



Tuvalu

CONSUMPTION TAX ACT 2008

Act 9 of 2008



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Tuvalu

CONSUMPTION TAX ACT 2008

Act 9 of 2008

AN ACT TO PROVIDE FOR THE INTRODUCTION OF A CONSUMPTION TAX AND MATTERS INCIDENTAL THERETO

ENACTED BY THE PARLIAMENT OF TUVALU
24 November 2008

Commencement [1 July 2009]

PART I - PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Consumption Tax Act 2008.
- (2) This Act shall come into force on a date or dates to be notified by the Minister.
- (3) Different parts of this Act may be brought into force by the Minister on different dates.

2 Interpretation

In this Act, unless the context requires otherwise —

“**approved form**” means any form approved under this Act;

“**associate**”, in relation to a person, means any other person who acts or may act in accordance with the directions, requests, suggestions, or wishes of the first-mentioned person; and the second mentioned person shall be an associate of the first mentioned person;

“**company**” means a body or association of persons whether or not incorporated, created, or formed under the law of Tuvalu or elsewhere, and any co-operative society, but does not include a partnership or trust;

“**consideration**”, in relation to a supply, means the total of the following amounts —

- (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 to the extent that the money is not paid under (a); and
- (c) any duties, levies, fees, and charges (other than tax imposed under this Act) paid or payable on, or by reason of the supply,

reduced by any price discounts or rebates allowed and accounted for at the time of the supply;

“**Consumption Tax**” means the consumption tax imposed under section 5(1);

“**Consumption Tax period**” means a quarter or part of a quarter.

“**Customs Officer**” means the Customs Officer of Tuvalu under the Customs Act;

“**enterprise**” means —

- (a) any independent economic activity whether or not undertaken for pecuniary profit, including any business, trade, manufacture, commerce, or adventure in the nature of trade; or
- (b) the activity of a licensing authority in issuing a licence, permit, certificate, concession, authorisation, or other document for a fee, but not including —
 - (i) any employment;
 - (ii) any hobby or leisure activity of an individual; or
 - (iii) any activity of a person other than an individual that if carried on by an individual would come within subparagraph (ii);

“**exempt use**” means the use of goods or services to make an exempt supply;

“**financial lease**” means —

- (a) a hire purchase agreement; or
- (b) any lease other than lease of land that is treated under international accounting standards as a financial lease;

“**goods**” means any tangible or personal property, but not money;

“**government entity**” means —

- (a) a department or agency of Government; or
- (b) a public enterprise;

- “**importer**” has the same meaning as in the Customs Act;
- “**input tax**” means the tax imposed under this Act payable in respect of a taxable supply to, or a taxable import by, a person;
- “**invoice**” means any document notifying an obligation to make a payment;
- “**licensing authority**” means any person that has the responsibility to issue any licence, permit, certificate, concession, authorisation, or other document for a fee under any law;
- “**Minister**” means the person who, at the relevant time, holds the post of Minister of Finance within the Government of Tuvalu, or is officially acting in that capacity;
- “**money**” means —
- (a) any coin or paper currency issued as legal tender, 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;
- “**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 taxable person;
- “**partnership**” means two or more persons carrying on business for joint profit;
- “**person**” includes a company, and any executor, administrator or trustee of any trust or deceased estate (in their individual and collective capacity as such);
- “**quarter**” means a period of three months ending upon the last day of March, June, September or December;
- “**registered person**” means a person who is registered or liable to be registered under this Act;
- “**Secretary**” means the person who, at the relevant time, holds the post of Secretary of Finance within the Government of Tuvalu, or is officially acting in that capacity;
- “**services**” means the provision of work or facilities or anything that is not goods or money;
- “**taxable import**” means an import of goods, other than an exempt import;
- “**taxable person**” means a registered person or a person treated as registered under this Act;
- “**taxable supply**” means the supply in Tuvalu by a person in connection with the carrying on of an enterprise including a supply in connection with the commencement or termination of an enterprise, but excluding an exempt supply;

“**Taxation Officer**” means the person who is, at the relevant time, the senior person appointed by the Minister pursuant to section 77 of the Income Tax Act to assist the Secretary with his or her responsibilities under this Act.

3 Fair market value

- (1) The fair market value of a supply at a particular time shall be the ordinary open market value of the supply in Tuvalu at that time.
- (2) If the fair market value of a supply cannot be determined under subsection (1), the fair market value shall be the amount determined by the Taxation Officer, or in the case of an import of goods, the Customs Officer.
- (3) The fair market value of consideration in kind or of an asset shall be determined in the same manner as the fair market value of a supply, with any necessary modifications made.

4 Supplies

- (1) A sale, exchange, or other transfer of the right to dispose of goods as owner shall be a supply of goods.
- (2) An application of goods by a taxable person to a private or exempt use shall be a taxable supply of the goods, but only if the taxable person has been allowed an input tax credit in respect of the acquisition of the goods.
- (3) The lease or hire of goods under a financial lease shall be a supply of the goods.
- (4) Anything done that is not a supply of goods or money shall be a supply of services, including the —
 - (a) grant, assignment, or surrender of any right;
 - (b) making available of any facility or advantage;
 - (c) toleration of any situation;
 - (d) refraining from the doing of any act; or
 - (e) issuing of any licence, permit, certificate, concession, authorisation, or other document by a licensing authority.
- (5) A supply of goods incidental to a supply of services shall be treated as part of the supply of services.
- (6) A supply of services incidental to an import of goods shall be treated as part of the supply of goods.
- (7) A supply of services incidental to an import of goods shall be treated as part of the import.

- (8) Subject to subsections (5) and (6), if a supply is a supply of goods and a supply of services, the Taxation Officer may determine the extent to which the supply shall be treated as a supply of goods or a supply of services.

PART II - IMPOSITION OF CONSUMPTION TAX

5 Imposition of Consumption Tax

- (1) Consumption Tax shall be levied on —
- (a) a taxable supply by a taxable person; and
 - (b) a taxable import.
- (2) The amount of Consumption Tax payable in respect of a taxable supply or taxable import shall be computed by applying the rate specified in subsection (3) to the value of the taxable supply or taxable import.
- (3) The rate of Consumption Tax shall be an amount determined by the Minister by Regulation, but shall be an amount within the range from 3% to 10%..
- (4) The Consumption Tax payable —
- (a) on a taxable supply, shall be accounted for to the Taxation Officer by the taxable person making the supply; or
 - (b) on a taxable import, shall be payable by the importer.
- (5) Notwithstanding anything contained in any law, the Consumption Tax payable by a taxable person under subsection (4)(a) shall be recoverable from the recipient of the supply.

6 Exempt and zero-rated supplies

- (1) The following supplies shall be exempt from Consumption Tax:
- (a) medical, dental, nursing and health services;
 - (b) education services;
 - (c) financial services;
 - (d) lease of land for residential purposes;
 - (e) the first 50 kilowatts of domestic electricity supply, per month;
 - (f) aviation fuel;
 - (g) flour, rice and cabin biscuits;
 - (h) sugar and cooking oil;
 - (i) any other type of good or service as determined by the Minister by Regulation..

- (2) The following taxable supplies shall be subject to a zero rate of Consumption Tax
- (a) an export of goods;
 - (b) an export of services for use outside Tuvalu;
 - (c) a supply of international transport of goods or passenger services from a place outside Tuvalu to another place or if the transport or part of the transport is across the territory of Tuvalu;
 - (d) the supply of goods as part of the transfer of part or whole of a business as a going concern by a registered person to another registered person, provided that the supplier and recipient have —
 - (i) agreed in writing that part or whole of the business is supplied as a going concern;
 - (ii) notified the Taxation Officer, in writing, of the details of the transfer, at the date of the transfer on which Consumption Tax has been credited as input tax.
- (3) The following shall be exempt from Consumption Tax —
- (a) imports by a government entity, other than a public enterprise;
 - (b) imports not exceeding \$25 in value accompanying a person arriving in Tuvalu;
 - (c) imports by diplomats according to law.

PART III - REGISTRATION

7 Compulsory and voluntary registration

- (1) A person shall apply to the Taxation Officer for registration for Consumption Tax —
- (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 the person's enterprise in that period will be \$100,000 or more; or
 - (b) at the end of any 12 month or less period, if in that period the total value of taxable supplies made by the person in the person's enterprise is \$100,000 or more.
- (2) The Taxation Officer shall in determining whether a person is to apply for registration under subsection (1), have regard to the value of taxable supplies made by an associate.

- (3) A person in receipt of a supply of services to which section 16 applies and who is not required to apply for registration under subsection (1) shall apply for registration if:
 - (a) at the beginning of any 12 month period there are reasonable grounds to expect that the total value of the services received by the person including any other taxable supplies the person makes in that period will be \$100,000 or more; or
 - (b) at the end of any 12 month period the total value of services received by the person, including any other taxable supplies the person makes is \$100,000 or more.
- (4) A person making taxable supplies who is not required to apply for registration under subsection (1) may apply for registration.
- (5) An application for registration shall be in the approved form and, in the case of an application under subsection (1), (3) or (4), shall be lodged with the Taxation Officer within 7 days of becoming obliged to apply for registration.
- (6) A person who fails to apply for registration as required under this section shall be treated as registered from the beginning of the first Consumption Tax period after the person became obliged to apply for registration or such later time as the Taxation Officer may notify in writing.

8 Registration

- (1) The Taxation Officer shall register a person who has applied for registration under section 7(1) or (3) if satisfied that the person is making, or will make taxable supplies.
- (2) If the Taxation Officer is not satisfied under subsection (1) he or she may refuse to register and shall serve an applicant under this section with written notice of a decision to refuse to register the person within 7 days of making the decision.
- (3) The Taxation Officer shall register a person who has applied for registration under section 7(4) if satisfied that —
 - (a) the person is making, or will make taxable supplies;
 - (b) the person has a fixed place of business;
 - (c) if the person has commenced carrying on business, the person —
 - (i) has kept proper records of its business; and
 - (ii) complied with the person's obligations under other revenue laws; and
 - (d) there are reasonable grounds to believe that the person will keep proper records and lodge regular and reliable Consumption Tax returns.
- (4) The Taxation Officer shall issue a person registered under this section with a Consumption Tax registration certificate in the approved form.

- (5) Registration shall take effect —
 - (a) in the case of an application under section 7(1), from the beginning of the first Consumption Tax period after the person became obliged to apply for registration or from such later time as set out in the Consumption Tax registration certificate; or
 - (b) in the case of an application under section 7(3), from the date the provisions of section 7(3) first applied to the person or from such later time as set out in the Consumption Tax registration certificate; or
 - (c) in the case of an application under section 7(4), from the date set out in the Consumption Tax registration certificate.
- (6) A registered person shall display the person's Consumption Tax registration certificate at a conspicuous place at every place of business of the person.
- (7) A registered person shall notify the Taxation Officer, in writing, of any change in the name (including business name), address, place of business, or nature of the business of the person within 21 days of the change occurring.

9 Cancellation of registration

- (1) A registered person —
 - (a) shall apply for cancellation of the person's registration if the person has ceased to make taxable supplies; or
 - (b) subject to subsection (2), may apply for cancellation of the person's registration if the person's taxable supplies do not exceed the registration threshold in section 7(1).
- (2) In the case of a registered person who applied for registration under section 7(4), an application under subsection (1)(b) may be made only after the expiration of 2 years from the date of registration.
- (3) An application under subsection (1) shall be in the approved form and, in the case of an application under subsection (1)(a), shall be lodged with the Taxation Officer within 7 days of ceasing to make taxable supplies.
- (4) The Taxation Officer shall, by notice in writing to the registered person, cancel the registration of a person who has applied under subsection (1) if satisfied that the person is required or permitted to apply for cancellation of registration.
- (5) The Taxation Officer shall, by notice in writing to the registered person, cancel the registration of any person who has not applied under subsection (1) if the Taxation Officer is satisfied that the person has ceased to make taxable supplies.
- (6) The cancellation of a person's registration shall take effect from the date set out in the notice of cancellation.

- (7) A person whose registration is cancelled under this section shall be treated as having made a taxable supply of any goods (including raw materials) on hand at the time the registration is cancelled but only if the person was allowed an input tax credit on acquisition of the goods.
- (8) The taxable supply referred to in subsection (7) shall be treated as having been made —
 - (a) immediately before cancellation of the person's registration; and
 - (b) for a value equal to the consideration paid or payable on acquisition of the goods.
- (9) If a person's registration is cancelled under this section, the person shall —
 - (a) immediately cease to hold out that the person is a registered person, including in any documentation used by the person;
 - (b) lodge a final Consumption Tax return and pay all Consumption Tax due, including the Consumption Tax due as a result of subsection (7) within 15 days after the date of cancellation of the person's registration; and
 - (c) immediately return the person's Consumption Tax registration certificate to the Taxation Officer.

PART IV - PROCEDURES RELATING TO SUPPLIES AND IMPORTS

10 Time of supply

- (1) Subject to this section, a supply of goods or services shall occur 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 by way of a gift shall occur —
 - (a) in the case of goods, on the date the goods are delivered; or
 - (b) in the case of services, on the date the services are complete.
- (3) A supply of goods by way of an application of the goods to a private or exempt use shall occur on the date the goods are first applied to such use.
- (4) If services are supplied —
 - (a) by way of a lease of goods (including a financial lease); or
 - (b) progressively under an agreement or law that provides for periodic payments,

the services shall be treated as successively supplied for successive parts of the period of the lease, or agreement or as determined by law, and each successive supply shall occur on the earlier of the dates on which the payment for the supply is due or received.

11 Place of supply

- (1) A supply of goods shall occur at the place where the goods are delivered or made available by the supplier or, if the delivery or making available involves transportation, the place where the goods are when the transportation commences.
- (2) Subject to subsection (3), (4) and (5), a supply of services shall occur at the place of business from which the services are supplied.
- (3) The supply of the following services shall occur in Tuvalu if the recipient uses or obtains the advantage of the services in Tuvalu of —
 - (a) a transfer, assignment of, or grant of a right to use, a copyright, patent, trademark;
 - (b) accountants, architects, consultants, engineers, or law practitioners;
 - (c) the processing of data or supplying information or any similar service;
 - (d) an advertising service;
 - (e) the toleration of any situation or the refraining from the doing of any act;
 - (f) the supply of personnel; or
 - (g) the service of an agent in procuring a service described in this subsection.
- (4) A supply of services in connection with real property shall occur in Tuvalu if the real property is in Tuvalu.
- (5) A supply of services by a licensing authority shall be deemed to have occurred in Tuvalu regardless of where the licence, permit, certificate, concession, authorisation, or other document is issued.

12 Value of supply

- (1) In this section, “tax fraction”, in relation to a taxable supply, means the fraction calculated in accordance with the following formula —
$$r/(100+r)$$
where r is the rate of Consumption Tax applicable to the supply as determined under section 5(3).
- (2) Subject to this section, the value of a supply of goods or services shall be the consideration for the supply.

- (3) The value of a supply of goods being the application of goods to a private or exempt use shall be —
 - (a) if section 18(5) applied to the acquisition of the goods, the consideration paid or payable on acquisition of the goods to the extent to which an input tax credit was allowed on acquisition; or
 - (b) in any other case, the consideration paid or payable on acquisition of the goods.
- (4) The value of a supply of goods or services made by a taxable person to an associate who is not a taxable person for no consideration or for a consideration that is less than the fair market value of the supply, shall be the fair market value of the supply at the time of the supply.
- (5) Except as provided in subsection (3) or (4), the value of a supply of goods or services for no consideration shall be zero.
- (6) If a taxable supply is made without a separate amount of the price being identified as Consumption Tax, the value of the supply shall be the price reduced by an amount equal to the price multiplied by the tax fraction.

13 Post-sale adjustments

- (1) This section applies if —
 - (a) a taxable supply is cancelled;
 - (b) the nature of a taxable supply is fundamentally varied or altered;
 - (c) the consideration for a taxable supply is altered; or
 - (d) the goods (or part thereof) the subject of a taxable supply are returned to the supplier.
- (2) If this section applies and the Consumption Tax properly chargeable in respect of the supply exceeds the Consumption Tax actually accounted for by the supplier, the amount of the excess shall be treated as output tax payable by the supplier for a taxable supply made in the Consumption Tax period in which the event referred to in subsection (1) occurred.
- (3) If subsection (2) applies and the supplier has issued a Consumption Tax debit note to the recipient of the supply in accordance with section 20(3), the recipient of the supply shall treat the additional Consumption Tax specified in a debit note issued herein as input tax payable by the recipient in the Consumption Tax period in which the debit note is received.
- (4) Subject to subsection (6), if this section applies and the Consumption Tax actually accounted for by the supplier exceeds the Consumption Tax properly chargeable in respect of the supply, the supplier shall be allowed an input tax credit for the amount of the excess in the Consumption Tax period in which the event referred to in subsection (1) occurred.

- (5) If subsection (4) applies and the supplier has issued a Consumption Tax credit note to the recipient of the supply in accordance with section 20(1), the recipient shall treat the additional Consumption Tax specified in the credit note as output tax payable by the recipient in the Consumption Tax period in which the credit note is received.
- (6) If the recipient of a supply to which subsection (4) applies is unregistered, no input tax credit shall be allowed under that subsection until the supplier has repaid the excess Consumption Tax to the recipient of the supply, whether in cash or as a credit against any amount owing to the supplier by the recipient.

14 Time of import

An import of goods shall occur —

- (a) if the goods are entered under the Customs Act, on the date on which they are so entered; or
- (b) in any other case, on the date the goods are brought into Tuvalu.

15 Value of import

- (1) The value of an import of goods shall be the sum of –
 - (a) the value of the goods ascertained for the purposes of customs duty under the Customs Act whether or not any duty is payable on the import;
 - (b) the amount of customs duty, excise, and any other fiscal charge (other than Consumption Tax and other than levies charged under the Import Levy (Special Fund) Act) payable on the import; and
 - (c) the value of any services referred to in section 4(7) not included in the value under paragraph (a).
- (2) The Customs Officer may, if the value of an import of goods cannot be determined under subsection (1)(a) or if he or she is satisfied that the value of an import of goods ascertained under subsection (1)(a) is not the correct value of the goods, treat the import of goods as a supply of goods made in Tuvalu at the relevant time and the value shall be determined in accordance with section 3.

16 Reverse charge on supply of foreign services

- (1) If a person makes a supply of services to a taxable person in Tuvalu and the supply is not a taxable supply because the supply is not made in Tuvalu but would have been a taxable supply had it been made in Tuvalu, to the extent the recipient will use the supply —
 - (a) to make exempt supplies; or

- (b) for personal or domestic use; or
- the supply shall be treated as a taxable supply made by the recipient at the same time and for the same consideration as the actual supply.
- (2) Where the supplier of the service is the taxable person receiving the service in Tuvalu, such supplier shall be treated as a person other than the taxable person receiving the service and the supply shall be taken to have occurred between two separate independent persons.

PART V - COMPUTATION OF CONSUMPTION TAX PAYABLE

17 Consumption Tax in a Consumption Tax period

The Consumption Tax payable by a taxable person in respect of taxable supplies made or treated as having been made by the person in a Consumption Tax period shall be computed according to the following formula —

A-B

where —

A is the total output tax payable in respect of taxable supplies made or treated as having been made by the person in the period; and

B is the total input tax credit allowed to the person under sections 13, 18, 25, and 40(3) for the period.

18 Input tax credits

- (1) Subject to this section, a taxable person shall be allowed a tax credit for input tax payable by the person.
- (2) Subject to this section a person may claim a credit for the input tax paid in respect of trading stock held at the date of registration if —
- (a) the person is registered under section 7;
 - (b) at the end of the last day before the date of the person's registration, the person held goods as trading stock;
 - (c) the trading stock was acquired by the person in a taxable supply to, or a taxable import by the person;
 - (d) the supply or import occurred no more than 3 months prior to the date of registration; and
 - (e) the person can provide documentary evidence satisfactory to the Taxation Officer, or as the case may be the Customs Officer, that input tax has been paid on the supply or import.

- (3) Notwithstanding anything contained in this section, no input tax credit shall be allowed in respect of a taxable supply to, or taxable import by a taxable person to the extent that the supply or import is used by the person to make exempt supplies or for private purposes.
- (4) An input tax credit —
 - (a) in the case referred to in subsection (1) shall be allowed at the time of the supply or import; or
 - (b) in the case referred to in subsection (2), shall be allowed on the date of registration.
- (5) Notwithstanding subsection (4)(a) an input tax credit allowed under subsection (1) cannot be claimed by a taxable person except for the Consumption Tax period in which the person has —
 - (a) in the case of a taxable supply, a Consumption Tax invoice for the supply; or
 - (b) in the case of a taxable import, a bill of entry or other document prescribed under the Customs Act for the import.

PART VI - CONSUMPTION TAX DOCUMENTATION

19 Consumption Tax invoices

- (1) A registered person making a taxable supply to another registered person shall, at the time of the supply, issue that other person with the original Consumption Tax invoice for the supply.
- (2) A Consumption Tax invoice shall contain the following particulars —
 - (a) the words “CONSUMPTION TAX INVOICE” in a prominent place;
 - (b) the name and address of the supplier;
 - (c) the name and address of the recipient;
 - (d) the individualised serial number and the date on which the Consumption Tax invoice is issued;
 - (e) the description of the goods supplied (including quantity or volume) or services provided and the date on which the supply was made; and
 - (f) the consideration for the supply and the amount of Consumption Tax charged.

20 Consumption Tax credit and debit notes

- (1) If —

- (a) a registered person (known as “the supplier”) has made a taxable supply to another registered person (known as “the recipient”);
- (b) at the time of the supply, the supplier has issued an original Consumption Tax invoice to the recipient;
- (c) section 13(1) applies to the supply; and
- (d) the amount shown on the invoice as the Consumption Tax charged exceeds the Consumption Tax properly chargeable in respect of the supply,

the supplier shall provide the recipient with an original Consumption Tax credit note.

(2) A Consumption Tax credit note shall contain the following particulars —

- (a) the words “CONSUMPTION TAX CREDIT NOTE” in a prominent place;
- (b) the name and address of the supplier;
- (c) the name and address of the recipient;
- (d) the individualised serial number and the date on which the Consumption Tax credit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the Consumption Tax credit note, including information sufficient to identify the taxable supply to which the Consumption Tax credit note relates; and
- (f) the consideration shown on the Consumption Tax invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of Consumption Tax that relates to the difference.

(3) If —

- (a) a registered person (known as “the supplier”) has made a taxable supply to another registered person (known as “the recipient”);
- (b) at the time of the supply, the supplier has issued an original Consumption Tax invoice to the recipient;
- (c) section 13(1) applies to the supply; and
- (d) the Consumption Tax properly chargeable in respect of the supply exceeds the amount shown on the invoice as the Consumption Tax charged,

the supplier shall provide the recipient with an original Consumption Tax debit note.

(4) A Consumption Tax debit note shall contain the following particulars —

- (a) the words “CONSUMPTION TAX DEBIT NOTE” in a prominent place;

- (b) the name and address of the supplier;
- (c) the name and address of the recipient;
- (d) the individualised serial number and the date on which the Consumption Tax debit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the Consumption Tax debit note, including information sufficient to identify the taxable supply to which the Consumption Tax debit note relates; and
- (f) the consideration shown on the Consumption Tax invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of Consumption Tax that relates to the difference.

21 Consumption Tax documentation

- (1) A taxable person who for any reason does not have a Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note as required under this Part may make a written request to the supplier to issue a Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note, as the case may be.
- (2) A request under subsection (1) shall be made —
 - (a) in the case of Consumption Tax invoice, within 60 days of the date of the supply; or
 - (b) in the case of a Consumption Tax credit note or Consumption Tax debit note, within 60 days of the event under section 13 to which the Consumption Tax credit note or Consumption Tax debit note relates.
- (3) A registered person receiving a request under subsection (1) shall comply with the request within 14 days of receiving the request.
- (4) A registered person shall issue only one original Consumption Tax invoice for a taxable supply, or one original Consumption Tax credit note or Consumption Tax debit note for an event under section 13, but a copy clearly marked as such may be provided to a registered person who claims to have lost the original.
- (5) The following documents shall be maintained in respect of a registered person —
 - (a) original Consumption Tax invoices, Consumption Tax credit notes, and Consumption Tax debit notes received by the person;
 - (b) a copy of all Consumption Tax invoices, Consumption Tax credit notes, and Consumption Tax debit notes issued by the person; and
 - (c) customs documentation relating to imports and exports of goods by the person.

- (6) The documents referred to in subsection (5)(b) shall be maintained in chronological order.
- (7) A person shall not issue a Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note other than in the circumstances specified in this Part.

PART VII - CONSUMPTION TAX RETURNS AND PAYMENT

22 Consumption Tax returns

- (1) A taxable person shall lodge a Consumption Tax return for each Consumption Tax period within 30 days after the end of the period.
- (2) A Consumption Tax return shall be in the approved form.

23 Consumption Tax payment

- (1) The Consumption Tax payable by a taxable person for a Consumption Tax period computed under section 17 shall be due and payable by the due date for lodging the Consumption Tax return for that period.
- (2) The Consumption Tax payable by an importer in respect of a taxable import shall be due and payable at the time of the import.
- (3) The liability for Consumption Tax arises by operation of this section and is not dependent on the Taxation Officer or the Customs Officer making an assessment of Consumption Tax due.
- (4) Any Consumption Tax that has not been paid by a taxable person within 5 years after the due date for payment ceases to be payable at the end of that period unless —
 - (a) the person has failed to file a Consumption Tax return for the Consumption Tax period to which the unpaid Consumption Tax relates;
 - (b) The Taxation Officer has within the 5 years period required payment of the amount by notice in writing; or
 - (c) the failure to pay was due to fraud, or gross or wilful neglect.

24 Consumption Tax payable on imports

- (1) Except where the contrary intention appears, the provisions of the Customs Act on imported goods shall, in so far as relevant and with such exceptions and modifications as necessary, apply in relation to Consumption Tax payable on a taxable import.

- (2) The Customs Officer may, by virtue of subsection (1), exercise any power conferred on the Customs Officer by the Customs Act as if the reference to customs duty in that Act included a reference to Consumption Tax payable on imported goods under this Act.

PART VIII - CONSUMPTION TAX REFUNDS

25 Refunds

- (1) Subject to subsection (3), if, for any Consumption Tax period, the total input tax credit allowed to a taxable person exceeds the person's total output tax for that period —
 - (a) the excess shall be carried forward and allowed as an input tax credit in the following Consumption Tax period and any amount of the excess not credited in that period shall be carried forward to the next following Consumption Tax period; and
 - (b) any amount of the excess not credited under paragraph (a) shall, upon written application by the person, be refunded to the person within 45 days after the date of lodgment of the application.
- (2) If a taxable person has an excess input tax credit carried forward under this section for more than one Consumption Tax period, the excess credit of the earliest Consumption Tax period shall be allowed first.
- (3) if the excess referred to in subsection (1) is due to excess input tax credits that are a regular feature of the taxable person's business, the Taxation Officer shall, upon application in writing, refund the excess within 45 days after lodgment of the Consumption Tax return for the period.
- (4) A taxable person who has erroneously overpaid Consumption Tax for a Consumption Tax period may apply, in writing, to the Taxation Officer for an input tax credit in the amount of the overpayment.
- (5) If the Taxation Officer is satisfied that an application has been properly made by a taxable person under subsection (4), the Taxation Officer shall allow the person an input tax credit in the Consumption Tax period specified by the Taxation Officer for the amount of the overpayment.
- (6) An application under subsection (4) shall be made within 5 years from the date of the overpayment.

PART IX - ASSESSMENTS AND APPEALS

26 Consumption Tax assessments

- (1) In this section —
“**objection decision**” means the decision of the Taxation Officer.
- (2) The Taxation Officer may make an assessment of the Consumption Tax payable by a taxable person if —
 - (a) the person fails to lodge a Consumption Tax return as required under this Act;
 - (b) the Taxation Officer is not satisfied with a Consumption Tax return lodged by the person; or
 - (c) the person has been paid a refund under section 25 to which the person is not entitled.
- (3) The Taxation Officer may make an assessment —
 - (a) under subsection (2)(a) or (c), at any time; or
 - (b) under subsection (2)(b) —
 - (i) if the default was due to fraud, or gross or wilful neglect, at any time, or
 - (ii) in any other case, within the time specified in section 23(4) for recovery of Consumption Tax.
- (4) The Taxation Officer may, based on the information available, estimate the Consumption Tax payable by a person for the purposes of making an assessment under subsection (2).
- (5) The Taxation Officer shall serve a notice of the assessment made under subsection (2) on the taxable person assessed stating —
 - (a) the reason for the assessment as provided for in subsection (2);
 - (b) the Consumption Tax payable under the assessment;
 - (c) if the assessment is issued under subsection (2)(a) or (b), the original due date for payment as determined under section 23;
 - (d) if the assessment is issued under subsection (2)(c), the due date for payment as determined under subsection (6); and
 - (e) the time, place, and manner of objecting to the assessment.
- (6) The Consumption Tax payable by a taxable person under an assessment issued under subsection (2)(c) shall be due 30 days after the person was served with the notice of assessment.
- (7) The Taxation Officer may, within 5 years after serving a notice of assessment on a taxable person, amend the assessment by making such alterations or

additions to the assessment as the Taxation Officer considers necessary, and a notice of the amended assessment shall be served on the person.

- (8) Nothing in subsection (7) shall prevent the amendment of an assessment to give effect to an objection decision, or a decision of the court.
- (9) An amended assessment shall be deemed as an assessment for all purposes of this Act.
- (10) Nothing in this section prevents any interest and penalty payable —
 - (a) in respect of Consumption Tax assessed under subsection (2)(a) and (b), from being computed from the original due date for payment of the Consumption Tax as determined under section 23; or
 - (b) in respect of Consumption Tax assessed under subsection (2)(c) in the case of an application for refund made fraudulently or negligently, from being computed from the date on which the refund was paid.

27 Assessment of recipient

- (1) If a taxable person who is the supplier has, in consequence of misrepresentation or fraud by the recipient of a supply, incorrectly treated the supply as —
 - (a) an exempt supply; or
 - (b) a supply subject to a zero rate of Consumption Tax under section 6,the Taxation Officer may assess the recipient of the supply for payment of the Consumption Tax due in respect of the supply and any interest and penalty imposed as a result of the late payment of the Consumption Tax.
- (2) The Taxation Officer shall serve notice of an assessment under subsection (1) on the recipient specifying —
 - (a) the reason for the assessment as provided in subsection (1);
 - (b) the Consumption Tax payable;
 - (c) the due date for payment of the Consumption Tax; and
 - (d) the time, place and manner of objecting to the assessment.
- (3) Subsection (1) does not preclude the Taxation Officer from recovering the Consumption Tax due in respect of the supply together with any interest and penalty from the supplier and —
 - (a) any amount recovered from the recipient of the supply shall be credited against the liability of the supplier in respect of the supply; and
 - (b) any amount recovered from the supplier shall be credited against the liability of the recipient of the supply.
- (4) Any supplier who pays Consumption Tax, interest, or penalty referred to in subsection (1) may recover the amount from the recipient of the supply.

- (5) An assessment made under subsection (1) shall be deemed as an assessment of Consumption Tax for all purposes of this Act.

28 Appeals

The imposition of Consumption Tax may be challenged in the like fashion as that provided for in regard to income tax by section 72 of the Income Tax Act.

PART X - POWERS OF THE TAXATION OFFICER

29 Recovery of unpaid Consumption Tax from third parties

- (1) Where any Consumption Tax or other amount imposed under this Act has not been paid by its due date, the Taxation Officer may by notice in writing require a person:
- (a) owing money to the person liable to pay the Consumption Tax or other amount outstanding;
 - (b) holding money for, or on behalf of, the person liable to pay the Consumption Tax or other amount outstanding;
 - (c) who is liable to make payments of salary or wages or other similar payments to the person liable to pay the Consumption Tax or other amount outstanding; or
 - (d) having authority from some other person to pay money to the person liable to pay the Consumption Tax or other amount outstanding;
- to pay the money to the Government or its nominated agent on the dates set out in the notice, up to the amount of the Consumption Tax or other amount outstanding due.
- (2) A copy of a notice issued under subsection (1) of this section shall be forwarded to the person liable to pay the Consumption Tax or other amount outstanding.
- (3) A person making a payment under a notice under subsection (1) of this section shall be treated as having made the payment on behalf of the person liable to pay the Consumption Tax or other amount outstanding and the person liable to pay the Consumption Tax or other amount outstanding shall not bring an action against the person making payment for recovery of that amount.
- (4) The Taxation Officer shall reduce the amount of the Consumption Tax or other amount outstanding by the person liable to pay them, by the amount of any payment made on that person's behalf under subsection (3) of this section.

- (5) Where any person who receives a notice under subsection (1) of this section transfers any money to which the notice applies to the person who he owes money to or is holding money on behalf of, or otherwise does not pay such money in accordance with the notice, that person shall, if the Taxation Officer agrees, become personally responsible for the amount outstanding under the notice and the other provisions of this Act shall apply as if the person who received the notice was the agent of the person liable to pay the Consumption Tax or other outstanding amount.

30 Recovery of unpaid Consumption Tax from seizure and sale of property

- (1) Where any Consumption Tax or other amount imposed under this Act has not been paid by any person by its due date, the Taxation Officer may request that the Minister to make an order placing restrictions on that person's movable property until the Consumption Tax or other amount has been paid.
- (2) Where a person to whom subsection (1) of this section applies, has not paid, or made arrangements satisfactory to the Taxation Officer to pay, the Consumption Tax or other amount due within 30 days of the order of the Minister obtained under that subsection, the Taxation Officer may enter any place and seize any movable property.
- (3) Movable property that has been seized under this section shall be stored in a place approved by the Taxation Officer for the storage of such property.
- (4) If movable property has been seized under this section, the Taxation Officer shall, as soon as practicable after the seizure, serve on the owner of the movable property or the person who had custody or control of the movable property immediately before seizure, a notice in writing —
 - (a) identifying the movable property;
 - (b) stating the movable property that has been seized under this section and the reason for seizure; and
 - (c) setting out the terms of subsections (6), (7) and (8).
- (5) The Taxation Officer shall not be required to serve a notice under subsection (4) if, after making reasonable enquiries, the Taxation Officer does not have sufficient information to identify the person on whom the notice should be served.
- (6) The Taxation Officer may authorise any movable property seized under this section to be delivered to the person on whom a notice under subsection (4) has been served if that person has paid, or makes an arrangement to pay to the satisfaction of the Taxation Officer any Consumption Tax or other amount due under this Act.
- (7) If subsection (6) does not apply, the Taxation Officer shall detain the movable property seized under this section —

- (a) in the case of perishable property, for such period as the Taxation Officer considers reasonable having regard to the condition of the property; or
 - (b) in any other case, for 21 days after the seizure of the property.
- (8) If the detention period in subsection (7) has expired, the Taxation Officer may sell the seized property by public auction or in such other manner as the Taxation Officer may determine.
- (9) The proceeds of disposal under subsection (8) shall be applied as follows –
 - (a) first toward the cost of seizing, keeping and selling the seized property;
 - (b) then towards the payment of the Consumption Tax or other amount due under this Act; and
 - (c) the balance, if any, shall be paid to the owner of the property.
- (10) The Taxation Officer may request the assistance of the Tuvalu Police Force in delivering and putting into place any order made by a court under subsection (2) of this section.

31 Persons with unpaid Consumption Tax not allowed to leave Tuvalu

- (1) Where any Consumption Tax or other amount imposed under this Act in excess of \$500 has not been paid by any person by its due date, the Taxation Officer may by notice in writing to the Principal Immigration Officer, require that the Principal Immigration Officer shall prevent that person from leaving Tuvalu, until the person:
 - (a) makes payment in full; or
 - (b) makes an arrangement satisfactory to the Taxation Officer for the payment of the tax or other amount.
- (2) In any case to which this section applies, where the conditions of paragraphs (a) or (b) of subsection (1) of this section have been met, the Taxation Officer shall by letter immediately inform the Principal Immigration Officer of that fact and the Principal Immigration shall forthwith no longer prevent the person to whom the conditions applies from leaving Tuvalu.

32 Businesses of persons with unpaid Consumption Tax may be temporarily closed

- (1) Where any Consumption Tax or other amount imposed under this Act in excess of \$500 has not been paid by its due date by any person, being a person who is operating a business, the Taxation Officer may by notice in writing inform that person of an intention to close down part or the whole of that person's business, until the person:
 - (a) makes payment in full; or

- (b) makes an arrangement satisfactory to the Taxation Officer for the payment of the tax or other amount.
- (2) In any case to which this section applies, where the conditions of paragraphs (a) or (b) of subsection (1) of this section have not been met within 7 days of the person to which it relates having received the notice, the Minister may by letter order the immediate closure of part or the whole of that person's business until the conditions in paragraph (a) or (b) of subsection (1) of this section have been met.
- (3) Where the Minister makes an order hereunder, the Taxation Officer shall affix in a conspicuous place on the front of the premises or part of a business which has been closed, a notice bearing the words "CLOSED TEMPORARILY FOR NOT PAYING OUTSTANDING TAX".
- (4) The Taxation Officer may request the assistance of the Tuvalu Police Force in delivering and putting into place any order made by the Minister under subsection (2) of this section."

33 Delegation

- (1) The Taxation Officer and Customs Officer may delegate in writing any duty, power, or function conferred to him or her under this Act.
- (2) The Taxation Officer may, at any time, revoke in writing any delegation under this section.

PART XI - ADMINISTRATIVE PENALTIES AND OFFENCES

34 Administrative penalties

- (1) A person who fails to apply for registration as required by section 7 shall be liable to a penalty equal to double the amount of Consumption Tax payable during the period in respect of which failure occurs, commencing on the date on which the person was required to apply for registration or such later date the person was registered by the Taxation Officer on his or her own motion.
- (2) Where a taxable person fails, in respect of any Consumption Tax period, to submit any tax return required under this Act on or before the last day on which same is required to be submitted, that person shall be liable to pay to the Taxation Officer, in addition to any tax which may be payable, a penalty of \$500.
- (3) Where a taxable person fails to pay any Consumption Tax due on or before the last day on which it is payable, that person shall be liable to pay to the Taxation Officer, in addition to the tax and any penalty imposed under subsection (2), a penalty representing —

- (a) 10 per cent of the tax for the first month or part of the month during which the tax remains unpaid; and
 - (b) 2 per cent of the tax for each subsequent month or part of the month during which the tax remains unpaid
- up to a maximum of 100 per cent of the tax.
- (4) Where, without reasonable cause, any person who is required under this Act to submit a tax return has understated the amount of Consumption Tax payable or has overstated the amount of Consumption Tax able to be refunded, there shall be payable, in addition to any tax and any penalty imposed under subsections (2) and (3), a penalty which shall be:
- (a) if the understatement, or as the case may be overstatement, was due to gross carelessness on the part of the person, fifty percent (50%) of the tax understated or overstated; or
 - (b) if the understatement, or as the case may be overstatement, was due to a deliberate attempt to avoid payment of tax or obtain a refund to which the person was not entitled, one hundred percent (100%) of the tax understated or overstated.
- (5) Notwithstanding subsection (4) of this section, where Consumption Tax has been understated or overstated and an additional penalty under that subsection is to be applied, the amount of that additional penalty will be reduced to:
- (a) 25% of that that would otherwise apply under subsection (4) if the person voluntarily disclosed the existence of the understatement or overstatement before any inquiries in relation to that understatement or overstatement had been initiated by the Taxation Officer; or
 - (b) 50% of that that would otherwise apply under subsection (4) if the person voluntarily disclosed the existence of the understatement or overstatement immediately after inquiries in relation to that understatement or overstatement had been initiated by the Taxation Officer.

35 Offences

- (1) Every person commits an offence against this Act who —
- (a) Fails to apply for registration as required by this Act;
 - (b) Fails to notify the Taxation Officer of a relevant change of circumstances as required by section 8(7);
 - (c) Fails to apply for cancellation of registration as required by section 9(1);
 - (d) Fails immediately upon cancellation to cease to hold out to be a registered person in terms of section 9(10)(a) or to return his, her or its registration certificate immediately upon cancellation as required by section 9(10)(c);

- (e) Fails to provide a Consumption Tax invoice, Consumption Tax credit note or Consumption Tax debit note as required in Part VI;
 - (f) Issues a Consumption Tax invoice, Consumption Tax credit note or Consumption Tax debit note otherwise than as provided in Part VI;
 - (g) Makes any false return, false statement or false declaration or gives any false information, knowing it to be false or being reckless as to whether it was false, or intentionally misleads or attempts to mislead the Taxation Officer in relation to any matter under this Act;
 - (h) Knowingly falsifies any records required to be kept under this Act;
 - (i) Knowingly issues any incorrect tax invoice;
 - (j) Knowingly misrepresents that an amount is payable as tax under this Act;
 - (k) Receives or deals with goods or services, if the person knows or has reason to believe that the tax payable on the supply has been or will be evaded;
 - (l) Obstructs the Taxation Officer or any officer authorized by the Taxation Officer acting in discharge of that officer's duties or the exercise of the officer's power under this Act;
 - (m) Contrary to the provisions of section 33, carries on the business or part of the business concerned or commits any other breach of an order made under that section;
 - (n) Fails to keep or properly maintain records of a taxable activity carried on by the person as required by this Act;
 - (o) Aids, abets, incites or conspires with any other person to commit any offence against this Act or against regulations made under this Act.
- (2) Every person who commits an offence under subsection (1) shall be liable to a fine not exceeding \$200 for the first such conviction, \$400 for the second such conviction and \$800 for each subsequent conviction, or imprisonment for a term not exceeding 2 years, or both.
- (3) The Taxation Officer shall from time to time publish a list of persons who have been convicted under this section or who have been subjected to penalty under section 35(1) or 35(4).

PART XII - MISCELLANEOUS

36 Priority for Consumption Tax

Notwithstanding any other provisions of this Act, if a person has not paid any amount of Consumption Tax as required under this Act, the amount of tax unpaid will, in the application of the assets of the person, rank as follows:

- (a) If the person is an individual, upon the person's bankruptcy or upon the person making an assignment for the benefit of the person's creditors, the amount of the tax payable will rank, in order of priority, immediately after preferential claims for wages or other sums payable to any worker, and in priority to all other claims;
- (b) If the person is a company, other than an unincorporated body or association, upon the liquidation of the company or upon the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company or upon possession being taken on behalf of that debenture holder of the property, the amount of tax payable will rank immediately after preferential claims for wages or other sums payable to any worker, and in priority to all other claims;
- (c) If the person is a company being an unincorporated body or association, upon the appointment of a receiver, the amount of tax payable will rank, in order of priority, immediately after any preferential claims for wages or other sums payable to any worker, and in priority to any claims of holders of debentures under any floating charge (including a floating charge which has since creation become a fixed or specific charge) created by the body.

37 Agreement to defeat the intention and application of the Act to be void

- (1) Notwithstanding anything in this Act, where the Taxation Officer is satisfied that an arrangement has been entered into to defeat the intent and application of this Act or of any provision of this Act, the Taxation Officer will treat the arrangement as void for the purposes of this Act and will adjust the amount of tax payable by any registered person (or refundable to that person by the Taxation Officer) who is affected by the arrangement, whether or not the registered person is a party to the arrangement, in such manner as the Taxation Officer considers appropriate so as to counteract any tax advantage obtained by the registered person from or under the arrangement.
- (2) For the purposes of this section —
 - “**arrangement**” means any contract, agreement, plan or understanding, whether or not legally enforceable, including all steps and transactions by which it is carried into effect;
 - “**tax advantage**” includes —
 - (a) Any reduction in the liability of a registered person to pay tax;
 - (b) Any increase in the entitlement of a registered person to a refund of tax;
 - (c) Any reduction in the total consideration payable by a person in respect of any supply of goods or services.

38 Branches and divisions

- (1) An enterprise conducted by a taxable person in branches or divisions shall be deemed to be a single enterprise for the purposes of this Act.
- (2) An enterprise conducted in branches or divisions shall be registered in the name of the person conducting same and not in the names of the branches and divisions.

39 Currency

- (1) An amount taken into account under this Act shall be expressed in Australian dollars.
- (2) If any amount is expressed in a currency other than Australian dollars, the amount —
 - (a) in the case of an import of goods, shall be converted into Australian dollars at the exchange rate applicable for the purposes of computing the customs duty payable on the import; or
 - (b) in any other case, shall be converted to Australian dollars at the mid exchange rate applying between the foreign currency and the Australian dollar on the date the amount is taken into account for the purposes of this Act.

40 Regulations

The Minister may make Regulations —

- (a) prescribing forms and fees required under this Act; and
- (b) for the proper and efficient administration of this Act.

41 Repeals and transitional provisions

- (1) In this section, “sales tax” means sales tax imposed by the Sales Tax Act.
- (2) The Sales Tax Act is hereby repealed.
- (3) The Schedule to the Room Tax Act is hereby amended by deleting the amount “1-%”, and substituting therefore the amount “7%”.
- (4) Subject to subsection (5), if —
 - (a) at the end of the last business day before the beginning of the first Consumption Tax period after commencement of this Act, a registered person held goods as trading stock;
 - (b) the goods were acquired not more than 3 months before the beginning of the first Consumption Tax period after commencement of this Act; and

(c) the Taxation Officer or the Customs Officer is satisfied that sales tax has been paid on the acquisition or import of those goods,

the person may claim an input tax credit for the sales tax paid in the first Consumption Tax period after the commencement of this Act.

- (5) No input tax credit shall be allowed under subsection (3) for any sales tax paid in respect of the acquisition of any goods if Consumption Tax imposed on a supply or import in acquisition of those goods after the commencement of this Act would not qualify for a full input tax credit because of the application of section 17(4) or (5).
- (6) A person claiming an input tax credit under subsection (3) in respect of trading stock on hand at the beginning of the first Consumption Tax period after commencement of this Act shall submit a list of the trading stock with the person's first Consumption Tax return, supported by documentary evidence of the payment of sales tax.
- (7) If a registered person concluded a contract before the commencement of this Act, the person shall recover any Consumption Tax payable on taxable supplies made by the person under the contract after the commencement of the Act and such Consumption Tax shall be recovered notwithstanding that the contract contained no provision relating to the recovery of Consumption Tax.