

SALES TAX BILL 1990

(NAME OF BILL)

CONTENTS: Bill
Objects and Reasons
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
~~(Authorisation from Minister of Finance under s.60 of Constitution)~~

FROM: Attorney General's Chambers 3/05/90

TO: Minister
(for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk) *Asuma 3/05/90*

TO: Minister of Finance
(for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution)

TO: Clerk to National Parliament *Stoubrink 4.5.90*
(for certificate by Speaker)

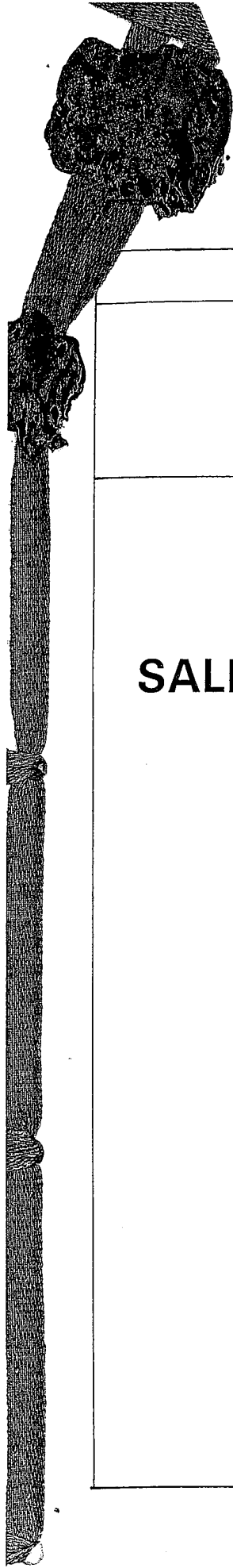
TO: Attorney General's Chambers
(for printing)

TO: Clerk to National Parliament *Stoubrink 15/5/90*
(for reference during 1st, 2nd and 3rd Readings)
(Date passed: 15/5/90 Act No. 6/90)

TO: Attorney General's Chambers *✓ 19/6/90*
(for checking before Assent)

TO: Governor-General *25/6/90*
(for Assent)

TO: Clerk to National Parliament
(for distribution: 1 copy Attorney General's Chambers *✓ 20/6/90*
1 copy Ministry *20/6/90*
1 copy Parliament Office
1 copy Registrar of the High Court *20/6/90*)



SALES TAX ACT 1990

(NO. 6 OF 1990)

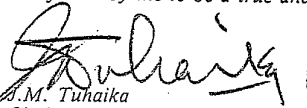


SALES TAX ACT 1990

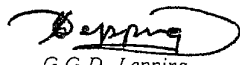
(NO. 6 OF 1990)

Passed by the National Parliament this fifteenth day of May 1990.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.


J.M. Tuhaika
Clerk to the National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this twentieth day of June 1990.


G.G.D. Lepping
Governor-General

Date of commencement: see section 1.

AN ACT to Impose a sales tax on certain prescribed goods and services and to provide for matters connected therewith or incidental thereto.

ENACTED by the National Parliament of Solomon Islands.

SALES TAX ACT 1990
ARRANGEMENT OF SECTIONS

Section:

1. Short title and commencement.
2. Interpretation.
3. Tax on purchase of goods or services.
4. Power of Minister to impose, revoke or vary sales tax.
5. Certificate of registration.
6. Exemptions.
7. Special remission.
8. Repayment of sales tax.
9. Waiver, refunds, etc.
10. Relief against double tax.
11. Anti-avoidance: high or low consideration.
12. Restraints on exempted goods.
13. Vendor to be collector.
14. Taxes to be collected at time of sale.
15. Returns.
16. Assessment of tax collected.
17. Purchaser liable.
18. Tax moneys deemed trust moneys.
19. Objections.
20. Appeal to High Court.
21. Penalty for default in filing return or remitting.
22. Interest.
23. Surety Bond.
24. Appointment of Inspectors.
25. Investigations.
26. Officers etc. of corporation.
27. Sales tax may be recovered by suit.
28. Collection of tax by distraint etc.
29. General penalty.
30. Offences.
31. Regulations.
32. Power of Commissioner to prescribe forms.
33. Sales tax not deductible for purpose of Income Tax Act, Cap. 61.

SCHEDULE.

1. This Act may be cited as the Sales Act 1990 and shall come into operation on a day to be appointed by the Minister by notice published in the Gazette.

Short title
and commence-
ment.

2. In this Act, unless the context otherwise requires -

Interpre-
tation.

“Commissioner” shall have the meaning assigned thereto by section 2(1) of the Income Tax Act;

“consumer” means a person who -

- (a) uses or utilises or intends to use or utilise in Solomon Islands prescribed goods or services for his own use or consumption or for the use or consumption of any other person at his expense; or
- (b) uses or utilises or intends to use or utilise in Solomon Islands prescribed goods or services on behalf of or as the agent for a principal who desired or desires to so use or utilise such prescribed goods or services by the principal or by any person at the expense of such principal;

“Minister” means the Minister for the time being charged with responsibility for the imposition and collection of sales tax;

“prescribed goods or services” means goods or services declared to be taxable by or pursuant to this Act and set out in the Schedule;

“purchaser” means -

- (a) any consumer; or
- (b) any person who acquires prescribed goods anywhere, for his own use or consumption, or for the consumption or use in Solomon Islands of other persons at his expense, or on behalf of or as agent for a principal who desires to acquire such prescribed goods for consumption or use in Solomon Islands by such principal or other person at his expense;

“sale” or “sells” means -

- (a) a sale of prescribed goods to a purchaser for the purpose of use or consumption and not for resale;
- (b) the providing of prescribed services for a consideration; or
- (c) any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise of any prescribed goods including a sale on credit or where the price is payable by instalments, or any other contract (whether or not a hire purchase contract)

whereby at a price or other consideration a person delivers to another person prescribed goods; or

- (d) the furnishing and distribution of prescribed goods for a consideration by social clubs or other organisations in the course of ordinary business;

“sales tax” means sales tax imposed by or under this Act by an order by the Minister and includes additional sales tax;

“use” does not include prescribed goods brought into Solomon Islands for the purpose of transporting them subsequently outside of Solomon Islands for use thereafter solely outside Solomon Islands;

“vendor” means a person who in the ordinary course of business sells prescribed goods or services and includes a wholesaler;

“value” includes -

- (a) the price for which the prescribed goods were purchased as expressed in terms of Solomon Islands currency;
- (b) the price for which the prescribed services were made available and used in Solomon Islands; and
- (c) in the case of prescribed goods, the costs of or charges for customs and excise duties, transportation and insurance.

Tax on
purchases
of goods
or
services.

3. (1) Every purchaser of prescribed goods or services shall be charged a tax (to be known as “sales tax”) in respect of the use or consumption of such goods or services computed in such amount or at such percentage of the value thereof as may be prescribed by the Minister:

Provided that sales tax shall not be payable on the purchase of any goods if the goods were entered under bond for the due exportation and landing in a place outside Solomon Islands and are in fact so exported.

(2) A purchaser shall pay the tax at the time of the sale.

(3) Where the Commissioner deems it necessary or advisable he may determine the value of any such goods for the purposes of taxation under this Act, and thereupon the value of such goods for such person shall be as so determined by him.

(4) If a person sells any prescribed goods to a person who alleged that he is not purchasing it for consumption or use in Solomon Islands, he shall nevertheless request such person to pay the tax or give security therefor, but such payment shall be refunded or such security restored by the Commissioner on receipt of

satisfactory evidence that, apart from this subsection, the tax is not required to be paid or secured.

(5) The Commissioner shall refund any amount overpaid as sales tax upon receipt, at any time within two years after the overpayment, of satisfactory evidence of such overpayment.

(6) Every person who brings into Solomon Islands or who receives delivery in Solomon Islands of prescribed goods acquired by him for money or moneys worth for his own consumption or use, or for the consumption or use of other persons at his expense, or on behalf of, or as agent for, a principal who desires to acquire such prescribed goods for consumption or use in Solomon Islands by such principal or other person at his expense, shall upon entry of the goods under the Customs and Excise Act supply the Commissioner with the invoice and all other relevant information required by him in respect of the consumption or use of such goods; and at the same time shall, subject to subsection (7), pay to the Commissioner the tax in respect of the consumption and use of such goods that would have been payable if the goods had been purchased for the first time in Solomon Islands at the time of entry of such goods under the Customs and Excise Act.

(7) No sales tax shall be payable pursuant to subsection (6) if the person aforesaid satisfies the Commissioner that the prescribed goods were purchased by him prior to the date on which the sales tax was imposed on those goods under this Act.

(8) The sales tax imposed by this Act shall be calculated separately on every purchase and shall be computed to the nearest cent.

4. (1) The Minister may from time to time in consultation with the Cabinet, by order impose sales tax on any goods and services and may revoke, reduce, increase, or alter any sales tax and may provide for exemptions therefrom, and any such order may revoke, amend or replace the Schedule to this Act.

(2) Any order made under subsection (1), shall be subject to a negative resolution of the National Parliament.

(3) Subject to subsection (2) until varied or revoked by an order made pursuant to subsection (1), the provisions of the Schedule shall have effect.

5. (1) Subject to the provisions of this Act, every person who in Solomon Islands sells prescribed goods or services shall apply to the Commissioner in the prescribed form for registration as a seller of prescribed goods and services together with the prescribed fee.

Cap. 58.

Power of
Minister to
impose,
revoke or
vary sales
tax.

Schedule.

Certifi-
cate of
registration.

(2) Where any person has made application under subsection (1), and the Commissioner is satisfied that such person is eligible to be registered under this Act, the Commissioner shall issue to such person a certificate of registration.

(3) Each certificate of registration issued by the Commissioner shall be kept and conspicuously displayed at the place of business of the vendor for which the certificate of registration is issued and is not transferrable.

(4) The Commissioner may -

(a) refuse to issue a certificate of registration to any vendor;
or

(b) suspend or cancel the certificate of registration of any vendor if such vendor or any of his employees contravenes or fails to comply with any of the provisions of this Act, but before a refusal, suspension or cancellation is made, the vendor shall be afforded an opportunity to appear before the Commissioner to show cause why the issuance of the certificate of registration should not be refused or why the certificate of registration should not be suspended or cancelled, as the case may be.

(5) A certificate of registration issued under this section may contain such terms and conditions as the Commissioner sees fit to impose for the better carrying out the purpose of this Act.

(6) Every vendor who fails to comply with this section or the terms and conditions specified under subsection (5) in the permit is guilty of an offence under this Act.

Exemptions.

6. The Minister may, by general notice, from time to time determine either generally or in any case or class of cases, or any persons entitled to relief from sales tax and any such relief may be made subject to any condition the Minister may impose.

Special
Remission.

7. If, owing to special circumstances, it is deemed undesirable that the whole amount of sales tax imposed by this Act be paid, the Minister may, by general notice, remit or refund the whole or any part of such sales tax and any such remission or refund may be made subject to any conditions the Minister may impose.

Repayment
of sales
tax.

8. If it be proved to the satisfaction of the Commissioner that any vendor has paid sales tax in excess of the due amount, such person shall be entitled to have the amount so paid in excess refunded and the Commissioner shall make the refund accordingly. Every claim for repayment under this section shall be made within two years from the end of the year to which the claim relates.

9. The Commissioner may, if he is satisfied that it would be just and equitable to do so -

Waiver,
refunds,
etc.

- (a) waive any penalty that a vendor would be liable to pay, if not for this section;
- (b) extend or grant further time for the submission of records, returns or other information required under this Act; or
- (c) authorise the refund of any overpayment made by a vendor.

10. Any vendor who has paid or is liable to pay, sales tax under this Act for the purchase of any prescribed goods or services and who proves to the satisfaction of the Commissioner that he has paid sales tax in respect of the same goods or services shall be entitled to relief from sales tax under this Act equal to the amount paid in the first instance.

Relief
against
double tax.

11. Where the Commissioner is of the opinion that -

- (a) any transaction or disposition of shares, stocks or assets was carried out for a consideration substantially different from that obtainable at arm's length or for no consideration; and
- (b) the effect of this would be to reduce or avoid the sales tax payable by the vendor,

Anti-
avoidance:
high or low
consideration.

the Commissioner may, for the purposes of this Act, treat the transaction or disposition as a sale, and having been carried out for such consideration as would in his opinion have been obtainable at arm's length:

Provided that this section shall not apply if the vendor, shows to the satisfaction of the Commissioner that -

- (i) the transaction did not have as its object, or one of its objects the avoidance of the sales tax; and
- (ii) the consideration for which the transaction was carried out was of a value less than the cost incurred by the person receiving the consideration in providing the subject matter of the transaction.

12. (1) Where prescribed goods have been purchased exempt from the tax imposed by this Act, the goods shall not during the two years next after the purchase be put to a taxable use, unless the purchaser prior to such change of use pays to the Commissioner the tax imposed by this Act on the value of the goods at the time of the purchase or unless the terms of the exemption expressly excludes the operation of this section.

Restraints
on exempted
goods.

(2) A person who contravenes the provisions of subsection (1) is guilty of an offence.

Vendor
to be
collector.

13. (1) Every vendor is an agent of the Commissioner for the purposes of this Act and as such shall levy and collect the taxes imposed by this Act upon the purchaser.

(2) No person acting under subsection (1) shall on that account be regarded as holding public office.

Taxes to
be collected
at time of
sale.

14. The sales tax imposed by this Act, whether the purchase price be stipulated to be payable in cash or on terms or by instalments or otherwise, shall be collected at the time of the sale on the whole amount of the value, and be remitted to the Commissioner together with the relative returns not later than ten days after the end of the month in which the sale occurs.

Returns.

15. Every vendor shall make such returns to the Commissioner at such times and shall keep such records in such form and substance as the Commissioner may from time to time prescribe.

Assessment
of tax
collected.

16. (1) Where a vendor fails to make a return or a remittance as required by or pursuant to this Act or if the returns are not substantiated by his records, the Commissioner may make an assessment of the tax collected by such vendor and such assessed amount shall thereupon be deemed to be tax collected by the vendor.

(2) Where it appears from an inspection, audit or examination of the books of account, records or documents of any vendor that this Act has not been complied with, the inspector making the inspection, audit or examination shall calculate the tax collected by the vendor in such manner and form and by such procedure as the Commissioner considers adequate and expedient, and the Commissioner shall assess the amount of the tax collected by the vendor.

Purchaser
liable.

17. The purchaser is liable for the tax imposed by this Act until it is collected, and, where the purchaser or consumer refuses to pay the tax at the time it is collectable under section 14, the vendor shall within thirty days thereafter, notify the Commissioner thereof.

Tax moneys
deemed trust
moneys.

18. (1) Every vendor who collects any tax under this Act shall be deemed to hold it in trust for the Government of Solomon Islands and is responsible for the payment over of it in the manner and time provided under this Act.

(2) Every tax collectable or penalty payable by a vendor under this Act is a first lien and charge upon his property in Solomon Islands for the amount of such tax or penalty and, notwithstanding anything to the contrary contained in any other act, has priority over all the other claims of any person.

19. (1) Where a vendor objects to an assessment made under section 16, he may within thirty days of receipt of the assessment, serve on the Commissioner a notice of objection in a form approved by the Commissioner setting out the reasons for the objection and the relevant facts.

Objections.

(2) Upon receipt of the notice of objection, the Commissioner shall within reasonable time reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereafter notify the vendor of his decision.

20. (1) Where a person has served notice of objection under section 19, he may appeal to the High Court to have the assessment vacated or varied after the Commissioner has confirmed or reassessed, but no appeal under this section shall be instituted after the expiration of sixty days from the day the Commissioner has confirmed the assessment or reassessed it.

Appeal to
High Court.

(2) The High Court may in delivering its judgment, order payment or refund the tax by the appellant or the Commissioner, as the case may be, and make such order as to costs as it considers proper.

21. (1) Every vendor who fails to deliver a return or remit the tax collectable or payable as and when required shall pay by way of interest an amount equal to ten per cent of the tax collectable per day for the period the amount remains outstanding.

Penalty for
default in
filing
return or
remitting.

(2) Every vendor who fails to complete the information or records required by the Commissioner is liable to a fine up to two thousand dollars and an additional penalty of twenty dollars per day from the day on which such information or records should have been made to the Commissioner.

(3) Every vendor who fails to register as a vendor of prescribed goods and services as required under this Act is liable to a fine of two thousand dollars and an additional penalty of double the amount of the tax collectable by him from the day on which the vendor should have been registered.

- Interest. 22. Any amount payable or to be remitted to the Commissioner under this Act shall bear interest, at the rate of ten per cent per annum, from the day on which such amount should have been paid or remitted to the Commissioner, to the day on which the Commissioner receives payment of the amount.
- Surety Bond. 23. The Commissioner may require any vendor to deposit with him a bond by way of cash or other security satisfactory to the Commissioner in an amount to be determined by the Commissioner, not being an amount three times the amount estimated by the Commissioner as being the amount of tax that would normally be collected, remitted or paid by the vendor as the amount due to the Government of Solomon Islands.
- Appointment of Inspectors. 24. (1) For the purpose of carrying out the provisions of this Act, the Commissioner may appoint inspectors in any part of Solomon Islands, and an inspector so appointed shall be deemed to be an agent for the purpose of carrying out his duties.
(2) Every inspector referred to in subsection (1) shall be subject to such directions, as the Commissioner may issue and perform such duties and exercise such powers of the Commissioner as may be specified in the conditions of his appointment or as may be from time to time be assigned or delegated to him by the Commissioner.
- Investigations. 25. (1) An inspector shall, for the purposes of this Act or the regulations, have powers to do all or any of the following things, namely -
- (a) to enter at all reasonable times any premises or place where any business is carried on or prescribed goods are kept or prescribed services are being provided;
 - (b) to make such examination or audit any books or records and any invoices, vouchers or other documents which may relate to the information required under this Act;
 - (c) examine prescribed goods described by an inventory or any goods which may, in his opinion assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records of the amount of any tax collectable or payable under this Act;
 - (d) require a vendor liable to collect or pay tax under this Act or, if such vendor is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof and any other

person on the premises of such vendor to give him all reasonable assistance with his audit or examination; and

(e) if during the course of an audit or examination it appears to him that there has been a contravention of this Act, seize and take into his custody any of the records, books, accounts, vouchers, invoices or other documents and retain them until they are produced in any court proceedings.

(2) The Commissioner may, for any purpose related to the administration or enforcement of this Act require the vendor, to provide information -

- (a) for purposes of reconciliation of statements;
- (b) to determine the actual time the sale is deemed to have taken place; or
- (c) which is relevant in fixing the value of the prescribed goods or services.

(3) Any person who hinders or interferes with any inspector doing anything that he is authorised by this section to do, or who prevents or attempts to prevent a person doing any such thing shall be guilty of an offence against this Act.

26. Where a corporation is guilty of an offence under this Act, any officer, director or agent of the corporation who directed, authorised, assented to or participated in, the commission of the offence is a party to and guilty of the offence and liable to the penalty provided for the offence.

Officers
etc. of
corporation.

27. Sales tax and any interest payable pursuant to section 22, may be sued for and recovered in a Magistrates' Court by the Commissioner, with full costs of suit, from the person charged therewith as a debt due to the Government.

Sales tax
may be
recovered
by suit.

28. In any case in which sales tax is recoverable in the manner provided in section 27, the Commissioner may, instead of suing for such sales tax authorise in writing any inspector to distrain upon the goods and chattels of the vendor or purchaser, as the case may be, and the provisions of section 76 of the Income Tax Act shall so far as applicable, be incorporated and read as one with this section.

Collection
of tax by
distrain
etc. etc.

Cap. 61.

29. (1) Subject to subsection (2), a person guilty of an offence against this Act for which no penalty is elsewhere prescribed is liable on conviction in a Magistrates' Court to a fine of not more than

General
penalty.

one thousand dollars or, in default of payment, to imprisonment for not more than two years.

(2) Every vendor who fails to remit the sales tax imposed by this Act is liable on conviction in a Magistrates' Court to a fine equal to the amount of the sales tax that should have been collected as determined under subsection (3) and, in addition, an amount not more than one thousand dollars or, in default of payment, to imprisonment for not more than twelve months.

(3) The Commissioner shall determine the amount of the sales tax referred to in subsection (2) from such information as is available to him and shall issue a certificate as to the amount, but except where he deems there has been deliberate evasion of this Act, the Commissioner shall not consider a period of more than one year in determining the amount of the tax referred to.

(4) In any prosecution under subsection (2), a certificate signed or purporting to be signed by the Commissioner stating the amount of sales tax that should have been collected is prima facie evidence of the amount of sales tax that should have been collected and of the authority of the person having or making the certificate without any proof of appointment or signature.

(5) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any sales tax payable under this Act.

Offences.

30. (1) Any person who for the purpose of obtaining any reduction, rebate, repayment or exemption in respect of sales tax either for himself or for any other person or who in any return, statement, declaration or particulars^s delivered under this Act, knowingly makes any false statement or false representation, shall, notwithstanding any other provision in this or any other Act, be liable on conviction to a fine not exceeding two thousand dollars and double the amount of sales tax which he ought to have charged under this Act; or to imprisonment for a term not exceeding two years.

(2) Any person who aids, abets, assists, incites or induces a vendor to -

(a) make or deliver any false return, statement, declaration or particulars under this Act; or

(b) keep or prepare any false accounts concerning the value of prescribed goods or services sold or supplied, shall be liable on conviction before a Magistrate to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding six months.

31. The Minister may make regulations for the purpose of giving effect to the provisions of this Act and, in particular, but without prejudice to the generality of the foregoing, such regulations may make provision in relation to all or any of the following -

- (a) prescribing anything required or permitted by this Act to be prescribed;
- (b) the method of collection and remittance of the sales tax and any condition or requirement affecting such collection or remittance;
- (c) exemption or refund of tax in whole or in part owing to special circumstances or in special cases, and prescribing the terms and conditions under which exemptions or refunds may be made.

Regulations.

32. Subject to the provisions of this Act and any regulations made thereunder, the Commissioner may from time to time prescribe forms required to be used for the purposes of this Act.

Power of
Commissioner
to prescribe
forms.

33. For the avoidance of doubt it is hereby declared that sales tax paid or payable pursuant to this Act is not deductible for purposes of the Income Tax Act.

Sales tax
not
deductible
for purpose
of Income
Tax Act,
Cap. 61.

SCHEDULE

(Section 4)

Prescribed Goods and Services	Rate
1. International Telecommunications	10 cents in the dollar
2. Restaurant Services	10 cents in the dollar
3. Tickets purchased for overseas travel	1 cent in the dollar

In this Schedule -

“International Telecommunications” means overseas telephone calls, telex and facsimile;

“Restaurant services” means licensed premises where cooked food is offered for sale either for consumption within the premises or to be taken away for consumption;

“Tickets purchased for overseas travel” means tickets purchased in Solomon Islands for overseas travel but does not include -

- (a) tickets purchased in Solomon Islands for overseas travel by students for educational purposes; or
- (b) tickets purchased in Solomon Islands to travel overseas for medical treatment, provided that the need for such overseas treatment is certified to be necessary by a qualified medical practitioner.