



**THE SALES TAX
(AMENDMENT) BILL
2004**



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THE SALES TAX (AMENDMENT)

BILL 2004

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Entitled

AN ACT TO AMEND THE SALES TAX ACT, CAP 125.

ENACTED by the National Parliament of Solomon Islands.

THE SALES TAX (AMENDMENT) BILL 2004

ARRANGEMENT OF CLAUSES

Clause:

1. SHORT TITLE AND COMMENCEMENT
2. AMENDMENT OF SECTION 2 OF CAP. 125
3. INSERTION OF NEW SECTION 5A
4. AMENDMENT OF SECTION 6
5. AMENDMENT OF SECTION 7
6. INSERTION OF NEW SECTION 16A
7. REPEAL AND REPLACEMENT OF SECTION 17
8. AMENDMENT OF SECTION 21
9. INSERTION OF NEW SECTION 21A
10. AMENDMENT OF SECTION 24
11. AMENDMENT OF SECTION 25
12. AMENDMENT OF SECTION 27
13. AMENDMENT OF SECTION 28

1. This Act may be cited as the Sales Tax (Amendment) Act, 2004, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Short title and commencement

2. Section 2 of the Sales Tax Act (hereinafter referred to as the "principal Act") is hereby amended by inserting therein immediately before the definition of "Commissioner" the following new definition -

Amendment of section 2 of Cap 125

" "authorized officer" means a person other than an inspector appointed by the Commissioner under section 24;".

3. The principal Act is hereby amended by inserting therein immediately after section 5 the following new section as section 5A -

Insertion of new section 5A

"Commissioner to issue Certificate of registration in certain circumstances

5A. (1) Where the Commissioner has reasonable cause to believe that a person in Solomon Islands who sells prescribed goods and services has not registered as required under section 5, the Commissioner may by notice in writing inform such person that he intends to register him as a seller of prescribed goods and services.

(2) The Commissioner shall in the notice issued pursuant to subsection (1), specify a period of not less than fourteen days within which the vendor may appear before him and show cause as to why, if any, he should not be registered as seller of prescribed goods and services.

(3) On being satisfied that such vendor qualifies to be registered, the Commissioner shall issue to such vendor a certificate of registration as prescribed under section 5 and the provisions of that section shall *mutatis mutandis* apply in respect of the vendor."

Amendment of section 6

4. Section 6 of the principal Act is hereby amended by inserting therein immediately after the words "from time to time determine" the words "in consultation with the Commissioner".

Amendment of section 7

5. Section 7 of the principal Act is hereby amended by deleting the words "the Minister may, by general notice," and substituting therefor the words "the Minister may, in consultation with the Commissioner, by general notice,".

Insertion of new section 16A

6. The principal Act is hereby amended by inserting therein immediately after section 16 the following new section as section 16A -

"Assessment of tax collectable

16A. (1) Where a vendor fails to charge and collect tax as required by this Act, the Commissioner may make an assessment of the tax which should have been 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 books of accounts, records or documents of any vendor that the vendor has failed to charge and collect tax in compliance with this Act, the Inspector making the inspection, audit or examination shall calculate the tax which should have been charged and collected by such 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 tax that should have been collected by the vendor,".

7. Section 17 of the principal Act is hereby repealed and the following new section substituted therefor -

Repeal and replacement of section 17

“Liability for tax

17. (1) The purchaser is liable for the tax imposed by this Act until it is collected and a consumer or purchaser who refuses to pay the tax at the time of sale is liable on conviction to a fine of two thousand dollars and double the amount of sales tax which he ought to have paid at the time of the purchase.

(2) Where a vendor fails to charge and remit any tax in accordance with his obligation under this Act, the amount in respect of which default has been made, shall constitute a debt payable by the vendor to the Commissioner on the 30th day of the month following the month in which the purchase of prescribed goods and services was made.

(3) If any vendor fails or neglects to charge and remit tax under the provisions of this Act and if recovery thereof has not been made from the purchaser such vendor shall be liable for payment of such tax.”

8. Section 21 of the principal Act is hereby amended in the following respects -

Amendment of section 21

(a) in subsection (1) by deleting the words “interest an amount equal to twenty per cent” and substituting therefor the words “penalty an amount equal to ten per cent”; and

(b) in subsections (2) and (3) by deleting the word “fine” wherever it appears therein and substituting therefor in each case the word “penalty”.

Insertion of new section 21A

9. The principal Act is hereby amended by inserting immediately after section 21, the following new section as section 21A -

“Penalty for failure to collect tax

21A. Every vendor who fails to charge and collect tax as required by this Act or the Regulations is liable to a penalty of two thousand dollars and an additional penalty up to twenty dollars per day from the day on which such tax should have been collected and remitted to the Commissioner.”

Amendment of section 24

10. Section 24 of the principal Act is hereby amended in the following respects -

(a) in subsection (1) by deleting the words “appoint inspectors in any part of Solomon Islands, and an inspector” and substituting therefor the words “appoint inspectors or authorised officers in any part of Solomon Islands, and any inspector or authorised officer”; and

(b) in subsection (2) by inserting immediately after the word “inspector” the words “or authorised officer”.

Amendment of section 25

11. Section 25 of the principal Act is hereby amended in the following respects -

(a) in subsection (1) by inserting after the word “inspector” the words “or authorised officer”;

(b) by deleting subsection (2) and substituting therefor the following new subsections as subsections (2) and (3) respectively -

“ (2) The Commissioner may, for any purpose related to the administration or enforcement of this Act, require the vendor to attend before him, any inspector or authorized officer for the purpose of -

(a) producing any books, documents or other relevant information in his custody;

- (b) providing information -
- (i) for the reconciliation of statements;
- (ii) to determine the actual time the sale is deemed to have taken place; or
- (iii) which is relevant in fixing the value of prescribed goods and services.

(3) Where a person is required under subsection (1) to furnish to the Commissioner any information, such person shall take all steps necessary to ensure that the information so required is produced or furnished in the manner requested;” and

- (c) by renumbering subsection (3) as subsection (4) thereof.

12. Section 27 of the principal Act is hereby amended by deleting the words “Sales tax, interest or any penalty payable pursuant to section 21 or 22” and substituting therefor the words “Sales tax or any penalty payable pursuant to sections 21, 21A or 22”. Amendment of section 27

13. Section 28 of the principal Act is hereby amended in the following respects - Amendment of section 28

(a) by deleting therefrom the word “interest” wherever it appears in that section;

(b) by adding immediately after the words “authorise in writing any inspector” the words “or authorized officer”; and

(c) by deleting the words “provisions of section 89” and substituting therefor the words “provisions of sections 85 and 89”.

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Objects and Reasons

The Sales Tax Act which was enacted in 1990, provides for the *imposition* ~~importation~~ of sales tax on certain prescribed goods and services. A recent review of the Act, indicated that for better or more effective implementation of the Act, the provisions relating to collection and recovery may need to be strengthened.

This Bill therefore seeks to amend the Act to give effect to the aforesaid.

The main features of the Bill are as follows -

(a) at present every person who sells prescribed goods and services is required to apply for registration with the Commissioner as a seller of prescribed goods and services. This provision has not been satisfactorily complied with. Hence, clause 5A empowers the Commissioner to issue notice on any person who he believes to be a provider of prescribed goods and services and register such person;

(b) clauses 4 and 5 seek to require the Minister to consult the Commissioner in granting exemptions and special remission;

(c) clause 6 is intended to widen the scope of section 16 by enabling the Commissioner to make an assessment of the tax that should have been collected;

(d) section 17 provides for a situation in which the vendor has charged the purchaser with sales tax but the vendor has not paid. Clause 7 seeks to repeal and replace this section so as to cover situations when the vendor has not charged the purchaser with sales tax by omission or other reason;

(e) section 21 provides for the imposition of penalties for default in filing returns or remitting tax collectable.

However, in the text of the section the words, "interest, fine and penalty" have been used. It is arguable that fines cannot be imposed by an administrative act. Hence, in order for avoidance of possible legal arguments it has been decided to substitute the word "penalty" instead of "fine";

(f) clause 9 seeks to provide for penalties for failure to collect tax as required under the Act;

(g) clause 10 seeks to provide for officers in the Sales Tax Division to be appointed as authorized officers and vest them with powers of inspectors;

(h) clause 11 seeks to strengthen the administrative and enforcement mechanism relating to investigations; and

(i) clauses 12 and 13 are consequential amendments necessary as a result of the changes introduced by clauses 8, 9, 10 and 11.



MINISTER OF FINANCE

