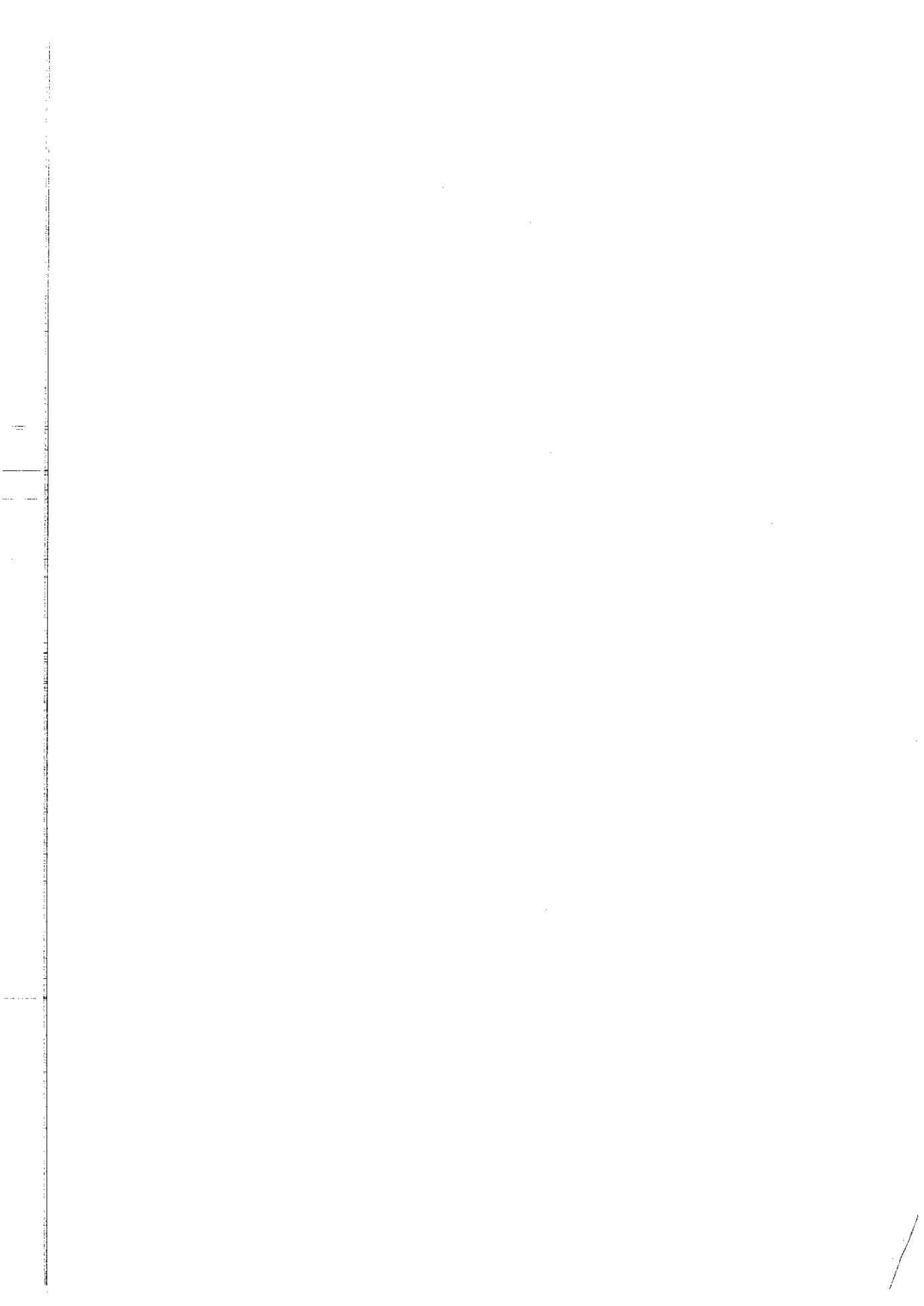




# **VALUE ADDED TAX BILL 2023**

**(NO. 9 OF 2023)**





# **VALUE ADDED TAX BILL 2023**

(NO. 9 OF 2023)

A

**BILL**

Entitled

**AN ACT TO PROVIDE FOR THE IMPOSITION OF VALUE ADDED TAX AND RELATED MATTERS.**

**ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.**

# VALUE ADDED TAX BILL 2023

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**SCHEDULE 4**

# VALUE ADDED TAX BILL 2023

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Value Added Tax Act 2023*.

### 2 Commencement

- (1) Section 3 commences on the date notified by the Minister by notice in the *Gazette*.
- (2) The rest of the Act commences on the date ("**full commencement date**") that is 180 days after the date of commencement of section 3.

### 3 Preliminary registration

- (1) This section applies to:
  - (a) a person who knows or could with reasonable diligence have known that the person will be liable to register under section 13 with effect on or from the full commencement date; and
  - (b) a financial institution for the purposes of the *Financial Institutions Act 1998* or the *Central Bank of Solomon Islands Act 2012*.
- (2) A person or financial institution to whom this section applies must apply for registration under section 13 not later than 40 business days before the full commencement date.
- (3) A person who fails to comply with subsection (2) is liable to an administrative penalty under section 70(1)(a) and for this purpose Division 1 of Part 10 is deemed to apply.

### 4 Act is tax law

This Act is a tax law for the purposes of the *Tax Administration Act*.



**5 Act binds the Crown**

This Act binds the Crown.

**Part 2 Interpretation**

**6 Definitions**

In this Act, unless the context otherwise requires:

"**adjustment event**" has the meaning in section 51;

"**approved form**" means a form approved by the Commissioner under section 159 of the *Tax Administration Act*;

"**associate**":

- (a) of a person ("**A**"), means another person ("**B**") who acts or may act (other than solely by reason of an employment or a client relationship) in accordance with A's directions, requests, suggestions or wishes; and
- (b) of person B, if B acts in accordance with A's directions, requests, suggestions or wishes other than solely by reason of an employment or a client relationship, means person A;

"**business day**" means a day that is not a Saturday, Sunday or public holiday;

"**Commissioner**" means the Commissioner of Inland Revenue holding office under section 6 of the *Tax Administration Act*;

"**credit note**" means a document that a supplier is required to issue under section 55(1);

"**creditable acquisition**", in relation to a registered person, means:

- (a) a taxable supply made to the person by another registered person; or
- (b) a taxable import made by the person;

"**Customs Act**" means the *Customs and Excise Act* (Cap. 121);

"**debit note**" means a document that a supplier is required to issue under section 56(1);

"**deemed output tax**", in relation to a registered person, means output tax deemed to be received by the registered person under section 26(2), 26(4), 38(2), 52(1) or 52(4);

"**deemed taxable supply**" means a taxable supply deemed to have been made by a person under section 26(1), 26(3) or 38(1);

"**enterprise**" has the meaning given in section 7;

"**exempt import**" means an import listed in Schedule 1;

"**exempt supply**" means a supply listed in Schedule 2;

"**fair market value**" has the meaning given in section 8;

"**file**" means to file, lodge or submit a document;

"**form**" means a form or format, and includes an electronic or online form or format;

"**full commencement date**" means the date referred to in section 2(2);

"**goods**" means immovable property or any tangible movable property, but does not include money;

"**government entity**" means:

- (a) the Government, including a department, division or agency of the Government but not including a state owned enterprise; or
- (b) a provincial government or the Honiara City Council; or
- (c) a foreign government or political subdivision of a foreign government, including a department, division or agency of the foreign government or political subdivision;

"**hire purchase agreement**" means a sale and purchase agreement under which the price is paid by instalments and each instalment includes an interest charge;

"**import**" has the same meaning as in section 2 of the *Customs Act*;

**"importer"** has the same meaning as in section 2 of the *Customs Act*;

**"input tax"**, in relation to a registered person:

(a) means:

- (i) the VAT paid in respect of a creditable acquisition by the person; and
- (ii) an amount that is treated for the purposes of this Act as input tax paid by the person; but

(b) does not include late payment interest or a penalty imposed under this Act or the *Tax Administration Act* in respect of a creditable acquisition;

**"input tax credit"** means the credit for input tax allowed under this Act;

**"international agreement"** means an agreement between the Government and a foreign government or international organisation for the provision of financial, technical, humanitarian or administrative assistance to the Government;

**"international organisation"** means:

- (a) an organisation to which the *International Financial Organisations Act* (Cap. 141) applies; or
- (b) any other organisation the members of which are primarily sovereign powers or governments of sovereign powers;

**"inventory"** means goods held for sale or lease, or goods that are raw materials, work in process, or materials used or consumed in an enterprise;

**"invoice"** means a document notifying an obligation to make a payment and includes a tax invoice;

**"late payment interest"** means late payment interest imposed under section 112 of the *Tax Administration Act*;

**"Minister"** means the Minister with responsibility for the administration of this Act;

**"money"** means:

- (a) any coin or paper currency that is legal tender in Solomon Islands, other than a coin or paper currency that is a collector's piece; or
- (b) a bill of exchange, promissory note, bank draft or postal or money order; or
- (c) whatever is supplied as payment by way of:
  - (i) a credit card or debit card; or
  - (ii) the crediting or debiting of an account;

**"net VAT"** means the net VAT calculated under section 46;

**"output tax"** means the tax imposed under this Act payable in respect of a taxable supply made or treated as having been made by a registered person, and includes deemed output tax;

**"penalty"** means a penalty imposed under this Act or the *Tax Administration Act*;

**"person"** means a natural person, a partnership, a trust, an incorporated or unincorporated body of persons, a government entity or an international organisation;

**"political subdivision"**, in relation to a foreign government, means a state, provincial, local or other government at a level lower than the national government;

**"price"** has the meaning given in section 9;

**"received"**, in relation to a person, includes applied on behalf of the person either at the instruction of the person or under any law;

**"recipient"**, in relation to a supply, means the person or persons to whom the supply is made;

**"recipient-created tax invoice"** means a recipient-created tax invoice referred to in section 59;

**"registered person"** means a person registered under section 18, and includes a person who is required to apply for registration but who has not done so within the time specified in section 13;

**"registration threshold"** means:

- (a) the amount specified in section 15(1) or otherwise prescribed; or
- (b) in the case of voluntary registration, the amount specified in section 15(2);

**"regulations"** means regulations made under this Act;

**"rules"** means rules made under section 169 of the *Tax Administration Act*;

**"services"** means anything that is not goods or money;

**"supplier"**, in relation to a supply, means the person or persons who made the supply;

**"supply"** means a supply of goods, a supply of services or a supply of imported services;

**"supply of goods"** means a sale, exchange or other transfer of the right to dispose of goods as owner, including under a hire purchase agreement;

**"supply of imported services"** has the meaning given in section 10;

**"supply of services"**:

- (a) means anything done that is not a supply of goods or money; and
- (b) includes the provision of utilities, refraining from doing anything and the grant, assignment or surrender of any right;

**"Tax Administration Act"** means the *Tax Administration Act 2022*;

**"tax fraction"**, in relation to a taxable supply, means the fraction computed in accordance with the following formula:

$$r / (100+r)$$

where  $r$  is the rate of VAT applicable to the supply as determined under section 12;

**"tax invoice"** means a document required to be issued under section 54(1) or prepared under section 59(1);

**"taxable import"** means an import of goods, other than an exempt import;

**"taxable supply"**:

- (a) means a supply, other than an exempt supply, made in Solomon Islands by a person in the course of or as part of an enterprise; and
- (b) includes a deemed taxable supply;

**"taxpayer identification number"** or **"TIN"**, in relation to a person, means the taxpayer identification number issued to that person under section 19 of the *Tax Administration Act*;

**"telecommunications services"**:

- (a) means the transmission, emission or reception of signals, writing, images, sounds or information of any kind by wire, radio, optical or other electromagnetic systems; and
- (b) includes:
  - (i) the related transfer or assignment of the right to use capacity for that transmission, emission or reception; or
  - (i) the provision of access to global or local information networks; but
- (c) does not include the supply of the underlying writing, images, sounds or information;

**"trust"** includes the estate of a deceased person;

**"value added tax"** or **"VAT"** means value added tax imposed under section 11;

**"VAT period"** means:

- (a) the period of any calendar month; or
- (b) any other period prescribed by regulation;

**"zero-rated supply"** means a supply listed in Schedule 3.

## **7 Meaning of enterprise**

(1) Subject to subsection (2), "**enterprise**" means:

- (a) an activity carried on continuously or regularly by a person, whether for pecuniary profit or not, if the activity involves or is intended to involve the supply of goods or services to another person, including a business, trade, commerce, manufacture, profession, vocation or occupation of any kind; or
- (b) an activity of a government entity that involves the supply of goods or services for a fee, including but not limited to the service of issuing a licence, permit, certificate, concession, authorisation or other document for a fee.

(2) An enterprise does not include:

- (a) an employment; or
  - (b) a hobby or leisure activity of an individual; or
  - (c) an activity of a person, other than an individual, that is essentially carried on as a hobby or leisure activity for the benefit of a member, owner or associate of the person.
- (3) An activity done or undertaken in the commencement, termination or reorganisation of an enterprise is done in the course or as part of the enterprise.
- (4) In subsection (2)(a), "**employment**" means employment of an individual under a contract of service for which the individual is paid a wage or salary.

## **8 Meaning of fair market value**

- (1) The fair market value of a supply is the price that the supply would fetch in an open market transaction freely made in Solomon Islands

at the time of supply between persons dealing with each other at arm's length.

- (2) If it is not possible to determine the fair market value of a supply ("**the actual supply**") under subsection (1), the fair market value is the price that a similar supply would ordinarily fetch in an open market transaction freely made in Solomon Islands at the time of the actual supply between persons dealing with each other at arm's length, adjusted to take account of the differences between the similar supply and the actual supply.
- (3) A supply is similar to another supply if it is the same as, or closely resembles, the other supply taking account of the character, quality, quantity, functionality, materials or reputation of the goods or services supplied.
- (4) If the fair market value of a supply cannot be determined under subsection (1) or (2), the fair market value is the price that is an objective estimation of the price that the supply would fetch in an open market transaction freely made in Solomon Islands at the time of supply between persons dealing with each other at arm's length as determined by the Commissioner based on generally accepted principles of valuation.
- (5) If a provision of this Act requires the fair market value to be determined at a particular time for particular goods or services held by a person, that value is worked out by reference to the fair market value of a supply of those goods or services as determined under this section, at that time.

## **9 Meaning of price**

- (1) The price of a supply is the total of the following amounts after reduction by any discounts or rebates allowed or accounted for at the time of supply:
  - (a) the amount in money paid or payable by any person, directly or indirectly, for the supply;
  - (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly, for the supply;
  - (c) any taxes, duties, levies, fees and charges paid or payable on, or by reason of, the supply.



- (2) The price of a sale of goods under a hire purchase agreement to which section 27(2) applies does not include any amount payable in relation to a supply of credit under the agreement.

## 10 Meaning of supply of imported services

- (1) A supply of imported services is a supply of services that satisfies the following conditions:
- (a) the supply is received in Solomon Islands by a registered person;
  - (b) the supply is made by a person who is not a registered person;
  - (c) the supply is not a taxable supply because the supply is not made in Solomon Islands;
  - (d) the supply would have been a taxable supply if it had been made in Solomon Islands;
  - (e) the registered person receiving the supply would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply.
- (2) For the purposes of subsection (1), if a registered person carries on an enterprise both in and outside Solomon Islands:
- (a) that part of the enterprise carried on outside Solomon Islands is treated as if it were a separate enterprise carried on by a person ("**the overseas person**") separate from the registered person and both persons are treated as associates of each other; and
  - (b) the overseas person is not a registered person; and
  - (c) the internal provision of services from the overseas person to the registered person is treated as a supply of services made by the overseas person in the course or as part of an enterprise carried on outside Solomon Islands.

## **Part 3                      Imposition of VAT**

### **11                      Imposition and liability for VAT**

- (1) VAT is imposed at the rate specified in section 12 on the following:
  - (a) a taxable supply made by a registered person;
  - (b) a taxable import;
  - (c) a supply of imported services.
- (2) The liability for VAT on a taxable supply arises at the time of supply and must be accounted for to the Commissioner by the registered person making the supply in accordance with section 62(1).
- (3) Irrespective of anything contained in any law but subject to section 64, the VAT payable by a registered person in respect of a taxable supply is recoverable by the person from the recipient of the supply.
- (4) The liability for VAT imposed on an import arises at the time of import and must be paid by the importer in accordance with section 62(2).
- (5) The liability for VAT imposed on a supply of imported services arises at the time of supply and must be accounted for to the Commissioner by the registered person receiving the supply in accordance with section 62(1).

### **12                      Amount and rate of VAT**

- (1) The amount of VAT payable in respect of a taxable supply, taxable import or supply of imported services is calculated by applying the rate specified in subsection (2) to the value of the supply or import.
- (2) The rate of VAT is:
  - (a) in the case of a taxable supply that is a zero-rated supply, 0%;  
or
  - (b) in any other case, 15%.

## **Part 4                      Registration**

### **13                      Liability to register for VAT**

A person must apply to the Commissioner for registration for VAT:

- (a) at the beginning of any 12-month period, if there are reasonable grounds to expect that the total value of taxable supplies to be made by the person in that period will exceed the registration threshold specified in section 15(1) or otherwise prescribed; or
- (b) at the end of any 12 month or lesser period, if, in that period, the total value of taxable supplies made by the person exceeds the registration threshold specified in section 15(1) or otherwise prescribed; or
- (c) if the person is a financial institution for the purposes of the *Financial Institutions Act 1998* or the *Central Bank of Solomon Islands Act 2012*.

### **14                      Voluntary registration for pre-establishment costs**

A person may voluntarily apply to the Commissioner for registration for VAT at the beginning of any 12-month period, if, in that period:

- (a) the person will incur costs of creditable acquisitions of goods or services, including costs of capital development; and
- (b) those costs will be incurred in relation to establishing an enterprise that, once established, will make predominantly taxable supplies; and
- (c) the total value of the costs will exceed the registration threshold specified in section 15(2).

### **15                      Registration threshold**

- (1) The registration threshold for liability to register under section 13 is \$2,000,000 or some other amount prescribed by regulations made with the prior approval of Cabinet.
- (2) The registration threshold for voluntary registration under section 14 is \$2,000,000.

## 16            **Application for VAT registration**

- (1) An application for VAT registration must:
  - (a) comply with section 65; and
  - (b) in the case of an application under section 13, be filed with the Commissioner within 5 business days after the person becomes liable to register.
- (2) If a government entity carries on an enterprise through a branch, division or other organisational unit, then in relation to that enterprise the government entity must apply for VAT registration only for the branch, division or unit in question.

## 17            **Determining whether person exceeds registration threshold**

- (1) For the purpose of determining whether the total value of taxable supplies by a person exceeds the registration threshold for a period, the value of the following taxable supplies must be ignored:
  - (a) a taxable supply by way of the sale of a capital asset of the enterprise of the person;
  - (b) a taxable supply made solely as a consequence of the person selling the whole or a part of the person's enterprise or permanently ceasing to carry on the person's enterprise.
- (2) In determining whether the total value of taxable supplies by a person exceeds the registration threshold, the Commissioner may have regard to the value of taxable supplies made by an associate of the person.
- (3) For the purposes of this section, the reference to a taxable supply made by a person includes a supply of imported services made to the person determined as exceeding the registration threshold on the assumption that the person is already a registered person.
- (4) In this section, "**capital asset**" means a tangible or intangible asset of an enterprise having a useful life of longer than 1 year, but does not include inventory.

## 18 Registration

- (1) If satisfied that section 13 applies to a person, the Commissioner must register that person:
  - (a) on receiving the person's application for registration; or
  - (b) if the person has failed to apply, on becoming aware that section 13 applies.
- (2) The Commissioner must:
  - (a) register a person who has applied for registration under section 14 if:
    - (i) the Commissioner is satisfied that section 14 applies to that person; and
    - (ii) the Commissioner and that person have agreed a date by which the enterprise in question must have commenced; and
  - (b) specify in the certificate issued under subsection (3):
    - (i) the date on which registration takes effect; and
    - (ii) the date agreed with the Commissioner as the date of commencement of the enterprise in question.
- (3) The Commissioner must issue a registered person with a VAT registration certificate in the approved form.
- (4) Registration takes effect:
  - (a) if the certificate specifies a subsequent date, from that date; or
  - (b) if no date is specified, from the beginning of the first VAT period after the registered person became liable to register.
- (5) Except in the case of a person registered under subsection (2), the Commissioner must not register a person who is not liable to register.
- (6) A person registered under subsection (2) is a taxpayer for the purposes of the *Tax Administration Act*.

**19 Deemed registration under section 18(1)**

- (1) A person who is registered under section 18(2) is deemed to become registered under section 18(1) when the person would otherwise become liable under section 13 to register.
- (2) As soon as practical after a person is deemed to be registered under section 18(1), the Commissioner must issue a new certificate of registration to that person.

**20 Display of registration certificate**

A registered person must display in a prominent location:

- (a) the original copy of the person's VAT registration certificate at the principal place at which the person carries on the person's enterprise; and
- (b) a certified copy of the certificate obtained from the Commissioner at every other place at which the person carries on the person's enterprise.

**21 Notice of change in name, etc**

- (1) A registered person must file a notice of any change in the name (including business name), address, contact details, place of business or nature of the enterprise of the person.
- (2) The notice must be:
  - (a) in the approved form; and
  - (b) filed with the Commissioner within 10 business days after the change occurred.

**22 Notice to cancel**

- (1) A registered person must file a notice to cancel the person's registration if a ground for cancellation occurs.
- (2) A ground for cancellation occurs if:
  - (a) in the case of a government entity, the entity ceases to carry on an enterprise; or

- (b) in the case of any other person registered under section 18(1):
  - (i) the person ceases to make taxable supplies; or
  - (ii) the person continues to make taxable supplies but the annual value of those supplies has fallen below the registration threshold and there is no reasonable expectation that this is only temporary; or
  - (iii) the person has ceased to be a financial institution for the purposes of the *Financial Institutions Act 1998* or the *Central Bank of Solomon Islands Act 2012*; or
- (c) in the case of a person registered under section 18(2):
  - (i) the criteria for registration under that subsection have ceased, or are likely to cease; and
  - (ii) the person would not otherwise be liable to register under section 13.

(3) The notice to cancel must be:

- (a) be in the approved form; and
- (b) filed with the Commissioner within 10 business days after the ground for cancellation occurs.

### **23 Cancellation when notice to cancel is filed**

- (1) This section applies if the Commissioner is satisfied from a notice to cancel that a ground for the cancellation of the registration of a registered person has occurred.
- (2) The Commissioner must cancel the registration by sending the registered person a notice in writing of cancellation that specifies the date of cancellation.

### **24 Cancellation without notice to cancel being filed**

- (1) This section applies when the Commissioner is satisfied, without a notice to cancel having been filed, that a ground for the cancellation of the registration of a registered person has occurred.

- (2) The Commissioner must cancel the registration by sending the registered person a notice in writing to the person that complies with subsection (3).
- (3) The notice must:
  - (a) specify the date of cancellation, which must not be less than 10 business days after the notice is given; and
  - (b) state that the cancellation is a tax decision; and
  - (c) inform the person of the right to object under Part 5 of the *Tax Administration Act* as modified by subsection (4).
- (4) An objection to a notice of cancellation must be filed with the Commissioner within 10 business days after the notice is given.
- (5) The Commissioner must not cancel the registration until the objection process has been completed.

## **25 Effect of cancellation**

- (1) The cancellation of a person's registration takes effect from the date specified in the notice of cancellation.
- (2) A person whose registration is cancelled must:
  - (a) not represent or hold out that the person is a registered person, including on any documentation used by the person; and
  - (b) within 10 business days after the date of cancellation of the person's registration:
    - (i) file a final VAT return and pay all VAT due, including the VAT due as a result of section 26; and
    - (ii) return the person's VAT registration certificate and any certified copies to the Commissioner.
- (3) The cancellation of a person's registration does not affect that person's liability for any act done or omitted to be done while registered.



## **26 Deemed taxable supply on cancellation of registration**

- (1) A person whose registration is cancelled is deemed to have made a taxable supply of any inventory on hand at the time the registration is cancelled if the person was allowed an input tax credit for the acquisition or import of the inventory goods or goods that have been subsumed into that inventory.
- (2) The taxable supply under subsection (1) is deemed to have been made by the person immediately before the person's registration is cancelled and the person is deemed to have received, at that time, an amount of output tax equal to the amount of the input tax credit allowed to the person on acquisition or import of the inventory.
- (3) A person registered under section 18(2) whose registration is cancelled on the ground set out in section 22(2)(c) is deemed to have made a taxable supply equal to the total input credits:
  - (i) received by that person since registration; and
  - (ii) divided by the tax fraction.
- (4) The taxable supply under subsection (3) is deemed to have been made by the person on cancellation of registration and the person is deemed to have received, at that time, an amount of output tax equal to the amount of the input tax credit allowed to the person before cancellation.

## **Part 5 Supplies and imports**

### **Division 1 Supplies: general**

#### **27 Mixed supplies**

- (1) Unless the context otherwise requires:
  - (a) a supply of a particular kind that is ancillary or incidental to a supply of another kind is treated as part of the principal supply; or
  - (b) a supply of services that is ancillary or incidental to an import of goods is treated as part of the import of goods.

- (2) The sale of goods under a hire purchase agreement is treated as a mixed supply of goods and services, provided that the supply of credit under the agreement is specified as a separate charge and is disclosed to the recipient of the supply.

**28 Time of supply**

- (1) Subject to this Act, a supply occurs on the earlier of:
  - (a) the date on which the invoice for the supply is issued; or
  - (b) the date on which any payment (including part payment) for the supply is made.
- (2) A supply between associates or by way of a gift occurs:
  - (a) in the case of goods, on the date the goods are delivered; or
  - (b) in the case of services, on the date the performance of the services is complete.
- (3) A supply of goods by means of a vending machine, meter or other device operated by a coin, note or token occurs on the date the coin, note or token is taken from the machine, meter or other device by or on behalf of the supplier.
- (4) A supply of services that must be paid for by prior credit occurs on the date that the credit is paid, whether paid in cash, electronically, online or by other means.

**29 Successive supplies of services**

- (1) This section applies if services are supplied:
  - (a) by way of a lease of goods; or
  - (b) progressively under an agreement or law that provides for periodic payments.
- (2) In a case to which this section applies:
  - (a) the supply of services is treated as a series of separate, successive supplies of services corresponding to the successive parts of the period of the lease or agreement, or as determined by law; and

- (b) each successive supply is treated as occurring on the earlier of the date on which the payment for that successive supply is due or received.

**30 Supply to unregistered person**

A registered person making a supply to a person who is not a registered person must:

- (a) state the price for the supply as inclusive of VAT; and
- (b) display a sign in a prominent location on its business premises, or disclose prominently on its invoices, that taxable supplies are made inclusive of VAT; and
- (c) disclose prominently on its invoice for a supply:
  - (i) whether the supply is a taxable supply; and
  - (ii) the rate or amount of VAT charged.

**31 Place of supply of goods**

The place of supply of goods is Solomon Islands if:

- (a) the goods are delivered or made available in Solomon Islands by the supplier; or
- (b) if the delivery or making available involves transportation, the goods are in Solomon Islands when the transportation commences.

**32 Place of supply of services**

- (1) The place of supply of services is Solomon Islands if:
  - (a) both the enterprise of the supplier that supplies the services and the recipient are in Solomon Islands; or
  - (b) the recipient is not a registered person and one of the circumstances in subsection (2) applies.
- (2) The circumstances referred to in subsection (1)(b) are:

- (a) the services are physically performed in Solomon Islands by a person who is in Solomon Islands at the time of supply and the recipient uses or obtains the benefit of the services in Solomon Islands; or
  - (b) the services are directly related to immovable property in Solomon Islands; or
  - (c) the services are radio or television broadcasting services received at an address in Solomon Islands; or
  - (d) the services are electronic services delivered to a person in Solomon Islands at the time of supply; or
  - (e) the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark, or similar right in Solomon Islands; or
  - (f) the services are telecommunications services and the supply is initiated by a person in Solomon Islands at the time of supply, other than a supply initiated by:
    - (i) a supplier of telecommunications services; or
    - (ii) a person who is global roaming while temporarily in Solomon Islands; or
  - (g) the supply is the issue of a licence by a government entity, local authority, regulatory authority or agency, or other authority in Solomon Islands.
- (3) For the purposes of subsection (2)(f), the person who initiates a supply of telecommunications services is the first occurring of the following persons:
- (a) the person who controls the commencement of the supply;
  - (b) the person who pays for the services;
  - (c) the person who contracts for the supply;
  - (d) the person to whom the invoice for the supply is sent.

- (4) In this section, "**electronic services**" means the development or maintenance of, or access to, any of the following when provided or delivered on or through a telecommunications network:
- (a) websites, web-hosting or remote maintenance of programs and equipment;
  - (b) software and the updating of software;
  - (c) images, text and information;
  - (d) databases;
  - (e) self-education packages;
  - (f) music, films and games, including games of chance;
  - (g) political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.

**33 Value of supply**

- (1) Except as provided in this Act, the value of a supply is the price of the supply less the VAT imposed under this Act.
- (2) If no price is charged for a supply, the value of the supply is zero.

**34 Value of supply to associate**

- (1) This section applies if:
  - (a) no price is charged on a taxable supply made by a registered person to an associate or the price is less than the fair market value of the supply; and
  - (b) the recipient of the supply is not entitled to an input tax credit for the whole of the input tax payable in respect of the supply,
- (2) The value of the supply is the fair market value of the supply determined at the time of supply.

**35 Value of supply of imported services**

- (1) Subject to subsection (2), the value of a supply of imported services:

- (a) if the supplier and recipient are associates, is the fair market value of the supply at the time of supply; or
  - (b) in any other case, is the price of the supply.
- (2) If a registered person liable for VAT under section 11(1)(c) and (5) in respect of a supply of imported services would have been entitled to a credit for part of the amount of input tax payable if the person had acquired the services in a creditable acquisition, the value of the supply under subsection (1) is reduced by an amount equal to the proportion of the input tax that would have been creditable.

### **36 Assessment of recipient of supply**

- (1) If a supplier has, through the fraud of, or a misrepresentation by, the recipient of a supply, incorrectly treated the supply as exempt or zero-rated, the Commissioner may:
- (a) assess the recipient for payment of the VAT payable for the supply; and
  - (b) under the *Tax Administration Act* assess the recipient for any penalty and late payment interest.
- (2) The Commissioner may recover from the supplier all or part of the VAT payable for the supply and any penalty and late payment interest from the supplier, but in that case must:
- (a) credit any amount recovered from the recipient against the liability of the supplier; and
  - (b) credit any amount recovered from the supplier against the liability of the recipient.
- (3) Any supplier who pays an amount under subsection (2) may recover that amount from the recipient.
- (4) The Commissioner may amend an assessment, including a self-assessment, of the supplier to give effect to subsection (2).

**37 Procedure for assessing recipient of supply**

- (1) If the Commissioner makes an assessment under section 36(1), the Commissioner must serve a notice of the assessment on the recipient.
- (2) The notice must specify the following:
  - (a) the reason for the assessment;
  - (b) the VAT, late payment interest and penalty payable under the assessment;
  - (c) the due date for payment of the VAT, late payment interest and penalty;
  - (d) the right to object to the assessment under Part 5 of the *Tax Administration Act*.
- (3) The due date for payment must not be less than 20 business days after the date of the notice.

**Division 2 Supplies: special categories**

**38 Application of goods to private or exempt use**

- (1) An application of goods by a registered person to a private or exempt use is deemed to be a taxable supply made by the person, but only if the person has been allowed an input tax credit in respect of the acquisition or import of the goods.
- (2) A taxable supply under subsection (1) is deemed to have been made by the registered person at the time that the goods are first applied to private or exempt use and the person is deemed to have received, at that time, an amount of output tax equal to the amount of input tax credit allowed to the person in respect of the acquisition or import of the goods.
- (3) In this section, "**exempt use**" means the use of goods or services to make an exempt supply.

**39 Second-hand goods**

- (1) This section applies if the following conditions are satisfied:

- (a) a taxable supply of second-hand goods has been made by a registered person who is a second-hand goods supplier;
  - (b) the second-hand goods were purchased by the registered person from a person who is not a registered person;
  - (c) the supply of the second-hand goods to the registered person would not have been an exempt or zero-rated supply if the supplier of the goods to the registered person was also a registered person;
  - (d) the second-hand goods were supplied by the registered person in substantially the same state as they were in when purchased by the registered person.
- (2) If subsection (1) applies:
- (a) the registered person is deemed to have paid an amount of input tax in respect of the acquisition of the second-hand goods equal to the tax fraction of the price paid for the second-hand goods; and
  - (b) the registered person is allowed an input tax credit for the deemed input tax under paragraph (a) in the VAT period in which the time of supply by the registered person of the second-hand goods occurs.
- (3) If a second-hand goods supplier receives second-hand goods ("**traded-in goods**") as part payment for a supply the supplier makes to a person who is not registered, the fair market value of the traded-in goods used to determine the price for the supply must be the same as the fair market value used to determine the price paid by the dealer to purchase the traded-in goods.
- (4) In this section:
- "second-hand goods"** means goods that have previously been used by a person who is not a registered person;
- "second-hand goods supplier"** means a registered person whose enterprise includes the re-supply of second-hand goods in substantially the same state as they were in when purchased by the person.



## 40 Rights and options

- (1) This section applies if:
  - (a) the supply of a right or option was a taxable supply; and
  - (b) another supply is made subsequently on the exercise of the right or option.
- (2) The price for the subsequent supply is limited to the additional price, if any, given for the subsequent supply or in connection with the exercise of the right or option.

## 41 Voucher issued for money

- (1) The issue of a voucher is not a supply if the voucher:
  - (a) entitles the holder to receive supplies of goods or services up to a monetary amount on redemption of the voucher; and
  - (b) is issued for an amount in money.
- (2) If the voucher is redeemed for a taxable supply by a registered person, the amount for which the voucher is issued is treated as comprising 2 components:
  - (a) an amount as the price or part of the price for the supply calculated as the amount referred to in subsection (1)(b) reduced by the tax fraction of that amount; and
  - (b) an amount as the VAT or part of the VAT payable in respect of the supply calculated as the tax fraction of the amount referred to in subsection (1)(b).
- (3) In this section, "**voucher**" means a voucher, stamp, token, coupon or similar article, including an article issued electronically, that can be redeemed by the holder only for supplies of goods or services, but does not include a postage stamp.

## 42 Lay-by sales

- (1) A supply of goods under a lay-by agreement occurs on the date the goods are delivered to the purchaser and the output tax payable in

respect of the supply is treated as received by the supplier on that date.

- (2) If a lay-by agreement is cancelled and the supplier retains any amount paid by the purchaser or recovers any amount owing by the purchaser under the agreement:
  - (a) the cancellation of the agreement is a supply of services by the seller at the time of cancellation; and
  - (b) the value of the supply, if the supplier is a registered person at the time of cancellation, is the amount retained or recovered by the seller reduced by an amount equal to the amount retained or recovered multiplied by the tax fraction.
- (3) In this section, "**lay-by agreement**" means a purchase agreement for goods under which:
  - (a) the price is payable by at least one additional payment after the payment of a deposit; and
  - (b) delivery of the goods takes place at any time after payment of the deposit; and
  - (c) ownership of the goods is transferred by delivery.

#### **43 Gaming services**

- (1) This section applies to the supply of a gaming service, whether through means of distance communication or in gaming premises or by any other means, to any player who is physically present in Solomon Islands when the gaming service is actually supplied.
- (2) The supply of a gaming service is a taxable supply to the value of the net gaming drop for each month.
- (3) The net gaming drop is the total of all sums, including cheques, received by a supplier in any month from the supply of a gaming service, less the total of all sums paid out by that supplier as winnings during that month in respect of the supply of the gaming service.
- (4) In this section:

**"chips"** means any tokens used or capable of being used in the conduct of gaming in place of money;

**"game of chance"**:

- (a) means an activity the outcome of which is determined by chance alone or predominantly by chance, and includes activities the outcome of which is determined by the occurrence or outcome of 1 or more future events; and
- (b) includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined; but
- (c) does not include any athletic game or sport;

**"gaming"**:

- (a) means the playing of a game of chance for winnings in money or money's worth; and
- (b) includes:
  - (i) participating in a commercial lottery as defined in section 2 of the *Gaming and Lotteries Act* (Cap. 139); and
  - (ii) betting relating to the outcome of a race, game or sporting event, or any other event for which there is an outcome;

**"gaming service"** means making gaming available for participation by players, whether directly or indirectly, and whether alone or with others, as an economic activity;

**"sum paid out as winnings"** includes any sum paid out to redeem a chip.

## **Division 3      Imports**

### **44      Time of import**

- (1) An import of goods occurs:
  - (a) in the case of goods under Customs control, on the date on which the goods are entered for use in Solomon Islands or otherwise cease to be under Customs control; or

- (b) in any other case, on the date on which the goods are brought into Solomon Islands.
- (2) In this section, "**entered**", in relation to an import of goods, has the same meaning as in section 2 of the *Customs Act*.

#### **45 Value of import**

- (1) Subject to subsection (2), the value of an import of goods is the sum of the following amounts:
  - (a) the customs value of the goods as determined under the *Customs Valuation Act 2009*, whether or not any duty is payable on the import;
  - (b) to the extent not included under paragraph (a), the cost of services treated as part of the import of the goods under section 27(1)(b);
  - (c) the amount of any import duty, excise tax, levy, or other fiscal charge (other than VAT), or any fee or other charge payable in respect of the import.
- (2) If goods are re-imported after being exported for the purpose of undergoing repair, renovation or improvement, the value of the import is the amount of the increase in value of the goods as a result of the repair, renovation or improvement provided:
  - (a) the form or character of the goods has not changed; and
  - (b) ownership of the goods has not changed since the goods were exported.

### **Part 6 Calculation of VAT**

#### **Division 1 Net VAT**

##### **46 Net VAT payable for VAT period**

The net VAT payable by a registered person for a VAT period is calculated according to the following formula:

$$(A + B) - C$$

where:

**A** is the total output tax received or deemed to have been received by the person in the period in respect of taxable supplies made by the person; and

**B** is the total VAT that the registered person is liable for under section 11 in respect of supplies of imported services made to the person during the period; and

**C** is the total input tax credit allowed to the person for the period under this Act.

#### **47 Effect of negative VAT payable**

- (1) This section applies if, for any VAT period, component "**C**" of the formula in section 46 exceeds component "**(A + B)**" ("*the excess*").
- (2) The excess must be refunded within 20 business days after the Commissioner has received a correct and complete return for the VAT period unless:
  - (a) the excess is carried forward and allowed as an input tax credit in the next or a later VAT period in accordance with rules referred to in subsection (3); or
  - (b) the Commissioner otherwise transfers the excess under section 69 of the *Tax Administration Act*.
- (3) Rules may be made for carrying forward the excess, including in relation to new businesses and major capital purchases.

### **Division 2 Input tax credits**

#### **48 Allowance of input tax credit**

- (1) A registered person is allowed a credit for the input tax imposed on a creditable acquisition by the person to the extent that the acquisition was for the purpose of making taxable supplies as determined at the time of the acquisition.
- (2) An input tax credit is allowed:

- (a) in the VAT period in which the input tax is paid, provided that the registered person, at the time of filing a VAT return for that period, holds the documentation set out in subsection (3); or
  - (b) in the next VAT period in which the registered person first holds that documentation.
- (3) The documentation required for the purposes of subsection (2) is:
- (a) in the case of a creditable acquisition that is a taxable import, a form or other document required by the *Customs Act* for the import; or
  - (b) in the case of a creditable acquisition that is a taxable supply, the tax invoice for the taxable supply to which the acquisition relates; or
  - (c) in the case of an input tax credit allowed under section 52(2), the debit note required to be issued under section 56; or
  - (d) in the case of an input tax credit allowed under section 52(3), a copy of the credit note issued to the recipient of the supply under section 55.

**49**

**When input tax credit is not allowed**

- (1) An input tax credit is not allowed for input tax paid in respect of:
- (a) a creditable acquisition by a registered person to the extent that the acquisition is used to provide entertainment, unless:
    - (i) the entertainment is provided in the ordinary course of the enterprise carried on by the registered person and the entertainment is not supplied to an associate or employee; or
    - (ii) the entertainment is provided while the recipient of the entertainment is away from home for the purposes of the enterprise of the recipient or the recipient's employer; or
  - (b) a creditable acquisition of a membership or right or entry for any person in a club, association or society of a sporting, social or recreational nature.

- (2) In this section, "**entertainment**" means the provision of accommodation, food, beverages, tobacco, amusement, recreation or hospitality of any kind.

**50 Input tax credit for pre-registration goods**

- (1) Subject to this Act, a registered person may claim, in the first VAT return filed by the person after being registered, an input tax credit determined in accordance with sections 48 and 49 for the input tax paid in respect of pre-registration goods if the requirements of subsection (2) or (3) are met.
- (2) The requirements for pre-registration goods are:
- (a) the goods are held at the date of registration for the purpose of making taxable supplies; and
  - (b) at the end of the last day before the date of registration, the person held the goods as inventory; and
  - (c) the inventory was acquired by the person in a creditable acquisition; and
  - (d) the acquisition occurred not more than 120 business days before the date of registration; and
  - (e) the person can provide documentary evidence satisfactory to the Commissioner that input tax has been paid on the acquisition; and
  - (f) an input tax credit would have been allowed for the acquisition of the goods had it occurred after registration.
- (3) Section 48(2) does not apply for the purposes of an input tax credit allowed under this section.
- (4) Regulations may be made providing for the relaxation by the Commissioner of the restriction in subsection (2)(d) in the case of a taxpayer who, in the opinion of the Commissioner, is tax compliant.

## **Division 3      Adjustment events**

### **51      Adjustment events**

For the purposes of this Division an adjustment event is any of the following:

- (a) the cancellation of a supply;
- (b) a fundamental alteration in the nature of a supply;
- (c) a change in the price of a supply;
- (d) the return of goods (or part of those goods) that are the subject of a supply to the supplier.

### **52      Post-supply adjustments**

- (1) If an adjustment event occurs in relation to a taxable supply and the VAT properly chargeable in respect of the supply exceeds the VAT actually accounted for by the supplier, the excess is deemed to be output tax received by the supplier in the VAT period in which the event occurred.
- (2) If subsection (1) applies and the supplier has issued a debit note to the recipient of the supply in accordance with section 56, the recipient is allowed an input tax credit for the additional VAT specified in the debit note in the VAT period in which the debit note is received.
- (3) Subject to subsection (5), if an adjustment event occurs in relation to a taxable supply and the VAT actually accounted for by the supplier exceeds the VAT properly chargeable in respect of the supply, the supplier is allowed an input tax credit for the amount of the excess in the VAT period in which the event occurred.
- (4) If subsection (3) applies and the supplier has issued a credit note to the recipient of the supply in accordance with section 55, the additional VAT specified in the credit note is deemed to be output tax received by the recipient in the VAT period in which the credit note is received.
- (5) If the recipient of a supply to which subsection (3) applies is not a registered person, no input tax credit is allowed under that subsection until the supplier has repaid the excess VAT to the recipient of the



supply, whether in cash or as a credit against any amount owing to the supplier by the recipient.

## **Division 4          Refunds**

### **53            Refunds to diplomatic missions and others**

- (1) The following may apply to the Commissioner for the refund of VAT paid by the applicant in relation to a taxable supply or taxable import:
  - (a) a foreign government or person who is exempt from liability for VAT under section 11 of the *Diplomatic Privileges and Immunities Act 1983* (Cap. 67);
  - (b) an international organisation or foreign government to the extent required under an international agreement or the *International Financial Organisations Act* (Cap. 141).
- (2) The application must comply with section 65.
- (3) The Commissioner may refund VAT paid by an applicant if satisfied that:
  - (a) the VAT for which the refund is sought was paid; and
  - (b) the applicant is exempt from liability for it; and
  - (c) the application is filed and complete within 80 business days after the date of payment of VAT.

## **Part 7                Administration**

### **54            Issue of tax invoice**

- (1) A registered person making a taxable supply to another registered person must issue that other person with the original tax invoice for the supply.
- (2) The invoice must be:
  - (a) in the approved form; and
  - (b) issued at the time of supply.

**55 Issue of credit note**

- (1) The supplier of a taxable supply must issue the recipient with a credit note in respect of the supply if:
  - (a) the supplier and recipient are registered; and
  - (b) the supplier has issued an original tax invoice in respect of the supply to the recipient; and
  - (c) section 51 applies to the supply; and
  - (d) the amount shown on the tax invoice as the VAT actually charged on the supply exceeds the VAT properly chargeable for the supply.
- (2) The credit note must be:
  - (a) in the approved form; and
  - (b) issued within 20 business days after the adjustment event.

**56 Issue of debit note**

- (1) The supplier of a taxable supply must issue the recipient with a debit note in respect of the supply if:
  - (a) the supplier and recipient are registered; and
  - (b) the supplier has issued an original tax invoice in respect of the supply to the recipient; and
  - (c) section 51 applies to the supply; and
  - (d) the VAT properly chargeable on the supply exceeds the amount shown on the tax invoice as the VAT actually charged,
- (2) The debit note must be:
  - (a) in the approved form; and
  - (b) issued within 20 business days after the adjustment event.

**57 Issue of invoice or note by or to VAT representative**

- (1) A tax invoice, credit note or debit note may be issued by or to the VAT representative of the supplier or recipient of a taxable supply by using:
  - (a) if the VAT representative is a tax agent, the agent's name, address and TIN; or
  - (b) if the VAT representative is not a tax agent, the supplier's or recipient's name, address and TIN.
- (2) An invoice or note issued by or to a VAT representative under subsection (1):
  - (a) must be issued by or to the agent only and must not be duplicated by the supplier or recipient; and
  - (b) is treated for the purposes of this Act as issued by or to the supplier or recipient, as the case may be.
- (3) In this section, "**tax agent**" means a person who is registered as a tax agent in accordance with section 32(1) of the *Tax Administration Act*.

**58 Request for issue of invoice or note**

A person who has failed to issue a tax invoice, credit note or debit note as required by this Act must, on the written request of the person to whom the invoice or note should have been supplied, issue the invoice or note to that person within 10 business days after receiving the request.

**59 Invoice for supply of imported services**

- (1) A registered person liable for VAT under section 11(1)(c) and (5) in respect of a supply of imported services must prepare a recipient-created tax invoice for the supply.
- (2) The invoice must be in the approved form.

**60 Irregular issue of invoice or note**

- (1) A person must not issue a tax invoice, credit note or debit note other than in the circumstances specified in this Act.
- (2) There must not be issued more than one original tax invoice or original credit or debit note for each taxable supply or adjustment event, but a copy clearly marked as such may be provided to a registered person who claims to have lost the original.

**Part 8 Procedure**

**61 VAT returns**

- (1) A registered person must file a VAT return for each VAT period not later than the 25<sup>th</sup> day of the month following the period.
- (2) The return must be:
  - (a) in the approved form; and
  - (b) filed with the Commissioner.

**62 Due date for payment of VAT**

- (1) The net VAT payable by a registered person for a VAT period must be paid by the due date for filing the VAT return for that period.
- (2) The VAT payable by an importer in respect of a taxable import must be paid at the time of import.

**63 Collection of VAT on imports**

- (1) The Comptroller of Customs and Excise ("***the Comptroller***") must collect VAT payable under this Act on an import of goods at the time of import.
- (2) For the purposes of subsection (1):
  - (a) the Comptroller may exercise any power conferred on him or her by the *Customs Act* as if the reference to import duty in that legislation included a reference to VAT payable on a taxable import under this Act; and

- (b) the Commissioner may make rules for administering the collection of VAT on imported goods.
- (3) A Customs officer has, in relation to the collection of VAT on imported goods, the powers and duties of a tax officer under the *Tax Administration Act* and to that extent:
  - (a) a Customs officer is a tax officer; and
  - (b) section 7 of the *Tax Administration Act* must be read accordingly.

**64 Non-resident must appoint VAT representative**

- (1) A non-resident who is required to apply for registration under section 13, or who is registered under section 18(2), but who does not carry on an enterprise through a fixed place in Solomon Islands:
  - (a) must appoint a VAT representative who is resident in Solomon Islands; and
  - (b) may be required by the Commissioner to lodge security with the Commissioner in accordance with the *Tax Administration Act*.
- (2) The VAT representative of a non-resident is responsible for doing all things required of the non-resident under this Act, including applying for registration in the name of the non-resident, the filing of VAT returns and the payment of VAT.
- (3) Rules may be made prescribing the requirements and procedure for the appointment of a VAT representative.
- (4) For the purpose of this section:
  - (a) a person is a non-resident if the person is not resident in Solomon Islands; and
  - (b) "**resident in Solomon Islands**" has the same meaning as in section 2(1) of the *Income Tax Act* (Cap. 123).

**65 Applications to Commissioner**

- (1) Where this Act provides for making an application to the Commissioner, the application must be:

- (a) in the approved form; and
  - (b) complete; and
  - (c) filed with the Commissioner within the time required by this Act.
- (2) An application is complete if it contains or is accompanied by all the information and documents:
- (a) required by the form; or
  - (b) otherwise prescribed by regulations; or
  - (c) required by a notice under subsection (3).
- (3) The Commissioner may by written notice require an applicant to provide within 20 business days of the notice any further information or documents that the Commissioner considers necessary for determining the application.

## **Part 9                      Seizure of goods subject to VAT**

### **66                      Seizure of goods**

- (1) The Commissioner may seize goods (and, if necessary) at any time enter the premises on which the goods are stored) if there are reasonable grounds to suspect that:
- (a) VAT is or will become payable in respect of the supply of the goods; and
  - (b) the VAT has not been or is not likely to be paid.
- (2) Goods seized under this section must be stored in premises approved by the Commissioner for the storage of seized goods.
- (3) A tax officer who acts for the Commissioner in seizing goods under subsection (1) must be authorised by the Commissioner for that purpose, and the Commissioner may authorise more than 1 tax officer acting jointly or separately.

**67****Notice of seizure**

- (1) As soon as practical after the seizure of goods, a notice of seizure that complies with subsection (2) must be served on:
  - (a) the owner of the goods; or
  - (b) the person who had custody or control of the goods at the time of seizure.
- (2) The notice must:
  - (a) be in writing; and
  - (b) be signed by the tax officer authorised under section 66(3); and
  - (c) state that the goods have been seized under this Act; and
  - (d) set out the effect of subsection (4) and sections 68 and 69.
- (3) if, after making reasonable inquiries, the Commissioner is unable to identify a person referred to in subsection (1)(a) or (b):
  - (a) subsection (1) does not apply; but
  - (b) the seizure notice may be served on any person who claims the goods and has provided sufficient information to the Commissioner to enable service of the notice.
- (4) The goods seized must be released to a person on whom the seizure notice has been served if that person:
  - (a) pays the VAT that is, or will become payable in respect of the supply of the goods; or
  - (b) makes an arrangement satisfactory to the Commissioner for payment of that VAT.
- (5) Except in the case of perishable goods or livestock, the goods seized must be detained for 15 business days after seizure.

**68****Sale of seized goods**

Unless the goods are released under section 67(4), the Commissioner:

- (a) having regard to their condition, may sell perishable goods or livestock:
  - (i) at any time; and
  - (ii) in the manner that the Commissioner determines; and
- (b) after the expiry of the 15-business day period for keeping the goods, may sell non-perishable goods by public auction.

## **69 Proceeds of sale of seized goods**

- (1) The proceeds of the sale of goods seized under section 66 must be applied in the following order:
  - (a) first, to the costs incurred in seizing, keeping, and selling the goods;
  - (b) second, towards payment of any VAT that is, or will become payable in respect of the supply of the goods;
  - (c) third, towards payment of any other tax payable by the person who is liable to pay the VAT ("*the taxpayer*");
  - (d) fourth, within 30 business days after selling the last of the property, to paying the taxpayer any surplus.
- (2) The taxpayer remains liable for any amount of unpaid VAT or costs that is not discharged under subsection (1) and the unpaid costs must be treated as unpaid tax for the purposes of recovery.

## **Part 10 Penalties and offences**

### **Division 1 Administrative penalties**

#### **70 Administrative penalties for breach of Act**

- (1) A person is liable to the prescribed penalty if any of the following applies:
  - (a) the person is liable to pre-register for VAT under section 3 and has failed to do so;



- (b) the person is liable to register for VAT and fails to make an application for registration as required by section 13;
  - (c) the person falsely represents or holds out that the person is currently registered under section 18;
  - (d) the person charges or collects VAT while not registered under section 18;
  - (e) the person fails to display the person's registration certificate as required by section 20;
  - (f) the person fails to file a notice of change in name etc as required by section 21;
  - (g) the person fails to file a notice to cancel registration as required by section 22;
  - (h) fails to return the person's VAT registration certificate etc as required by section 25(2)(b)(ii);
  - (i) fails to comply with the requirements for a supply to an unregistered person as required by section 30;
  - (j) fails to issue a tax invoice as required by section 54;
  - (k) fails to issue a credit note as required by section 55;
  - (l) fails to issue a debit note as required by section 56;
  - (m) fails to comply with a request under section 58 for the issue of a tax invoice, credit note or debit note in accordance with that section;
  - (n) fails to prepare a recipient-created tax invoice as required by section 59;
  - (o) issues a tax invoice, credit note or debit note in breach of section 60;
  - (p) fails to appoint a VAT representative as required by section 64(1)(a).
- (2) In this section, "**prescribed penalty**" means the penalty prescribed by regulations for each relevant breach committed by a person.

## **71 Assessment of administrative penalty**

- (1) The Commissioner:
  - (a) may impose a penalty under this Division in accordance with this section; and
  - (b) in doing so, must not impose an administrative penalty that exceeds the prescribed maximum penalty amount for the administrative penalty.
- (2) The Commissioner must:
  - (a) make an assessment of any penalty that may be imposed under this Division; and
  - (b) serve on the person subject to the penalty a notice of assessment of penalty that complies with subsection (3).
- (3) The notice must state:
  - (a) the grounds for imposing the penalty; and
  - (b) the amount of the penalty; and
  - (c) the due date for payment which must not be less than 20 business days after the notice is served.
- (4) If the Commissioner brings a prosecution relating to an act or omission for which a penalty has been imposed under this Division:
  - (a) the Commissioner must refund any amount that has been paid towards the penalty; and
  - (b) the penalty is payable only if the prosecution is withdrawn.

## **72 Remission of administrative penalty**

- (1) The Commissioner may remit part or all of a penalty:
  - (a) on the Commissioner's own initiative; or
  - (b) on the application in writing of the person assessed for the penalty under section 71.

- (2) The grounds for a remission of penalty are the following:
- (a) serious hardship to the person subject to the penalty;
  - (b) the incorrect imposition or calculation of a penalty;
  - (c) circumstances that the person subject to the penalty cannot change or influence;
  - (d) an honest unintentional failure to pay unpaid tax by the person subject to the penalty;
  - (e) any other prescribed ground.

### **73 Recovery of administrative penalty**

- (1) The Commissioner may, under Part 8 of the *Tax Administration Act*:
- (a) recover an administrative penalty imposed under this Act from a person as if it were tax payable by that person; and
  - (b) recover late payment interest for failure to pay an administrative penalty under this Act.
- (2) Recovery of an administrative penalty from a person does not relieve that person of any liability for the payment of tax for which the person is or may be liable.

## **Division 2 Offences**

### **74 Customs-related offences**

- (1) A person commits an offence who:
- (a) without authorisation, enters a place where goods under Customs control that are subject to VAT are stored; or
  - (b) is involved in the unauthorised removal, alteration or interference with goods under Customs control that are subject to VAT.

Maximum penalty            20,000 penalty units or imprisonment for 12 months, or both

- (2) A person commits an offence who does any of the following things:
- (a) knowingly smuggles, unlawfully conveys, or has in the person's possession, any smuggled goods subject to VAT;
  - (b) knowingly offers for sale smuggled or unlawfully imported goods subject to VAT;
  - (c) receives goods subject to VAT knowing or believing the goods to have been smuggled or to have been unlawfully imported.

Maximum penalty      20,000 penalty units or imprisonment for 12 months, or both

**75      Prevention of price exploitation on introduction of VAT**

- (1) A person commits an offence who makes a regulated supply for a price that is excessive having regard to the following:
- (a) the introduction of this Act;
  - (b) the removal of goods tax and sales tax;
  - (c) changes in the rate of import duty or the accommodation levy;
  - (d) amendments to relevant legislation;
  - (e) the person's costs;
  - (f) supply and demand conditions;
  - (g) any other relevant matter.

Maximum penalty      50,000 penalty units

- (2) It is a defence to a prosecution for an offence under subsection (1) if:
- (a) the contravention was due to a reasonable mistake; and
  - (b) the person took reasonable precautions and exercised due diligence to avoid contravention of subsection (1).
- (3) The Commissioner must publish guidelines about when prices for regulated supplies may be in contravention of subsection (1).

- (4) In this section, "**regulated supply**" means a supply occurring in the period commencing 6 months before and ending 2 years after the full commencement date.

## **Part 11                    Miscellaneous**

### **76                    Branches and divisions**

- (1) Subject to subsection (3), an enterprise conducted by a person in branches, divisions or other organisational units is treated as a single enterprise for the purposes of this Act.
- (2) Subject to subsection (3), a person who conducts an enterprise in branches, divisions or other organisational units must be registered in the name of the person and not in the names of the branches, divisions, or units.
- (3) This section does not apply to a government entity that carries on an enterprise through a branch, division or other organisational unit.

### **77                    Tax avoidance schemes**

- (1) Despite anything in this Act, if the Commissioner is satisfied that:
- (a) a tax avoidance scheme has been entered into or carried out; and
  - (b) a person has obtained a tax benefit in connection with the tax avoidance scheme; and
  - (c) having regard to the substance of the tax avoidance scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain the tax benefit,

the Commissioner may determine the VAT liability of the person who obtained the tax benefit as if the tax avoidance scheme had not been entered into or carried out.

- (2) If a determination is made under subsection (1), the Commissioner must issue an assessment giving effect to the determination.

(3) A determination under subsection (1) must be made within 7 years from the last day of the VAT period to which the determination relates.

(4) In this section:

**"scheme"** includes a course of action, and an agreement, arrangement, promise, plan, proposal or undertaking, whether express or implied, and whether or not legally enforceable;

**"tax avoidance scheme"** means any scheme if one of the main purposes of a person in entering into the scheme is the avoidance or reduction of any person's liability for VAT under this Act;

**"tax benefit"** means any of the following:

- (a) a reduction in the liability of a person to pay VAT;
- (b) an increase in the entitlement of a person to an input tax credit;
- (c) an entitlement to a refund;
- (d) a postponement of a liability for the payment of VAT;
- (e) an acceleration of an entitlement to an input tax credit;
- (f) any other advantage arising because of a delay in payment of VAT or an acceleration of the entitlement to an input tax credit;
- (g) anything that causes a taxable supply, taxable import, or supply of imported services not to be a taxable supply, taxable import, or supply of imported services, as the case may be;
- (h) anything that gives rise to an input tax credit entitlement for an acquisition or import that is used or is to be used other than in making taxable supplies.

## 78 **Currency translation**

- (1) An amount taken into account under this Act must be expressed in Solomon Islands dollars.
- (2) An amount expressed in a foreign currency must be converted:

- (a) in the case of the import of goods, in accordance with section 15 of the *Customs Valuation Act 2009*; or
- (b) in any other case, at the rate published or otherwise notified by the Central Bank of Solomon Islands for the date on which the amount is taken into account for the purposes of this Act.

## **79 Application of Act**

Despite any other Act or agreement made before or after the full commencement date, an exemption from tax in such other Act or agreement for a person must not be construed as an exemption from the payment of VAT under this Act unless the exemption is also provided for in this Act.

## **80 Regulations**

- (1) The Minister may make such regulations as are necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the Regulations may:
  - (a) prescribe the period that is a VAT period, and for that purpose may describe different periods for different classes of taxpayer; and
  - (b) with the prior approval of Cabinet, prescribe the amount of the registration threshold under section 15(1); and
  - (c) prescribe the circumstances in which the Commissioner may relax the restriction contained in section 50(2)(d); and
  - (d) prescribe the information and documents that must be contained in or accompany an application to the Commissioner (section 65(2)); and
  - (e) prescribe regulations for particular types of supplies and in relation to input tax credits; and
  - (f) the maximum penalty amount for each administrative penalty set out in section 70 and, without limiting the penalty amounts that may be prescribed, prescribe:
    - (i) different amounts of penalty; and

- (ii) penalties for continuing breach that include a penalty for each day or month that the breach in question continues.

## **81 Repeals**

- (1) The following Acts and Regulations are repealed:
  - (a) *Goods Tax Act* (Cap. 122);
  - (b) *Sales Tax Act* (Cap. 125);
  - (c) *Stamp Duties Act* (Cap. 126).
  - (d) *Goods Tax Regulations 1993* (LN 9/1993);
  - (e) *Goods Tax (Electronic Tax System) Regulations 2018* (LN 24/2018);
  - (f) *Sales Tax (Electronic Tax System) Regulations 2018* (LN 23/2018).
- (2) Despite its repeal under this section, an Act or Regulation must be treated as a tax law for the purposes of the *Tax Administration Act 2022*, for so long and to the extent necessary for enabling and enforcing the collection of goods tax, sales tax or stamp duty under a liability arising before the full commencement date.

## **82 Transitional arrangements**

The transitional arrangements set out in Schedule 4 have effect in accordance with that Schedule.

## **83 Regulations for transitional arrangements**

The Minister may make regulations for all or any of the following purposes:

- (a) providing transitional, consequential, and savings provisions relating to the coming into force of this Act, which may be in addition to, or in place of, or which may amend, any transitional, consequential, and savings provisions in section 3 or 84 or Schedule 4;
- (b) to facilitate the bringing into force of any regulations under this Act;



- (c) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply;
- (d) providing for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced by this Act to the provisions of this Act.

## **84 Consequential amendments**

- (1) The *Income Tax Act* (Cap. 123) is amended by inserting after section 3, the following:

### **“3A VAT payment not assessable income**

An amount is not assessable income to the extent that it includes an amount relating to VAT payable under the *Value Added Tax Act 2023*.”

- (2) Section 20 of the *Income Tax Act* (Cap. 123) is amended by adding the following:
  - “(4) A loss or outgoing consisting of a payment of value added tax under the *Value Added Tax Act 2023* is not deductible under this Act.
  - (5) A loss or outgoing is not deductible by a person under this Act to the extent that it includes an amount relating to an input tax credit to which the person is entitled under the *Value Added Tax Act 2023*.”

# SCHEDULE 1

(Section 6)

## Exempt imports

The following imports are exempt imports for the purposes of the Act:

- (a) an import of goods that if supplied in Solomon Islands would be a taxable supply subject to a zero rate under Schedule 3;
- (b) an import of goods that are travellers' accompanied personal baggage for the purposes of the *Customs Act*;
- (c) an import of goods by a diplomatic or consular mission, or by a diplomat or member of the diplomat's family forming part of the diplomat's household in Solomon Islands, to the extent provided for in the *Diplomatic Privileges and Immunities Act* (Cap. 67) or *Consular Relations Act* (Cap. 66);
- (d) an import of goods by an international organisation or a foreign government to the extent required under an international agreement or the *International Financial Organisations Act* (Cap. 141);
- (e) an import of supplies for aircraft and ships engaged on international services that would be free of import duty under the *Customs Act*.

## SCHEDULE 2

(Section 6)

### Exempt supplies

#### 1 Interpretation

In this Schedule:

**“education”**:

- (a) means the process of teaching, training and learning; and
- (b) does not include the provision of board or maintenance

**“education services”** means education provided by any of the following:

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

**“finance lease”** means:

- (a) a hire purchase agreement; or
- (b) any lease that is treated under international financial reporting standards as a finance lease;

**“financial services”** means any of the following, except when provided for an explicit fee:

- (a) granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit or credit guarantees by the grantor;

- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques or negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds and other securities, other than custody services;
- (e) management of investment funds;
- (f) provision, or transfer of ownership, of a life insurance contract or the provision of reinsurance in respect of any such contract;
- (g) provision, or transfer of ownership, of an interest in a scheme whereby provision is made for the payment or granting of benefits by a benefit fund, provident fund, pension fund, retirement annuity fund or preservation fund;
- (h) a supply of credit under a finance lease, if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods; or
- (i) the arranging of any of the services in paragraphs (a) to (h);

**"lease"** includes a licence but does not include a long-term lease;

**"long-term lease"** means a lease for more than 50 years;

**"new residential premises"** means residential premises that:

- (a) have not previously been sold as residential premises or been the subject of a long-term lease; or
- (b) have been created by a substantial renovation of a building; or
- (c) have replaced demolished premises on the same land;

**"residential premises"** means land or a building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation;

**“transport services”:**

- (a) means the conveyance of fare-paying passengers and their personal effects by road, other than by a tour operator or provider of accommodation; and
- (b) does not include services ancillary to the conveyance referred to in paragraph (a), such as radio dispatch of taxis and car hire fees.

**2 Exempt supplies**

- (1) The following are exempt supplies for the purposes of this Act:
  - (a) a supply of medical services by a medical practitioner registered under the *Medical and Dental Practitioners Act 1988*;
  - (b) a supply of medicines on prescription by a medical or dental practitioner under the *Medical and Dental Practitioners Act 1988*;
  - (c) a supply of education services;
  - (d) a supply of financial services;
  - (e) a supply of transport services;
  - (f) a supply of unimproved land;
  - (g) a supply by way of sale or long-term lease of residential premises, other than new residential premises;
  - (h) a supply by way of a lease of residential premises, other than a lease for a term of less than 60 days;
  - (i) a supply of holiday or hotel accommodation, if the accommodation is provided to an individual (alone or together with other individuals) who resides in the accommodation under terms consistent with a landlord and tenant agreement and for a continuous period of at least 60 days;
  - (j) a supply of goods donated to a charitable or religious organisation;

- (k) a supply of a right or option to receive a supply that will be an exempt supply under paragraphs (a) to (j).
- (2) A supply is not an exempt supply if, but for subclause (1), the supply would be a taxable supply subject to VAT at a zero rate.

## SCHEDULE 3

(Section 6)

### Zero-rated supplies

#### 1 Interpretation

In this Schedule:

**"export"** means:

- (a) in relation to goods, a supply of goods if they are delivered to, or made available at, an address outside Solomon Islands as evidenced by documentary proof acceptable to the Commissioner; or
- (b) in relation to services, a supply of services if they are for use or consumption outside Solomon Islands as evidenced by documentary proof acceptable to the Commissioner;

**"international transport services"**:

- (a) means the transportation of goods or passengers by sea or air:
  - (i) from a place outside Solomon Islands to another place outside Solomon Islands, including, if relevant, any part of the transport that takes place across the territory of Solomon Islands; or
  - (ii) from a place outside Solomon Islands to a place in Solomon Islands; or
  - (iii) from a place in Solomon Islands to a place outside Solomon Islands; and
- (b) includes services ancillary to international transportation, such as the provision of insurance, stevedoring and related services, and the provision of consumables used on the voyage or flight.

## **2 Zero-rated supplies**

The following taxable supplies are subject to a zero rate of VAT for the purposes of this Act:

- (a) an export of goods or services;
- (b) a supply of international transport services;
- (c) a supply of goods or services as part of the transfer of an enterprise, or part of an enterprise, as a going concern by a registered person to another registered person if:
  - (i) all the goods or services necessary for the continued operation of the enterprise or part of the enterprise are supplied to the transferee; and
  - (ii) the transferor carries on the enterprise until the day of transfer; and
  - (iii) the transferee will not carry on the enterprise to make exempt supplies and will not use the goods or services for private use; and
  - (iv) the transferor and transferee agree in writing, on or before the date of the transfer, that it will be treated as a transfer of an enterprise or part of an enterprise as a going concern for the purposes of this Act;
- (d) a supply of a right or option to receive a supply that will be a taxable supply subject to a zero rate under paragraphs (a) to (c).



## **SCHEDULE 4**

(section 82)

### **Transitional arrangements**

#### **1 Goods held as inventory before commencement**

- (1) This clause applies to a registered person who:
  - (a) had pre-registered under section 3; and
  - (b) immediately before the full commencement date held goods as inventory; and
  - (c) on the acquisition of the goods had paid goods tax under the *Goods Tax Act* (Cap. 122) or import duty under the *Customs Act*.
- (2) Subject to subclause (3), the registered person may claim, in the first VAT return filed by the person after the full commencement date, an input tax credit for the goods tax or import duty paid on the goods if the goods were acquired not more than 80 business days before the full commencement date.
- (3) A registered person may not claim an input tax credit under this clause for any import duty in respect of the acquisition of goods by import if an input tax credit could not have been claimed had the import occurred after the full commencement date.

#### **2 Post-commencement supply under pre-commencement contract**

- (1) Subject to subclause (2), if a registered person concluded a contract before the full commencement date, the person is entitled to recover VAT on a taxable supply made under that contract after the full commencement date, notwithstanding that the contract contained no provision for increasing the amount payable under the contract because of the imposition of VAT.
- (2) If the period of successive supply referred to in section 29 begins before, and ends after, the full commencement date, the supply of

services is treated as having been made continuously and uniformly throughout that period and the price for the supply is apportioned accordingly.

- (3) Subclause (2) does not apply to the supply of a warranty in relation to goods or a service if the value of the warranty has been included in the price of the goods or service.

# VALUE ADDED TAX BILL 2023

## EXPLANATORY MEMORANDUM

### OBJECTS

The object of the Value Added Tax Bill is to simplify and modernise the arrangements for the imposition and collection of tax on the consumption of goods and services.

The Bill repeals the existing tax arrangements and replaces them with a value added tax (VAT) which is consistent with those found elsewhere in the Pacific and more broadly throughout the world.

Specifically, the *Goods Tax Act* (Cap 122), the *Sales Tax Act* (Cap 125), the *Stamp Duties Act* (Cap 126) will be repealed. Further through separate legislative processes, most import duties (except for those on motor vehicles, fuel, alcoholic beverages, sugary drinks and tobacco) will be reduced to zero and the current accommodation levy on tourist accommodation will be removed.

The Bill is part of the tax reform process for Solomon Islands which began in 2007.

# CONTENT

## Part 1 Preliminary matters

### 1 Short Title

The short title is the *Value Added Tax Act 2023*.

### 2 Commencement

The commencement clause provides that clause 3 of the Act commences on the day appointed by the Minister by notice in the *Gazette*. (Under section 16(2) of the *Interpretation and General Provisions Act* (Cap. 85), “the Minister” is the Minister responsible for the administration of the Act.) Clause 2(2) provides that the rest of the Act will commence 180 days later on the “full commencement date”.

### 3 Preliminary Registration

This clause provides for the registration of persons prior to the full commencement date. A person who reasonably expects they will need to be registered after the full commencement date is required to register not later than 40 business days before the full commencement date. This will allow for the orderly implementation of the Act. Clause 3(2) provides an administrative penalty for persons who fail to register within the required time frame.

### 4 Act is tax law

Clause 4 states that the Act will be a tax law under the *Tax Administration Act 2022* (TAA). This means that the arrangements set out in the TAA for matters such as objections and appeals, recovery of tax, penalties and offences, etc. will apply to the administration of this Act.

### 5 Act binds the Crown

Clause 5 binds the Crown. This means that the Government and government entities must comply with the Act and register if required. It also means that VAT will apply to supplies to the Government.

## **Part 2 Interpretation**

### **6 Definitions**

Clause 6 sets out the definitions of terms used in the Bill. Most of these are self-explanatory.

The key definitions that apply to special concepts for the VAT are:

“Creditable acquisition” means a taxable supply made to another registered person, i.e. a supply on which VAT is payable. Creditable acquisitions also include taxable imports by the registered person. A creditable acquisition may give rise to an input tax credit.

“Goods” is defined broadly to include any goods - specifically immovable property or tangible movable property. Immovable property includes land or interests in land. Movable property includes all goods including inventory and capital equipment such as plant and machinery. Goods are limited to tangible property so intangible property such as intellectual property, rights, shares, stocks etc. are treated as services (see below). Services and money (see below) are excluded from goods.

“Input tax” is the VAT paid by a registered person on creditable acquisitions received as part of its enterprise. It includes amounts treated as input tax but does not include penalties or interest imposed under this Act or the TAA.

“Input tax credit” is the credit allowed under this Act. Under clause 48, the input tax credit is limited to input tax on creditable acquisitions to the extent they are used to make taxable supplies.

“Money” means any legal tender in Solomon Islands, excluding any collectable items. It also includes bills of exchange, promissory notes, bank drafts and postal or money orders and payments supplied via credit or debit card or by crediting or debiting an account. As money is excluded from the definition of goods and services, a supply of money is not subject to VAT.

“Output tax” is the VAT charged by a registered person on the supply of goods and services and includes VAT deemed to have been charged and the VAT payable on imported services.

“Person” includes a natural person and non-natural persons such as bodies corporate or unincorporated, governments, international organisations, partnerships, trusts and companies. The definition is deliberately broad.

“Services” are defined broadly to include anything that is not goods or money and includes utilities and rights.

“Tax fraction” is the formula used to calculate the amount of VAT in a VAT inclusive price. The formula is:

$$r/(100+r) \text{ where } r \text{ is the rate of VAT.}$$

Thus,  $15/(100+15)$  shows that the VAT is 13.044% of the VAT inclusive price.

“Taxable supply” is the basic supply which gives rise to a VAT liability. It is a supply of goods and services made in Solomon Islands by a person in the course of an enterprise. A taxable supply includes a “zero-rated” supply (Schedule 3) but does not include an exempt supply (Schedule 2). The definition is broad but not all supplies will be taxable. The following are not taxable supplies:

1. a supply outside Solomon Islands;
2. a supply made by a person who is not carrying on an enterprise;
3. a supply made by a person carrying on an enterprise if the supply is not made in the course of the enterprise. For example, a registered person may carry on an enterprise as a lawyer, but if the person sells privately his or her car used for private purposes, the sale of the car will not be a taxable supply as it has not been made “in the course of” the person’s enterprise as a lawyer;
4. an exempt supply;
5. transactions such as the payment of a dividend, the giving of unconditional subsidies or grants, or a contribution of capital (e.g. settling funds on trust).

Taxable supply also includes deemed taxable supplies such as the supply of inventory at the time of cancellation of registration (clause 26) and the application of goods to private or exempt use (clause 38).

“VAT period” is any calendar month, so returns and payments to IRD are required monthly. The Bill provides that regulations may prescribe any other period, this is intended to allow for consideration of different periods for different groups of taxpayers, e.g. small businesses.

## 7 Meaning of enterprise

Clause 7 provides a definition of "enterprise". This is important as VAT only applies to supplies made by an enterprise which is carried on continuously or regularly, whether for profit or not. Enterprise also includes some government activities - limited to issuing a licence, permit, certificate, concession, authorisation or other document for a fee.

An enterprise does not include employment or a hobby or leisure activity.

## 8 Meaning of fair market value

Clause 8 sets out how "fair market value" is established and allows for the Commissioner to determine this if the standard approaches cannot be used. Fair market value is referenced in other parts the Act, e.g. clause 34 value of supply to associate, clause 35 value of supply of imported services and clause 39 second-hand goods.

## 9 Meaning of price

Clause 9 defines the meaning of "price" as the total of any moneys paid, any supplies in kind and any taxes, duties, levies, fees and charges (including VAT). Clause 9(2) excludes the amount payable that relates to a supply of credit, as this is covered under the arrangements for financial services. The price should be compared to the "value" which is defined in clause 33 as the price less VAT.

## 10 Meaning of supply of imported services

Clause 10 defines the meaning of "supply of imported services". These are services received in Solomon Islands by a registered person where the supply is not made in Solomon Islands. This would include such things as the supply offshore of legal, architectural, engineering or similar services. Such services would ordinarily be taxable but if a person is registered and eligible for full input tax credits the services are excluded from the definition and the person does not need to account for the supply as the credit would equal the tax payable. Imported services therefore are only relevant for businesses providing exempt supplies.

## **Part 3 Imposition of VAT**

### 11 Imposition and liability for VAT

Clause 11 provides that VAT is imposed on a taxable supply made by a registered person, a taxable import and a supply of imported services. Taxable

supplies are defined in clause 6. Clause 11 also contains rules for the timing of the liability and the way it must be accounted for. Clause 62 requires VAT on imports to be paid at the time of importation and for other supplies by the due date for filing returns.

#### 12 Amount and rate of VAT

Clause 12 provides that the rate of the VAT is 15% of the value of a taxable supply or import unless the supply is zero-rated, in which case the rate is 0%.

### **Part 4 Registration**

#### 13 Liability to register for VAT

Clause 13 requires that a person whose annual turnover does, or is expected to, exceed the registration threshold must register. Turnover is measured using only taxable supplies and the period is any rolling period of any 12 months. The threshold is specified in clause 15(1).

The registration threshold does not apply to financial institutions who must be registered under clause 13(c).

#### 14 Voluntary registration for pre-establishment costs

This clause provides for voluntary registration for persons incurring costs for creditable acquisitions of goods and services in the pre-establishment stage of commencing an enterprise. Until a person commences making taxable supplies, they are unable to register under the standard rules of clause 13. However, they may be making a significant investment prior to the business starting, e.g. building a hotel or a factory.

If a person is receiving creditable acquisitions that exceed the registration threshold specified in clause 15(2), they may register voluntarily and claim input tax credits.

This arrangement is intended to remove a potential disincentive for investment by non-established businesses.

#### 15 Registration threshold

Clause 15 specifies the registration thresholds for standard registration (clause 15(1)) and voluntary registration (clause 15(2)). Although both thresholds are currently set at \$2,000,000, clause 15(1) provides for the standard threshold to be altered by regulation.



## 16 Application for VAT registration

Clause 16 specifies that an application for registration must be made consistent with the processes set out in clause 65 and filed within 5 business days of the person becoming liable to register under clause 13.

Clause 16(2) provides that a government entity that carries on an enterprise must only be registered at the relevant operational unit.

### **Example**

The Ministry of Finance and Treasury (MoFT) provides motor vehicle licensing and registration services through the Inland Revenue Division (IRD). The Transport Licencing Unit will be required to register, but not MoFT or IRD.

Clause 70 provides an administrative penalty for persons who fail to register within the required time frame.

## 17 Determining whether person exceeds registration threshold

Clause 17 provides that calculation of a person's threshold should exclude taxable supplies from the sale of capital assets or taxable supplies made solely as a consequence of the person selling the whole or a part of the person's enterprise or permanently ceasing to carry on the person's enterprise. The Commissioner may also consider supplies by an associate in calculating the threshold.

## 18 Registration

Clause 18(1) requires that, if a person is required to register under clause 13, the Commissioner must register that person upon receiving an application to register. The Commissioner must also register a person who has not applied on becoming aware that person is required to do so. The Commissioner must issue a registration certificate and must not register a person who is not required to register unless they are applying for voluntary registration under clause 14.

Clause 18(2) requires the Commissioner to register a person seeking voluntary registration. A person seeking voluntary registration must agree with the Commissioner on a date by which the enterprise must commence.

To remove any doubt, clause 18(6) clarifies that a voluntarily registered person is a taxpayer for the purposes of the Tax Administration Act.

Clause 70(1)(c) provides an administrative penalty for a person who falsely represents that they are registered under this section.

Clause 70(1)(d) provides an administrative penalty for persons who charge or collect VAT while not registered.

#### 19 Deemed registration under section 18(1)

Clause 19 provides that a person voluntarily registered under clause 18(2) is deemed to become registered under clause 18(1) as soon as they become liable to register under the standard rules.

#### 20 Display of registration certificate

Clause 20 requires a registered person to display the original VAT certificate at the principal place of business and certified copies at every other place of business.

Clause 70(1)(e) provides an administrative penalty for persons who fail to comply with this requirement.

#### 21 Notice of change in name, etc

Clause 21 requires that a registered person notify in the approved form any change in the name, address, contact details place of business or nature of the enterprise within 10 business days.

Clause 70(1)(f) provides an administrative penalty for persons who fail to notify within the required time frame.

#### 22 Notice to cancel

Clause 22 provides that a registered person must file a notice for cancellation in the approved form if grounds occur. The grounds for cancellation are that:

1. a government entity ceases to carry on an enterprise;
2. a person is no longer a financial institution;
3. a person ceases to make taxable supplies, or the annual value of supplies falls below the threshold and there is no reasonable expectation that this is only temporary;
4. a voluntarily registered person no longer meets the criteria for voluntary registration.

The notice must be filed within 10 business days. Clause 70(1)(g) provides an administrative penalty for persons who fail to notify within the required time frame.

### 23 Cancellation when notice to cancel is filed

Clause 23 requires that, if satisfied that a ground for cancellation has occurred, the Commissioner must cancel the person's registration by notice in writing which includes the date of cancellation.

### 24 Cancellation without notice to cancel being filed

Clause 24 provides for the Commissioner to cancel registration without a notice from the person if satisfied that a ground for cancellation has occurred. The Commissioner must notify the registered person in writing specifying the date of cancellation and must include information on the rights of the person to object under the TAA. If the person lodges an objection, the cancellation must not take effect until the objection process has been completed.

### 25 Effect of cancellation

Clause 25 provides that the cancellation takes effect on the date specified in the notice. A person whose registration is cancelled must not represent themselves as a registered person. Within 10 business days of the cancellation, the person must file a final VAT return and pay all VAT due including VAT due to clause 26. The person must also return the original registration certificate and all copies.

Clause 70(1)(h) provides an administrative penalty for persons who fail to return certificates within the required time frame.

Administrative penalties under the TAA may apply to failure to lodge a return and remit VAT.

### 26 Deemed taxable supply on cancellation of registration

Clause 26(1) specifies that a person whose registration is cancelled is deemed to make a taxable supply of any inventory on hand if an input tax credit has been allowed for the acquisition or import of the goods. The purpose of this clause is to ensure that the post-cancellation activities of a person whose registration is cancelled does not benefit from input tax credits allowed before cancellation.

Clause 26(3) provides that a voluntarily registered person whose registration is cancelled is deemed to have made a taxable supply equal to the total input tax credits divided by the tax fraction. This will have the effect of making them liable to repay all credits received.

## **Part 5 Supplies and imports**

### **Division 1: Supplies: general**

#### 27 Mixed supplies

Clause 27 provides rules for a transaction that involves more than one element, each of which would, if viewed separately, have a different character and possibly different VAT treatments. A supply that is incidental or ancillary to another supply should be considered as part of the main supply.

The sale of goods under a hire purchase agreement is considered a mixed supply unless the supply of the credit is specified as a separate charge. In that case the supply of goods would be a taxable supply and supply of the credit would an exempt supply.

If VAT applies in the same way to all elements of the supply, it will generally be unnecessary for suppliers to consider the effect of these rules.

#### 28 Time of supply

Clause 28 specifies the time of supply for various types of transactions. The time of supply is when liability for VAT arises (clause 11), subject to the due dates for payment set out in clause 62.

The general rule for determining the time of supply is that a supply of goods or services occurs on the earlier of the date the invoice is issued or the date any payment (including a part payment) for the supply is made.

Clause 28(2) specifies that the time of a supply between associates or by gift is the date goods are delivered or services are completed. This needs to be specified as the test in the general rule in clause 28(1) may not be met if the parties collude to delay the issuing of an invoice or payment. For a gift no payment will actually be made.

Clause 28(3) provides that the time of supply for goods by a vending machine is the time when cash or tokens are removed from the machine on behalf of the supplier.

Clause 28(4) provides that time of supply for services requiring payment in advance by credit is the time the credit is paid. This is relevant to services such as Cashpower electricity or phone credit.

### 29 Successive supplies of services

Clause 29 provides a mechanism to time payments under either a lease of goods or progressively under an agreement or law that provides for periodic payments. In these cases, the supplies are treated as a series of separate supplies corresponding to the successive periods and each supply occurs on the earlier of the date on which payment is received or due. This clause is relevant to equipment leases, including hire purchase agreements, and to services such as a long-term construction contract where progress payments are made throughout the contract.

### 30 Supply to unregistered person

Clause 30 requires that a registered person making a supply to an unregistered person must state the VAT inclusive price and include on its invoices whether a supply is taxable, and the rate or amount of VAT charged. This is to ensure that consumers are correctly informed of the VAT arrangements for the business.

Clause 70(1)(i) provides an administrative penalty for persons who fail to comply with these requirements.

### 31 Place of supply of goods

The place of supply is important in defining whether or not a supply is a taxable supply. Clause 31 specifies that the place of supply is Solomon Islands if goods are delivered or made available in Solomon Islands by the supplier.

Clause 31(b) provides that if the delivery of the goods involves the transportation of the goods, the supply occurs in Solomon Islands if goods are in Solomon Islands when the transportation commences. The transportation rule is particularly important in the case of cross-border supplies. This means that an export from Solomon Islands is treated as a taxable supply in Solomon Islands, although it will be zero-rated under Schedule 3. The reverse of this transportation rule is that if goods are supplied from a place outside of Solomon Islands the supply is not made in Solomon Islands and is therefore not a taxable supply. It may however be a taxable import.

### 32 Place of supply of services

Clause 32 defines the place of supply for services. The general rule is that the place of supply is Solomon Islands if both the enterprise of the supplier and the recipient are in Solomon Islands.

However, special rules cover the situation when the recipient is unregistered. In this case, the supply will occur in Solomon Islands if one of following applies:

1. the services are physically performed in Solomon Islands and the recipient uses the services in Solomon Islands;
2. the services are directly related to immovable property in Solomon Islands;
3. the services are broadcast services received in Solomon Islands;
4. the services are electronic services;
5. the supply is the transfer, assignment or grant of a right to a copyright, patent, trademark or similar in Solomon Islands;
6. the services are telecommunications services (defined in clause 6) initiated by a person in Solomon Islands other than a supplier of telecommunications service or a person global roaming while temporarily in Solomon Islands;
7. the supply is the issue of a licence by a government entity or other authority in Solomon Islands.

Clause 32(3) sets out rules for determining who initiates a telecommunication supply and clause 32(4) defines "electronic services".

### 33 Value of supply

Clause 33 defines the "value" of a supply as the price less VAT. This relates back to clause 12 which specifies that the amount of VAT is calculated by applying the specified rate to the value and clause 30 which requires that prices stated to non-registered persons must be inclusive of VAT. For exempt and zero-rated supplies the value equals the price.

The VAT can be calculated from the price by multiplying it by the tax fraction (see above).

### **Example**

If a supply of goods has a **price** of \$250 and is taxed at the standard rate, then:

The VAT component of the price is:

$$\$250 * 15/(100 +15) = \$32.61$$

The **value** of the goods is  $\$250 - \$32.61 = \$217.39$

If no price is charged, the value is zero.

### 34 Value of supply to associate

Clause 34 provides that if a taxable supply is provided to an associate at no price or a price less than the fair market value and the recipient is not entitled to an input tax credit for the whole input tax payable, the value of the supply is the fair market value (as determined by clause 8). This is designed to prevent avoiding VAT through manipulating prices between associates.

### 35 Value of supply of imported services

Clause 35 is used to determine the value of a supply of imported services. The value of a supply of imported services is the fair market value if the supply is between associates. In other cases, the value is the price of the supply.

If the recipient is registered and would be eligible for a part credit if the supply was creditable acquisition, the value of the supply is reduced by an amount equal to the proportion of input tax that would have been creditable. This situation arises when a supplier provides a mix of exempt and taxable supplies.

### 36 Assessment of recipient of supply

Clause 36 provides a mechanism whereby the recipient of the supply can be assessed for payment of VAT if, due to fraud or misrepresentation by the recipient, the supplier has incorrectly treated the supply as exempt or zero rated. Clause 36(2) allows the Commissioner to recover VAT payable from the supplier but must credit any amounts recovered against the liabilities of the supplier or recipient as relevant. Clause 36(3) provides for the supplier to recover any amount paid under clause 36(2) from the recipient.

### 37 Procedure for assessing recipient of supply

Clause 37 sets out the procedure for assessing the recipient under clause 36. The Commissioner must serve a notice on the recipient of the assessment and any penalties and interest and inform the recipient of their objection rights under the TAA. The due date for payment must not be less than 20 business days from the notice.

## **Division 2: Supplies: special categories**

### 38 Application of goods to private or exempt use

Clause 38 deals with the treatment of goods that have been acquired for the purpose of making taxable supplies but have subsequently been used for private purposes or to provide exempt supplies. The aim of this provision is to reverse any input tax credit and only operates if a credit has already been claimed on the goods. This may occur if a business uses stock for their own personal purposes. The operation is that a taxable supply is deemed to have been made with deemed output tax equal to the amount of input tax credit received.

### 39 Second-hand goods

Clause 39 provides arrangements for the supply of second-hand goods, such as motor vehicles. Second-hand goods will have had VAT charged when they first enter the supply chain, and their second-hand value will reflect this. This provision is limited to when a second-hand dealer purchases goods from an unregistered person. The registered person will be able to claim an input tax credit equal to the tax fraction of the price paid for the goods.

#### **Example**

Go Fast Motors is a registered person and a second-hand car dealer. Go Fast purchased a car from Charlie for \$9,000 and subsequently sold the car to Peter for \$13,000 including VAT. As Charlie is unregistered, Go Fast is able to claim an input tax credit of  $\$9,000 \times 15/(100+15)$ , i.e. \$1,173.91. Go Fast is also liable to account for VAT on the sale of  $\$13,000 \times 15/(100+15)$ , i.e. \$1,695.65. Go Fast must claim the credit and account for output VAT in the tax period in which the sale occurs.

If a trade-in is made as part of the purchase price, clause 39(3) requires that the fair market value of the traded-in goods must be the same as the fair market value used to determine the price paid for the goods and hence the input tax credit claimed.



#### 40 Rights and options

Clause 40 sets out the arrangements for VAT on rights and options. It provides that if the supply of a right or option was a taxable supply and another supply is made in exercising that right, the price for the subsequent supply is limited to the additional price.

#### 41 Voucher issued for money

Clause 41 sets out the treatment of vouchers. The issue of a voucher is not a supply if the voucher is issued for an amount of money and allows the holder to receive goods and services up to a specified monetary value on redemption. If the voucher is redeemed for a taxable supply the amount of the voucher is taken to contain an amount of VAT equal to the tax fraction of the amount paid for the voucher.

#### 42 Lay-by sales

Clause 42 provides rules for the treatment of lay-by sales. The time of supply is the date the goods are delivered and output tax is taken to be received by the supplier at that date. If a lay-by is cancelled and the supplier retains or recovers any amount then the cancellation is taken to be a supply of services at the time of cancellation. The value of the supply of cancellation is the amount retained or recovered by the seller reduced by the tax fraction of that amount.

#### 43 Gaming supplies

Clause 42 provides rules for VAT on gaming services. VAT will be charged monthly on the "net gaming drop" which is the sum of all moneys received minus winnings paid out. It will be charged on all forms of gaming including lotteries and services provided online.

### **Division 3: Imports**

#### 44 Time of import

Clause 44 sets out the time of import. The general rule is that an import occurs when the goods are entered as defined by section 2 of the *Customs and Excise Act* (Cap 121) (CEA) or otherwise cease to be under Customs control. In any other case, the time of import is the date goods are brought into Solomon Islands.

## 45 Value of import

Clause 45 sets the value of imported goods as the sum of the Customs value as determined by the *Customs Valuation Act 2009* (CVA) plus the cost of any services treated as part of the import and not included in the Customs value and any import duty, excise tax, levy or any other charge (excluding VAT) payable for the import.

Clause 45(2) sets the value of goods re-imported after export for repair, renovation or improvement as the amount of the increase in value provided the form and character and the ownership of the goods has not changed.

## **Part 6 Calculation of VAT**

### **Division 1: Net VAT**

#### 46 Net VAT payable for VAT period

Clause 46 provides that the net VAT payable for a VAT period is the total output tax received (including deemed output tax) plus the total VAT for imported services received less the total input tax credit.

#### 47 Effect of negative VAT payable

Clause 47 provides that if the total input tax credits for a period exceed the total output tax received the excess must be refunded within 20 business days unless it is carried forward and allowed as an input tax credit in the next or later VAT period or transferred by the Commissioner to another tax liability under section 69 of the TAA.

Clause 47(3) provides for the Commissioner to make rules for carrying forward an excess.

In general, it is not expected that registered persons will have an excess of credits except in occasional circumstances such as major capital purchases or the establishment of new businesses. However, in some cases, such as exporters, excess input tax credits will be a regular feature of their enterprise and in this case the excess must be refunded.

### **Division 2: Input tax credits**

#### 48 Allowance of input tax credit

Clause 48 provides that an input tax credit is allowed to a registered person on a creditable acquisition (see above) that is made for the purpose of making taxable supplies. The credit is available in the VAT period in which the input tax is paid provided that the registered person has the necessary documentation to support the claim. If the person does not hold the documentation, the credit is allowed in the next VAT period after the documentation is obtained.

#### 49 When input tax credit is not allowed

Clause 49 sets out when an input tax credit is not allowed. A credit is not available to the extent that the acquisition is used to provide entertainment – i.e., accommodation, food, beverage, tobacco, amusement, recreation or hospitality of any kind – unless:

- the entertainment is provided in the ordinary course of the enterprise and not provided to an employee or associate; or
- the recipient of the entertainment is away from home for the purpose of the enterprise.

Credits are also unavailable for the acquisition of membership or right of entry for any person to a club, association or society of a sporting, social or recreational nature.

#### 50 Input tax credits for pre-registration goods

Clause 50 sets out the conditions for claiming input tax credits for goods purchased prior to becoming registered. This allows for new businesses to purchase stock and other supplies to become established. The credit is limited to goods purchased in the 120 business days prior to becoming registered.

This arrangement is distinct from the voluntary registration arrangements and would typically apply to an onshore person establishing an enterprise.

Clause 50(4) provides a regulation making provision that would allow circumstances to be defined in which the Commissioner may increase the 120 business day period for persons who are tax compliant.

### **Division 3: Adjustment events**

#### 51 and 52 Adjustment events

Clauses 51 and 52 establish arrangements for adjustments to be made if a registered person has incorrectly accounted for VAT because of a subsequent change in the circumstances of the supply. These changes are cancellation of the supply, a change in the nature of the supply, a change in the price of the supply or the return of goods to the supplier.

#### **Division 4: Refunds**

##### 53 Refunds to diplomatic missions and others

Clause 53 allows the Commissioner to refund VAT to a foreign government, a person who is exempt under the *Diplomatic Privileges and Immunities Act 1983* (Cap 67) or to an international organisation or foreign government as required under an international agreement or the *International Financial Organisations Act* (Cap 141). Applications must be made within 80 business days of when the VAT is paid.

#### **Part 6 Administration**

##### 54 Issue of tax invoice

Clause 54 requires that a registered person making a taxable supply to another registered person must issue the recipient with the original tax invoice, in the approved form and at the time of the supply. Tax invoices are a key compliance mechanism and can be used to audit VAT returns.

Clause 70(1)(j) provides an administrative penalty for persons who fail to comply with this requirement.

##### 55 and 56 Issue of credit/debit note

Clauses 55 and 56 provide for the issuing of a credit or debit note, as required, if an adjustment is required under clause 51.

Clause 70(1)(k) and (l) provides an administrative penalty for persons who fail to comply with these requirements.

##### 57 Issue of invoice or note by or to VAT representative

Clause 57 allows for the issuing and receiving of tax invoices and credit and debit notes by a tax agent or VAT representative of the supplier or recipient of a taxable supply.

## 58 Request for issue of invoice or note

Clause 58 requires that a person who has failed to issue a tax invoice or credit or debit note must issue one within 10 business days of a written request from the person who should have received it.

Clause 70(1)(m) provides an administrative penalty for persons who fail to comply with this requirement.

## 59 Invoice for supply of imported services

Clause 59 requires a person who received a supply of imported services to prepare a recipient-created tax invoice in the approved form.

Clause 70(1)(n) provides an administrative penalty for persons who fail to comply with this requirement.

## 60 Irregular issue of invoice or note

Clause 60 provides that a person must not issue a tax invoice or credit or debit note except as provided by the Act. It also requires that only one original document must be issued for each taxable supply or adjustment event but a clearly marked copy may be provided to a registered person who claims to have lost the original.

Clause 70(1)(o) provides an administrative penalty for persons who fail to comply with this requirement.

Registered persons will be required to retain tax invoices and credit and debit notes for seven years under the record keeping obligations of the TAA. Administrative penalties may apply for breaches of clauses 54 to 60, see below. The offence provisions of the TAA may also apply.

## **Part 8 Procedure**

### 61 VAT returns

Clause 61 requires a registered person to file a VAT return for each VAT period by the 25<sup>th</sup> day of the month following the period.

The TAA provides an administrative penalty for persons who fail to comply with this requirement.

## 62 Due date for payment of VAT

Clause 62 requires the payment of net VAT payable by the due date for the return. VAT payable by an importer must be paid at the time of importation.

The TAA provides an administrative penalty for persons who fail to comply with this requirement.

## 63 Collection of VAT on imports

Clause 63 provides the arrangements for the collection of VAT on taxable imports:

- the Comptroller of Customs and Excise (Comptroller) must collect VAT payable on imports;
- the Comptroller may exercise the powers of the *Customs Act* as though references in that Act included a reference to VAT payable on taxable imports;
- the Commissioner may make rules for administering the collection of VAT on imported goods; and
- a Customs officer, in collecting VAT, has the powers and duties of a tax officer under the TAA and to that extent is a tax officer.

## 64 Non-resident must appoint VAT representative

Clause 64 requires that a non-resident who is required to register for VAT but who does not carry on an enterprise through a fixed place in Solomon Islands must appoint a VAT representative who is resident in Solomon Islands and may be required to lodge security in accordance with the TAA. The VAT representative is responsible for doing all things required of the non-resident under this Act.

Clause 70(1)(p) provides an administrative penalty for persons who fail to comply with this requirement.

## 65 Applications to Commissioner

Clause 65 sets out the requirements for making applications to the Commissioner under this Act.

## **Part 9 Seizure of goods subject to VAT**

### **66 Seizure of goods**

Clause 66 empowers the Commissioner to seize goods if there are reasonable grounds to suspect that VAT is or will be payable on the supply of the goods and VAT has not been or is unlikely to be paid. This is a compliance measure designed to deal with the problem of suppliers setting themselves up for short times and then disappearing without payment of VAT.

### **67 Notice of seizure**

Clause 67 requires the Commissioner to serve a notice of seizure on the owner of goods or the person who has custody or control of the goods at the time of seizure. The seized goods must be released to a person who has been served with a seizure notice if the person pays the VAT or makes a satisfactory arrangement with the Commissioner for the payment. Seized goods must be detained for 15 business days after seizure except in the case of perishable goods or livestock.

### **68 Sale of seized goods**

Clause 68 provides that unless the goods are released under clause 67(4) the Commissioner may sell perishable goods or livestock at any time and in the manner the Commissioner determines. Non-perishable goods may be sold by public auction after the expiry of the 15 business day period.

### **69 Proceeds of sale of seized goods**

Clause 69 provides how the proceeds of the sale of seized goods must be applied. After the sale the taxpayer remains liable for any undischarged amount of VAT or costs.

## **Part 10 Penalties and offences**

### **Division 1 Administrative penalties**

This division establishes a system of administrative penalties for breaches of this Act. In general, an administrative penalty is a monetary penalty imposed by a regulator (in this case, the Commissioner) for a non-criminal default or violation under the legislation administered by the regulator.

The VAT administrative penalties arrangements are parallel to and based on the administrative penalties system in the TAA. Some breaches may result in administrative penalties being applied under either or both Acts.

#### 70 Administrative penalties for breach of Act

Clause 70 sets out the breaches for which an administrative penalty may be applied:

- failure to pre-register for VAT;
- failure to register for VAT;
- falsely represents or holds out that the person is currently registered;
- the person charges or collects VAT while not registered;
- the person fails to display the person's registration certificate;
- failure to file a notice of change in name and other details;
- failure to file a notice to cancel registration;
- fails to return the person's VAT registration certificate;
- failure to disclose VAT status of a supply;
- failure to issue a tax invoice as required;
- failure to issue a credit note as required;
- failure to issue a debit note as required;
- failure to comply with a request for the issue of a tax invoice, credit note or debit note;
- failure to create a recipient created tax invoice as required;
- issues a tax invoice, credit note or debit note in breach of the Act;
- failure to appoint a VAT representative as required.
- Clause 70(2) provides for the amount of administrative penalties is prescribed by regulation.



## 71 Assessment of administrative penalty

Clause 71 deals with the assessment of an administrative penalty. For each category a maximum penalty will be prescribed by regulations. The Commissioner must make an assessment of penalty and serve a notice for payment of the penalty on the person who is subject to it. The notice must state the grounds for imposing the penalty, and the amount of the penalty, and the due date for payment which must not be less than 20 business days after the notice is served.

A person must not be liable to both an administrative penalty and a criminal prosecution for conduct that could both attract a penalty and constitute an offence. If a penalty is paid for conduct that is later prosecuted as an offence, the Commissioner must repay the penalty, which only becomes once more payable if the prosecution is subsequently withdrawn.

## 72 Remission of administrative penalty

Clause 72 allows the Commissioner to remit a penalty on his or her own initiative or on written application by the person subject to the penalty in certain circumstances, notably if the consequence is serious hardship to the person subject to the penalty, or the penalty has been incorrectly imposed or calculated, as well as circumstances that the person subject to the penalty cannot change or influence such as serious illness or absence from Solomon Islands and an honest unintentional failure to pay unpaid tax by the person subject to the penalty such as being unaware of the tax owing because the person did not receive the notice.

## 73 Recovery of administrative penalty

Clause 73 applies the recovery powers of the TAA to an administrative penalty. A penalty is recoverable as if it were tax payable by the taxpayer. Recovery of an administrative penalty from a person does not relieve that person of any liability for the payment of tax for which the person is or may be liable.

## **Division 2 Offences**

The TAA provides for a range of tax offences which may also be applicable for VAT offences.

## 74 Customs-related offences

Clause 74 provides for offences for a person who interferes with goods subject to VAT that are under Customs control or who smuggles, sells or receives

goods subject to VAT. These are parallel to offences in the Customs Valuation Act but these are limited to goods under customs control under a customs law. Clause 74 clarifies offences involving goods subject to VAT.

#### 75 Prevention of price exploitation on introduction of VAT

Clause 75 provides a mechanism to prevent price exploitation during the transition from the current taxes to the VAT. The Commissioner must publish guidelines to assist suppliers to understand when prices may be in breach of this clause. A supplier breaching this provision may be liable to a maximum penalty of 50,000 penalty units.

### **Part 11 Miscellaneous**

#### 76 Branches and divisions

Clause 76 requires that an enterprise conducted in branches or divisions is to be treated as a single enterprise and registered in the name of the person, not the branches and divisions. This clause does not apply to government entities.

#### 77 Tax avoidance schemes

Clause 77 provides a general anti-avoidance rule for the VAT. If the Commissioner is satisfied that a person has entered into a tax avoidance scheme for the purpose of obtaining a tax benefit and has obtained a tax benefit, the Commissioner may determine the VAT liability of the person as if the scheme had not been entered into.

#### 78 Currency translation

Clause 78 provides currency conversion rules. For imports, currency must be converted in line with the Customs Valuation Act. In any other case, currency conversions use the rate published by the Central Bank of Solomon Islands for the relevant date.

#### 79 Application of Act

Clause 79 provides that despite any other Act or agreement, exemptions from VAT must be provided for in this Act.

#### 80 Regulations

Clause 80 provides a regulation making power. In particular, it requires the maximum administrative penalties to be prescribed by regulation.

## 81 Repeals and revocations

Clause 81 repeals the Goods Tax Act, Sales Tax Act and Stamp Duties Act. The recovery provisions for these Acts were subsumed into the Tax Administration Act 2022 and are unaffected by the repeal of the primary acts. This allows for the collection of any tax liabilities from these taxes not yet received. Clause 81(2) clarifies that the repealed acts are still to be considered as tax law to ensure that the Tax Administration Act provisions operate despite the repeal of the primary acts.

## 82 Transitional arrangements

Clause 82 provides for transitional arrangements as set out in Schedule 4.

## 83 Regulations for transitional arrangements

Clause 83 provides for regulations to be made to facilitate the transition to the VAT.

## 84 Consequential amendments

Clause 84 provides a consequential amendment to the Income Tax Act to provide that VAT received is not considered as assessable income and VAT paid is not deductible. A loss or outgoing is not deductible to the extent of any input tax credit allowed under this Act.

## **Schedule 1 Exempt Imports**

Schedule 1 lists the following as exempt imports:

- a) an import of goods that would be zero-rated;
- b) travellers' accompanied personal baggage;
- c) imports by diplomatic missions or diplomats;
- d) imports by international organisations or foreign governments; and
- e) supplies for aircraft and ships engaged on international services.

## **Schedule 2 Exempt Supplies**

Schedule 2 provides that the following are exempt supplies:

- a) medical services;

- b) medicines on prescription;
- c) education services;
- d) financial supplies;
- e) transport services;
- f) unimproved land;
- g) a sale or long-term lease of residential premises, other than new residential premises;
- h) a lease of residential premises greater than 60 Days;
- i) a supply of holiday or hotel accommodation that is consistent with a landlord and tenant agreement and for a period of at least 60 consecutive days;
- j) goods donated to a charitable or religious organisation; and
- k) a right or option to receive a supply that would be exempt under paragraphs (a) to (j).

Schedule 2 also provides definitions of the key terms and also provides that a zero-rated supply is not an exempt supply.

### **Schedule 3 Zero-rated Supplies**

Schedule 3 provides that the following are zero-rated supplies:

- a) an export of goods or services;
- b) international transport services;
- c) transfer of an enterprise as a going concern; and
- d) a right or option to receive a supply that would be zero-rated under paragraphs (a) to (c).

Schedule 3 also provides definitions of the key terms.

## **Schedule 4 Transitional Arrangements**

### **1 Goods held as inventory before commencement**

Clause 1 provides for a special input tax credit for import duty and goods tax paid on goods held as inventory at the commencement of VAT. This is limited to goods purchased not more than 80 business days prior to the commencement of VAT.

### **2 Post-commencement supply under pre-commencement contract**

Clause 2(1) provides for the collection of VAT on supplies made under a contract entered into prior to the full commencement date where no provision for this was included in the contract.

Clause 2(2) provides an apportionment rule for a successive supply that begins before and ends after the full commencement date.

**HON. HARRY KUMA**  
**MINISTER FOR FINANCE AND TREASURY**

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