(7) Where a vendor changes from a payments basis to an invoice basis the tax payable shall, for the purposes of subsection (5), be-

(a) an amount equal to the aggregate amount of output tax that would have been accounted for under section 16(3) if the vendor had, in relation to the tax periods up to and including the tax period immediately preceding the changeover period, been accounting for tax payable on an invoice basis, to the extent that that amount exceeds the aggregate of the output tax accounted for in those tax periods,

reduced by-

(b) an amount equal to the aggregate amount of input tax that would have been deducted under section 16(3) if the vendor had, in relation to the tax periods up to and including the tax period immediately preceding the changeover period, been accounting for tax payable on an invoice basis, to the extent that that amount of input tax exceeds the aggregate amount of input tax deducted in those tax periods.

(8) If in relation to any particulars required to be furnished under subsection (4) the amount referred to in subsection (6)(b) exceeds the amount referred to in subsection (6)(a) or the amount referred to in subsection (7)(b) exceeds the amount referred to in subsection (7)(a), the amount of the excess shall be refundable to the vendor by the Commissioner in respect of the changeover period as provided in section 44(1) read with section 16(5).

(9) Where a vendor's basis of accounting is changed

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as contemplated in subsection (2) or (3), the vendor shall prepare lists of debtors and creditors in relation to the vendor's enterprise showing the amounts owing by such debtors and the amounts owing to such creditors as at the end of the tax period immediately preceding the changeover period.

16. Calculation of tax payable.- (1) The tax payable by a vendor shall be calculated by him in accordance with the provisions of this section in respect of each tax period during which he has carried on an enterprise in respect of which he is registered or is required to be registered in terms of section 23.

(2) No deduction of input tax shall be made in terms of this decree in respect of a supply, unless-

- (a) a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with section 20 or 21 and is held by the vendor making that deduction at the time that any return in respect of that supply is furnished; or
- (b) a tax invoice is in terms of section 20(6) or (7) not required to be issued, or a debit note or credit note is in terms of section 21 not required to be issued; or
- (c) sufficient records are maintained as required by section 20(8) where the supply is a supply of second-hand goods or a supply of goods as contemplated in section 8(10) and in either case is a supply to which that section relates:

Provided that, where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this decree, the Commissioner may determine that no deduction for input tax in relation to that supply shall be made unless that tax invoice or debit note or credit note is retained in accordance with the provisions of section 55(2).

(3) Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(b) and (c) and 7(3)(a) the following amounts, namely-

- (a) in the case of a vendor who is in terms of

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- section 15 required to account for tax payable on an invoice basis, the amounts of input tax-
- (i) in respect of supplies of goods and services (not being supplies of second-hand goods to which paragraph (b) of the definition of "input tax" in section 1 applies) made to the vendor during that tax period;
 - (ii) in respect of supplies of second-hand goods to which paragraph (b) of the definition of "input tax" in section 1 applies, to the extent that payment in respect of those supplies has been made during that tax period;
 - (iii) charged in terms of section 7(1)(b) in respect of goods imported into the Republic by the vendor and invoiced or paid, whichever is the earlier, during that tax period;
 - (iv) charged in terms of section 7(3)(a) in respect of goods subject to excise duty as contemplated in that section and invoiced or paid, whichever is the earlier, during that tax period;
 - (v) calculated in accordance with section 21(2)(b) or 21(7) or section 22, as applicable to the vendor;
- (b) in the case of a vendor who is in terms of section 17 required to account for tax payable on a payments basis, the amounts of input tax-
- (i) in respect of supplies of goods and services made to the vendor in respect of which the provisions of section 9(1), 9(3)(a), 9(3)(b) or 9(4) apply, to the extent that payments of consideration in respect of such supplies have been made during the tax period;
 - (ii) charged in terms of section 7(1)(b) in respect of goods imported into the Republic by the vendor or in terms of section 7(3)(a) in respect of goods subject to excise duty as contemplated in that section and paid by the vendor during the tax period;
 - (iii) in respect of supplies of goods and services made to the vendor during the tax period, excluding supplies of goods and services to which subparagraph (i) of this paragraph applies;
 - (iv) calculated in accordance with section 21(2)(b) or 21(7), as applicable to the vendor, to the extent that payments in respect of the tax so calculated have been made during the tax period;

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- (v) calculated in accordance with section 22 as applicable to the vendor;
- (c) an amount equal to the tax fraction of any payment made during the tax period by the vendor to indemnify another person in terms of any contract of insurance: Provided that this paragraph-
 - (i) shall only apply where the supply of that contract of insurance is a taxable supply or where the supply of that contract of insurance would have been a taxable supply if the time of performance of that supply had been on or after the commencement date;
 - (ii) shall not apply where that payment is in respect of the supply of goods or services to the vendor or the importation of any goods by the vendor;
 - (iii) shall not apply where the supply of that contract of insurance is a supply charged with tax at the rate of zero per cent under section 11 and that other person is, at the time that that payment is made, not a vendor and not a resident of the Republic;
 - (iv) shall not apply where that payment results from a supply of goods or services to that other person where those goods are situated outside the Republic or those services are physically performed elsewhere than in the Republic or a specified country at the time of that supply;
- (d) an amount equal to the tax fraction of any amount paid by the supplier of the services contemplated in section 8(13) as a prize or winnings to the recipient of such services;
- (e) an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of the Revenue Fund by the supplier of the services contemplated in section 8(13);
- (f) the amounts calculated in accordance with section 18(4) or (5) in relation to any goods or services applied during the tax period as contemplated in that section;
- (g) any amount of input tax in relation to any supply in respect of which paragraph (a) of, or the proviso to, subsection (2) of this section has operated to deny a deduction of input tax and the vendor has obtained, during the tax period, a tax invoice in relation to that supply; and
- (h) in the case of a vendor who has supplied goods

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or services or who is deemed to have supplied goods or services during that tax period in terms of section 18(1), an amount determined in accordance with the formula

$$A \times B \times C,$$

in which formula-

"A" represents the tax fraction;

"B" represents the lesser of-

(i) (aa) the cost of those goods or services, including any tax charged in respect of those goods or services; or

(bb) where the vendor was at some time after the acquisition of such goods or services deemed under section 18(4) to have been supplied with such goods or services, the amount which was represented by "B" in the formula contemplated in section 18(4) when such goods or services were deemed to be supplied to the vendor; or

(cc) where the vendor was at some time after the acquisition of such goods or services required to make an adjustment contemplated in section 18(2) or (5), the amounts then represented by "A" in the formula contemplated in section 10(9) or "B" in the formula contemplated in section 18(5) respectively, in the most recent adjustment made in terms of section 18(2) or (5) by the vendor prior to such supply of goods or services; and

(ii) the open market value of the supply of those goods or services at the time those goods or services are deemed to be supplied;

"C" represents the percentage that, immediately before the time contemplated in section 9(6), the use or application of the goods or services for the purpose other than that of making taxable supplies was of the total use or application of the goods or services:

Provided that where any vendor is entitled under the preceding provisions of this subsection to

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deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to any later tax period to the extent that it has not previously been deducted by the vendor under this subsection: Provided further that the amount of input tax which, in relation to any supply of goods or services to a vendor, the vendor may deduct in respect of any payment referred to in paragraph (a)(ii) or (b)(i) of this subsection, shall be an amount which bears to the full amount of the input tax relating to that supply the same ratio as the amount of the payment bears to the full value on which tax was payable in respect of the supply.

(4) For the purposes of subsection (3), output tax in relation to a supply made by a vendor shall be attributable to a tax period-

- (a) in the case of a vendor who is in terms of section 15 required to account for tax payable on an invoice basis, where a supply is made or is deemed to be made by him during the tax period; or
- (b) in the case of a vendor who is in terms of section 15 required to account for tax payable on a payments basis-
 - (i) to the extent that payment of consideration has been received by the vendor during the tax period in respect of a supply of goods or services in respect of which the provisions of section 9(1), 9(3)(a), 9(3)(b), 9(3)(d), 21(2)(a) or 21(6) apply;
 - (ii) where a supply of goods or services is made or deemed to be made during the tax period by that vendor, not being a supply of goods or services to which subparagraph (i) of this paragraph applies.

(5) If, in relation to any tax period of any vendor, the aggregate of the amounts that may be deducted under subsection (3) from the sum referred to in that subsection, the amount (if any) refundable to the vendor under section 15(8), the amount (if any) brought forward from the tax period preceding the firstmentioned tax period as provided in paragraph (ii) of the proviso to section 44 (1) and the amount (if any) credited under section 44(4) to the vendor's account during the first-mentioned tax period, exceeds the said sum, the amount of the excess shall, subject to the provisions of this decree, be refundable to the vendor by the Commissioner as provided in section 44(1).

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17. Permissible deductions in respect of input tax.-

(1) Where goods or services are acquired or imported by a vendor partly for consumption, use or supply (hereinafter referred to as the intended use) in the course of making taxable supplies and partly for another intended use and tax has become payable in respect of the supply to him or the importation by him, as the case may be, of such goods or services or in respect of such goods under section 7(3), the extent to which such tax is input tax as contemplated in the definition of "input tax" in section 1 shall be an amount which bears to the full amount of such tax the same ratio as the intended use of such goods or services in the course of making taxable supplies bears to the total intended use of such goods or services: Provided that-

- (i) where the intended use of goods or services in the course of making taxable supplies is equal to not less than 90 per cent of the total intended use of such goods or services, the goods or services concerned shall for the purposes of this decree be deemed to have been acquired wholly for the purpose of making taxable supplies; and
- (ii) where goods or services are deemed by section 9(3)(b) to be successively supplied, the extent to which the tax relating to any payment referred to in that section is input tax may be estimated where the calculation cannot be made accurately until the completion of the supply of the goods or services, and in such case such estimate shall be adjusted on completion of the supply, any amount of input tax which has been overestimated being accounted for as output tax in the tax period during which the completion occurs and any amount of input tax which has been underestimated being accounted for as input tax in that period.

(2) Notwithstanding anything in this decree to the contrary, a vendor shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16(3) any amount of input tax-

- (a) in respect of goods or services acquired by such vendor for the purposes of entertainment: Provided that this paragraph shall not apply where-
 - (i) such goods or services are acquired by the vendor wholly or mainly for making taxable supplies in the ordinary course

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- of an enterprise which continuously or regularly supplies entertainment for a consideration and for which supply of entertainment a charge which covers the cost of such entertainment is made by such vendor to the recipient;
- (ii) such goods or services are acquired by the vendor for the consumption or enjoyment by an employee or office holder of such vendor in respect of personal subsistence in respect of any night that such employee or office holder is by reason of the duties of his employment or office obliged to spend away from his usual place of residence in the Republic;
 - (iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger in such conveyance during a journey, where such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such service is a taxable supply;
 - (iv) such goods or services consist of a meal or refreshment supplied by the vendor as organizer of a meeting, seminar or similar event to a participant in such meeting, seminar or similar event, the supply of such meal or refreshment is made during the course of or immediately before or after such meeting, seminar or similar event and a charge which covers the cost of such meal or refreshment is made by the vendor to the recipient;
 - (v) such goods or services are acquired by a local authority for the purpose of providing sporting or recreational facilities or public amenities to the public;
 - (vi) such goods or services are acquired by a welfare organization for the purpose of making supplies in the furtherance of its aims and objects; or
- (b) in respect of any fees or subscriptions paid by the vendor in respect of membership of any club, association or society of a sporting, social or recreational nature; or
 - (c) in respect of any motor car supplied to or imported by the vendor: Provided that this paragraph shall not apply where such motor car

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is acquired by the vendor exclusively for the purpose of making a taxable supply of such motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether such supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration: Provided further that for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply.

(3) Notwithstanding anything in section 16(4), where a vendor has made a supply of goods as contemplated in section 8(10) and in respect of the acquisition thereof by the vendor a deduction of input tax under section 16(3) was denied in terms of subsection (2) of this section, the vendor shall not be required to account for output tax in relation to such supply.

18. **Adjustments.-** (1) Subject to the provisions of section 8(2), where-
- (a) goods or services have been supplied to or imported by a vendor, or
 - (b) goods have been manufactured, assembled, constructed or produced by him, or
 - (c) goods or services were deemed by subsection (4) to have been supplied to him,
- (not being goods or services in respect of the acquisition of which by the vendor a deduction of input tax was denied by section 17(2) or would have been denied if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such vendor or wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose, such goods or services shall, if they are subsequently applied by him (otherwise than in the circumstances contemplated in section 8(9) wholly for a purpose other than the said purpose be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise.
- (2) Where-
- (a) goods or services have been supplied to or imported by a vendor, or
 - (b) goods have been manufactured, assembled, constructed or produced by him, or
 - (c) goods or services were deemed by subsection

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(4) to have been supplied to him, (not being goods or services in respect of the acquisition of which by the vendor a deduction of input tax was denied by section 17(2) or would have been denied if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such vendor wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose such goods or services shall, if the extent of the application or use of such goods or services in the course of making taxable supplies is subsequently reduced in relation to their total application or use, be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise at the time at which such reduction is deemed by subsection (6) to take place: Provided that this subsection shall not apply to any capital goods or services which cost less than R40 000 excluding tax or where such goods or services were deemed to be supplied to the vendor by subsection (4) if the amount which was represented by "B" in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such vendor.

(3) Notwithstanding anything in this section, to the extent that any vendor has or is deemed to have granted a benefit or advantage to an employee or the holder of any office which in terms of the Income Tax Act is to be included in his income, and such benefit or advantage consists of a supply of goods or services, the granting of that benefit or advantage shall be deemed to be a supply of goods or services made by the vendor in the course of an enterprise carried on by the vendor: Provided that this subsection shall not apply to any such benefit or advantage to the extent that it has arisen by virtue of any supply of goods or services which is an exempt supply in terms of section 12 of this Act or is supply which is charged with tax at the rate of zero per cent in terms of section 11 of this Act or is a supply of entertainment: Provided further that this subsection shall not apply to any such benefit or advantage to the extent that it is granted by the vendor in the course of making exempt supplies.

(4) Where-

- (a) goods or services have been supplied to or imported by a vendor; or
- (b) goods have been manufactured, assembled, constructed or produced by him; or
- (c) goods or services are deemed by subsection (1)

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or section 8(2) to have been supplied to him, (not being goods or services in respect of the acquisition of which by a person a deduction of input tax was denied or would have been denied by section 17(2) if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced or applied by such vendor wholly for purposes other than that of consumption, use or supply in the course of making taxable supplies and such goods or services are subsequent to the commencement date applied in any tax period by that person or, where he is a member of a partnership, by the partnership, wholly or partly for consumption, use or supply in the course of making taxable supplies, those goods or services shall be deemed to be supplied in that tax period to that person or the partnership, as the case may be, and the Commissioner shall allow that person or the partnership, as the case may be, to make a deduction in terms of section 16(3) of an amount determined in accordance with the formula

A X B X C,

in which formula-

"A" represents the tax fraction;

"B" represents the lesser of-

- (i) the cost of those goods or services, including any tax charged in respect of those goods or services; and
- (ii) the open market value of the supply of those goods or services at the time when the supply is deemed to be made; and

"C" represents the ratio that, immediately after the supply so deemed to be made, the intended use of the goods or services (as contemplated in section 17(1) in the course of making taxable supplies bears to the total intended use of those goods or services, expressed as a percentage: Provided that where the intended use of goods or services in the course of making taxable supplies is equal to not less than 90 per cent of the total intended use of such goods or services such percentage shall be deemed to be 100 per cent.

(5) Where-

- (a) goods or services have been supplied to or imported by a vendor, or
- (b) goods have been manufactured, assembled, constructed or produced by him, or
- (c) goods or services are deemed by subsection (4) to have been supplied to him,

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(not being goods or services in respect of the acquisition of which by the vendor a deduction of input tax was denied by section 17(2) or would have been denied if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced or applied by such vendor partly for the purpose of consumption, use or supply in the course of making taxable supplies, such goods or services shall, if the extent of the application or use of such goods or services in the course of making taxable supplies is subsequent to the commencement date increased in relation to their total application or use, be deemed to be supplied to him, and the Commissioner shall allow the vendor to make a deduction in terms of section 16(3), in the tax period during which such increase is deemed by subsection (6) to take place, of an amount determined in accordance with the formula

$$A \times B \times (C-D),$$

in which formula-

"A" represents the tax fraction;

"B" represents the lesser of-

(i) (aa) the cost including any tax charged in respect of those goods or services, to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services; or

(bb) where goods or services were deemed by subsection (4) to have been supplied to the vendor, the amount which was represented by "B" in the formula contemplated in that subsection when such goods or services were deemed to be supplied to the vendor; or

(cc) where the vendor was at time after the acquisition of the goods or services required to make an adjustment contemplated in subsection (2) or this subsection the amounts represented by "A" in the formula contemplated section 10(a) or by "B" in the formula contemplated in this subsection respectively, in the most recent adjustment made under subsection (2) or this subsection by the vendor prior to such supply of goods or services so deemed to be made; and

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(ii) the open market value of the supply of those goods or services at the time any increase in the extent of the use or application of the goods or services is deemed by subsection (6) to take place;

"C" represents the percentage that, during the 12 month period during which the increase in use or application of the goods or services for the purposes of making taxable supplies was of the total use or application of the goods: Provided that where the said percentage does not exceed the percentage contemplated in "D" by more than 10 per cent of the total use or application, the said percentage shall be deemed to be the percentage determined in "D";

"D" represents the percentage that the use or application of the goods or services for the purposes of making taxable supplies was of the total use or application of such goods or services determined in terms of section 17(1), section 10(9) or subsection (4) of this section or this subsection, whichever, was applicable in the period immediately preceding the 12 month period contemplated in "C":

Provided that this subsection shall not apply to any capital goods or services which cost less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the person by subsection (4) if the amount which was represented by "B" in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such person.

(6) For the purposes of subsections (2) and (5) any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on the last day of the vendor's year of assessment as defined in section 1 of the income Tax Act or, if the vendor is not an income tax payer, on the last day of February: Provided that, where a vendor who is not an income tax payer draws up annual financial statements in respect of a year or other period ending on a date other than the last day of February, any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on such first-mentioned date.

(7) For the purposes of subsections (2) and (5) the extent of the application or use of any goods or services for the purpose of making taxable supplies shall be determined with reference to the

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application or use of such goods or services during the 12 month period ending on the day any reduction or increase in the extent of the application or use of such goods or services is deemed by subsection (6) to have taken place: Provided that, where any goods or services are acquired, manufactured, assembled, constructed or produced by a vendor or are deemed under subsection (4) to have been supplied to that vendor during such 12 month period, the extent of the application or use of such goods or services shall be determined with reference to the period ending on the day contemplated in subsection (6) and commencing on the date such goods or services are acquired, manufactured, assembled, constructed or produced by the vendor or are deemed to be supplied to the vendor under subsection (4): Provided further that where the period between the commencement date and the date contemplated in subsection (6) is less than a 12 month period it shall for the purposes of this section be deemed to be a 12 month period.

19. Goods or services acquired before incorporation.-

Any company, being a vendor, shall, where any amount of tax has been charged in terms of section 7 in relation to the acquisition of goods or services for or on behalf of that company or in connection with the incorporation of that company and those goods or services were acquired prior to incorporation by a person who-

- (a) was reimbursed by the company for the whole amount of the consideration paid for the goods or services, and
- (b) acquired those goods or services for the purpose of an enterprise to be carried on by the company and has not used those goods or services for any purpose other than carrying on such enterprise,

be deemed to be the recipient of the goods or services and to have paid the tax so charged as if the supply or the payment of the tax had been made during the tax period in which the reimbursement referred to in paragraph (a) is made: Provided that this section shall not apply in relation to any goods or services where-

- (i) the supply of those goods or services by that person to the company is a taxable supply or is a supply of second-hand goods not being a taxable supply; or
- (ii) those goods or services were so acquired more than six months prior to the date of incorporation of the company; or
- (iii) the company does not hold sufficient records

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to establish the particulars relating to the deduction to be made.

20. **Tax invoices.**- (1) Except as otherwise provided in this section a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10) to a recipient, being a registered vendor, shall at their request of the recipient provide that recipient within 21 days after receiving that request with a tax invoice containing such particulars as are specified in this section: Provided that-

- (i) it shall not be lawful to issue more than one tax invoice for each taxable supply;
- (ii) if a vendor claims to have lost the original tax invoice, the supplier or the recipient, as the case may be, may provide a copy clearly marked "copy".

(2) Where a recipient, being registered vendor, creates a document containing the particulars specified in this section and purporting to be a tax invoice in respect of a taxable supply of goods or services made to the recipient by a supplier, being a registered vendor, that document shall be deemed to be a tax invoice provided by the supplier under subsection (1) of this section where-

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the taxable supplies or taxable supplies of a specified category to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any taxable supply to which this subsection applies; and
- (c) such document is provided to the supplier and a copy thereof is retained by the recipient:

Provided that, where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this decree.

(3) Where a supply of goods is deemed by section 8(10) to be made and both the recipient and the supplier in relation to that supply are registered vendors, the recipient shall, within 21 days after the day on which such supply is deemed by section 9(8) to be made, create and furnish to the supplier a document which contains the particulars specified in this section and such document shall for the purpose of this Decree be deemed to be a tax invoice provided by the supplier under subsection

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(1) of this section.

(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice shall contain the following particulars:

- (a) The words "tax invoice" in a prominent place;
- (b) the name, address and registration number of the supplier;
- (c) the name and address of the recipient;
- (d) an individual serialized number and the date upon 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;
- (g) either-
 - (i) the total amount of the tax charged, the consideration excluding tax, and the consideration inclusive of tax, for the supply; or
 - (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply, a statement that it includes a charge in respect of the tax and the rate at which the tax was charged.

(5) Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed R200 a tax invoice shall contain the particulars specified in that subsection or the following particulars:

- (a) The words "tax invoice" in a prominent place;
- (b) the name and registration number of the supplier;
- (c) an individual serialized number and the date upon which the tax invoice is issued;
- (d) a description of the goods or services supplied;
- (e) the consideration for the supply and either the amount of tax charged or a statement that it includes a charge in respect of tax:

Provided that this subsection shall not apply to a supply that is charged with tax under section 11.

(6) Notwithstanding any other provision of this decree, a supplier shall not be required to provide a tax invoice if the total consideration for a supply is in money and does not exceed R20.

(7) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies and that it would be impractical to require that a full tax invoice be issued in terms of this section, the Commissioner may, subject to such conditions as the Commissioner may consider

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necessary, direct-

- (a) that any one or more of the particulars specified in subsection (4) or (5) shall not be contained in a tax invoice; or
- (b) that a tax invoice is not required to be issued.

(8) Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods or of goods as contemplated in section 8(10) to a recipient, being a registered vendor, the recipient shall maintain sufficient record to enable the following particulars to be ascertained:

- (a) The name and address of the supplier;
- (b) the date upon which the second-hand goods were acquired or the goods were repossessed, as the case may be;
- (c) a description of the goods;
- (d) the quantity or volume of the goods;
- (e) the consideration for the supply :

Provided that this subsection shall not require that recipient to keep such records where the total consideration for that supply is in money and does not exceed R20.

21. **Credit and debit notes.-** (1) This section shall apply where, in relation to the supply of goods or services by any registered vendor-

- (a) that supply has been cancelled; or
- (b) the nature of that supply has been fundamentally varied or altered; or
- (c) the previously agreed consideration for that supply has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
- (d) the goods are services or part of the goods or services supplied (excluding a returnable container) have been returned to the supplier,

and the supplier has-

- (i) provided a tax invoice in relation to that supply and the amount shown therein as tax charged on that supply is incorrect in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the above-mentioned events; or
- (ii) furnished a return in relation to the tax period in respect of which output tax on that supply is attributable and has accounted for an incorrect amount of output tax on that supply in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or

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more of the above-mentioned events.

(2) Where a supplier has accounted for an incorrect amount of output tax as contemplated in subsection (1), that supplier shall make an adjustment in calculating the tax payable by that supplier in the return for the tax period during which it has become apparent that the output tax is incorrect and if-

- (a) the output tax properly chargeable in relation to that supply exceeds the output tax actually accounted for by the supplier, the amount of that excess shall be deemed to be tax charged by that supplier in relation to a taxable supply attributable to the tax period in which the adjustment is to be made and shall not be attributable to any prior tax period; or
- (b) the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, that supplier shall make a deduction in terms of section 16(3) in respect of the amount of that excess (such amount being deemed for the purposes of that section to be input tax): Provided that the said deduction shall not be made where the excess tax has been borne by a recipient of goods or services supplied by the supplier and the recipient is not a vendor unless the amount of the excess tax has been repaid by the supplier to the recipient, whether in cash or by way of a credit against any amount owing to the supplier by the recipient.

(3) Subject to this section, where a tax invoice has been provided as contemplated in subsection (1)(i) and-

- (a) the amount shown as tax charged in that tax invoice exceeds the actual tax charged in respect of the supply concerned, the supplier shall provide the recipient with a credit note containing the following particulars:
 - (i) The words "credit note" in a prominent place;
 - (ii) the name, address and registration number of the vendor;
 - (iii) the name and address of the recipient;
 - (iv) the date on which the credit note was issued;
 - (v) either-
 - (aa) the value of the said supply shown in the said tax invoice, the correct amount of the value of the supply, the difference between those two amounts and the tax charged in respect of that supply to the extent that it

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- relates to the amount of that difference; or
- (bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the said difference includes a charge in respect of the tax;
- (vi) a brief explanation of the circumstances giving rise to the issuing of the credit note;
 - (vii) information sufficient to identify the transaction to which the credit note refers;
- (b) the actual tax charged in respect of the supply concerned exceeds the tax shown in the tax invoice as charged, the supplier shall provide the recipient with a debit note containing the following particulars:
- (i) The words "debit note" in a prominent place;
 - (ii) the name, address and registration number of the vendor;
 - (iii) the name and address of the recipient;
 - (iv) the date on which the debit note was issued;
 - (v) either-
 - (aa) the value of the said supply shown in the said tax invoice, the correct amount of the value of the supply, the difference between those two amounts and the tax charged in respect of that supply to the extent that it relates to the amount of that difference; or
 - (bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the said difference and a statement that the difference includes a charge in respect of the tax;
 - (vi) a brief explanation of the circumstances giving rise to the issuing of the debit note;
 - (vii) information sufficient to identify the transaction to which the debit note refers:

Provided that-

- (A) it shall not be lawful to issue more than one credit note or debit note for the amount of the excess;
- (B) if any registered vendor claims to have

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lost the original credit note or debit note, the supplier or recipient, as the case may be, may provide a copy clearly marked "copy";

- (C) a supplier shall not be required to provide a recipient with a credit note contemplated in paragraph (a) of this subsection in any case where and to the extent that the amount of the excess referred to in that paragraph arises as a result of the recipient taking up a prompt payment discount offered by the supplier, if the terms of the prompt payment discount offer are clearly stated on the face of the tax invoice.

(4) Where a recipient, being a registered vendor, creates a document containing the particulars specified in this section and purporting to be a credit note or a debit note in respect of a supply of goods or services made to the recipient by a supplier, being a registered vendor, that document shall be deemed to be a credit note or, as the case may be, a debit note provided by the supplier under subsection (3) where-

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the supplies or supplies category to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a credit note or, as the case may be, a debit note in respect of any supply to which this subsection applies; and
- (c) a copy of any such document is provided to the supplier and another copy is retained by the recipient:

Provided that-

- (i) where a credit note is issued in accordance with this subsection, any credit note issued by the supplier in respect of that supply shall be deemed not to be a credit note for the purposes of this decree;
- (ii) where a debit note is issued in accordance with this subsection, any debit note issued by the supplier in respect of that supply shall be deemed not to be a debit note for the purposes of this decree.

(5) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies and that it would be impractical to require that a full credit note or debit note be issued in terms of this section, the Commissioner

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may, subject to any conditions that the Commissioner may consider necessary, direct-

(a) that any one or more of the particulars specified in paragraph (a) or, as the case may be, paragraph (b) of subsection (3) shall not be contained in a credit note or, as the case may be, a debit note; or

(b) that a credit note or, as the case may be, a debit note is not required to be issued.

(6) Where any recipient, being a registered vendor, has been issued with a credit note in terms of subsection (3)(a) or has written or other notice or otherwise knows that any tax invoice which the vendor holds is incorrect as a result of any one or more of the events specified in any of paragraphs (a), (b), (c) or (d) of subsection (1) and has made a deduction of any amount of input tax in any tax period in respect of the supply of goods or services to which the credit note or that notice or other knowledge, as the case may be, relates, the amount of the excess referred to in subsection (3)(a) shall be deemed to be tax charged in relation to a taxable supply made by the recipient attributable to the tax period in which the credit note was issued or that notice or, as the case may be, other knowledge was received, to the extent that the input tax deducted exceeds the output tax properly charged.

(7) Where any recipient, being a registered vendor, has been issued with a debit note in terms of subsection (3)(b) and has made a deduction of any amount of input tax in any tax period in respect of the supply of goods or services to which that debit note relates, the recipient may, subject to the provisions of section 17, make a deduction of input tax in terms of section 16(3) in respect of the amount of the excess referred to in subsection (3)(b) in the tax period in which the debit note is issued, to the extent that the output tax properly charged exceeds the input tax deducted.

22. **Irrecoverable debts.**- (1) Where a vendor-
- (a) has made a taxable supply for consideration in money, and
 - (b) has furnished a return in respect of the tax period for which the output tax on the supply was payable and has properly accounted for the output tax on that supply as required under this decree, and
 - (c) has written off so much of the said consideration as has become irrecoverable,
- the vendor may make a deduction in terms of section 16(3) of that portion of the amount of tax charged

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in relation to that supply as bears to the full amount of such tax the same ratio as the amount of consideration so written off as irrecoverable bears to the total consideration for the supply, the deduction so made being deemed for the purposes of the said section to be input tax: Provided that-

- (i) where tax charged in respect of a supply of goods under an instalment credit agreement has become irrecoverable, any deduction in terms of section 16(3) as provided for in this section, shall be restricted to the tax content of the amount which has become irrecoverable in respect of the cash value of such supply, as applicable in respect of that agreement in terms of section 10(6);
- (ii) the amount which has become irrecoverable in respect of such cash value shall be deemed to be an amount equal to the balance of the cash value remaining after deducting therefrom so much of the sum of the payments made by the debtor in terms of the said agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said instalment credit agreement, may properly be regarded as having been made in respect of the cash value;
- (iii) the said tax content shall be an amount calculated by applying the tax fraction, as applicable at the time the said instalment credit agreement was entered into, to the amount deemed as aforesaid to be irrecoverable in respect of such cash value:

Provided further that the deduction provided for in this subsection shall not be made in terms of section 16(3)-

- (i) in respect of any amount which has become irrecoverable in respect of an instalment credit agreement if the vendor has repossessed the goods supplied in terms of that agreement; or
 - (ii) in the case of any vendor who is required to account for tax payable on a payments basis in terms of section 15, except in relation to any supply made by him to which section 9(2)(b) or section 9(3)(c) applies.
- (2) Where any amount in respect of which a deduction has been made in accordance with subsection (1) is at any time wholly or partly recovered by the vendor, that portion of the amount of such deduction as bears to the full amount of such deduction the same ratio as the amount of the irrecoverable debt recovered bears to the debt written off shall be deemed to be tax charged in relation to a taxable

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supply made during the tax period in which the debt is wholly or partly recovered.

PART III

Registration

23. **Registration of persons making supplies in the course of enterprise.**- (1) Every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered-
- (a) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R150 000;
 - (b) at the commencement of any month where there are reasonable grounds for believing that the total value of the taxable supplies to be made by that person in the period of 12 month reckoned from the commencement of the said month will exceed the abovementioned amount:
- Provided that the total value of the taxable supplies of the vendor within the period of 12 months referred to in subparagraph (a) or the period of 12 months referred to in subparagraph (b) shall not be deemed to have exceeded or be likely to exceed the amount of R150 000 where the Commissioner is satisfied that the said total value will exceed or is likely to exceed such amount solely as a consequence of-
- (i) any cessation of, or any substantial and permanent reduction in the size or scale of, any enterprise carried on by that person;
 - or
 - (ii) the replacement of any plant or other capital asset used in any enterprise carried on by that person; or
 - (iii) abnormal circumstances of a temporary nature.
- (2) Every person who, in terms of subsection (1) becomes liable to be registered shall not later than 21 days after; becoming so liable apply to the Commissioner for registration in such form as the Commissioner may approve and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.
- (3) Notwithstanding the provisions of subsections (1) and (2), every person who satisfies the Commissioner that, on or after the commencement

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date-

- (a) that person is carrying on any enterprise, or
- (b) that person intends to carry on any enterprise from a specified date,

may apply to the Commissioner in the approved form for registration under this decree and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.

(4) Where any person has-

- (a) applied for registration in accordance with subsection (2) or (3) and the Commissioner is satisfied that the person is eligible to be registered, that person shall be a vendor with effect from such date as the Commissioner may determine; or

- (b) not applied for registration in terms of subsection (2) and the Commissioner is satisfied that that person is liable to be registered in terms of this decree, that person shall be a vendor with effect from the date upon which that person first became liable to be registered in terms of this decree: Provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a vendor from such later date as the Commissioner may consider equitable.

(5) Notwithstanding anything in this decree to the contrary, where any enterprise is carried on by any association not for gain in branches or divisions, or separate enterprises are carried on by that association, that association may apply in writing to the Commissioner for any such branch, division or separate enterprise to be deemed to be a separate person for the purposes of this section and, if every such branch, division or separate enterprise maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of that branch, division or separate enterprise, every such branch, division or separate enterprise shall be deemed to be a separate person and not a part of the association and, where any a such branch, division or separate enterprise is deemed to be a separate person under this subsection, any enterprise carried on by that branch or division or any separate enterprise carried on by the association shall to that extent be deemed not to be carried on by the association concerned.

(6) The provisions of this decree relating to the determination of the value of any supply of goods or services, whether such supply is made before or

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on or after the commencement date, shall apply for the purposes of this section but no regard shall be had to any tax charged in respect of any such supply: Provided that any supply of services contemplated in section 11(2)(n) shall for the purposes of this section be deemed not to be a taxable supply.

(7) Where the Commissioner is satisfied that any person who has applied for registration in terms of subsection (3) is not eligible to be registered or should not be registered by reason of the fact that such person-

- (a) has no fixed place of abode or business, or
- (b) does not keep proper accounting records relating to any enterprise carried on by him, or
- (c) has not opened a banking account with any deposit-taking institution, mutual building society or other similar institution for the purposes of any enterprise carried on by him, or
- (d) has previously been registered as a vendor in respect of any enterprise, whether in terms of this decree or in terms of the Sales Tax Act, 1978 but failed to perform his duties under either of the said laws in relation to such enterprise,

the Commissioner may refuse to register the said person as a vendor and shall give written notice to that person of such refusal.

(8) For the purposes of this section "month" means any of the twelve months into which any calendar year is divided.

24. Cancellation of registration.- (1) Subject to the provisions of subsection (2) every vendor shall cease to be liable to be registered where the Commissioner is satisfied that the total value of the vendor's taxable supplies in the period of 12 months commencing at the beginning of any tax period of the vendor will be not more than the amount referred to in section 23(1).

(2) Every vendor who wishes to have his registration cancelled in the circumstances contemplated in subsection (1) may request the Commissioner in writing to cancel his registration and, if the Commissioner is satisfied as contemplated in subsection (1), the Commissioner shall cancel the vendor's registration with effect from the last day of the tax period during which the Commissioner was so satisfied or from such other date as may be determined by the Commissioner and he shall notify the vendor of the date on which

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the cancellation of the registration takes effect.

(3) Every vendor who ceases to carry on all enterprises shall notify the Commissioner of that fact within 21 days of the date of such cessation and the Commissioner shall cancel the registration of such vendor with effect from the last day of the tax period during which all such enterprises ceased or from such other date as may be determined by the Commissioner: Provided that the Commissioner shall not at any time cancel the registration of any such vendor if there are reasonable grounds for believing that the vendor will carry on any enterprise at any time within 12 months from the date of such cessation.

(4) Any notification by a vendor in terms of subsection (3) shall be made in writing to the Commissioner and shall state the date upon which that vendor ceased to carry on all enterprises and whether or not that vendor intends to carry on any enterprise within 12 months from that date.

(5) Where any person has applied for registration under section 23(3)(b) and the Commissioner has registered that person in terms of section 23(4), the Commissioner may cancel that person's registration if that person does not carry on any enterprise on or before the date specified in that person's application.

(6) Where any person has been registered as a vendor in consequence of an application made by him under section 23(3) and subsequent to the registration of that person as a vendor it appears to the Commissioner that such person's registration should be cancelled by reason of any of the circumstances referred to in section 23(7), the Commissioner may cancel such person's registration with effect from a date determined by the Commissioner: Provided that where such person lodges an objection against the Commissioner's decision under this subsection the cancellation of that person's registration shall not take effect until such time as the Commissioner's decision becomes final and conclusive.

(7) The Commissioner shall give written notice to the person concerned of his decision to cancel such person's registration in terms of this section or of his refusal to cancel such registration .

25. **Vendor to notify change of status-** Subject to this decree, every vendor shall, within 21 days and in such form as the Commissioner may prescribe, notify the Commissioner in writing of-
- (a) any change in the name, address, constitution or nature of the principal enterprise or

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- enterprises of that vendor;
- (b) any change of address at or from which, or the name in which, any enterprise is carried on by that vendor;
 - (c) any change whereby that vendor ceases to satisfy the conditions provided in section 15(2), where the Commissioner has given a direction in respect of that vendor in terms of that section;
 - (d) any change whereby the provisions of section 27(3)(a) become applicable in the case of that vendor:

Provided that this section shall not apply to the notification of any changes in the ownership of any company.

- 26. Liabilities not affected by person ceasing to be vendor.-** The obligations and liabilities under this decree of any person in respect of anything done or omitted to be done by that person while that person is a vendor shall not be affected by the fact that that person ceases to be a vendor or by the fact that, notwithstanding his being registered as a vendor, the Commissioner cancels that person's registration as a vendor.

PART IV

Returns, payments and assessments

- 27. Tax period.-** (1) For the purposes of this section-
"Category A" means the category of vendors whose tax periods are periods of two months ending on the last day of the months of January, March, May, July, September and November of the calendar year;
"Category B" means the category of vendors whose tax period are periods of two months ending on the alst day of the months of February, April, June, August, October and December ofthe calendar year;
"Category C" means the category of vendors whose tax periods are periods of one month ending on the last day of each of the 12 months of the calendar year;
("Category D" means the category of vendors whose tax periods are periods of six months ending on the last day of February and August of the calendar year or, where any vendor falling within this category makes written application therefor, onthe last day of such other months as the Commissioner may approve;
- (2) (a) Every vendor, not being a vendor who falls within Cateogry C or D as contemplated in

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subsection (3) or (4), shall fall within Category A or Category B.

(b) The Commissioner shall determine whether such vendor falls within Category A or Category B and notify the vendor accordingly.

(c) The determinations made by the Commissioner under paragraph (b) shall be made so as to ensure that approximately equal numbers of vendors fall within Category A and category B.

(d) The Commissioner may from time to time direct that any vendor falling within Category A shall, with effect from the commencement of a future period, fall within Category B, or vice versa.

(3) A vendor shall fall within Category C if-

(a) the total value of the taxable supplies of the vendor (including the taxable supplies of any branches, divisions or separate enterprises of the vendor registered as separate vendors under section 50(2))-

(i) has in the period of 12 months ending on the last day of any month of the calendar year exceeded R30 million, or

(ii) is likely to exceed that amount in the period of 12 months beginning on the first day of any such month, or

(b) the vendor has applied in writing for the tax periods in his case to be on a monthly basis, or

(c) the vendor has repeatedly made default in performing any of his obligations in terms of this decree,

and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category C: Provided that a vendor falling within Category C shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner if the vendor has applied in writing to be placed within Category A, B or D and the Commissioner is satisfied that by reason of a change in the vendor's circumstances he satisfies the requirements of this section for placing within Category A, B or D.

(4) A vendor shall fall within Category D if-

(a) the vendor's enterprise consists solely of agricultural, pastoral or other farming activities or the vendor is a branch, division or separate enterprise which is deemed by subsection (5) of section 23 to be a separate person for the purposes of that section and is as such registered under that section or the vendor is a branch, division or separate enterprise registered as a separate vendor

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- under section 50(1);
- (b) the activities of any such branch, division or separate enterprise consist solely of agricultural, pastoral or other farming activities and activities of that kind are not carried on in any other branch, division or separate enterprise of the vendor or the association not for gain, as the case may be, by whom a written application referred to in paragraph (e) is made;
 - (c) the total value of the taxable supplies of the vendor from agricultural, pastoral or other farming activities-
 - (i) has in the period of 12 months ending on the last day of any month of the calendar year not exceeded R1 million; and
 - (ii) is not likely to exceed that amount in the period of 12 months commencing at the end of the period referred to in subparagraph (i);
 - (d) the vendor does not fall within Category C; and
 - (e) the vendor whose enterprise consists solely of agricultural, pastoral or other farming activities or the vendor referred to in section 50(1) or the association not for gain referred to in section 23(5), as the case may be, has made a written application to the Commissioner, in such form as the Commissioner may prescribe, for such first-mentioned vendor or the branch, division or separate enterprise in question, as the case may be, to be placed within Category D,

and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category D: Provided that a vendor falling within Category D shall cease to fall within that Category, with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in paragraph (e) for the vendor to be placed within Category A, B or C or the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B or C.

(5) For the purposes of subsection (3)(a) and subsection (4)(c)-

- (a) the provisions of this decree relating to the determination of the value of any supply of goods or services, whether such supply is made before or on or after the commencement date, shall apply for the purposes of this

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- paragraph, but no regard shall be had to any tax charged in respect of such supply; and
- (b) the total value of the taxable supplies of a vendor within any period of 12 months referred to in subsection (3)(a) or (4)(c) shall not be deemed to have exceeded or to be likely to exceed the amount of R30 million referred to in subsection (3)(a) or the amount of R1 million referred to in subsection (4)(c), as the case may be, where that total value exceeds or is likely to exceed that amount, as the case may be, solely as a consequence of-
- (i) any cessation of, or any substantial or permanent reduction in the size or scale of, any enterprise carried on by the vendor; or
 - (ii) the replacement of any plant or other capital asset used in any enterprise carried on by the vendor; or
 - (iii) abnormal circumstances of a temporary nature.

(6) the tax periods applicable to any vendor shall be the tax periods applicable to the Category within which the vendor falls as contemplated in this section: Provided that-

- (i) the first such period shall commence on the commencement date or, where any person becomes a vendor on a later date, such later date;
- (ii) any tax period ending on the last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last day, end within seven days before or after such last day;
- (iii) the first day of any tax period of the vendor subsequent to the vendor's first tax period shall be the first day following the last day of the vendor's preceding tax period.

28. Returns and payments of tax.- (1) Every vendor shall, within the period ending on the twenty-fifth day of the first month commencing after the end of a tax period relating to such vendor or, where such tax period ends on or after the first day and before the twenty-fifth day of a month, within the period ending on such twenty-fifth day-

- (a) furnish the Commissioner with a return (in such form as the Commissioner may prescribe) reflecting such information as may be required for the purpose of the calculation of tax in terms of section 16; and

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- (b) calculate the amounts of such tax in accordance with the said section and pay the tax payable to the Commissioner or calculate the amount of any refund due to the vendor:

Provided that, where payment of the full amount of the tax is effected by means of an electronic transfer on or before the last business day of the month during which the said twenty-fifth day falls, the period within which the return is required to be rendered and the tax is required to be calculated and paid shall be deemed to end on the day on which such payment is received.

(2) Every vendor who is registered in terms of the provisions of Part III shall within the period allowed by subsection (1) of this section furnish the return referred to in that subsection in respect of each tax period relating to such vendor, whether or not tax is payable or a refund is due in respect of such period.

(3) The Commissioner may, having regard to the circumstances of any case but subject to the provisions of section 39, extend the period within which such return is to be furnished or such tax is to be paid.

(4) For the purposes of this section "month" means any of the twelve months into which any calendar year is divided.

29. **Special returns.**- Where goods are deemed by section 8(1) to be supplied in the course of an enterprise the person selling the goods (hereinafter referred to as the seller), whether or not the seller is a vendor, shall within the period of 30 days after the date on which the sale was made-

- (a) furnish the Commissioner with a return (in such form as the Commissioner may prescribe) reflecting-
- (i) the name and address of the seller and, if registered as a vendor, his registration number.
 - (ii) the name and address of the person whose goods are sold (hereinafter referred to as the owner) and, if the owner is registered under this decree, the registration number of the owner;
 - (iii) the date of the sale ;
 - (iv) the description and quantity of the goods sold;
 - (v) the selling price of the goods and the amount of tax charged in respect of the supply of goods under the sale, being the tax leviable in respect of such

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supply under section 7(1)(a); and
(vi) such other particulars as may be required, and
(b) pay to the Commissioner the amount of tax so charged; and
(c) send or deliver to the owner a copy of the return referred to in paragraph (a),
and the seller and the owner shall exclude from any return which the seller or owner is required to furnish under section 28 the tax charged on the supply of goods under the sale in respect of which the return is furnished under this section.

30. **Other returns.**- In addition to any return required under any other provision of this decree the Commissioner may require any person, whether or not that person is a vendor, to furnish on his own behalf or as an agent or trustee to the Commissioner such further or other return, in a form prescribed by the Commissioner, as may be required by the Commissioner.

31. **Assessments.**- (1) Where-

- (a) any person fails to furnish any return as required by section 28, 29 or 30 or fails to furnish any declaration as required by section 13(4) or 14, or
- (b) the Commissioner is not satisfied with any return or declaration which any person is required to furnish under a section referred to in paragraph (a), or
- (c) the Commissioner has reason to believe that any person has become liable for the payment of any amount of tax but has not paid such amount, or
- (d) any person, not being a vendor, supplies goods or services and represents that tax is charged on that supply, or
- (e) any vendor supplies goods or services and such supply is not a taxable supply or such supply is a taxable supply in respect of which tax is chargeable at a rate of zero per cent and, in either case, that vendor represents that tax is charged on such supply at a rate in excess of zero per cent,

the Commissioner may make an assessment of the amount of tax payable by the person liable for the payment of such amount of tax and the amount of tax so assessed shall be paid by the person concerned to the Commissioner

(2) For the purposes of subsection (1) the person liable for the payment of any amount of tax

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assessable by the Commissioner shall be-

- (a) the person liable for the payment of such tax in terms of section 7; or
 - (b) where the provisions of section 29 are applicable-
 - (i) the seller referred to in that section, unless the provisions of subparagraph (ii) are applicable; or
 - (ii) the owner referred to in that section, if the said seller holds a written statement contemplated in section 8(1)(b) furnished by the said owner and that written statement is incorrect; or
 - (c) where subsection (1)(d) is applicable, the person referred to in that provision; or
 - (d) where subsection (1)(e) is applicable, the vendor referred to in that provision.
- (3) In making such assessment the Commissioner may estimate the amount upon which the tax is payable.
- (4) The Commissioner shall give the person concerned written notice of such assessment, stating the amount upon which tax is payable, the amount of tax payable, the amount of any additional tax payable in terms of section 60 and the tax period (if any) in relation to which the assessment is made, and-
- (a) where the assessment is made on a seller referred to in subsection (2)(b)(i), send a copy of that notice of assessment to the owner referred to in that subsection; or
 - (b) where the assessment is made on an owner referred to in subsection (2)(b)(ii), send a copy of that notice of assessment to the seller referred to in that subsection.
- (5) The Commissioner shall, in the notice of assessment referred to in subsection (4), give notice to the person upon whom it has been made that any objection to such assessment shall be lodged or be sent so as to reach the Commissioner within 30 days after the date of such notice.
- (6) For the purposes of this section, Part II, Part VI and sections 58, 59 60 and 61-
- (a) the person referred to in subsection (1)(d) shall be deemed to be a vendor; and
 - (b) any tax represented to be charged on any supply referred to in subsection (1)(d) or (1)(e) shall be deemed to be tax payable by the vendor concerned and the amount thereof as assessed under this section shall be paid within the period allowed by the Commissioner.

any tax payable used and related tax to ascertain
assessment has been entered or reduced as the case

PART V

Objections and appeals

32. Objections to certain decisions or assessments.-

- (1) Any person who is dissatisfied with-
 - (a) any decision given in writing by the Commissioner-
 - (i) in terms of section 23(7) notifying that person of the Commissioner's refusal to register that person, or
 - (ii) in terms of section 24(6) or (7) notifying that person of the Commissioner's decision to cancel any registration of that person of the Commissioner's refusal to cancel such registration, or
 - (iii) in terms of section 44(8) of the Commissioner's refusal to make a refund, or
 - (b) any assessment made upon him under the provisions of section 31, 60 or 61, may lodge an objection thereto with the Commissioner.
- (2) Every objection shall be in writing and shall specify in detail the grounds upon which it is made.
- (3) No objection shall be considered by the Commissioner which is not delivered at his office or posted to him in sufficient time to reach him within 30 days after the date on which notice of any decision or assessment against which such objection is lodged was given by the Commissioner, unless the Commissioner is satisfied that reasonable grounds exist for delay in lodging the objection: Provided that any decision of the Commissioner in the exercise of his discretion under this subsection shall be subject to objection and appeal.
- (4) After having considered the objection the Commissioner may-
 - (a) alter any decision pursuant thereto, or
 - (b) alter or reduce any assessment pursuant thereto, or
 - (c) disallow the objection,and shall send to the objector written notice of such alteration, reduction or disallowance. as the case may be.
- (5) Where no objection is lodged against any decisions mentioned as contemplated in subsection (1) or where any objection has been disallowed or withdrawn or any decision has been altered or any assessment has been altered or reduced, as the case

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may be, such decision or altered decision or such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

33. Appeals to board of review.- (1) An appeal against decision or assessment of the Commissioner, as notified in terms of section 23(4), shall lie to the board of review for hearing income tax appeals constituted under the provisions of section 30 of the Income Tax Act.
- (2) Every appeal shall be by way of a notice in writing and shall be lodged with the Commissioner within 30 days after the date of the notice mentioned in section 32(4) or, if the Commissioner has under section 71(4) withdrawn the last-mentioned notice and sent it anew, the date of the notice so sent anew: Provided that the Commissioner may, on good cause shown, condone any delay in the lodging of any such notice of appeal within the said period: Provided further that any decision of the Commissioner in the exercise of his discretion under this subsection shall be subject to objection and appeal.
- (3) At the hearing of any appeal to the board of review-
- (a) the appellant shall be limited to the grounds of objection stated in the notice of objection referred to in section 32(2) unless the Commissioner agrees to the amendment of such grounds or the appellant, on good cause shown prior to or at such hearing, is given leave by the board of review to amend such grounds of objection within a reasonable period and on such terms as to any postponement of such hearing and costs which may result from such postponement as the board may order;
 - (b) the board of review may inquire into and consider the matter before it and may confirm, cancel or vary any decision of the Commissioner under appeal or make any other decision which the Commissioner was empowered to make at the time the Commissioner made the decision under appeal or, in the case of any assessment, order that assessment to be altered, reduced or confirmed or, if it thinks fit, refer such matter back to the Commissioner for further investigation and reconsideration in the light of principles laid down by the board.
- (4) The provisions of section 30(2) to (10) of the Income Tax Act and any regulations under that Act relating to any appeal to the board of review shall

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mutatis mutandis apply with reference to any appeal under this section.

34. **Appeal against decision of board of review.-**
(1) The appellant in proceedings before the board of review referred to in section 33 or the Commissioner may in the manner provided in section 31 of the Income Tax Act appeal against any decision of that board.
(2) The provisions of the said section 31 of the Income Tax Act and any regulations made under that Act relating to any appeal in terms of that section shall mutatis mutandis apply with reference to any appeal under this section.
35. **Members of board of review not disqualified from adjudicating.-** A member of a board of review referred to in section 33 shall not solely on account of any liability imposed upon him under this decree be deemed to be interested in any matter upon which he may be called upon to adjudicate thereunder.
36. **Payment of tax pending appeal.-** The obligation to pay and the right to receive and recover any tax chargeable under this decree shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law, but if any assessment is altered on appeal or in conformity with any such decision a due adjustment shall be made, amounts paid in excess being refunded with interest at such rate as may be fixed for the purposes of this section by the Minister from time to time by notice in the Gazette and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39(1).
37. **Burden of proof.-** The burden of proof that any supply or importation is exempt from or not liable to any tax chargeable under this decree or is subject to tax at the rate of zero per cent or that any value upon which tax is chargeable or any amount of tax chargeable is subject to any deduction or set-off or that any amount should be deducted as input tax, shall be upon the person claiming such exemption, non-liability, rate of zero per cent, deduction or set-off and, upon the hearing of any appeal from any decision of the

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Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

PART 6

Payment, recovery and refund of tax

38. **Manner in which tax shall be paid.**- (1) Subject to the provisions of section 7(3)(c) and (d) and section 13(5) and (6) the tax payable under this decree shall be paid in full within the time allowed by section 13 (4) or section 14 or section 28 or section 29, whichever is applicable.
- (2) Where the Commissioner is satisfied that due to circumstances beyond the control of the person liable for the payment of the tax the amount of tax due cannot be accurately calculated within the time allowed by section 13(4) of section 14 or section 28 or section 29, whichever is applicable, the Commissioner may, in his discretion and subject to such conditions as he may impose, agree to accept payment of a deposit by such person of an amount equal to the estimated liability of such person for such tax.
- (3) Such payment shall be deemed to be a provisional payment in respect of the liability of the said person for such tax, as finally determined and when such liability is so determined any amount paid in excess shall be refundable to such person and any amount short-paid shall be recoverable from him.
39. **Penalty and interest for failure to pay tax when due.**- (1) (a) If any person who is liable for the payment of tax and is required to make such payment in the manner prescribed in section 28(1) fails to pay any amount of such tax within the period for the payment of such tax specified in the said provision, he shall, in addition to such amount of tax, pay-
- (i) a penalty equal to 10 per cent of the said amount of tax; and
 - (ii) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at a rate fixed by the Minister by notice in the Gazette, for each month or part of a month in the period reckoned from the said first day.

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(b) Where any amount of tax has in relation to any tax period of any vendor been refunded to the vendor in terms of the provisions of section 44(1), read with section 16(5), or has in relation to that period been set off against unpaid tax in terms of the provisions of section 44(4) and such amount was in whole or in part not properly refundable to the vendor under section 16(5), so much of such amount as was not properly so refundable shall for the purposes of paragraph (a) be deemed to be an amount of tax required to be paid by the vendor within the said period.

(2) If any person who is liable for the payment of tax in accordance with the provisions of section 29 fails to pay any amount of such tax within the period allowed for the payment of such tax in terms of that section, he shall, in addition to such amount of tax, pay-

(a) a penalty equal to 10 per cent of the said amount of tax; and

(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at a rate fixed by the Minister by notice in the Gazette, for each month or part of a month in the period reckoned from the said first day.

(3) If any person who is liable for the payment of tax and is required to make such payment in the manner prescribed in section 13(4) fails to pay any amount of such tax within the period allowed for payment of such tax in terms of the said section, he shall, in addition to such amount of tax, pay-

(a) a penalty equal to 10 per cent of the said amount of tax; and

(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax calculated at a rate fixed by the Minister by notice in the Gazette, for each month or part of a month in the period reckoned from the said first day.

(4) Where any importer of goods which are required to be entered under the Customs and Excise Act fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so

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payable if it had been payable (whichever date is later) he shall in addition to such amount of tax pay-

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount is made on or after the first day of the month following the month during which the relevant date fell, interest on the said amount of tax, calculated at a rate fixed by the Minister by notice in the Gazette, for each month or part of a month in the period reckoned from the said first day.

(5) Where any person who is liable for the payment of tax and is required to make such payment in the manner prescribed in section 7(3)(c), fails to pay any amount of such tax on the date on which in terms of the Customs and Excise Act liability arises for the payment of the exercise duty referred to in section 7(3)(a), he shall in addition to such amount of tax pay-

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the said date fell, interest on the said amount of tax, calculated at a rate fixed by the Minister by notice in the Gazette, for each month or part of a month in the period reckoned from the said first day.

(6) If any person who is liable for the payment of tax and is required to make such payment in the manner prescribed in section 14 fails to pay any amount of such tax within the period allowed for payment of such tax in terms of the said section, he shall in addition to such amount of tax, pay-

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at a rate fixed by the Minister by notice in the Gazette, for each month or part of a month in the period reckoned from the said first day.

(7) Where the Commissioner is satisfied that the failure on the part of any person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), (3) or (6) or on the date referred to in subsection (4) or (5), as the case may be, was not due to an intent to avoid or postpone liability for the payment of

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the tax or the Commissioner is partly so satisfied, he may remit in whole or in part any penalty or interest payable in terms of this section.

(8) For the purposes of this section "month" means any of the twelve months into which any calendar year is divided.

40. **Recovery of tax.**- (1) Any amount of any tax, additional tax, penalty or interest payable in terms of this decree shall, when it becomes due or is payable, be a debt due to the State and shall be recoverable by the Commissioner in the manner hereinafter provided.

(2) (a) If any person fails to pay any such tax, additional tax, penalty or interest when it becomes due or is payable by him, the Commissioner may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount thereof so due or payable by that person and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(b) The Commissioner may by notice in writing addressed to the aforesaid clerk or registrar withdraw the statement referred to in paragraph (a), and such statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under that paragraph in respect of any tax, additional tax, penalty or interest referred to in the withdrawn statement.

(c) The Commissioner may institute proceedings for the sequestration of the estate of any person and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax, additional tax, penalty or interest payable by such person under the provisions of this decree.

(3) Notwithstanding anything contained in the Magistrate' Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2)(a) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this decree.

(4) Where, in addition to any amount of tax or additional tax which is due is payable by any person, any amount of interest or penalty is payable by him in terms of section 39, any payment made by that person in respect of such tax, additional tax, interest or penalty which is less

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than the total amount due by him in respect of such tax, additional tax, interest and penalty shall be deemed to be made-

- (a) in respect of such interest; and
- (b) to the extent that such payment exceeds the amount of such interest, in respect of such penalty; and
- (c) to the extent that such payment exceeds the sum of the amounts of such interest and penalty, in respect of such tax or additional tax.

(5) It shall not be competent for any person in proceedings in connection with any statement filed in terms of subsection (2)(a) to question the correctness of any assessment upon which such statement is based, notwithstanding that objection and appeal may have been lodged against such assessment.

41. Liability for tax in respect of certain past supplies or importations.- Notwithstanding anything to the contrary in this decree.

- (a) no amount of tax otherwise properly chargeable and payable by any person or deductible by him shall be recoverable by the Commissioner in respect of any past supply of goods or services or any past importation of goods if, in terms of a general ruling by the Commissioner which had not been withdrawn by him at the time at which the said person became contractually obliged to supply or receive such goods or services, as the case may be, no tax was payable in respect of such supply or importation;
- (b) no further amount of tax shall be recoverable by the Commissioner; in respect of or in relation to any past supply of goods or services or any past importation of goods if, in terms of a general ruling by the Commissioner which had not been withdrawn by him at the time of such supply or importation, the tax payable or deductible in respect of such supply or importation had been calculated and paid or had been deducted in accordance with such ruling, as the case may be;
- (c) where any decision has been given by the Commissioner-
 - (i) to the effect that any person is required or not required to be registered as a vendor in terms of this decree, or
 - (ii) as to the taxable or non-taxable nature of any supply of goods or services by

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any person or of the importation of goods by any person (including any decision as to the applicability of any exemption or rate of zero per cent) or as to the deductibility or non-deductibility in terms of section 16(3) of tax in respect of the supply to any person of goods or services or the importation by any person of goods, and such decision is subsequently withdrawn, such withdrawal shall, as respects any contractual obligation incurred by the person concerned before such withdrawal to supply or receive the goods or services concerned, not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or his entitlement or otherwise to a deduction of tax, as determined in accordance with such decision, as the case may be, provided such decision was accepted by the said person and all the material facts were known to the Commissioner when the decision was given;

(d) where-

- (i) any amount of tax chargeable in respect of a supply of goods or services has not been returned in any return required to be furnished under section 28 or 29 and in which the said amount is required to be returned, or
- (ii) any amount of tax chargeable in respect of the importation of goods was not paid when such goods were entered for home consumption in terms of the Customs and Excise Act or as required under section 13(4), or
- (iii) any amount of tax chargeable in respect of a supply of imported services has not been accounted for and paid as required by section 14(1), or
- (iv) any amount of tax has been incorrectly deducted in terms of section 16(3) in any return required to be furnished under section 28,

and in consequence thereof an amount of tax which should have been paid to the Commissioner has not been paid, that amount shall not be recoverable by the Commissioner after the expiration of a period of five years after the date of the supply referred to in subparagraph (i) or the importation referred to in subparagraph (ii) or the supply referred to in subparagraph (iii) or the supply or importation referred to in subsparagraph (iv),

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as the case may be, if it shown-

- (aa) that the failure to pay the amount which should have been paid was not due to an intent to avoid the payment of tax; and
- (bb) that the person responsible for the payment of the amount which should have been paid acted in good faith and on an assumption that an exemption or a rate of zero per cent was in fact applicable in respect of the supply referred to in subparagraph (i) or the imputation referred to in subparagraph (ii) or the supply referred to in subparagraph (iii) or that any such supply was not subject to tax or that a deduction in respect of the amount referred to in subparagraph (iv) was in fact applicable, as the case may be; and
- (cc) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person:

Provided that this paragraph shall not apply if the Commissioner has not later than the end of the said period issued an assessment in respect of the unpaid tax.

42. **Evidence as to assessments.**- The production of any document issued by the Commissioner purporting to be a copy of or an extract from any notice of assessment shall be conclusive proof of the making of such assessment and shall, except in the case of proceedings on appeal against the assessment, be conclusive proof that the amount and all the particulars of such assessment appearing in such document are correct.

43. **Security for tax.**- (1) The Commissioner may, in the case of any vendor who has been convicted of any offence under this decree or who has repeatedly failed to pay amounts of tax due by him or to carry out other obligations imposed upon him by this decree, by written notice to such vendor require him, within such period as the Commissioner may allow, to furnish to or deposit with the Commissioner security for the payment of any tax, additional tax, penalty or interest which has or may become payable by the vendor in terms of this decree.

(2) Such security shall be of such nature, for such amount and in such form as the Commissioner may direct.

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(3) Where the Commissioner has directed that such security shall be in the form of a cash deposit and the vendor fails to make such deposit within the period allowed by the Commissioner, the amount of such deposit shall be recoverable from the vendor in terms of section 40 as though such amount were an amount of tax due by the vendor.

(4) Where such security is in the form of a cash deposit, the amount deposited may be set off in whole or in part by the Commissioner against any liability of the vendor for any tax, additional tax, penalty or interest or such amount (or the balance thereof remaining after deducting any portion thereof which has been so set off) may be repaid by the Commissioner to the vendor when the Commissioner is satisfied that the security is no longer required.

44. **Refunds.-** (1) Any amount of tax which is refundable to any vendor in terms of section 16(5) in respect of any tax period shall, to the extent that such amount has not been set off against unpaid tax in terms of subsection (6) of this section, be refunded to the vendor by the Commissioner: Provided that-

(i) the Commissioner shall not make a refund under this subsection unless the claim for the refund is made within five years after the end of the said tax period; or

(ii) where the amount that would be so refunded to the vendor is determined to be R100 or less, the amount so determined shall not be refunded in respect of the said tax period but shall be carried forward to the next succeeding tax period of the vendor and be accounted for as provided in section 16(5).

(2) Subject to the provisions of subsection (3), where-

(a) any amount of tax, additional tax, penalty or interest paid by any person to the Commissioner was in excess of the amount of tax, additional tax, penalty or interest, as the case may be, that should properly have been charged under this decree; or

(b) any amount refunded to a vendor in terms of subsection (1) was less than the amount properly refundable under that subsection, the Commissioner shall, on application by the person concerned, refund the amount of tax, additional tax, penalty or interest paid in excess or the amount by which the amount refunded was less than the amount properly refundable, as the case may be.

(3) The Commissioner shall not make a refund under

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subsection (2), unless-

- (a) the claim for the refund of such excess amount of tax, additional tax, penalty or interest is made within five years after the date upon which payment of the amount claimed to be refundable was made: Provided that if the Commissioner is satisfied that such payment was made in accordance with the practice generally prevailing at the said date, no refund shall be made unless the claim for any refund is made within six months after that date; or
- (b) the amount to be refunded is R10 or more; or
- (c) the Commissioner is satisfied that any amount of output tax claimed to be refundable to a vendor will, if such amount has been borne by any other person, in turn be refunded by the vendor to such person.

(4) Where the amount that would be refunded under subsection (2) is determined to be R100 or less, the amount so determined shall not be refunded but shall be credited to the vendor's account and be accounted for as provided in section 16(5).

(5) Notwithstanding the provisions of paragraph (ii) of the proviso to subsection (1) and the provisions of subsection (4) any amount determined to be refundable to a vendor in respect of his final tax period on the cancellation of his registration as a vendor shall be refundable to him in full.

(6) Where any vendor-

- (a) has failed to pay to the Commissioner within the period prescribed for payment any amount of tax, additional tax, penalty or interest payable by him, or
- (b) owes any amount of tax, interest or penalty levied under any other law administered by the Commissioner and the vendor is in default in respect of the payment of such amount,

the Commissioner may set off against the amounts referred to in paragraphs (a) and (b) any amount or part thereof which has become refundable to the vendor under this section or any interest which has become payable to the vendor in terms of section 45.

(7) Where the vendor has failed to furnish a return for any tax period as required by this decree, the Commissioner may withhold payment of any amount refundable to the vendor under subsection (1) or any amount of interest payable to the vendor in

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terms of section 45 until the vendor has furnished such return.

(8) If the Commissioner refuses to make or authorize a refund in terms of this section he shall, at the request of the vendor concerned, give the vendor written notice of such refusal.

- 45. Interest on delayed refund.-** (1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor's return in respect of a tax period is received by the Commissioner refund any amount refundable in terms of section 44(1), interest shall be paid on such amount at such rate as may be fixed for the purposes of this subsection by the Minister from time to time by notice in the Gazette and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable: Provided that this subsection shall not apply where-
- (i) such return made by the vendor is incomplete or defective in any material respect; or
 - (ii) the vendor is in default in respect of any of his obligations to render a return as contemplated in section 44(7).
- (2) Where the amount of any interest paid to a person in terms of subsection (1) is in excess of the correct amount, the Commissioner may recover the amount of the excess under section 40(2)(a) as if it were tax payable by such person.

PART VII

Representative vendors

- 46. Persons acting in a representative capacity.-** The person responsible for performing the duties imposed by this decree-
- (a) on any company shall be the managing director thereof or any other officer of the company designated by the Commissioner or, in the case of any company which is placed in liquidation, the liquidator thereof;
 - (b) on any public authority shall be any person responsible for accounting for the receipt and payment of moneys under the provisions of any law or for the receipt and payment of moneys or funds on behalf of such public authority;
 - (c) on local authority shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such

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- local authority;
- (d) on any corporate or unincorporate body (other than a company) shall be any person who is the treasurer of that body or whose functions are similar to those of a treasurer of that body;
 - (e) on a person under legal disability shall be his guardian, curator or administrator or the other person having the management or control of his affairs;
 - (f) on any person who is not a resident of the Republic or any person (other than a company) who is for the time being out of the Republic, shall be any agent of such person controlling such person's affairs in the Republic or any manager of any enterprise of such person in the Republic;
 - (g) on a deceased person or his estate shall be the executor or administrator of such estate;
 - (h) on an insolvent person or his estate shall be the trustee or administrator of such estate;
 - (i) on any trust fund shall be the person administering the fund in a fiduciary capacity:

Provided that nothing herein contained shall be construed as relieving any such company, public authority, local authority, body or person or any member of a partnership referred to in section 51(3) from having to perform any duties imposed by this decree upon such company, public authority, local authority, body or person which the first-mentioned person has failed to perform.

47. **Power to appoint agent.**- The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person and the person so declared an agent shall for the purposes of this decree be the agent of such other person in respect of the payment of any amount of tax, additional tax, penalty or interest payable by such other person and may be required to make payment of such amount from any moneys which may be held by him for or be due by him to the person whose agent he has been declared to be.
48. **Liability of representative vendor.**- (1) For the purposes of this section "representative vendor" means-
- (a) in relation to any company, public authority, local authority, body, trust fund or person referred to in section 46, the person who is in terms of that section responsible for performing the duties imposed under this

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decree on such company, public authority, local authority, body, trust fund or person; and

(b) in relation to the other person referred to in section 47, any person declared by the Commissioner under that section to be the agent of that other person.

(2) Every representative vendor shall as respects moneys controlled or transactions concluded or anything done by him in his representative capacity be under this decree in relation to such moneys or transactions as though such liability been incurred by him personally but such liability shall be deemed to have been incurred by him in his representative capacity only.

(3) Any tax, additional tax, penalty or interest payable by any representative vendor in his representative capacity shall be recoverable from him but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control: Provided that any tax, additional tax, penalty or interest payable by a company shall not be recoverable from any officer of the company but shall be recoverable from the company.

(4) Every representative vendor who, as such, pays any such tax, additional tax, penalty or interest shall be entitled to recover the amount so paid from the person on whose behalf it is paid or to retain, out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.

(5) Every representative vendor referred to in section 46(g) who, as such, pays any such tax, additional tax, penalty or interest due by any deceased person shall be entitled to recover the amount so paid from the estate of such deceased person or to retain out of any moneys of the estate of such deceased person that may be in his possession or that may come to him as executor or administrator of such estate, an amount equal to the amounts so paid.

(6) Every representative vendor shall be personally liable for the payment of any tax, additional tax, penalty or interest payable by him in his representative capacity if, while the amount thereof remains unpaid-

(a) he alienates,, charges or disposes of any money received or accrued in respect of which the tax is chargeable; or

(b) he disposes of or parts with any fund or money belonging to the person whom he represents which is in his possession or

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comes to him after the tax, additional tax, penalty or interest has become payable, if such tax, additional tax, penalty or interest could legally have been paid from or out of such fund or money.

(7) Every person who becomes a representative vendor (other than a person representing a company, public authority or local authority as contemplated in section 46(a), (b) or (c) or a person appointed as an agent under the provisions of section 47) shall within 21 days after becoming responsible for performing duties under this decree on behalf of any other person notify the Commissioner in such form as the Commissioner may prescribe of the fact that he has become a representative vendor of that other person.

49. **Remedies of Commissioner against agent or trustee.-** The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as he would have against the property of any person liable to pay any tax, additional tax, penalty or interest chargeable under this decree and in as full and ample a manner.

PART VIII

Provisions relating to separate enterprises, bodies of persons other than companies, marketing pools, etc.

50. **Separate enterprises, branches and divisions.-**
- (1) Where separate enterprises are carried on by any vendor or an enterprise is carried on by any vendor in branches or divisions, the vendor may apply in writing to the Commissioner for any such separate enterprise, branch or division to be registered separately for the purposes of this decree.
- (2) The Commissioner shall, upon application made under subsection (1), register any separate enterprise, branch or division as a separate vendor if each such separate enterprise, branch or division maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of the separate enterprise, branch or division is so separately registered, the activities carried on by that separate enterprise, branch or division shall be deemed to be carried on by a person separate from the vendor referred to in subsection (1).

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(3) The Commissioner may, with effect from a date determined by him, cancel any registration in terms of subsection (2) of any separate enterprise, branch or division, if-

- (a) the vendor referred to in subsection (1) has applied to the Commissioner in writing for such registration to be cancelled, or
- (b) it appears to the Commissioner that the duties or obligations of such separate enterprise, branch or division have not been satisfactorily performed or carried out,

and any activity carried on by that separate enterprise, branch or division shall as from the said date be deemed to be carried on by the said vendor.

(4) The Commissioner shall cancel the separate registration of any separate enterprise, branch or division on the cancellation of the registration of the vendor referred to in subsection (1).

(5) Where any separate enterprise, branch or division separately registered under this section fails to do anything required to be done under this decree the liability for the doing of that thing shall revert to the vendor referred to in subsection (1).

(6) Notwithstanding the preceding provisions of this section, any direction or determination of the Commissioner made under section 15 or 27 in respect of the vendor referred to in subsection (1) of this section shall apply equally to each separate enterprise, branch or division of the vendor which is separately registered under this section: Provided that where a direction or determination is made by the Commissioner under subsection (2) of section 27 which applies in respect of any such separate enterprise, branch or division, this subsection shall not be construed as preventing the Commissioner from making a separate direction or determination under subsection (4) of the said section in the circumstances contemplated in that subsection in respect of any other separate enterprise, branch or division of the said vendor.

51. Bodies of persons, corporate or unincorporate (other than companies).- (1) Subject to the provisions of section 46, where any body of persons, whether corporate or unincorporate (other than a company), carries on or is to carry on any enterprise-

- (a) such body shall be deemed to carry on such enterprise as a person separate from the members of such body;

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- (b) registration of that body as a vendor shall be effected separately from any registration of any of its members in respect of any other enterprise;
- (c) liability for tax in respect of supplies by that body shall be determined and calculated in respect of the enterprise carried on by it as an enterprise carried on independently of any enterprise carried on by any of its members, and any refund relating to that body's enterprise which is payable in terms of section 44 shall be made to that body; and
- (d) the duties and obligations imposed on any vendor or other person shall, as respects the enterprise carried on by that body, be performed by it separately from the duties and obligations imposed on any of its members.

(2) Where any such body is a partnership or other unincorporated body and is dissolved in consequence of the retirement or withdrawal of one or more (but not all) of its members or the admission of a new partnership or unincorporated body comes into being consisting of the remaining members of the dissolved partnership or body, as the case may be, or such remaining members and one or more new members and the new partnership or body continues to carry on the enterprise of the dissolved partnership or body as a going concern, the dissolved partnership or body and the new partnership or body, as the case may be, shall (unless the Commissioner, having regard to the circumstances of the case, otherwise directs) for the purposes of this decree be deemed to be one and the same partnership or body, as the case may be.

(3) Subject to the provisions of section 46, every member of a partnership shall be liable jointly and severally with the other members of the partnership for performing the duties of the partnership in terms of this decree and paying the tax imposed on the partnership in respect of supplies made by the partnership while such member was a member of the partnership: Provided that this subsection shall not apply to any such member of a partnership who in relation to that partnership is a partner en commandite or a special partner as defined in the Special Partnerships' Limited Liability Act, 1861 (Act 24 of 1861), who has not held himself out as an ordinary or general partner of the partnership concerned.

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52. **Pooling arrangements.**—(1) Any pool managed by any board or body for the sale of agricultural, pastoral or other farming products, being a pool contemplated in section 22 of the Marketing Act 1986 (Act 22 of 1986), may on written application by such board or body be deemed to be an enterprise or part of an enterprise carried on by that board or body separately from the members of such board or body: Provided that such board or body may elect in writing that the pool be treated as a separate enterprise and may apply for such pool to be registered separately in terms of section 50: Provided further that such board or body may, notwithstanding the provisions of section 54(1) and (2), if it makes an election in writing, be treated as a principal and not as an agent of its members.
- (2) Notwithstanding the provisions of section 54, any rental pool scheme operated and managed by any person for the benefit of some or all of the owners of time-sharing interests in a property time-sharing scheme shall be deemed to be a separate enterprise carried on by such person separately from the owners and shall be registered separately under section 50: Provided that such a rental pool scheme shall notwithstanding the provisions of section 54(1) and (2), be treated as a principal and not as an agent of the owners.
53. **Death or insolvency of vendor.**— (1) (a) Where, after the death of any vendor or the sequestration of his estate, any enterprise previously carried on by the vendor continues to be carried on by or on behalf of the executor or trustee of his estate or anything is done in connection with the termination of the enterprise, the estate of the vendor, as represented by the executor or trustee, as the case may be, shall be deemed to be a vendor in respect of the enterprise.
- (2) Where a mortgagee is in possession of any land or other property previously mortgaged by the mortgagor, being a vendor, and the mortgagee carries on any enterprise of the mortgagor in relation to such land or other property, the mortgagee shall, from the date on which the mortgagee took possession of that land or other property until such time as the mortgagee ceases to be in possession of that land or other property, be deemed, to the extent that the mortgagee carries on such enterprise, to be a vendor.
54. **Agents and auctioneers.**— (1) For the purposes of this decree where an agent makes a supply of goods

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or services for and on behalf of any other person who is the principal of that agent, that supply shall be deemed to be made by that principal and not by that agent: Provided that, where that supply is a taxable supply and that agent is a vendor, the agent may, notwithstanding anything to the contrary in this decree, issue a tax invoice or a credit note or a debit note in relation to such supply as if the agent had made a taxable supply and, to the extent that that tax invoice or credit note or debit note relates to that supply, the principal shall not also issue a tax invoice or a credit note or a debit note, as the case may be.

(2) Where any vendor makes a taxable supply of goods or services to an agent who is acting on behalf of another person who is the principal for the purposes of that supply, that supply shall be deemed to be made to that principal and not to such agent: Provided that such agent may nevertheless request that he be provided with a tax invoice and the vendor may issue a tax invoice or a credit note or debit note as if the supply were made to such agent.

(3) Where a tax invoice or a credit note or debit note in relation to a supply has been issued-

- (a) by an agent as contemplated in subsection (1), or
- (b) to an agent as contemplated in subsection (2),

the agent shall maintain sufficient records to enable the name and address and registration number of the principal to be ascertained.

(4) For the purposes of subsection (5) the expression "auctioneer" means a vendor carrying on an enterprise which comprises or includes the supply by him by auction or by sale on a national fresh produce market as defined in section 1 of the Commission, for Fresh Produce Markets Act, 1970 (Act 82 of 1970) of goods as an auctioneer or agent for or on behalf of another person (hereinafter in this section referred to as the principal).

(5) Notwithstanding anything in the preceding provisions of this section, where the principal and the auctioneer agree to have a supply by auction of any goods, other than a taxable supply, treated as if that supply were made by the auctioneer and no by the principal, the supply shall be charged with tax as if it were made by the auctioneer in the course or furtherance of the auctioneer's enterprise and the auctioneer may-

- (a) recover the amount of tax charged on that supply from the principal as a debt together with the costs of recovery in any court of competent jurisdiction; or

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- (b) retain or deduct such amount and costs out of any money in the auctioneer's hands belonging or payable to the principal.
- (6) Notwithstanding anything in subsection (2), where any vendor makes a taxable supply (other than a supply that is charged with tax at the rate of zero per cent under section 11) of goods or services to an agent who is a vendor and is acting for or on behalf of another person who is the principal for the purposes of that supply and-
- (a) the principal is not a resident of the Republic and is not a vendor; and
 - (b) (i) the supply is directly in connection with either the exportation, or the arranging of the exportation, of goods from the Republic to any country or place outside the Republic (other than a specified country or a place therein) or the importation, or the arranging of the importation, of goods to the Republic from any country or place outside the Republic, including in either case the transportation of those goods within the Republic as part of such exportation or importation, as the case may be; or
 - (ii) the supply is of services which comprise the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while present in the Republic or a specified country or is of services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft,

this decree shall, where such agent and the principal agree, apply as if the supply were made to that agent and not to the principal.

PART IX

Provisions relating to books of account or other records, entry and search, offences and penalties, recovery of tax, etc.

55. **Records.-** (1) Every vendor shall keep such books of account or other records as may enable him to observe the requirements of this decree and enable the Commissioner to satisfy himself that the vendor has observed such requirements, and every vendor shall, in particular, keep-

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- (a) a record of all goods and services supplied by or to the vendor showing the goods and services and the suppliers of their agents in sufficient detail to enable the goods and services and the suppliers of the agents to be readily identified by the Commissioner and all invoices, tax invoices, credit notes and debit notes relating thereto;
- (b) the charts and codes of account, the accounting instruction manuals and the system and programme documentation which describe the accounting system used in each tax period in the supply of goods and services;
- (c) any list required to be prepared in accordance with section 15(9); and
- (d) any documentary proof required to be obtained and retained in accordance with section 11(3).

(2) Such books of account or other records, such invoices, tax invoices, credit notes, debit notes and other documents relating to entries in such books or records and such charts, codes, manuals, list and documentary proof shall at all reasonable times during the period of five years referred to in subsection (3) be open for inspection by any person acting under the authority of the Commissioner.

(3) All such books of account, records and other documents required to be kept in terms of subsection (1) shall-

- (a) where kept in book form, be retained and carefully preserved by the vendor for a period of five years from the date of the last entry in any book; or
- (b) where consisting of bank statements, deposit slips, invoices, tax invoices, credit notes, debit notes, stock lists, paid cheques or other documents not in book form, be retained and carefully preserved by the vendor for a period of five years after the completion of the transactions, acts or operations to which they relate.

(4) The Commissioner may, subject to such conditions as he may determine and in respect of any documents referred to in subsection (3), authorize the retention of a microfilm copy or computer tape record of such documents in lieu of the originals thereof.

56. **Information.-** (1) The Commissioner may by notice in writing require any person to furnish him,

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within such period as he may determine, with such information at such person's disposal as the Commissioner may require for the purposes of this decree, whether or not such person is or has been required in terms of section 23 to apply for registration as a vendor.

(2) For the purpose of obtaining full information in carrying out the provisions of this decree the Commissioner may require any person to produce for examination by the Commissioner, or by any person appointed by him for the purpose, at such time and place as may be appointed by the Commissioner, any books, accounts, trade lists, stock lists or other records or documents which the Commissioner may deem necessary.

(3) (a) The Commissioner may by notice in writing require any person, whom the Commissioner may deem able to furnish information, to attend at a time and place named by the Commissioner for the purpose of being examined on oath regarding any transactions or matters related to the carrying out of any provision of this decree by that person or any other person.

(b) Any person, required under paragraph (a) to attend for the purpose of being examined, shall be compensated by the Commissioner for any reasonable expenses necessarily incurred by him in so attending.

57. **Powers of entry and search.**- (1) Any officer engaged in administering this decree who has been authorized thereto by the Commissioner in writing may-

- (a) without previous notice and at any time during the day enter any premises whatsoever and on such premises search for any accounts, books, moneys, records or other documents or verify the existence of any assets;
- (b) in carrying out any such search open or cause to be opened or removed and opened any article in which he suspects any accounts, books, moneys, records or other documents are kept;
- (c) seize any such accounts, books, records or other documents which in his opinion may afford evidence which may be material in assessing the liability of any person for any tax payable under this decree; and
- (d) retain any such accounts, books, records or other documents for as long as they may be required for any assessment or for any criminal or other proceedings under this

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decree.

(2) Any officer referred to in subsection (1) shall on demand produce the written authority issued to him by the Commissioner.

(3) The person, to whose affairs any accounts, books, records or other documents seized under the provisions of subsection (1) relate, shall be entitled to examine and make copies thereof or extracts therefrom during office hours under such supervision as the Commissioner may determine.

58. **Offences and penalties generally.**- Any person who-
- (a) holds himself out as an officer engaged in carrying out the provisions of this decree, or
 - (b) holds himself out as an officer authorised by the Commissioner for the purposes of entry and search as contemplated in section 57(1), or
 - (c) fails to apply for registration as required by section 23, or
 - (d) fails to comply with the provisions of section 13(4) or section 14 or section 28(1) or (2), section 29 or section 30, or
 - (e) contravenes the provisions of section 65, or
 - (f) fails to keep or preserve any books of account, records or other documents as provided in subsection (1) or (3) of section 55 or, where the provisions of subsection (4) of that section are applicable, fails to keep or preserve any microfilm copy or computer tape record the retention of which was authorized by the Commissioner under the said subsection (4), or
 - (g) fails to comply with any requirement of section 56, or
 - (h) hinders or obstructs or assaults any officer engaged in carrying out his duties under section 57(1) or wilfully fails to comply with any lawful demands made by such officer in the performance of his duties or the exercise of his powers, or
 - (i) fails to notify the Commissioner of anything of which he is required by section 25 or 48(7) to notify the Commissioner, or
 - (j) being an auctioneer or a supplier of goods or services-
 - (i) declares to any person to whom goods or services are supplied by such auctioneer or supplier that tax has been included in or will be added to the price or amount chargeable in respect of such supply, where in fact no tax is payable in terms of this decree, or

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- (ii) knowingly and without lawful excuse (the burden of proof of which shall be upon him) includes in or adds to the price or amount charged to the recipient in relation to such supply any tax, where in fact no tax is payable in terms of this decree, or
- (iii) knowingly and without lawful excuse (the burden of proof of which shall be upon him) includes in or adds to the price or amount charged to the recipient in relation to such supply any tax in excess of the tax properly leviable under this decree in respect of the value of such supply, or
- (k) knowingly and without lawful excuse (the burden of proof of which shall be upon him) fails to comply with the provisions of paragraph (i) of the proviso to section 20(1) or paragraph (A) of the proviso to section 21(3), or
- (l) being a registered vendor, fails to provide another registered vendor with a tax invoice, credit note or debit note as required by the decree,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

59. Offence and penalties in regard to tax evasion.-

(1) Any person who with intent to evade the payment of tax levied under this decree or to obtain any refund of tax under this decree to which such person is not entitled or with intent to assist any other person to evade the payment of tax payable by such other person under this decree or to obtain any refund of tax under this decree to which other person is not entitled-

- (a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this decree or sign any statement or return so rendered without reasonable grounds for believing the same to be true, or
- (b) gives any false answer, whether verbally or in writing, to any request for information made by the Commissioner or any person duly authorized by the Commissioner or any officer referred to in section 5(1), or
- (c) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or

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- authorizes the falsifications of any books of account or other records, or
- (d) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of such fraud, art or contrivance, or
 - (e) makes any false statement for the purposes of obtaining any refund of or exemption from tax, or
 - (f) receives, acquires possession of or deals with any goods or accepts the supply of any service, knowing or having reason to believe that the tax on the supply of the goods or service has been or will be evaded, or
 - (g) knowingly issues any tax invoice, credit note or debit note required under this decree which is in any material respect' erroneous or incomplete, or
 - (h) knowingly issues any tax invoice showing an amount charged as tax where the supply in respect of tax will not take place,

shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 24 months or to both such fine and such imprisonment.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry has been made in any return by or on behalf of any person on in any books of account or other records of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused that false statement or entry to be made or to have allowed it to be made with intent to evade the payment of tax or to obtain a refund of tax to which that person is not entitled, as the case may be, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the first-mentioned person to evade the payment of tax or to obtain a refund of tax to which he is not entitled.

(3) A conviction for an offence in terms of this decree shall not exempt the person convicted from the payment of any tax, additional tax, penalty or interest payable in accordance with the provisions of this decree.

60. **Additional tax in case of evasion.**- (1) Where any vendor fails to perform any duty imposed upon him by this decree or does or omits to do anything with intent-

- (a) to evade the payment of any amount of tax payable by him; or

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(b) to cause a refund to him by the Commissioner in terms of section 44 (1) of any amount of tax (such amount being referred to hereunder as the excess) which is in excess of the amount properly refundable to him under the said section read with section 16(5), before applying section 44(6),

such vendor shall be chargeable with additional tax not exceeding an amount equal to double the amount of tax referred to in paragraph (a) or the excess referred to in paragraph (b), as the case may be.

(2) The amount of the said additional tax shall be assessed by the Commissioner and shall be paid by the vendor within such period as the Commissioner may allow.

(3) The power conferred on the Commissioner by this section shall be in addition to any right conferred him by this decree to institute or take other proceedings under this decree.

61. Recovery of tax from recipient.- (1) Where, in respect of any supply made by a vendor, the vendor has in consequence of any fraudulent action or any misrepresentation by the recipient of such supply incorrectly applied a rate of zero per cent or treated such supply as being exempt from tax, the Commissioner may, notwithstanding anything in this decree to the contrary, raise an assessment upon the recipient for the amount of tax payable, together with any penalty and interest that has become payable in terms of section 39 in respect of such amount.

(2) The amounts payable under such assessment shall be paid by the recipient within such periods as the Commissioner may allow and shall be recoverable from the recipient in the manner provided in section 40.

(3) This section shall not be construed as preventing the Commissioner from recovering the amounts of unpaid tax, penalty and interest from the vendor, but in the event of such amounts being recovered from the recipient the vendor shall be absolved from liability for the payment of the amounts due.

62. Publication of names of tax offenders.- (1) the Commissioner shall from time to time publish by notice in the Gazette a list of persons who have been convicted of offences under section 59(1).

(2) Every list published in terms of this section shall specify-

(a) the name, address and principal enterprise

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- of the vendor;
- (b) such particulars of the offence as the Commissioner may think fit;
- (c) the tax period or tax periods in which the offence occurred;
- (d) the amount or estimated amount of the tax evaded; and
- (e) the amount (if any) of the additional tax imposed.

63. **Reporting of unprofessional conduct.**- (1) For the purposes of this section "controlling body" means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by such association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any other person (hereinafter referred to as a client), done or omitted to do anything which in the opinion of the Commissioner-

- (a) was intended to enable or assist the client to avoid or unduly postpone the performance of any duty or obligation imposed on such client by or under this decree, or by reason of negligence of the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation, and
- (b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by that body,

the Commissioner may lodge a complaint with the said controlling body.

(3) (a) Notwithstanding the provisions of section 6 the Commissioner may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Commissioner it is necessary to lay before the controlling body to which the complaint is made.

(b) Before lodging any such complaint or disclosing such information the Commissioner shall

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deliver or send to the client and the person against whom the complaint is to be made a written notification of his intended action setting forth particulars of the said information .

(c) The client or the said person may within 30 days after the date of such written notification lodge in writing with the Commissioner any objection he may have to the lodging of the said complaint.

(d) If on the expiry of the said period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon lodge the complaint as contemplated in subsection (2).

(4) The complaint shall be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit: Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

(5) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the client as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint if other than the client concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.

PART X

Miscellaneous

64. **Prices deemed to include tax.-** Any price charged by any vendor in respect of any taxable supply of goods or services shall be deemed to include any tax payable in terms of section 7(1)(a) in respect of such supply.
65. **Prices advertised or quoted to include tax.-** Any price advertised or quoted by any vendor in respect of any taxable supply of goods or services shall include tax and the vendor shall in his advertisement or quotation state that the price includes tax, unless the total amount of the tax

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chargeable under section 7(1)(a), the price excluding tax and the price inclusive of tax for the supply are advertised or quoted by the vendor: Provided that price tickets on goods need not state that the prices include tax if this is stated by way of a notice prominently displayed at all entrances to the premises in which the enterprise is carried on and at all points in such premises where payments are effected: Provided further that the Commissioner may in the case of any vendor or class of vendors approve any other method of displaying prices of goods or services by such vendor or class or vendors during a period approved by the Commissioner which commences before and ends after the commencement date or, where the rate of tax is increased or reduced, the date on which the increases or reduced rate of tax takes effect.

66. **Rounding-off tables.-** Any amount of tax determinable under this decree shall be calculated in accordance with such rounding-off tables as the Commissioner may from time to time prescribe.

67. **Contract price or consideration may be varied according to rate of value-added tax.-**

(1) Whenever the value-added tax is imposed or increased in respect of the supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was imposed or increased, as the case may be, the vendor may, notwithstanding anything to the contrary in any agreement or law recover from the recipient, as an addition to the amounts payable by the recipient to the vendor, a sum equal to any amount payable by the vendor by way of the said tax or increase, as the case may be, and any amount so recoverable by the vendor shall, whether or not it is recovered, be accounted for by the vendor under the provisions of this decree.

(2) Whenever the value-added tax is withdrawn or decreased in respect of any supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was withdrawn or decreased, as the case may be, the vendor shall, notwithstanding anything to the contrary in any agreement or law reduce the amount payable to him by the recipient by way of any consideration in which the amount of such tax was included by a sum equal to the amount of the tax withdrawn or the amount by which the tax is decreased, as the case may be.

(3) Whenever the value-added tax is imposed or increased or withdrawn or decreased, as the case

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may be, in respect of any supply of goods or services subject to any fee, charge or other amount (whether it is fixed, maximum or minimum fee, charge or other amount) prescribed by, or determined pursuant to, any law or by any regulation or measure having the force of law, that fee, charge or other amount may be increased or shall be decreased, as the case may be, by the amount of tax or additional tax charged or chargeable or the amount of tax no longer charged or chargeable, as the case may be: Provided that this subsection shall not apply to any fee, charge or other amount has been altered in any law, regulation or measure prescribing or determining such fee, charge or other amount to take account of any imposition, increase, decrease or withdrawal of such tax.

68. Tax relief allowable to certain diplomats and diplomatic and consular missions.- (1) The Minister may, with the concurrence of the Minister of Foreign Affairs, authorize the granting of relief by way of a refund in respect of value-added tax paid or borne-

(a) by any person enjoying full or limited immunity, rights or privileges under section 2 of the Diplomatic Privileges Act, 1951 (Act 71 of 1951) or an agreement contemplated in section 2A of that Act or a proclamation contemplated in section 2B of that Act or under the recognized principles of international law, provided similar or equivalent relief is granted in the country by which such person is employed to any representative or employee of the Government of the Republic stationed in such country who enjoys full or limited immunity, rights or privileges in that country; or

(b) by any diplomatic or consular mission of a foreign country established in the republic, relating to transactions concluded for the official purposes of such mission, provided similar or equivalent relief is granted to any diplomatic or consular mission of the republic established in the foreign country concerned.

(2) The relief contemplated in subsection (1)(a) shall not be granted to any citizen or permanent resident of the Republic.

(3) The Minister may authorize any relief under this section on such conditions and subject to such restrictions as he may deem fit.

(4) Any claim for a refund of tax under this section shall be made in such form and at such time as the Commissioner may prescribe and shall be

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accompanied by such proof of payment of tax or certification as the Commissioner may require.

69. Issue of diplomatic tax relief certificates to certain diplomats and representatives of diplomatic and consular mission.-

(1) Notwithstanding the provisions of section 67 the Commissioner may, at the request of the Director-General: Foreign Affairs, register-

(a) any person who enjoys full or limited immunity, rights or privileges under section 2 of the Diplomatic Privileges Act, 1951 or an agreement contemplated in section 2A of that Act or a proclamation contemplated in section 2B of that Act or under the recognized principles of international law, or

(b) any specified representative of any diplomatic or consular mission established in the Republic,

and issue to such person or such representative a diplomatic tax relief certificate in such form and upon such conditions and subject to such restrictions as the Commissioner may prescribe, provided similar or equivalent relief is granted in the country by which such person or representative is employed to any employee or representative of the Government of the Republic stationed in such country who enjoys full or limited immunity, rights or privileges in that country.

(2) A diplomatic tax relief certificate shall not be so issued to any person who is a citizen or permanent resident of the Republic.

(3) Any supply of goods or services in respect of which tax relief is granted under this section shall be charged with tax at the rate of zero per cent provided the vendor making such supply issues an invoice stating the name of the person or representative holding the diplomatic tax relief certificate utilized in respect of such supply and the number of such certificate.

70. Jurisdiction of courts.- Any person charged with an offence under this decree may, notwithstanding anything to the contrary contained in any law, be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business.

71. Authentication and service of documents.- (1) Any form, notice, demand or other document issued or

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given or made by or on behalf of the Commissioner or any other officer in terms of this decree shall be sufficiently authenticated if the name or official designation of the Commissioner or officer by whom the same is issued or given or made is stamped or printed thereon.

(2) Any form, notice, demand, document or other communication required or authorized under this decree to be issued, given or sent to or served upon any person by the Commissioner or any other officer shall, except where otherwise provided in this decree, be deemed to have been effectually issued, given, sent or served-

- (a) if delivered to him; or
- (b) if left with some adult person apparently residing at or occupying of employed at his last known abode or office or place of business in the Republic; or
- (c) if despatched by registered or any other kind of post addressed to him at his last known address, which may be any such place or office as is referred to in paragraph (b) or his last known post office box number of that of his employer; and
- (d) in the case of a company-
 - (i) if delivered to the managing director or secretary of the company; or
 - (ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company as its registered office in the Republic or where nosuch place has been appointed by the company, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company in the Republic; or
 - (iii) if despatched by registered or any other kind of post addressed to the company or its managing director or secretary at its or his last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his last known post office box number or that of his employer.

(3) Any form, notice, demand, document or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contemplated in paragraph (c) or (d)(iii) of that subsection shall be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of

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post, have arrived at the place to which it was addressed, unless the Commissioner is satisfied that it was not received or was received at some other time or, where the time at which it was received or the fact that it was received is in dispute in proceedings under this decree in any court having jurisdiction to decide the matter, the court is so satisfied: Provided that the preceding provisions of this subsection shall not apply where any person is in criminal proceedings charged with the commission of an offence by reason of his failure, refusal or neglect to do anything which he is required to do in terms of the said form, notice, demand, document or other communication, unless it was despatched to such person by registered or certified post.

(4) If the Commissioner is satisfied that any form, notice, demand, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner contemplated in subsection (2)(b), (c) or (d)(ii) or (iii) has not been received by the person to whom it was addressed or has been received by such person considerably later than it should have been received by him and that such person has in consequence been placed at a disadvantage, the Commissioner may, if he is satisfied that the circumstances warrant such action, direct that such form, notice, demand, document or other communication be withdrawn and be issued, given, sent or served anew.

72. **Arrangements to overcome difficulties or anomalies.**- If in any case the Commissioner is satisfied that, in consequence of the manner in which any vendor or class of vendors conducts his or their business, trade or occupation, difficulties or anomalies have arisen or may arise in regard to the application of any of the provisions of this decree the Commissioner may give a direction as to the manner in which such provisions shall be applied in the case of such vendor or class of vendors and the Commissioner may make such arrangements with such vendor or class of vendors as to the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided in this decree as appear to overcome such difficulties or anomalies: Provided that such direction or arrangement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this decree.

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73. Schemes for obtaining undue tax benefits.-

(1) Notwithstanding anything in this decree whenever the Commissioner is satisfied that any scheme (whether entered into or carried out before or after the commencement date and including a scheme involving the alienation of property)-

- (a) has been entered into or carried out which has the effect of granting a tax benefit to any person, and
- (b) having regard to the substance of the scheme-
 - (i) was entered into or carried out by means or in a manner which would not normally be employed for bona fide business purposes, other than the obtaining of a tax benefit, or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length, and
- (c) was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit,

the Commissioner shall determine the liability for any tax imposed by this decree and the amount thereof as if the scheme had not been entered into or carried out or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purposes of this section-

"scheme" includes any transaction, operation, scheme or understanding (whether enforceable or not), including all steps and transactions by which it is carried into effect;

"tax benefit" includes-

- (a) any reduction in the liability of any person to pay tax; or
- (b) any increase in the entitlement of any vendor to a refund of tax; or
- (c) any reduction in the consideration payable by any person in respect of any supply of goods or services; or
- (d) any other avoidance or postponement of liability for the payment of any tax, duty or levy imposed by this decree or by any other law administered by the Commissioner.

(3) Any decision of the Commissioner under this section shall be subject to objection and appeal and, whenever in proceedings relating thereto it is proved that the scheme concerned does or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such scheme was

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entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

74. Regulations.- (1) The Minister may make regulations in regard to any matter which is permitted or required by this decree and generally for the better carrying out of the objects and purposes of this decree.

(2) Notwithstanding anything to the contrary in this decree where the Minister is satisfied that, in consequence of the manner in which any business, trade or occupation is carried on, malpractices or difficulties have arisen or may arise in regard to the collection of tax levied under this decree, the Minister may, in order to counter such malpractices or to overcome such difficulties, make regulations in regard to the application of any rate of zero per cent or any exemption or to the payment or collection of any tax in a manner other than that provided in this decree.

75. Prevention of or relief from double taxation in Republic and specified country.- (1) The Minister may enter into an agreement with the government of any specified country whereby arrangements are made with that government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and such specified country, of value-added tax or any similar tax where the supply of goods or services is subject to such tax in either the Republic or such specified country and such supply or the importation of such good is also subject to such tax in the other country which is a party to the agreement, being such specified country or the Republic, as the case may be, or to the rendering of reciprocal assistance in the administration of taxation under the said laws.

(2) In any agreement contemplated in subsection (1) provision may be made-

(a) where a tax on value-added is levied in each country which is a party to such agreement, for payments to be made, on a reciprocal basis, by the government of one of those countries (hereinafter referred to as the first country) to the government of the other country (hereinafter referred to as the second country) of so much of the tax on value added which is levied and collected in the first country and is borne by persons carrying on in the second country any business or occupation of a class specified in the agreement or by other persons who are

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resident in the second country as does not exceed an amount equal to the amount of tax on value added which would have been payable at the rate of the tax on value added levied in the second country, but excluding any tax levied in the first country on any supply if not tax on value added would be payable in the second country on a similar supply and on any supply of goods and services used or consumed in the first country; and

- (b) for the constitution and appointment of a committee comprised of representative of both countries to perform duties relating to the implementation of the provision made as contemplated in paragraph (a) and the monitor of such payments.

(3) As soon as may be after the conclusion of any such agreement the arrangements thereby made shall be notified by the Minister by notice in the Gazette whereupon, until such notice is withdrawn by the Minister, the arrangements notified therein shall in so far as they relate to immunity, exemption or relief in respect of such tax in the Republic have effect as if enacted in this decree but only if and for so long as such arrangements, in so far as they relate to immunity, exemption or relief in respect of such tax levied or leviable in such other country, have the effect of law in such country.

(4) The Minister may at any time withdraw any such notice by notice in the Gazette and the arrangements notified in such earlier notice shall cease to have effect upon a date fixed in such latter notice, but the withdrawal of any notice shall not affect the validity of anything previously done thereunder.

(5) The duty imposed by any law to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorized officer of the country mentioned in any notice issued in terms of subsection (2) of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in such notice.

- 76. Amendments varying rate of tax or certain fixed amounts of Schedule 1 or 2.-** the Minister may from time to time with the prior approval of the Council of State by notice in the Gazette , with effect from the date of such notice or a later date specified by the Minister-

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- (a) amend the provisions of section 7 so as to effect a variation or further variation of the rate of tax fixed by the said section by increasing or reducing that rate: Provided that the rate fixed under the said section shall not be varied under this paragraph so as to provide for an increase of more than 2 per cent in the rate of tax so fixed, or
- (b) amend Schedule 1 or 2 whenever he deems it expedient in the public interest to do so; or
- (c) amend paragraph (b) of the definition of "commercial rental establishment" in section 1, or section 15(2)(b)(i), or section 18(2) or (5), or section 20(5), or section 20(6), or section 20(8), or section 23(1), or section 27(3)(a)(i), or section 27(4)(c), or paragraph (ii) of the provision to section 44 (1), or section 44 (3)(b), or section 44 (4), so as to vary any of the amounts specified therein; or
- (d) amend the provisions of this decree as he deems fit so difficulties which may arise in regard to the application of any such provision or to make such further provision as the Minister considers to be fair and reasonable.

77. **Transitional matters.-** (1) For the purposes of this section-

"sales tax" means the sales tax levied under the Sales Tax Act;

"Sales Tax Act" means the Sales Tax Act, 1978 (Act No.103 of 1978) as in force immediately prior to its repeal by this decree.

(2)(a) Where in the course of an enterprise carried on by a person registered as a vendor in terms of the Sales Tax Act that person has before the commencement date entered in an agreement for the sale of movable goods and sales tax would have been payable by him in respect of the taxable value of such sale if the said Act had not been repealed but the said tax is not payable by reason of the fact that the consideration payable by the purchaser in respect of such sale has not been paid in full before the commencement date and delivery of the said goods has not been effected before that date, the said person shall, if on the commencement date he is a vendor as defined in section 1 of this Act, be deemed for the purposes of this Act to have supplied the said goods at the time of delivery of the said goods or the time at which any payment in respect of the said consideration is made on or

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after the commencement date or the time at which an invoice in respect of such sale is issued on or after that date, whichever time is earliest.

(b) Where any leased property has been leased by a vendor under the Sales Tax Act who is on the commencement date a vendor under this decree to a lessee under a financial lease, as defined in section 1 of the Sales Tax Act, and such property is delivered to the lessee on or after that date, such property shall, notwithstanding the provisions of section 9 of this decree be deemed to have been supplied to the lessee under an instalment credit agreement at the time of delivery of such property.";

(3) Where, on or after the commencement date, any amount accrues to a vendor who was a vendor for the purposes of the Sales Tax Act and the amount so accruing or apportion thereof would, but for the repeal of that Act, have been taken into account in the determination of a taxable value chargeable with sales tax-

- (a) in terms of section 5(1)(c) of that Act in respect of a rental consideration for a period which ended before the said date; or
- (b) in terms of section 5(1)(d) of that Act in respect of a taxable service completed before date, or
- (c) in terms of section 5(1)(e) of that Act in respect of board and lodging supplied for a period which ended before that date, or
- (d) in terms of section 5(1)(f) of that Act in respect of accommodation let for a period which ended before that date,

value-added tax shall, notwithstanding anything in this decree to the contrary, be chargeable in respect of that amount as though such amount were a consideration for a supply of goods or services supplied by the vendor on the date on which that amount accrued.

(4) This decree shall not be construed as imposing value-added tax under section 7(1)(a) in respect of-

- (a) a provision of goods under a rental agreement entered into before the commencement date for a period which ended before that date where such goods did not constitute goods as defined in section 1 of the Sales Tax Act; or
- (b) a performance of services under an agreement entered into before that date where the performance of such services is completed before that date or such services were performed during and in respect of a period which ended before that date, if in either case such services were not taxable services

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as contemplated in the definition of "taxable service" in section 1 of the Sales Tax Act.

(5) Where the value of any supply of goods or services, as determined under section 10, includes any amount which has been taken into account by a vendor in the determination of a taxable value under the Sales Tax Act and sales tax was chargeable in respect of such taxable value under section 5 of that Act or would have been so chargeable but for the provisions of section 6 of that Act, the value in respect of such supply shall for the purpose of value-added tax be reduced by the said amount (but excluding so much of that amount as represents sales tax).

(6) For the purposes of this decree, where-

- (a) goods are provided under a rental agreement for a period which commences before and ends on or after the commencement date, or
- (b) the performance of any services is commenced before and is completed on or after that date, or
- (c) domestic goods and services are provided for a period which commences before and ends on or after that date,

the value of the supply, as determined under this decree shall not be reduced to take account of any portion thereof made before the said date:

Provided that-

- (i) where the goods referred to in paragraph (a) consist of fixed property, there shall be excluded from the rental consideration for the supply so much of such consideration as is attributable to the portion of the period referred to in that paragraph which ends before the said date;
- (ii) where the services referred to in paragraph (b) were not taxable services for the purposes of the Sales Tax Act-
 - (aa) any progress payment in respect of that portion of the services performed before the said date shall for the purposes of this decree be ignored; and
 - (bb) where any payment becomes due or is received in respect of services which were not taxable services for the purposes of the Sales Tax Act and which are commenced before and completed on or after the said date, that portion of the payment which, on the basis of a fair and reasonable apportionment, is attributable to the portion of the services performed

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before the said date shall be excluded from the consideration for the supply.

(7) Where any payment is made on or after the date of promulgation of this decree and before the commencement date in respect of consideration for the supply of any goods or services (not being a transaction in respect of which a taxable value is subject to sale tax) a supply of such goods or services shall be deemed to have been made on the commencement date to the extent to which such payment or invoice relates to the provision of goods or the performance of services on or after the commencement date: Provided that this subsection shall not apply in respect of any payments customarily made or invoices customarily issued when made or issued at regular intervals for the provision of goods or the performance of services still to be made or performed.

(8)(a) In the case of a vendor who was on the day before the commencement date a vendor for the purposes of the Sales Tax Act an adjustment shall be made in the manner provided in paragraphs (c) and (d) in respect of sales tax attributable to any amount which would, but for the repeal of that Act, have been accounted for under paragraph (d), (i), (iv) or (vi) of subsection (2) of section 11 of that Act.

(b) The sales tax attributable to such amount shall be determined by applying the formula

$$\frac{r}{100 + r} \times t,$$

in which formula "r" is the rate of sales tax, expressed as a percentage, which was in force on the day before the commencement date and "t" is the said amount.

(c) The adjustment shall be made in the tax period of the vendor under this decree which, as nearly as possible, corresponds with the tax period of the vendor which would, but for the repeal of the Sales Tax Act, have applied under that Act.

(d) The adjustment shall be made by including in the amounts of output tax accounted for under section 16(3), in respect of the relevant tax period under this decree the amount of sales tax attributable to the amount that would have been accounted for under paragraph (d) of subsection (2) of section 11 of the Sales Tax Act and by including in the amount of input tax accounted for under the said section 16(3) such amount as would have been accounted for under paragraph (i), (iv) or (vi) of the said subsection (2).

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(9) Where, in the case of any vendor who was for the purposes of the Sales Tax Act deemed to be a liquor trader, any excess could, but for the repeal of the Sales Tax Act, have been carried forward from the tax period under that Act ending on the day before the commencement date, the amount of the excess shall, if on that date he continued to carry on the trade of selling liquor, for the purposes of section 16(3) of this decree be deemed to be input tax paid by him in respect of a supply of liquor made to him on that date.

(10)(a) Notwithstanding the provisions of subsection (7), where fixed property has been disposed of under an agreement for the sale of such property concluded before the commencement date, the disposal of such property under such sale shall be deemed not to be a supply of goods for the purposes of this decree.

(b) For the purposes of this subsection where an option to purchase fixed property or a right of pre-emption in respect of fixed property is granted, the agreement for the sale of the property shall be deemed to be concluded when the option or right of pre-emption is exercised.

(11) Where any vendor who is on or with effect from the commencement date registered under section 23 and on that date-

(a) carries on a construction, civil engineering or similar enterprise and has on hand a stock of material acquired by him prior to that date in order to be used by him for the purpose of incorporation in any building or other structure or work of a permanent nature to be erected, constructed, assembled, installed, extended or embellished by him in the course of such enterprise, and sales tax has been borne by him in respect of such materials, or

(b) has on hand a stock of consumable goods or maintenance spares acquired under sales concluded by him prior to that date for the purpose of consumption or use in the course of his enterprise, and sales tax has been borne by him in respect such sales,

and on or after that date any item of such stock is withdrawn by him for the purpose referred to in paragraph (a) or the purpose referred to in paragraph (b), as the case may be, the vendor may, provided he has taken stock of such materials, consumable goods or maintenance spares, as the case may be, and he retains properly prepared stock lists in respect of such stocktaking, include in the amounts of input tax deducted by him under

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section 16(3) in respect of the tax period during which such item is withdrawn, the amount of sales tax borne by him in respect of that item: Provided that where the vendor does not maintain records which are adequate enough to determine when items are withdrawn from such stocks or the sales tax so borne thereon in respect of sales to him of such items, the Commissioner may, on application by the vendor, authorize him to deduct the actual sales tax borne by him in respect of such sales or an amount of sales tax which on the basis of a reasonable calculation represents the amount of sales tax so borne by him on the stocks in equal instalment by way of inclusions in the input tax deducted by the vendor in his tax returns over a period of two years or such shorter period as the Commissioner may allow.

(11) Where sales tax has been borne by any vendor (being a person who is on or with effect from the commencement date registered under section 23) in respect of the acquisition of goods (Other than fixed property or goods incorporated therein) under a sale or the importation of goods and such goods are held by him on the commencement date as trading stock, whether or not the vendor is liable for normal tax under that Act, the vendor may, provided he has taken stock of such goods and he retains properly prepared stock lists in respect of such stocktaking, include the amount of that tax in the amounts of input tax deducted by him under section 16(3) in respect of the tax period during which such goods are supplied by him in the course or furtherance of his enterprise: Provided that, where it appears to the Commissioner that the keeping of records for the purposes of the preceding provisions of this subsection can be dispensed with without prejudice to revenue collections, the Commissioner may, on application by the vendor, authorize him to deduct the sales tax on stocks of such goods so held by the vendor in equal instalments by way of inclusions in the input tax deducted by the vendor in his tax returns over a period of two years or such shorter period as the Commissioner may allow.

- (12)(a) Where any person-
- (i) is on the day before the commencement date registered as a vendor under the Sales Tax Act,
 - (ii) at the end of that day has in his possession goods (as defined in that Act) which he has not disposed of or which he has disposed of under a sale but for which he has not received full payment and in either case sales tax was

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not borne by him on acquisition, and

(iii) on the commencement date is not a vendor for the purposes of this decree subparagraph (i) he shall for the purposes of the Sales Tax Act be deemed to have applied such goods on the day referred to in subparagraph (i) to a use or consumption contemplated in section 5(1)(h) of that Act.

(b) Any sales tax payable under the Sales Tax in respect of the taxable value of such goods shall be payable at the rate of 10 per cent and may be paid to the Commissioner within the period of three months reckoned from the day after the commencement date, without penalty.

78. Amendment and repeal of laws.- (1) Subject to the provisions of this section-

(a) the Stamp Duties Act, 1968 (Act 77 of 1968) is hereby amended as provided in Part 1 of Schedule 3; and

(b) the laws specified in Part 2 of Schedule 3 are hereby repealed.

(2)(a) the amendments in item (2) of Part 1 of Schedule 3 shall come into operation on the commencement date: Provided that any stamp duty or other amount which but for such amendments would have been capable of being levied or recovered under subsection (4) of the said section 24 in respect of policies, certificates of insurance and endorsements thereon executed before that date and renewals thereof falling due before that date shall be lived, paid and recovered as if the said amendments had not been effected.

(b) Item (4) of Part 1 of Schedule 3 shall come into operation on the commencement date in respect of insurance policies, certificates of insurance and endorsements thereon executed on or after that date and renewals thereof falling due on or after that date.

(3) The provisions of the Sales Tax Act, 1978 (Act 103 of 1978) shall remain in force for the purposes of the levying, payment, assessment and recovery of sales tax levied under that Act which is in terms of section 8 of that Act deemed to have become payable on a date falling before the commencement date and matters concerned therewith.

79. State bound by decree and effect of certain exemption from taxes.- This decree shall bind the state, and no provision in any other law whereunder exemption is or may be granted from any tax or duty shall be construed as applying or referring, as the case may be, to the tax leviable under this decree

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unless such tax is expressly mentioned in such provision.

- 80. Short title.-** This decree shall be called the Value-added Tax Decree, 1991.

- (2) exported by residents of the Republic for their own use while abroad and subsequently reimported either as accompanied or unaccompanied passengers' baggage by such residents.
- 407.02 Goods imported as accompanied passengers' baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic:
- 22.00/01.00 Wine not exceeding 2 litres per person
- 22.00/02.00 Spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre per person
- 24.02/01.00 Cigarettes not exceeding 400 and cigars not exceeding 50 per person
- 24.03/01.00 Cigarette or pipe tobacco not exceeding 250g per person
- 33.03/01.00 Perfumery not exceeding 50 ml and toilet water not exceeding 250 ml per person
- 00.00/01.00 Other new or used goods, of a total value not exceeding R500 per person
- 00.00/02.00 Additional goods, new or used, of a total value not exceeding R1 000 per person (excluding goods of a class or kind specified in Item Nos. 407.02/22.00, 407.02/24.02, 407.02/24.03 and 407.02/33.03)
- 407.06 Household furniture, other household effects and other removable articles, including equipment necessary for the exercise 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 the Republic) and members of his family, imported for own use on change of his residence to the Republic.
- 409.01 Imported goods exported and thereafter returned to or brought by the exporter without having been subjected to any process of manufacture or manipulation and without a permanent change of ownership.
- 409.02 Goods produced or manufactured in the Republic, exported therefrom and thereafter returned to 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 (excluding excisable goods exported ex a customs and excise warehouse).
- 409.03 Imported or locally manufactured returned empty packing containers: Pallets of wood, wooden casks, vats, tubs, sacks, bags and aluminium casks and drums.
- 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 reimportation.

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SCHEDULE 1

(SECTION 13(3))

EXEMPTION: CERTAIN GOODS IMPORTED INTO THE REPUBLIC

The goods in respect of which the exemption under the provisions of section 13(3) shall apply, shall be as hereinafter set forth.

PART A

IMPORTED GOODS WHICH ARE ENTERED OR ARE REQUIRED TO BE ENTERED UNDER THE PROVISIONS OF THE CUSTOMS AND EXCISE ACT

1. Goods imported into the Republic which fall under any heading and description mentioned below, to the extent indicated, and in respect of which either no customs duty is payable or a rebate of customs duty is granted in terms of the Customs and Excise Act:

ITEM NO.	HEADING AND DESCRIPTION
405.04	Goods for welfare or charitable purposes:
	00.00/03.00 Goods approved by the Commissioner for Customs and Excise forwarded free to an organisation or body approved by the said Commissioner which cares for the welfare of children, subject to the conditions imposed by that Commissioner in each case and to a permit issued by him.
	63.09 Used clothing purchased by or forwarded unsolicited and free to any church or any welfare organisation registered in terms of the National Welfare Act, 1987 (Act No. 18 of 1987) for distribution free of charge by such church or organization to indigent persons, subject to production at the time of importation of a written declaration by such church or organization that the goods have been purchased or forwarded unsolicited and free and that they will be distributed free of charge to indigent persons.
406.00	Goods for Heads of State, Diplomatic and other Foreign Representatives.
407.01	Personal effects and sporting and recreational equipment, new or used: (1) imported either as accompanied or unaccompanied passengers' baggage by non-residents of the Republic for their own use during their stay in the Republic;

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- 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.
- 409.07 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Director-General: Finance and Economic Development, provided that-
- (i) the specific permit is obtained before the temporary exportation of the goods; and
 - (ii) any additional conditions which may be stipulated in the said permit, are complied with.
- 412.02 Urns and coffins containing human remains, together with flowers or wreaths.
- 412.03 Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in the Republic.
- 412.04 Used property of a person normally resident in the Republic who dies while temporarily outside the Republic.
- 412.10 Bona fide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed R100 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars) consigned by natural persons abroad to natural persons in the Republic.
- 412.11 Goods imported-
- (a) for the relief of distress of persons in cases of famine or other national disaster;
 - (b) under any technical assistance agreement; or
 - (c) in terms of an obligation under any multilateral international agreement to which the Republic is a party.
- 412.12 Goods imported for any purpose agreed upon between the Governments of the Republic, Botswana, Lesotho and Swaziland.
- 470.01 Goods temporarily admitted for processing, provided such goods do not become the property of the importer.
- 470.02 Goods temporarily admitted for repair, cleaning or reconditioning.
- 480.00 Goods temporarily admitted for specific purposes.
- 490.00 Goods temporarily admitted subject to exportation in the same state.

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Heading No.

27.09.00	Petroleum oil and oils obtained from bituminous minerals, crude.
49.11.10.20	Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries.

2. Any of the following items imported into the Republic in respect of which the Controller of Customs and Excise has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act, granted permission that entry need not be made:
 - (i) Containers temporarily imported;
 - (ii) human remains;
 - (iii) goods which in the opinion of the Commissioner for Customs and Excise are of no commercial value;
 - (iv) goods imported under an international carnet; and
 - (v) goods of value for customs duty purposes not exceeding R200, and on which no such duty is payable in terms of Schedule No. 1 to the said Act.
3. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value for duty purposes under the Customs and Excise Act not exceeding R40 per parcel.

PART B

IMPORTED GOODS WHICH ARE NOT AND WILL NOT BE REQUIRED TO BE ENTERED UNDER THE PROVISIONS OF THE CUSTOMS AND EXCISE ACT

1. Goods imported into the Republic from any specified country as defined in section 1, namely-
 - (a) Goods referred to in paragraph 1 of Part A of this Schedule under items 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, 490.00 and Headings Nos. 27.09.00 and 49.11/49.11.10.20 to the extent indicated
 - (b) Goods or items referred to in paragraphs 2 and 3 of Part A of this Schedule, to the extent indicated.
 - (c) Any motor vehicle constituting an asset of any enterprise or of any other bona fide commercial, financial, industrial, mining, quarrying, farming, forestry or fishing concern or of any bona fide professional practise actively carried on in any specified country, and which is brought temporarily into the Republic from such country for the use during the course of his employment by any employee of such enterprise, concern or practice where such an employee is ordinary resident in the Republic and does not have any direct or indirect financial interest or share in such enterprise, concern or practice.
2. Goods imported into or produced or manufactured in the Republic, 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, if such goods

were acquired in the Republic before the commencement date or, where such goods were so acquired on or after that date, tax under this decree was paid in respect of the acquisition thereof.

3. Goods which are shipped or conveyed to the Republic for transshipment or conveyance to any country.

PART C

IMPORTED GOODS WHICH ARE NOT AND WILL NOT BE REQUIRED TO BE ENTERED UNDER THE PROVISIONS OF THE CUSTOMS AND EXCISE ACT, EXCLUDING GOODS IMPORTED FROM ANY SPECIFIED COUNTRY

1. Goods imported into the Republic, namely-
 - (a) Goods referred to in paragraph 1 of Part A of this Schedule under items Nos. 405.04, 406.00, 407.01, 407.02, 407.06, 409.01, 409.02, 409.03, 409.04, 409.06, 409.07, 412.02, 412.03, 412.04, 412.10, 412.11, 412.12, 470.01, 470.02, 480.00, 490.00 and Headings Nos. 27.09.00 and 49.11/49.11.10.20 to the extent indicated.
 - (b) Goods or items referred to in paragraphs 2 and 3 of Part A of this Schedule, to the extent indicated.
 - (c) Any motor vehicle constituting an asset of any enterprise or of any other bona fide commercial, financial, industrial, mining, quarrying, farming, forestry or fishing concern or of any bona fide professional practice actively carried on in any specified country, and which is brought temporarily into the Republic from such country for the use during the course of his employment by any employee of such enterprise, concern or practice where such an employee is ordinarily resident in the Republic and does not have any direct or indirect financial interest or share in such enterprise, concern or practice.
2. Goods which are shipped or conveyed to the Republic for transshipment or conveyance to any country.

SCHEDULE 2

(SECTION 11(1)(g))

ZERO RATE: SUPPLY OF GOODS USED OR CONSUMED FOR AGRICULTURAL, PASTORAL OR OTHER FARMING PURPOSES

1. The goods in respect of the supply of which the rate of zero per cent shall apply under the provisions of section 1(1)(g) of this Act shall, subject to the provisions of paragraph 2, be as hereinafter set forth:

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Item 1	Stock feed
" 2	fertiliser
" 3	foliar nutrition
" 4	herbicide
" 5	insecticide
" 6	fungicide
" 7	dosage agent
" 8	dips
" 9	licks
" 10	veterinary vaccines prepared for use wholly or mainly in respect of farm livestock
" 11	seed in a form used for cultivation
" 12	grain seed in a form used for cultivation
" 13	plant material in a form used for cultivation

2. The provisions of paragraph 1 shall apply only if-
- (a) the goods concerned are supplied to a vendor who is registered under this decree in quantities the consideration for which is not less than R500 per item for each supply; and
 - (b) a tax invoice containing the particulars required by section 20(4) of this Act is issued in respect of the relevant supply.

SCHEDULE 3

LAWS AMENDED OR REPEALED

(SECTION 78)

PART 1: LAWS AMENDED

STAMP DUTIES ACT, 1968 (ACT 77 OF 1968):

- (1) Section 23 amended by the substitution for subparagraph (viii) of paragraph (b) of subsection (4) of the following subparagraph:
- "(viii) where exemption from duty is claimed under paragraph (v) of the Exemptions to Item 15(3) of Schedule 1, there is annexed to such instrument a declaration signed by the transferor containing the following particulars:
- (aa) The name and address of the transferor and the registration number allocated to him as a vendor under the Value-Added Tax Decree; 1991;
 - (bb) the name and address of the transferee;
 - (cc) the date of the sale or disposal of the share in respect of which the registration of transfer is to be effected, and the amount of the consideration given by the transferee for the share under the sale or disposal, excluding value-added tax within the meaning of the said decree; and

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(dd) the amount of the said value-added tax payable in respect of the sale or disposal and the tax period under the said decree in respect of which such tax has been or will be payable.";

(2) Section 24 amended-

(i) by the deletion of subsection (1);

(ii) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) receives or takes credit for any premium or consideration for any policy or certificate of insurance or any endorsement thereto chargeable with duty under Item 18 of Schedule 1 and does not within one month after receiving or taking credit for such premium or consideration make out and execute a policy, receipt or instrument; or"; and

(iii) by the deletion of subsections (2A), (3), (4), (5), (6), (7), (8) and (8A);

(3) Item 15 of Schedule 1 amended by the insertion under the heading "Exemptions from the duty under paragraph (3):" of the following subparagraph:

"(v) Any registration of transfer of any share in a share block company as defined in section 1 of the Share Block Control Act, 1980 (Act No. 59 of 1980) which confers a right to or an interest in the use of immovable property, where such registration is in consequence of a sale or disposal of such share which in terms of the Value-Added Tax Decree, 1991, constitutes a supply of such share and in terms of that decree value-added tax has been or will be paid by the transferor in respect of such supply."

(4) Item 18 of Schedule 1 amended-

(a) by the deletion of paragraphs (4) and (6); and

(b) by the substitution in paragraph (7) for the words "any policy" of the words "any above-mentioned policy".

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PART 2: LAWS REPEALED

NO. AND YEAR OF LAW	SHORT TITLE
Act 103 of 1978	Sales Tax Act, 1978
Act 111 of 1979	Sales Tax Amendment Act, 1979
Act 105 of 1980	Sales Tax Amendment Act, 1980
Act 97 of 1981	Sales Tax Amendment Act, 1981
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