

VALUE ADDED TAX (AMENDMENT) ACT, 2002

No. 10



of 2002

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Value Added Tax Act

Date of Assent: 24th June 2002

Date of Commencement: 1st July 2002

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Value Added Tax (Amendment) Bill, 2002. Short title
2. The Value Added Tax Act (No. 1 of 2001) (in this Act referred to as “the Act”) is amended in section 2 thereof by inserting, in its correct alphabetical order, the following new definition —
““second-hand goods” means goods which were previously owned and used, including immovable property, but does not include livestock, domestic animals or wild animals;” Amendment of section 2 of Act No. 1 of 2001
3. Section 13 of the Act is amended in subsection (1) (a) thereof by inserting, immediately after the words “an amount equal to”, the words “the sum of”. Amendment of section 13 of the Act
4. Section 19 of the Act is amended —
(a) in subsection (1) thereof, by —
(i) substituting for paragraph (a)(i) thereof, the following new paragraph —
“(i) payable in respect of taxable supplies made to the person during — Amendment of section 19 of the Act

- (A) the tax period; or
- (B) the preceding tax period if —
 - (i) the tax invoice covering the taxable supply made in the preceding tax period was not received until the current tax period, and
 - (ii) the tax on the taxable supply was not claimed in a previous tax period.”;
- (ii) deleting the word “and” which appears at the end of paragraph (d) (iv);
- (iii) substituting for the full stop which appears at the end of paragraph (e) thereof, the words “;and”; and
- (iv) inserting immediately after paragraph (e), the following new paragraphs —
 - “(f) subject to paragraphs (g), (h) and (i), an amount equal to the tax fraction of the lesser of —
 - (i) the amount paid, or
 - (ii) the fair market value, including tax, of second-hand goods acquired in Botswana during the tax period by a registered person from a person registered or not registered, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies;
 - (g) an amount equal to the tax fraction of the lesser of —
 - (i) the amount paid, or
 - (ii) the fair market value, including tax, of second-hand goods acquired in Botswana during the tax period by a registered person from a related person, registered or not registered, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies, but not more than the tax imposed on the supply of the goods to the related person;
 - (h) an amount equal to the tax fraction of the value of second-hand goods that are repossessed in Botswana during the tax period by a creditor who is a registered person, from a defaulting debtor, whether registered or not, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies, but not more than the tax imposed on the supply of the goods to the defaulting debtor;

- (i) an amount equal to the tax fraction of the value of second-hand goods that are acquired in Botswana during the tax period by an insurer who is a registered person, from an insured person in a transaction not subject to tax if the goods —
 - (i) are acquired in settlement of an insurance claim,
 - (ii) are taxable at a positive rate under this Act, and
 - (iii) are acquired for re-supply in a taxable transaction, but not more than the tax imposed on the supply of the goods to the insured person; and”;
- (b) in subsection (2) thereof, by —
 - (i) deleting the word “and” which appears at the end of paragraph (a) thereof; and
 - (ii) substituting, for the full stop which appears at the end of paragraph (b) thereof, the words “; and”; and
 - (iii) inserting, immediately after paragraph (b) thereof the following new paragraph —
 - “(c) for purposes of subsection 1(f) - (i), with respect to the acquisition, the registered person is in possession of documents required by the Director.”

5. Section 20 of the Act is amended in subsection (1) thereof by —

- (a) substituting for the definition of “passenger vehicle” the following new definition —

““passenger vehicle” means a vehicle designed or adapted for the transport of nine or fewer seated persons, including a double-cab vehicle but does not include a safari vehicle; and” and

- (b) inserting, immediately after the definition of “passenger vehicle”, the following new definition —

““safari vehicle” means a vehicle designed or adapted for use and used to transport tourists in a game reserve, national park, sanctuary, or safari area, by a holder of a valid licence to operate a tourist enterprise, but does not include a saloon car, a station wagon or similar passenger vehicle .”

6. Section 23 of the Act is amended by —

- (a) substituting, for subsection (1) thereof, the following new subsection —

“(1) Subject to subsection (2), a registered person, referred to in this section as the “registered supplier”, making a taxable supply to a person, referred to in this section as the “recipient”, shall provide the recipient with a tax invoice for the taxable supply containing such particulars as are specified in paragraph 1 of the Fourth Schedule.”;

- (b) by substituting, for subsection (9) thereof, the following new subsection —

Amendment
of section 20
of the Act

Amendment of
section 23 of
the Act

“(9) A recipient who is a registered person, may create a document containing such particulars as are specified in paragraph 1 of the Fourth Schedule that shall be treated, for purposes of the Act, as a tax invoice issued by the registered supplier to the recipient if —

- (a) the Director has granted the recipient or class of recipients written approval to issue such documents with respect to specified taxable supplies;
- (b) the supplier and the recipient agree that the supplier shall not issue a tax invoice with respect to such taxable supplies;
- (c) the document is provided to the supplier and a copy is retained by the recipient;
- (d) the words “recipient-created tax invoice” are displayed prominently on the document; and
- (e) the recipient complies with any other conditions that may be imposed by the Director.”;

(c) by inserting, immediately after subsection (11) thereof, the following new subsection —

“(12) Where a document referred to in subsection (9) issued by a recipient of a taxable supply is treated as a tax invoice covering the same taxable supply, an invoice issued by the supplier shall not be a tax invoice for purposes of this Act.”

Amendment of
section 24 of
the Act

7. Section 24 of the Act is amended —

- (a) in subsection (1) thereof, by substituting for the words “paragraph 3”, which appear therein, the words “paragraph 2”; and
- (b) in subsection (3) thereof, by substituting for the words “paragraph 4”, which appear therein, the words “paragraph 3”.

Amendment
of section 25
of the Act

8. Section 25 of the Act is amended by substituting for the section, the following new section —

“Tax period 25. (1) Subject to subsection (2), the tax period applicable to a registered person under this Act is the period of one month ending on the last day of each month.

(2) The Minister may, by regulations, authorise a different tax period for specific categories or classes of registered persons.”

Amendment
of section 60
of the Act

9. Section 60 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

“(1) Where a person commits an offence under this Act, other than an offence under section 58, at any time prior to the commencement of the court proceedings relating thereto, if —

- (a) the fine does not exceed P5 000, the Director; or
- (b) the fine exceeds P5 000, the Director, with the approval of the Minister,

may compound such offence and order the person to pay such sum of money as may be specified by the Director, not exceeding the amount of the fine prescribed for that offence.”

10. The Act is amended by inserting, immediately after section 77 thereof, the following new section —

“Agreement
varying
application of
Act

77A. Where the Director is satisfied that because of the manner in which any person conducts his business activities, difficulties or anomalies may arise with regard to the application of any of the provisions of this Act, the Director and that person may agree on the manner in which those provisions shall be applied in order to overcome those difficulties or anomalies:

Provided that such agreement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this Act.”

Insertion of
section 77A
in the Act

11. Section 80 of the Act is amended by —

(a) inserting, in subsection (1) thereof, immediately after the definition of “qualifying goods” the following new definition —

““qualifying vehicles” means registrable goods as defined in section 74, which are eligible for an input tax deduction in terms of section 19, and on which sales tax was paid when they were imported into or purchased in Botswana;”

(b) deleting, in subsection (1) thereof, the words, “in respect of the first tax period”, which appear therein;

(c) substituting, for subsection (6) (i) thereof, the following new subsection —

“(a) held, at the end of the last business day prior to the beginning of the first tax period after the tax becomes effective —

(A) qualifying goods acquired not more than 4 months before the tax becomes effective; and

(B) qualifying vehicles acquired not more than 12 months before the tax becomes effective; and

(b) the Director is satisfied that sales tax has been paid on the acquisition or import of those goods,

the amount of the sales tax deduction shall be the amount of such taxes paid on such goods, but with respect to each item qualifying for the deduction, the sales tax shall not exceed the fair market value multiplied by the tax fraction.”

(d) deleting, in subsection (7) thereof, the words “and subject to the provisions of section 42 relating to overpayment of tax”, which appear therein; and

Amendment of
section 80 of the
Act

(e) substituting for subsection (16) thereof, the following new subsection —

“(16) If —

(a) successive supplies described in section 8(11) or (12) were provided; or

(b) services subject to sales tax were rendered, during a period that began before and ended after this Act came into force, VAT is imposed on the consideration for the services rendered after this Act came into effect, except that to the extent the consideration for the services rendered before this Act came into effect is paid more than 4 months after the Act came into effect, the consideration shall be treated as consideration for the supply of services rendered on the day after the end of that 4 month period.”

Amendment
of First
Schedule to
the Act

12. The First Schedule to the Act is amended in paragraph 2 thereof by inserting immediately after subparagraph (r), the following new subparagraph —

“(s) a supply of —

leaded petrol, unleaded petrol, diesel oil and illuminating paraffin, which consist of fuel levy goods as defined in section 2 of the Customs and Excise Duty Act.”

Amendment
of Fourth
Schedule to
the Act

13. The Fourth Schedule to the Act is amended in paragraph 1 thereof by —

(a) substituting, for subparagraph (c) thereof, the following new subparagraph —

“(c) for a supply to a registered recipient, the name, address, and VAT registration number of the recipient;” and

(b) deleting subparagraph (2) thereof.

PASSED by the National Assembly this 23rd day of April, 2002.

C.T. MOMPEI,
Clerk of the National Assembly.