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Government Notice

OFFICE OF THE PRIME MINISTER

No. 419

2022

PROMULGATION OF ACT OF PARLIAMENT

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

No. 14 of 2022: Value-Added Tax Amendment Act, 2022.

Act No. 14, 2022

VALUE-ADDED TAX AMENDMENT ACT, 2022

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Value-Added Tax Act, 2000, so as to substitute the words “prescribe” or “prescribed”; to provide for a definition for assessment; to enable a person carrying on a taxable activity but is not yet making taxable supplies to be registered; to provide that the conducting of a taxable activity or the importation of goods by a registered person must be connected with the making of taxable supplies; to enable the Commissioner to determine the manner in which a tax return or notice of assessment may be furnished or served; to provide for the allocation of VAT payments; to zero rate the supply of sanitary pads; and to provide for incidental matters.

(Signed by the President on 29 December 2022)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

General amendment of Act No. 10 of 2000

1. The Value-Added Tax Act, 2000 (Act No. 10 of 2000) (hereinafter referred to as the “principal Act”) is amended by the substitution for the words “prescribe” or “prescribed”, when used in relation to or in connection with the Commissioner, wherever they appear of the words “determine” or “determined”.

Amendment of section 1 of Act No. 10 of 2000 as amended by section 1 of Act No. 34 of 2000, section 1 of Act No. 6 of 2002 and section 1 of Act No. 2 of 2007

2. Section 1 of the principal Act is amended by insertion of the following definition after the definition of “appealable decision”:

““assessment” means the determination by the Commissioner -

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| <p>(a) of an amount upon which any tax leviable under this Act is chargeable; or</p> <p>(b) of the amount of any such tax, penalties or interest,</p> |
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and includes any determination by the Commissioner which is in terms of this Act subject to objection and appeal”.

Amendment of section 15 of Act No. 10 of 2000 as amended by section 7 of Act

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No. 34 of 2000 and section 2 of Act No. 12 of 2015

3. Subsection (1) of section 15 of the principal Act is amended by the insertion of the following paragraph after paragraph (b):

“(c) on or after the date of commencement of this paragraph intends to carry or carries on a taxable activity and is likely to make taxable supplies only after a period of time, may register under this Act, and the registration shall take effect from the commencement of such taxable activity.”.

Amendment of section 18 of the Act No. 10 of 2000 as amended by section 9 of Act No. 34 of 2000, section 9 of Act No. 6 of 2002, section 2 of Act No. 2 of 2007 and section 4 of Act No. 4 of 2010

4. Section 18 of the principal Act is amended by the -

(a) substitution for subparagraph (i) and (ii) of paragraph (a) of subsection (1) of the following subparagraphs:

“(i) payable in respect of taxable supplies made to the registered person during the tax period, or during the preceding tax periods (and has not been claimed under this subparagraph in those periods): Provided that the taxable activity conducted by the registered person during the tax period or during the preceding tax periods is connected with the making of taxable supplies: Provided further that no deduction in relation to that supply shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction; and

(ii) paid in respect of any import of goods by the registered person during the tax period, or during the preceding tax periods (and has not been claimed under this subparagraph in those periods), in the course or furtherance of a taxable activity carried on by the registered person: Provided that the import of goods by the registered person during the tax period or during the preceding tax periods is connected with the making of taxable supplies: Provided further that no deduction in relation to that importation shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction; and”; and

(b) addition of the following subsection after subsection (4):

“(5) A person registered under section 15(1)(c) may claim input tax -

(a) paid in respect of taxable supplies made to the registered person during the tax period or during the preceding tax periods which are directly connected with the furtherance of, or in the course of carrying

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on its taxable activity, which taxable activity is directly connected to the intended making of future taxable supplies and has not been claimed under this paragraph in those periods: Provided that no deduction in relation to that activity shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction; and

- (b) paid in respect of any import of goods by the registered person during the tax period or during the preceding tax periods which are directly connected with the furtherance of, or in the course of carrying on, its taxable activity, which taxable activity is directly connected to the intended making of future taxable supplies and has not been claimed under this paragraph in those periods: Provided that no deduction in relation to that importation shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction.”.

Amendment of section 25 of Act No. 10 of 2000

5. Section 25 of the principal Act is amended by the substitution for the opening sentence of subsection (6) of the following sentence:

“(6) Where an assessment has been made under this section, the Commissioner shall serve a notice of the assessment in the manner determined by the Commissioner on the person assessed, which notice shall state -”.

Amendment of section 31 of Act No. 10 of 2000 as amended by section 16 of Act No. 34 of 2000

6. Section 31 of the principal Act is amended by the substitution for subsection (6) of the following subsection:

“(6) Where, in addition to any amount of tax which is due and payable by any person under this Act, any amount of interest or penalty is payable, any payment made by that person in respect of such tax, interest or penalty which is less than the total amount due shall be dealt with as made -

- (a) in respect of such [**penalty**] tax; and
- (b) to the extent that such payment exceeds the amount of such [**penalty**] tax, in respect of such interest; and
- (c) to the extent that such payment exceeds the sum of such [**penalty**] tax and interest, in respect of such [**tax**] penalty.”.

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Amendment of section 38 of Act No. 10 of 2000 as amended by section 16 of Act No. 34 of 2000, section 11 of Act No. 6 of 2002 and section 3 of Act No. 12 of 2004

7. Section 38 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) the total amount deductible by a registered person under section 18(1) for a tax period exceeds the person’s output tax for that period or the total amount claimed under section 18(5); or”.

Amendment of section 39 of Act No. 10 of 2000 as amended by section 18 of Act 34 of 2000

8. The principal Act is amended by the substitution of section 39 of the following section:

“39. (1) Where the Commissioner does not refund any amount refundable on the due date for payment prescribed in section 38(2)(b) interest shall be paid on such amount at the rate of 11 per cent per annum, calculated from the due date for payment so prescribed to the date of the payment of such refund: Provided that where the Commissioner withholds a refund as contemplated in section 38(6) no interest shall be so payable.

(2) Notwithstanding subsection (1), interest is not payable to a registered person -

- (a) who claimed such refund based on the fact that the person became registered in terms of section 15(4); and
- (b) whose refund claim was placed on hold or rejected prior to the commencement of this subsection.
- (3) Subsection (2) does not apply to a person who is registered in terms of section 15(1)(c) or section 15(4) after the commencement of that subsection.”.

Amendment of Schedule III to Act No. 10 of 2000 as amended by section 30 of Act No. 34 of 2000, section 14 of Act No. 6 of 2002, section 8 of Act No. 12 of 2004, section 1 of Act No. 4 of 2008 and section 6 of Act No. 4 of 2010

9. Schedule III of the principal Act is amended by the -

- (a) insertion of the following definition after the definition of “maize meal” in paragraph 1:

““sanitary pads” means menstrual pads of all types such as -

- (a) menstrual pads for light, medium and heavy flow, mini, super, sports, overnight, with or without wings;
- (b) maternity pads designed for use in pre and post birth bleeding;

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(c) panty liners which are similar to menstrual pads and are lighter and thinner,

but does not include tampons of all types, with or without an applicator, menstrual cups, feminine sanitary wipes, period or leak-proof underwear or any incontinence towels or pads.”; and

(b) addition to paragraph 2 of the following subparagraph:

“(jj) a supply of sanitary pads.”.

Short title and commencement

10. This Act is called the Value-Added Tax Amendment Act, 2022 and comes into operation on the first day of the month following the month in which this Act is published in the *Gazette*.
