

VALUE ADDED TAX (AMENDMENT) ACT, 2006

No. 15



ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of Cap. 50:03
3. Amendment of section 8 of the Act
4. Amendment of section 9 of the Act
5. Amendment of section 18 of the Act
6. Amendment of section 19 of the Act
7. Amendment of section 44 of the Act
8. Amendment of section 62 of the Act
9. Amendment of First Schedule to the Act
10. Amendment of Second Schedule to the Act

An Act to amend the Value Added Tax Act

Date of assent: 30th June, 2006

Date of Commencement: 1st July, 2006

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Value Added Tax (Amendment) Act, 2006 and shall come into operation on 1st July, 2006.

Short title and commencement

2. The Value Added Tax Act (in this Act referred to as "the Act") is amended in section 2 thereof —

Amendment of Cap. 50:03

(a) by inserting in the correct alphabetical order the following new definition —

““Commissioner General” means the Commissioner of the Revenue Service appointed under section 22(1) of the Botswana Unified Revenue Service Act;”;

Cap. 53:03

(b) by substituting for the word “Director” wherever it occurs in the Act, the words “Commissioner General”;

(c) in the definition of “input tax” by inserting immediately after paragraph (b) the following new paragraphs —

“(c) transfer duty required to be paid under the Transfer Duty Act; and

Cap. 53:01

(d) any tax deemed to have been paid for purposes of section 19(1), which shall be an amount equal to the tax fraction of the lesser of any consideration in money or the fair market value of the supply (not being a taxable supply) to the registered person by way of sale of any second hand goods situated in Botswana by a resident.”.

Amendment
of section 8 of
the Act

3. Section 8 of the Act is amended by —

- (a) substituting for subsection (4) the following subsection —
“(4) Subject to subsection (18), a supply of goods under a credit agreement occurs when the goods are delivered or the time any payment for the supply is received, whichever is earlier.”;
- (b) inserting immediately after subsection (16) the following new subsections —
“(17) Notwithstanding the provisions of this section, a supply of immovable property occurs when the transfer deed is registered with the Registrar of Deeds or when any payment is received, whichever occurs earlier.
(18) A supply of —
(a) an electrical connection under the Botswana Power Corporation’s Rural Electrification Scheme; or
(b) housing by the Botswana Housing Corporation under the Tenant Purchase Scheme, pursuant to a hire-purchase agreement, occurs as each payment is due or is made under that agreement, whichever is earlier.”.

Amendment
of section 9 of
the Act

4. Section 9 of the Act is amended by inserting immediately after subsection (19) the following new subsection —

“(20) The value of a supply of an electrical connection or a supply of housing referred to under section 8 (18) is an amount equal to the instalment due or paid under the scheme.”

Amendment
of section 18
of the Act

5. Section 18 of the Act is amended in subsection (11) by substituting for paragraph (a) the following paragraph —

“(a) a taxable supply of any goods on hand, including capital goods and goods that were acquired before the commencement of this Act, unless input tax under section 20 (2) was denied; and”.

Amendment
of section 19
of the Act

6. Section 19 of the Act is amended —

- (a) in subsection (1) by substituting for paragraph (a) the following paragraph —
“(a) subject to this section and section 20, the total amount of input tax —
(i) payable in respect of taxable supplies made to the person during the tax period;
(ii) paid in respect of any import of goods by the person during the tax period in the course of furtherance of a taxable activity carried on by the person; and
(iii) allowed under section 21 for the tax period, and”;
- (b) by substituting for paragraph (f) the following paragraph —
“(f) subject to paragraphs (g), (h), and (i), an amount equal to the tax fraction of the lesser of —
(i) the amount paid for, 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, or

- (iii) shall not exceed the amount of transfer duty which was or would have been payable in terms of this paragraph for second hand goods contemplated in paragraph (c) of the definition of input tax in section 2;”;
- (c) by inserting immediately after subsection (1) the following new subsection —
 - “(1 A.) Notwithstanding the provisions of paragraph (a) of subsection (1), a claim for input tax credit can be filed —
 - (a) for a person whose tax period under section 25 or under the regulations issued under that section is a period of one month, up to the next three tax periods;
 - (b) for a person whose tax period under section 25 or under the regulations issued under that section is a period of two months, during the next tax period, and
 - (c) for a person who has paid tax in respect of any imports of goods, in the next tax period.”.

7. Section 44 of the Act is amended —

Amendment
of section 44
of the Act

- (a) in subsection (1) by substituting for paragraph (a) the following paragraph —
 - “(a) in the case of a company, other than a company in liquidation —
 - (i) where the company is an incorporated company, any director or person that has authority over the disbursement of corporate funds or disposal of corporate assets,
 - (ii) where the company is an incorporated company that has a public officer in addition to the person under subparagraph (i), that public officer,
 - (iii) in the case of an unincorporated association or body, a member of the committee or management responsible for accounting for the receipt and payment of moneys of the association or body; or
 - (iv) in any other case, a person who is responsible for accounting for the receipt and payment of moneys or funds on behalf of the company;”
- (b) in subsection (3) by substituting for the words “subsection (5)” the words “subsections (5) and (5A)”;
- (c) by inserting at the beginning of the subsection (5) the words “Subject to subsection (5A);
- (d) by inserting immediately after subsection (5) the following new subsection —
 - “(5A) Notwithstanding subsection (5), a person who was a director of the company at the time of the commission of any act referred to in subsection (5) shall be liable, jointly and severally, for any tax payable by the company unless that person proves, to the satisfaction of the Commissioner General, that the failure by the company to pay the tax was not due to any negligence on his or her part.”

Amendment
of section 62
of the Act

8. Section 62 of the Act is amended by —

(a) substituting for subsection (4) the following subsection —

“(4) A person dissatisfied with a decision of the Commissioner General under subsection (1) or (5) may appeal against such decision only in accordance with the provisions of Part VIII.”;

(b) inserting immediately after subsection (4) the following new subsections —

“(5) After first consulting the accounting officer for purposes of the Finance and Audit Act, the Commissioner General may, if he is satisfied that the same is irrecoverable, remit any amount of tax, not exceeding P50,000, unpaid by any person in respect of any tax year.
(6) The Minister may remit wholly or in part any tax payable by any person where he is satisfied that it is just and equitable to do so, or where he is satisfied that such tax is irrecoverable.”.

Cap. 54:01

Amendment
of First
Schedule to
the Act

9. The First Schedule to the Act is amended in paragraph 2 by inserting immediately after subparagraph (s) the following new subparagraphs —

“(t) a supply of —

- (i) millet grain,**
- (ii) millet meal,**
- (iii) wheat grain,**
- (iv) maize cobs,**
- (v) flour,**
- (vi) sugar, and**
- (vii) setswana beans**

in their natural state and not mixed with other products, to the extent provided in the regulations;

(u) a supply of pesticides specified under Customs Tariff Heading 38:08;

(v) a supply of fertilizers specified under Customs Tariff chapter 31:01-31:05;

(w) a supply of tractors specified under Customs Tariff Heading 8701.90 when acquired for farming by a person operating a farming business, to the extent provided in the regulations.”

Amendment
of Second
Schedule to
the Act

10. The Second Schedule to the Act is amended in paragraph 2 by inserting immediately after subparagraph (f) the following new subparagraphs —

“(g) a supply of domestic passenger transportation by road or rail, other than the transportation of tourists, to the extent provided in the regulations;

(h) cash grants made by or received from the State, to the extent provided in the regulations;

(i) a supply of condoms; and

(j) donations”.

PASSED by the National Assembly this 30th day of June, 2006.

A. MATLHAKU,
Clerk of the National Assembly.