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Government Notice

OFFICE OF THE PRIME MINISTER

No. 310

2015

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. 12 of 2015: Value-Added Tax Amendment Act, 2015.

Act No. 12, 2015 **VALUE-ADDED TAX AMENDMENT ACT, 2015**

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 increase the VAT threshold; to provide for the requirement of security for the importation of goods on a VAT import account; to empower the Commissioner to prescribe criteria for the eligibility of VAT import accounts; to set a threshold for voluntary VAT registration; to provide for liability of shareholders for tax debts; to impose criminal penalties for the misuse of VAT import account numbers; to provide for rules for electronic communication; and to provide for incidental matters.

(Signed by the President on 11 December 2015)

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

Amendment of section 14 of Act No. 10 of 2000, as amended by section 6 of Act No. 34 of 2000 and by section 7 of Act No. 6 of 2002

1. Section 14 of the Value-Added Act, 2000 (in this Act referred to as the "principal Act") is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) Where tax is payable on an import of goods -

- (a) in the case of goods required to be entered for home consumption in terms of the Customs and Excise Act, the importer shall, upon such entry, furnish the Commissioner with an import declaration and pay the tax due in respect of that import in accordance with subsection (5) or any arrangements on terms as prescribed by the Commissioner by notice made there under; or
- (b) in the case of goods imported from Botswana, Lesotho, South Africa or Swaziland, the importer shall, upon such import, furnish the Commissioner with an import declaration and pay the tax due in respect of that import in accordance with [that] subsection (5) or [the said] arrangements made under that subsection; or
- (c) in the case where goods, in circumstance contemplated in paragraph (a) or (b) are imported on a VAT import account arranged on condition that security may be

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requested before the importation of goods on such account and on such additional conditions as may be prescribed by the Commissioner by notice for the granting or refusal of such account as contemplated in subsection (5)(a)(ii)(aa) or (bb), the importer shall, not later than the twentieth day of the month following the month of import, pay the tax due in respect of the import of those goods: Provided that where during any particular month no goods were imported on a VAT import account, the importer shall, not later than the twentieth day of the month following that month, furnish the Commissioner with an import declaration reflecting that no goods were imported during that month; or

- (d) in any other case, the importer shall, at the time of the import, furnish the Commissioner with an import declaration and pay the tax due in respect of that import in accordance with subsection (5)(a)(i).”;

- (b) by the addition after subsection (6) of the following subsections:

“(7) Where a VAT import account has been arranged and granted as contemplated in section 14(1)(c) and subsequent to such arrangement for a VAT import account it appears to the Commissioner that -

- (a) such person’s VAT import account should be cancelled by reason of any of the circumstances referred to in section 16(7); or
- (b) such person has not complied with the conditions as prescribed by the Commissioner at the time of granting the VAT import account,

the Commissioner may cancel such person’s VAT import account with effect from a date determined by the Commissioner.

(8) Section 17(13) shall equally apply to a cancellation contemplated in subsection (7).”.

Amendment of section 15 of Act No. 10 of 2000, as amended by section 7 of Act No. 34 of 2000

2. Section 15 of the principal Act is amended -

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) on the date of commencement of this Act continues to carry on any activity being a taxable activity under this Act, becomes liable to be registered on such date where during the period of 12 months immediately preceding such date that person made supplies in the course or furtherance of that activity the total value of which exceeded [N\$200 000] N\$500 000; or

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(b) on or after the date of commencement of this Act carries on any taxable activity and is not registered under this Act, becomes liable to be registered -

(i) at the end of any period of 12 months, where during that period such person made taxable supplies the total value of which exceeded [N\$200 000] N\$500 000; or

(ii) at the beginning of any period of 12 months, where there are reasonable grounds for believing that the total value of taxable supplies to be made by such person during that period will exceed [N\$200 000] N\$500 000.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) A person shall not become liable to be registered in terms of subsection (1) where the Commissioner is satisfied that the total value of the taxable supplies of that person within the period of 12 months referred to in paragraph (a) or paragraph (b) of that subsection exceeded or is likely to exceed the amount of [N\$200 000] N\$500 000 solely as a consequence of -

(a) any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or

(b) the replacement of any capital goods used in the taxable activity carried on by that person.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) Any person who is making or who intends to make, taxable supplies but who is not liable to be registered in terms of subsection (1) and -

(a) the taxable supplies to be made can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time; and

(b) where the total value of taxable supplies to be made can reasonably be expected to exceed N\$200 000 in a period of 12 months.

may in accordance with section 16(1) apply to the Commissioner for registration under this Act.”; and

(d) by the addition after subsection (6) of the following subsection:

“(7) Where the Commissioner is satisfied that any person who has applied for registration in terms of subsection (4) is not eligible in terms of this Act or should not be registered by reason of the fact that such person -

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- (a) has no fixed place of abode or business;
- (b) does not keep proper accounting records relating to any business activity carried on by him;
- (c) has previously been registered as a VAT registered person under this Act in respect of any business carried on by him but failed to perform his duties under this Act; or
- (d) has repeatedly not performed duties under the Income Tax Act, 1981 (Act No 24 of 1981) or any other taxation law in Namibia,

the Commissioner may refuse to register the person in terms of this Act and shall give written notice to the person of such refusal.”.

Amendment of section 16 of Act No. 10 of 2000, as amended by section 6 of Act No. 34 of 2000 and by section 7 of Act No. 6 of 2002

3. Section 16 of the principal Act is amended by the substitution for paragraph (2) of the following paragraph:

“(2) The Commissioner shall register any person who has applied for registration within 21 days from receipt of the application subject to such conditions as prescribed by the Commissioner by notice, unless the Commissioner is satisfied that such person is not liable to be registered in terms of section 15 or, in the case of an application under section 15(4) -

- (a) such person has no fixed place of abode or business; or
- (b) the Commissioner has reasonable grounds to believe that such person -
 - (i) will not keep proper records; or
 - (ii) will not submit regular and reliable tax returns.

as required in terms of this Act.”.

Amendment of section 17 of Act No. 10 of 2000

4. Section 17 of the principal Act is amended -

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

“(2) Any person liable to be registered in terms of section 15(1), or who was registered as a result of an application under section 15(4), may apply for cancellation of the registration [**only after the expiration of a period of two years from the date the registration took effect**].”.

- (b) by the insertion after subsection (4) of the following subsection:

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“(4A) Where a person has been registered in consequence of an application made by him under section 15(4) and subsequent to the registration of the person it appears to the Commissioner that -

- (a) the registration of the person should be cancelled by reason of any of the circumstances referred to in section 16(7); or
- (b) the person has not attained the amount as prescribed in section 15(1) within a period of time as prescribed by the Commissioner by notice,

the Commissioner may cancel the registration of the person with effect from a date determined by the Commissioner.”.

Amendment of section 23 of Act No. 10 of 2000, as amended by section 12 of Act No. 34 of 2000 and section 1 of Act No. 11 of 2011

5. Section 23 of the principal Act is amended -

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

“(2) The tax period applicable to any registered person under this Act shall -

- (a) in the case of a registered person whose only taxable activities are farming activities, be a period of two, four, six or twelve calendar months ending on the last day of the last month of each such period, and as elected by such registered person at the time of application for registration; and
- (b) in [any other] the case of a person registered in terms of section 15(1), subject to subsection (3), be a period of two calendar months divided in -
 - (i) Category A, being periods ending on the last day of January, March, May, July, September and November of the calendar year; **[and]**
 - (ii) Category B, being periods ending on the last day of February, April, June, August, October and December of the calendar year~~[.]~~; and
- (c) in the case of a person registered under section 15(4), subject to subsection (3), be a period of six calendar months ending on the last day of the last month of each such period, and as elected by such registered person at the time of application for registration, unless the Commissioner has granted written approval for a different period, upon separate application in writing and good cause shown, the tax period granted under this paragraph may not be less than two calendar months.

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Insertion of sections 37A and 84A in Act No. 10 of 2000

6. The principal Act is amended by the insertion -

(a) after section 37 of the following section:

“Liability of shareholders for tax debts

37A. (1) For the purposes of this Act, “tax debt” means the amount of tax due and payable, including penalties and interest charged.

(2) A person who is a shareholder of a company or member of a close corporation is liable to pay the unpaid tax to the extent that the tax debt arose during the time the person so served as such shareholder or such member, and in case of more than one person, such persons are liable jointly and severally to pay the unpaid tax to the extent that the tax debt arose during the time the persons so served as such shareholders or such members.”;

(b) by the substitution for section 61 of the following section:

“Improper use of VAT registration number and VAT import accounts

61. (1) Any person who -

(a) knowingly uses a false VAT registration number (including the VAT registration number of another person) on a return, notice or other document prescribed or used for the purposes of this Act;

(b) uses a VAT import account of another person for a consideration or otherwise to evade the payment of tax in the manner required for non-holders of VAT import accounts; or

(c) being a holder of a VAT import account knowingly allows another person for a consideration or otherwise to use his or her account to evade the payment of tax in the manner required for non-holders of VAT import accounts.

[shall be guilty of] commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(2) Subsection (1)(a) shall not apply to any person who has used the VAT registration number of another person with the permission of that other person on a return, notice or other document relating to the tax affairs of that other person.”.

(c) by the insertion after section 84 of the following section:

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VALUE-ADDED TAX AMENDMENT ACT, 2015**“Rules for electronic communication**

84A. (1) The Minister may make rules prescribing -

- (a) the procedures for submitting a return in electronic format, and for other electronic communications between Commissioner and other persons; and
- (b) the requirements for an electronic digital signature of a return or communication.

(2) The Minister may, in the case of a return or other document submitted in electronic format, accept an electronic or digital signature as a valid signature for the purposes of this Act if a signature is required.

(3) If in any proceedings under this Act the question arises whether an electronic or digital signature of a person referred to in subsection (2) was used with the authority of the person, it must be assumed, in the absence of proof to the contrary, that the signature was so used.”.

Amendment of Schedule IV to Act No. 10 of 2000, as amended by section 32 of Act No. 34 of 2000, section 9 of Act No. 12 of 2004, section 6 of Act No. 2 of 2007, section 7 of Act No. 4 of 2010 and section 4 of Act No. 11 of 2011

7. Schedule IV to the principle Act is amended by the substitution for subparagraph (a) of paragraph 2 of the following subparagraph:

“(a) A supply of financial services referred to in -

- (i) paragraphs (a) to (c), inclusive, of the definition of “financial services”, to the extent that the consideration payable in respect of such services is not a fee, commission or similar charge; and
- (ii) paragraphs (d) to (i), inclusive, of that definition[;],

including financial services rendered to non-residents who are outside Namibia at the time the service is supplied;”.

Short title and commencement

8. This Act is called the Value-Added Tax Amendment Act, 2015 and, comes into operation on the first day of the month following the month in which this Act is published in the *Gazette*.