

**Commonwealth Of Republica
VALUE ADDED TAX ACT**

EXPLANATORY MEMORANDUM

I. INTRODUCTION

The Act provides for the imposition of a value added tax (referred to as "VAT") that will replace the [existing sales tax].

II. EXECUTIVE SUMMARY

VAT is a broadly based consumption tax that is imposed by the Act on the supply of goods and services in Republica and on the import of goods into Republica. What follows is a brief summary of the basic provisions of the Act; a detailed explanation of each section in the Act is provided in Part III of this memorandum below.

Charge to Tax

The Act imposes VAT on—

- (1) every taxable supply; and
- (2) every import of goods other than an exempt import

Taxable supply. A taxable supply is a supply of goods or services in Republica, other than an exempt supply, made by a person for consideration as part of the person's taxable activities. The definitions of supply of goods and supply of services are intended to be mutually exclusive but jointly exhaustive of all types of supply. The only exception to this is a supply of money which is neither a supply of goods nor a supply of services and, therefore, is outside the charge to tax. Any person engaged in taxable activity can make a taxable supply, but tax is imposed only on taxable supplies by a taxable person. A taxable person is a person who is, or is required to be, registered for the purposes of VAT. Generally, a person is only required to be registered if the person meets the registration threshold. In relation to domestic transactions, therefore, only supplies of goods or services (other than exempt supplies) by taxable persons for consideration as part of the person's taxable activities are subject to VAT. This means that private transactions between individuals and supplies made by unregistered persons conducting small businesses will not be subject to VAT.

Exempt supply. A taxable supply does not include an exempt supply. A supply of goods or services is an exempt supply if it is listed in Schedule II to the Act. An exempt supply is not charged to tax even if made by a taxable person.

Import of Goods. Every import of goods into Republica is subject to VAT unless the import is an exempt import. Broadly, an exempt import is an import of goods that is either exempt from customs duty (unless the Minister provides otherwise) or, if the import was a domestic supply, it would be an exempt supply.

Person Liable for Tax

Taxable supplies. The person liable for VAT on a taxable supply is the taxable person making the supply. A taxable person, however, can be expected to pass the VAT onto its customer by increasing the price for the goods or services supplied by the amount of VAT payable in respect of the supply. The cost of VAT, therefore, is generally borne by the unregistered end-user or a person making exempt supplies who is unable to claim a credit for the tax previously paid in respect of the goods or services supplied. The importer is the person liable for VAT on an import of goods.

Calculation of Tax Payable

Generally, the tax payable on a taxable transaction -- on a taxable supply or import of goods -- is determined by applying the rate of tax applicable to the supply to the taxable value of the supply.

Rate of Tax. The Act provides for two rates of tax. The general rate is []. A zero rate of tax applies to those supplies listed in Schedule III.

Taxable Value. Generally, the taxable value is the price paid for the supply although in certain cases the taxable value is the fair market value of the supply. The taxable value of an import of goods is the sum of the customs value of the import, the customs and other duties paid, and the value of any services the supply of which is incidental to the import of the goods.

Input tax credit. Taxable persons are generally able to claim a credit for any VAT paid in respect of taxable supplies made to, or an import of goods by, the person where those supplies or imports are for use in the person's taxable activity. No input tax credit is allowed, however, to the extent the goods or services acquired are for use by the taxable person in making exempt supplies. This represents an important difference between exemption and zero-rating. A zero-rated supply is still a taxable supply and, therefore, an input tax credit may be claimed in respect of goods or services acquired for use in making zero-rated supplies.

Time for Payment of VAT

Taxable supplies. The VAT payable on taxable supplies made by a taxable person is paid on a monthly return basis. A taxable person is required to lodge monthly returns of tax payable and credits claimable for the month. The net VAT liability must be paid by the due date for the return for the month (*i.e.* within 21 days after the end of the month). Where the amount of credits claimable exceeds the tax payable, the excess must be refunded to the taxable person within six months of the due date for the return to which the excess relates.

Imports. The VAT payable in respect of an import of goods must be paid at the

time of the import. This is the case regardless of whether the importer is a taxable person. In other words, the VAT payable on imports of goods by a taxable person is not accounted for on the monthly return basis, but rather at the time of import.

III. COMMENTARY

This section-by-section commentary provides a detailed explanation of the Value Added Tax Act.

1. Short Title and Commencement

This section provides that the Act when enacted may be cited as the Value Added Tax Act.

The Act will come into operation on the date appointed by the Minister responsible for Finance (“Minister”) and published in the Gazette. **This approach provides flexibility to link the commencement of the Act with the administrative preparations; the legislative tradition of some countries will not, however, favor a flexible effective date of this kind, and an alternative is therefore to specify the date of commencement in the law itself.** Transitional provisions are specifically provided for in section 89 of the Act. Further, the Minister is empowered under section 87 to make regulations of a transitional nature.

2. Interpretation

This section provides definitions of commonly used terms in the Act. The definitions in section 2 apply unless the context otherwise requires. The main definitions are discussed below; many other definitions are self-explanatory. Definitions for “capital goods,” “recipient,” “resident person,” “taxable supply,” and “trust” are discussed in the Explanatory Notes to the Vatopia VAT Act.

Application to own use

This term is primarily relevant to section 11 of the Act which defines a supply of goods for the purposes of the Act. Section 11(4) provides that an application of goods to own use is a supply of goods for the purposes of the Act. Where the application to own use is made by a taxable person of goods acquired by that person for the purposes of that person’s taxable activities, the application to own use is treated as a taxable supply and is subject to VAT (section 6(a)).

According to the definition of “application to own use”, goods are treated as applied to own use where the goods are applied to personal use (including the personal use of a relative). There is a separate definition of “relative” in section 2. An example of an application of goods to own use is where a trader takes goods out of the trader’s stock-in-trade for his or her personal use. For example, a retailer of electrical goods may take a radio out of her stock of goods for use in her home. The definition of application to own use specifically includes applying the goods to the personal use of a relative. In the above example, this would occur where the trader allows her spouse to use the goods.

Company

This term is primarily relevant to the definition of “person” in section 2, which definition forms the foundation for identifying who is a taxable person for the purposes the imposition of VAT under section 6. The definition is also relevant to section 81 which obliges, inter alia, a company to have a “nominated person” for the purposes for VAT.

A "company" is broadly defined to mean a body corporate or unincorporate, whether operated for profit or non-profit purposes, whether created or recognized under Republica law or the laws of another country. This clearly includes an incorporated association of persons given separate legal status under local or foreign corporations law, including a statutory corporation. If Republica allows businesses to organize in unincorporated form with many of the attributes of a company such as limited liability, centralized management and free transferability of interests, this form of business operation is considered a "company" for purposes of the Act.

The definition also includes unincorporated associations (such as a club); but does not include a partnership or trust. “Partnership” has its ordinary meaning under Republica law and “trust” is separately defined in section 2 of the Act.

Any entity within the definition of “company” will be a “person” for the purposes of the Act. Where that person makes supplies of goods or services (other than exempt supplies) for consideration as part of the carrying on of taxable activities, the person may be a taxable person and liable for VAT on those supplies (see sections 6, 7, and 8). This means; for example, that an unincorporated association conducting business activities may be liable for VAT in respect of those activities. The application of the Act to an unincorporated association is subject to the modifications in section 82.

Consideration

This term is primarily relevant to the determination of the taxable value of a taxable supply. The concept of consideration is also relevant in determining whether a supply is a taxable supply. A taxable supply is a supply in connection with a taxable activity, and a taxable activity in section 5 involves supplies made for consideration. The term also is relevant to the determination of the value of a taxable supply in section 21.

The consideration for a supply of goods or services is the total amount in money or kind paid or payable for the supply. The definition makes it clear that consideration may be received directly or indirectly. Further, the consideration may be paid by the person to whom the goods or services are supplied or by any other person, provided the payment is “for” the supply.

The starting point in determining the consideration paid or payable for a supply of goods or services is the total price charged for those goods or services. Where the price is received wholly or partly in kind, the consideration is, or includes, the fair market value of what is received in kind. By virtue of section 13(1)(a), the total amount paid or payable for a supply of goods will include the value of any services supplied that are incidental to the supply of the goods (for example, delivery). Similarly, by virtue of section 13(1)(b), the total amount paid or payable for a supply of services will include the value of any goods supplied that are incidental to the supply of the services.

The definition of consideration expressly includes any duties, levies, fees, and

charges paid or payable on, or by reason of, the supply of goods or services. The intention is that VAT is imposed on a base including all other taxes and similar payments imposed by reason of the supply. This includes, for example, a compulsory fee or an excise tax charged on the supply. The only exception to this is that the consideration for a supply is reduced by any VAT included in the consideration. Where a taxable supply is made without the VAT being separately identified, section 21(3) provides that the value of the supply is reduced by the VAT element in the price.

The consideration for a supply is reduced by any discount or rebate allowed and accounted for at the time of the supply. This ensures that the consideration for a supply is the actual consideration made for that particular supply. For example, if the price for an item is normally 100,000 republicans but is reduced by way of a discount to 90,000 republicans for a particular supply, then the consideration for the supply is 90,000 republicans and not 100,000 republicans even though other supplies, perhaps made at the same time, take place for a consideration of 100,000 republicans. A discount or rebate allowed at a later date (such as a prompt payment or periodic quantity discount) is not taken into account in determining the consideration for the supply, but rather is subject to the rules on adjustments in section 22.

Finance lease

This term is relevant to sections 15 and 21 which provide special rules for determining the time and taxable value of a supply of goods under a finance lease. Under these sections, finance lease is treated in the same way as a sale of a goods. Consequently, the general rules applicable to leases do not apply to finance leases.

While a finance lease is in legal form a lease of the goods, the terms of the lease are such that it is substantially equivalent to a sale of the goods. A lease will be treated as a finance lease if it satisfies one of four alternative tests—

(1) the term of the lease exceeds 75 percent of the expected life of the goods determined primarily by reference to generally accepted accounting principles relating to depreciation of assets;

(2) the lessee has an option to purchase for a fixed or determinable price at the expiration of the lease;

(3) the estimated residual value of the goods at the expiration of the lease (including the period of an option to renew) is less than 20 percent of the market value of the goods at the commencement of the lease; or

(4) the goods are custom-made for the lessee and for practical purposes of use only to the lessee.

Goods

This term is relevant to defining the base on which VAT is levied. The intention of the Act is to ensure that VAT can be applied to any transaction which adds value. This is done by dividing transactions into those involving goods and those involving services. Broadly, this means that VAT can be applied to those transactions involving a supply of property and those where value is added without any property being supplied. The Act

adopts the usual practice of defining what constitutes goods and then defining services as meaning anything that is not goods. In this way, the terms goods and services are mutually exclusive (*i.e.* something cannot be both goods and services at the same time), but jointly exhaustive (*i.e.* anything that adds value that is not goods is treated as services).

It is also important to properly characterize a transaction as involving either goods or services because the rules as to time (section 15), place (sections 17 and 18) and value (section 21) of the transaction differ depending whether goods or services are involved.

“Goods” is defined broadly to mean all kinds of corporeal property both movable and immovable. Consequently, movable property such as stock-in-trade and the capital goods of a business will be goods for the purposes of the Act. While the definition expressly includes immovable property (that is, land and buildings affixed to land), many supplies of immovable property will be exempt supplies (see section 19 and Schedule II). The definition also expressly includes thermal and electrical energy, heating, gas, refrigeration, air conditioning, and water as goods for the purposes of the Act. The definition expressly excludes “money” which is separately defined in section 2.

The fact that an item is within the definition of goods does not necessarily mean that the supply of the item is subject to VAT. It is only where the supply is a taxable supply that VAT is charged (see section 6(a)).

Import

This term is relevant to defining the base on which VAT is levied (see section 6(b)).

Import means to bring, or cause to be brought into, Republica from a foreign country or place. The definition is consistent with the definition in the [Customs Legislation].

Importer

This term is relevant to section 7(b) which provides that the importer is the person liable to account to the Commissioner for the VAT payable in respect of the import of goods.

Importer is defined to include the owner or any person having possession of, or who is beneficially interested in, the goods at the time of import.

The definition is consistent with the definition of importer in the [Customs Legislation] and ensures that it is the person in possession of the goods at the border (whether owner or agent) that is treated as the importer.

Person

This term is primarily relevant for determining who is liable to account to the Commissioner for VAT. Under section 7, it is the taxable person (in relation to a taxable supply) or the importer (in relation to an import of goods) who is liable for tax. Only a

person can be a taxable person or an importer.

Person is defined inclusively so that it otherwise has its ordinary meaning. Consequently, it will include every entity that has separate legal status under the law of Republica. This means, for example, that a natural person will be a person for the purposes of the Act. The definition specifically includes entities that may not ordinarily be regarded as legal persons. The intention is to include within the definition of person every entity through which business activity may be conducted.

The definition expressly includes a partnership even though a partnership is not a separate legal person under general law. This means, for example, that it is the partnership that is treated as the taxable person for the purposes of the Act although this is subject to the special rules in section 82. Partnership is not separately defined in the Act, and therefore, has its general law meaning, namely an association of persons carrying on business with a view to profit. A trust is also expressly included within the definition of person even though it is not otherwise a separate legal person. There is a separate definition of trust in section 2 which extends beyond the ordinary meaning of trust.

While an incorporated association or statutory corporation is a separate legal person, the specific inclusion of company within the definition of person ensures that an unincorporated association which is treated as a company for the purposes of the Act is treated as a person. As with partnerships, unincorporated associations are subject to the special rules in section 82.

The definition also specifically includes a government and a local authority as a person for the purposes of the Act. The reference to a government includes both the Government of Republica and a foreign government. The reference to local authority is intended to cover political subdivisions or lower levels of government.

Services

This term is relevant to defining the base on which VAT is levied. As stated above in relation to the definition of "goods", the intention of the Act is to ensure that VAT can be applied to any transaction which adds value. This is done by dividing transactions into those involving goods and those involving services. The Act adopts the usual practice of defining what constitutes goods and then defining services as meaning anything that is not goods. This means, for example, that even refraining from activity, as in a covenant not to compete, will be considered a service. The only exception is money. This means that money is neither goods nor services and therefore, the supply of money (for example, in payment for goods) is not a taxable supply. "Goods" and "money" are both defined in section 2.

Taxable person

This term is relevant to the calculation of tax payable for a tax period. The tax payable on a taxable supply must be accounted for by the taxable person making the supply. Sections 25 and 26 provide for the calculation of tax payable by a taxable person.

A "taxable person" is a broad term that includes more than persons registered for VAT. A taxable person is a person who is, or is required to be, registered under section 8.

Persons required to register include those who make taxable supplies that exceed the registration threshold in section 8, and the State or local authorities or bodies within section 8(4) that carry on business, regardless of the amount of their taxable supplies.

Only a person can be a taxable person. "Person" is defined broadly in section 2 and, as discussed in the commentary to that definition, the intention is to include within the definition of person, every entity through which taxable activity may be conducted even though the entity may not be a separate legal person, and whether or not the person engages in activity for profit. Special rules applicable to partnerships and unincorporated associations are in section 82.

There is no residency requirement attached to the definition of taxable person and, therefore, a foreign person who meets the registration threshold in section 8 will be a taxable person. Consequently, some foreign persons with branches or permanent establishments in Republica will be required to apply for registration.

A taxable person is a person who is registered under section 8. This definition also treats as a taxable person a person who is not registered but who is required to apply for registration under section 8. In other words, once a person exceeds the registration threshold, the person is a taxable person regardless of whether or not the person actually makes an application. As a taxable person, the person is liable to charge VAT on taxable supplies made and to account to the Commissioner for that VAT. If a taxable person does not collect the VAT chargeable on supplies made, the person remains responsible to pay the tax to the Commissioner. This is intended to prevent persons from avoiding the tax by simply not registering for tax purposes.

Taxable supply

While sections 11 and 12 define "supply of goods" and "supply of services" broadly, section 6(a) charges to tax only those supplies that are taxable supplies. This term defines those supplies that are taxable supplies.

A taxable supply is a supply of goods or services for consideration in Republica (other than an exempt supply) made in the course or furtherance of a taxable activity. For a supply of goods or services to be a taxable supply, therefore, the following conditions must be satisfied—

- (1) the supply must not be an exempt supply;
- (2) the supply must be made in Republica;
- (3) the supply must be made for consideration; and
- (4) the supply must be made as part of the person's taxable activities.

If any of these conditions are not satisfied, then the supply is not a taxable supply.

The first condition is that the supply must not be an exempt supply. A supply is an exempt supply if it is specified in Schedule II (see section 19). An exempt supply, therefore, is not a taxable supply. While this means that no output tax is charged in respect of the supply, it also means that a taxable person making the supply cannot claim

a credit for input tax paid on purchases related to the supply (see section 28).

The second condition is that the supply must be made in Republica. Supplies made outside Republica are not subject to tax. Sections 17 and 18 contain rules to locate the place of a supply. Exports of goods shipped from Republica are treated as supplies in Republica (section 17(1)), and exports of services are treated as supplies in Republica (section 18(6)). Exports of goods and services therefore are taxable supplies and eligible for input credits under section 28.

The third condition is that the supply must be made for consideration. A supply is made for consideration if the supplier directly or indirectly receives payment for the supply, whether from the person supplied or any other person. This condition is related to the final condition and together these two conditions are intended to ensure that VAT only applies to supplies made in the business context.

The fourth condition is that the supply be made as part of the supplier's taxable activities. As discussed above, this is intended to ensure that transactions on the personal account of a person are not within the operation of VAT. Taxable activity is defined under section 5.

3. Fair Market Value

There are several situations where the taxable value of a taxable supply is the fair market value of the goods or services at the time of the supply (see sections 10(11) and 21(2)). The purpose of this section is to provide rules for determining the fair market value of a taxable supply.

Section 3(1) contains the definition of the fair market value of a taxable supply for purposes of the Act. Under section 3(1), the fair market value of a taxable supply is the consideration (see section 2 definition) that a similar supply would generally fetch if that supply were freely offered and made on the same day in Republica. A supply only qualifies as a similar supply if it is made between persons who were not related persons as defined in section 4.

Under section 3(3), a supply is a similar supply if it is identical to, or closely or substantially resembles the supply. This is determined by having regard to the characteristics, quality, quantity supplied, place of supply, functional components, and reputation of, and materials comprising, the goods or services that are the subject of the taxable supply. The similar supply may be made by the same person who made the taxable supply or by another person.

Where there is no similar supply to the taxable supply so that the section 3(1) definition cannot apply (for example, the goods are unique goods that are only sold by the taxable person to related persons), section 3(2) empowers the Commissioner to determine the fair market value of the supply having regard to all of the facts and circumstances of the supply.

4. Related Persons

This section provides a definition of related persons. The concept of a related

person has significance in a variety of contexts. For example, the consideration charged in a transaction between related persons is not necessarily respected as the fair market value of the supply. See section 3(1).

Related persons is defined in broad and general terms in section 4. The intention with this definition is to treat as related persons those who consort together. Both parties are treated as related persons. It is not necessary for directions, requests, suggestions, or wishes to be communicated between persons for them to be related persons, as related persons often have implicit understanding of each other's wishes and, therefore, do not need to communicate formally.

The definition of "related persons" treats the following as related persons -

A natural person and any relative of the natural person (paragraph (a)). "Relative" is defined in section 2. The following are treated as relatives of a natural person -

- (a) a spouse of the natural person; or
- (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild, or adopted child of that person or his or her spouse; or
- (c) any spouse of a person referred to in (b); or
- (d) the adopter of an adopted child referred to in (b).

Under the definition of "relative", an adopted child of a natural person is treated as related to the natural person in the first degree of consanguinity.

A natural person and any trust in respect of which the natural person or any relative of the natural person (see above) is or may be a beneficiary (paragraph (b)). "Trust" is defined in section 2 by reference to the broad definition of "trustee" in section 2. By virtue of the definition of trustee, a deceased estate is treated as a trust for the purposes of the Act. The reference to a relative who "may be a beneficiary" is intended to cover a relative who is a potential beneficiary under a discretionary or contingent trust.

A partnership and any 25% or greater partner in the partnership (paragraph (c)). For this purpose, holdings of persons who are related to the partner or holdings that are indirectly owned by the partner or the related person are taken into account.

An unincorporated association or body, or a private company and any member of the association, body or corporation (paragraph (c)) who holds a 25% interest (taking into account both holdings of related persons and indirect holdings). "Private company" takes its meaning from the *Income Tax Act*. In determining whether a person satisfies the control threshold, it is provided that the interests of the person may be aggregated with the interests of any related person (under the definition), and the interests of a person may be traced through one or more interposed companies, partnerships or trusts.

An incorporated company (other than a private company) and any person (other

than an incorporated company) who directly or indirectly controls 25% or more of the voting power of the company or the rights to distributions of capital or profits of the company (paragraph (d)). See above for the determination of when a person satisfies the control threshold.

An incorporated company (other than a private company) and another incorporated company where the same person directly or indirectly controls 25% or more of the voting power, or the rights to distributions of capital or profits of both companies (paragraph (e)). See above for the determination of when a person satisfies the control threshold. Any person who is a related person (under the definition) in relation to the second-mentioned company is also a related person with the first-mentioned company.

The application of paragraph (d) of the definition may be illustrated by the following example -

X (Pty) Ltd is a taxable person that makes supplies to Y (Pty) Ltd. A is the beneficial owner of all the shares in X (Pty) Ltd and the B Trust is the owner of all the shares in Y (Pty) Ltd. A is the sole beneficiary under the B Trust. The issue is whether X (Pty) Ltd and Y (Pty) Ltd are related persons.

B Trust and A are related persons under paragraph (b) (A, together with B Trust is the beneficial owner of 100% of the shares in both X (Pty) Ltd and Y (Pty) Ltd). Therefore, X and Y are related persons because the same persons control them (paragraph (e)).

Assume, instead, that the beneficiary under the B Trust is A's spouse (C). The result would be the same, since A would be a related person to B Trust in this case as well.

5. Taxable Activity

This section defines "taxable activity" for the purposes of the Act. The concept of a taxable activity is primarily relevant to the determination of those supplies that are subject to VAT. Section 6(1)(a) imposes VAT on every taxable supply. "Taxable supply" is defined in section 2 to mean any supply of goods or services in Republica in the course or furtherance of a taxable activity, other than an exempt supply. Thus, only supplies in the course or furtherance of a taxable activity are subject to VAT and, therefore, transactions that are not part of a taxable activity may be beyond the scope of the tax. Many of the rules in the Act depend on the determination that an activity is a taxable activity, including the rules governing registration in section 8. Mandatory registration applies only to persons engaged in a taxable activity (section 8(1)), and registration may be cancelled if a taxable activity ceases (section 10).

Subsection (1) sets out the definition of "taxable activity". Two types of activities are expressly included as taxable activities. Paragraph (a) provides that an activity carried on continuously or regularly by any person wholly or partly in Republica that involves or is intended to involve the supply of taxable goods or services to a person for consideration is a taxable activity. For example, a traveling music group that performs in concert in Republica is conducting an activity partly in Republica. An activity may be a taxable activity within paragraph (a), whether or not it is carried on for pecuniary profit.

Paragraph (b) provides that an activity of a local authority (see section 2), or an unincorporated association or body that involves the supply of taxable goods or services for consideration is a taxable activity. This is the case regardless of whether the activity is carried on continuously or regularly.

In both cases, a taxable activity involves the making of taxable supplies of goods or services for consideration. Subsection (4) provides that a supply is made for consideration if the supplier receives payment for the supply in money or in kind from the recipient of the supply or from any other person. A supply is made for consideration, whether the supplier receives the payment directly or indirectly.

Subsection (5) treats certain supplies as having been made for consideration, whether or not any actual consideration has been provided. Paragraph (a) treats a supply made between related persons (section 4) as a supply for consideration, even if there is no consideration paid for the supply. Paragraph (b) treats a supply of goods for use as trade samples as a supply for consideration. Paragraph (c) deals with events that are treated as supplies under section 11(4), notwithstanding that there is no change in ownership or possession of goods, or provision of services to another person. The events covered by paragraph (c) are: a change in the use of goods or services previously used in a taxable activity, or an application of goods to a person's own use or for the use of an employee for personal use. In each case, paragraph (c) treats the supply as having been made for consideration.

Subsection (2) specifies three activities that are not taxable activities. First, paragraph (a) provides that an activity carried on by a natural person essentially as a private recreational pursuit or hobby is not a taxable activity. For example, artistic painting or marathon running by an individual is not a taxable activity if conducted as a private recreational pursuit or hobby.

Secondly, paragraph (a) also provides that any activity carried on by a person, other than a natural person, which would, if carried on by a natural person, be carried on essentially as a private recreational pursuit or hobby is not a taxable activity. Thus, a natural person cannot turn a recreational pursuit or hobby into a taxable activity by conducting the hobby through a company (or other entity). **It is possible to delete this part of the rule under paragraph (a) if the possible abuse is not considered significant or if the assumption is that an activity conducted through a company (or other entity) always constitutes a business for VAT purposes.**

Thirdly, paragraph (b) provides that an activity to the extent that it involves the making of exempt supplies (see section 19 and Schedule II, paragraph 2) is not a taxable activity. The words "to the extent" contemplate apportionment of an activity. It is only that part of the activity that involves the making of exempt supplies that is excluded from the definition of taxable activity. It is for this reason that exempt supplies are not subject to tax, and the supplier is denied input tax credits for tax paid on acquisitions used in making the exempt supplies (see sections 28(6) and (8)).

In the absence of a statutory rule, it may not be clear if an activity conducted when a taxable activity is commenced or terminated is part of the taxable activity. Subsection (3) specifically provides that any such activity is treated as carried out in the course or furtherance of the taxable activity.

6. Charge to Tax

The purpose of this section is to impose VAT on two categories of transaction: taxable supplies; and imports of goods. The section introduces two key concepts contained in the legislation: namely, taxable supply, and import.

Paragraph (a) imposes tax on every taxable supply. A "taxable supply" is defined in section 2 as a supply of goods or services for consideration in Republica, other than an exempt supply, made as part of the person's taxable activities. A taxable supply by a taxable person is taxable only if the supply takes place in Republica. In other words, the transaction must be within Republica's jurisdiction to tax. Sections 17 and 18 provide rules to determine if a supply takes place in Republica. Supplies outside Republica are beyond the scope of the VAT. Sections 11 and 12 define a supply of goods and a supply of services, and section 5 defines a taxable activity. A taxable supply can only be made by a "taxable person." According to the section 2 definition, a taxable person is a person who is, or is required to be, registered under section 8. The requirement that the supply be made by a taxable person means that supplies made by persons who are not taxable persons are outside the charge to tax.

According to the definition of a taxable supply, there are two situations in which a supply by a taxable person is not a taxable supply. A taxable supply does not include an "exempt supply" (see section 19), or a supply not made for consideration as part of the person's taxable activities. The second situation, covering transactions that are not within the scope of the taxable person's taxable activities (such as the purchase and consumption of personal goods), are outside the charge to tax. If a person converts business goods to personal use (see section 11(4)), a taxable supply is deemed to occur.

Paragraph (b) taxes every import of goods other than an import that is exempt under section 20 if supplied in Republica. "Import" is defined in section 2 as an item that a person brings or causes to be brought into Republica from a foreign country or place. This definition is consistent with the definition of import in the [Customs legislation]. No tax is charged on an exempt import. This is defined in section 20. An import is an exempt import if the goods imported are exempt from customs duty or, if the goods had been supplied in Republica, the supply would be an exempt supply. For this purpose, a supply of a going business under Schedule II, paragraph 1(k) is not considered an exempt supply.

Some countries that zero rate some domestic sales of goods extend zero rating to imports of many of these goods which would be zero rated if sold domestically. There is no such provision in the Act because there is no zero rating of items that may be imported.

7. Persons Liable to Pay Tax

The purpose of this section is to identify the person who is obliged to pay to the Commissioner the VAT chargeable on a taxable transaction. In the case of a taxable supply, it is the taxable person making the supply who is obliged to pay the tax. Taxable person is defined in section 2. The tax on taxable supplies is collected on a monthly return basis (see sections 31 and 39).

In the case of an import of goods, it is the importer (see section 2 definition discussed above) who is liable to pay the tax. The tax must be paid at the time of the import regardless of whether the importer is also a taxable person (see sections 16 and 39 (1)(c)).

8. Registration

This section identifies those persons who are required to apply for registration for the purposes of VAT. By virtue of the section 2 definition of a taxable person, such persons are taxable persons. Section 8 provides for both mandatory and voluntary registration. The mechanics of registration are set out in section 9.

It is mandatory for three classes of persons to apply for registration. First, under section 8(1)(a), a person who is not already a registered person is required to apply to be registered within 20 days of the end of any period of [three or fewer months] if taxable supplies by that person for that period exceeded the registration threshold. The test in section 8(1)(a) is a continuing test. Businesses need to calculate the value of total taxable supplies at the end of each month to check whether they are required to apply for registration. Consequently, persons who are not registered must keep the level of their taxable activities under continuous review.

Secondly, under section 8(1)(b), a person who is not already registered is required to apply to be registered at the beginning of any period of [three months] where there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed the registration threshold. This is primarily aimed at new businesses, although it will also apply to expanding businesses.

For both the above cases of mandatory registration, the registration threshold is set out in section 8(2). It is tested by reference to the value of total taxable supplies made, or reasonably expected to be made, by the person during the relevant three-month period. The rules in Part VI of the Act apply in calculating the value of taxable supplies in order to determine whether the registration threshold is exceeded.

The registration threshold is tested by reference to the “taxable supplies” made, or reasonably to be expected to be made, by a person during the relevant [three-month] period. It is only the taxable supplies of the person that are taken into account in determining whether the registration threshold is exceeded. Consequently, supplies that—

- (1) are not made for consideration as part of the person’s taxable activities; or
- (2) are exempt supplies within section 19,

are not taken into account. This means, for example, that a person conducting a business which largely involves making exempt supplies may not be required to apply for registration.

The registration threshold is determined by reference to the total taxable supplies made by the person. This means that all taxable supplies made by the person must be taken into account even if those supplies relate to different business activities undertaken by the person.

The third kind of person required to apply for registration is the State or a local authority or body that carries on taxable activities. Section 8(4). Such a person is required to apply for registration at the date of commencement of those activities. As to what constitutes taxable activities, see section 5. The requirement to apply for registration under section 8(4) is not subject to the registration threshold applicable under section 8(1).

Some nations also require auctioneers to register and collect tax as seller, regardless of the level of taxable supplies.

Section 8(3) provides for voluntary applications for registration. A person who is not required by section 8(1) to apply for registration and who is supplying goods or services (including exempt supplies) for consideration as part of the taxable activities of the person may apply to be registered. Broadly, this means that a person who is not undertaking taxable activities or who is undertaking such activities but who is not supplying taxable goods or services for consideration as part of those activities, may not apply for registration.

A person who fails to apply for registration as required by section 8(1) or (4) is guilty of an offense under section 57 or, alternatively, is liable for penal tax under section 71. See section 76(3).

9. Requirements for Registration

This section sets out the mechanics of registration. Section 9(1) provides that a person who is required under section 8 to apply for registration must do so on the form approved by the Commissioner for this purpose. Further, the applicant must provide any further information that the Commissioner may require.

Under section 9(2), the Commissioner is obliged to register a person who has applied for registration unless the Commissioner is satisfied that the person is not eligible to be registered for the purposes of the Act. A person is not eligible to be registered if the person is not required (section 8(1) or (4)) or permitted (section 8(3)) to make an application for registration. Broadly, this means that the Commissioner shall refuse to register a person who is not undertaking taxable activities or who is undertaking such activities but who is not supplying taxable goods or services for consideration as part of those activities.

In the case of a voluntary application under section 8(3), section 9(2) provides for additional grounds upon which the Commissioner may refuse to register the person. These grounds are set out in paragraphs (a) and (b) of section 9(2) and do not apply to an application by a person who is required to apply for registration under section 8(1) or (4). The Commissioner may refuse to register a person who has applied under section 8(3) if the person has no fixed place of abode or business, or the Commissioner has reasonable grounds to believe that the person will not keep proper records, or will not submit regular and reliable tax returns.

Where the Commissioner decides not to register a person under section 9(2), section 9(7) obliges the Commissioner to serve a notice in writing on the person of that decision within 14 days of making the decision. Section 80 sets out the requirements as

to service of notices under the Act. A person who has been refused registration may challenge that decision. Under section 9(8), however, such a person may only challenge the decision through the objection and appeal procedure in Division II of Part VIII.

The Commissioner is obliged under section 9(4) to issue a certificate of registration to a registered person. The certificate shall contain the particulars specified in section 9(4). The certificate is evidence that a person is registered and, therefore, is subject to the requirements and entitlements of the Act.

Section 9(3) specifies the date upon which registration is effective. For mandatory applications under section 8(1) or (4), registration takes effect from the beginning of the calendar month immediately following the month in which the obligation to apply for registration arose. For example, if a person is obliged under section 8(1)(a) to apply for registration by 20 July, then the resulting registration takes effect from 1 August.

For voluntary registrations under section 8(3), registration takes effect from the beginning of the calendar month immediately following the month in which the application for registration was made. For example, if a person applied for registration under section 8(3) on 15 July, then the resulting registration takes effect from 1 August.

Section 9(5) obliges the Commissioner to establish and maintain a register containing the relevant details of all registered persons. The relevant details are those details specified on the certificate of registration and such other details as the Commissioner may consider as necessary.

As section 2 defines a taxable person to include a person who is required to apply for registration whether or not the person has done so, section 9(6) permits the Commissioner to register a person who is required to apply for registration under section 8 even though the person has not made an application. The Commissioner is obliged under section 9(7) to serve a notice in writing of a decision to register the person under section 9(2) or (6). Under section 9(8), a person dissatisfied with a decision to register the person under section 9(2) or (6) may challenge the decision only through the objection and appeal procedure in Division II of Part VIII.

Section 9(9) obliges a taxable person to notify the Commissioner in writing of any change in the name, address, or principal taxable activities of the person; or of the name and address from which the person conducts taxable activities; or of any change in circumstances whereby the person temporarily closes or temporarily ceases to operate, but does not cease to make taxable supplies within the meaning of section 10(1).

10. Cancellation of Registration

This section provides the necessary authority for the registration of a taxable person to be canceled in appropriate cases at the application of the person or the instigation of the Commissioner.

Section 10(1) obliges a taxable person in specified circumstances to apply in writing to have the person's registration canceled. The application for cancellation must be made within fourteen days of the following events. If the taxable person is a local authority or body, the person must apply for cancellation if the person ceases to engage in taxable activities. For other taxable persons, the person must apply for cancellation if

the person ceases to make taxable supplies. An application for cancellation under section 10(1) is mandatory. Failure to make such an application is an offense under section 57.

Section 10(2) permits a taxable person, other than a local authority or body, who is making taxable supplies but at a level below the registration threshold for the most recent three-month period (see section 8(1)) to apply in writing to have the person's registration canceled. This applies to both a person who previously made supplies at a level in excess of the registration threshold and a person who voluntarily applied for registration. In the latter case, section 10(3) provides that an application under section 10(2) may not be made until after two years from the date of registration. This is intended to prevent a person who voluntarily applies for registration under section 8(3) from being registered for a short period to secure repayment of tax credits (for example, in respect of purchases of large capital goods) without any intention of remaining registered for any extended period.

Section 10(4) obliges the Commissioner to cancel the registration of a taxable person if the person has properly applied for cancellation of registration under section 10(1) or (2). Although no application has been made under section 10(1) or (2), under section 10(5), the Commissioner must cancel a person's registration if the Commissioner is satisfied that the person is neither required nor entitled to apply for registration under section 8. For example, this section 10(5) rule applies if a taxable person dies or ceases to exist. In such a case, an application under section 10(1) will prove impossible.

Section 10(6) gives the Commissioner discretion to cancel the registration of a person who is not required to apply for registration under section 8. This discretion is limited to situations in which the person has no fixed place of abode or business, the business has not kept adequate records, or the person has not submitted required returns properly. These circumstances are like those that justify the Commissioner refusing to register a person who has voluntarily applied for registration as set out in section 9(2)(a) and (b).

Section 10(7) obliges the Commissioner to notify a taxable person in writing of a decision to cancel or refuse to cancel the person's registration under this section. The notice must be served within fourteen days of making the decision. Section 80 covers the service of notice requirements.

When a registration is canceled, section 10(9) obliges the Commissioner to remove the person's name and other details from the register required to be maintained under section 9(5). A person dissatisfied with a decision to cancel or refuse to cancel the person's registration may challenge that decision. Under section 10(10), however, such a person may challenge the decision only through the objection and appeal procedure in Division II of Part VIII.

Section 10(8) provides that the cancellation of registration generally takes effect at the end of the tax period [a calendar month] in which the registration is canceled. The Commissioner has the discretion to order the cancellation to take effect at an earlier date. For example, the Commissioner may cancel registration immediately for a person engaged in fraud or evasion of the tax.

A taxable person may have tax-paid goods on hand (including capital goods such as plant and equipment) at the date that the registration is canceled, and may have

claimed an input credit with respect to such goods. Under section 10(11), a taxable person whose registration has been canceled is treated as having made a taxable supply in Republica of all goods on hand (including capital goods) at the date that the registration is canceled. This deemed supply applies only with respect to goods for which an input tax credit was claimed. In the absence of section 10(11), section 6(a) would not apply as there is no supply of goods or services as defined in sections 11 and 12; in particular, there is no disposition of any goods as owner on cancellation of registration. Section 10(11) treats the taxable supply as having been made for the fair market value of the goods at the date that the registration is canceled. The output tax payable in respect of the section 10(11) taxable supply is to be accounted for in the taxable person's final return -- the return for the month in which the person's registration is canceled. If the taxable person acquired the goods for use in making taxable and exempt supplies, section 28(8) denies credit for the input tax attributable to the portion of the purchase used in making exempt supplies. **One option is to tax only the portion of the goods on hand, such as inventory, that were used in making taxable supplies. That option complicates the administration and compliance costs and is not included in the Act.**

Section 10(12) makes it clear that the cancellation of a person's registration does not affect the person's obligations and liabilities arising while the person was still a taxable person.

11. Supply of Goods

This section defines a supply of goods. This term is part of the definition of a taxable supply under section 2. A taxable supply is a supply of goods or services in Republica (other than an exempt supply) for consideration as part of a person's taxable activities.

Supply of goods is defined to mean a transfer of the right to dispose of tangible property as owner, including an agreement of sale and purchase. This will cover a transaction where the owner parts with possession of the goods but retains title until some later event. For example, sale of goods by instalments under an arrangement whereby the purchaser is given possession of the goods but title is not to pass until each instalment has been paid is a supply of goods. This will also cover a sale of goods where there is a retention of title section in the agreement of sale (that is, the purchaser has possession but title in the goods is not to pass until the whole of the price is paid). The definition expressly includes an agreement of sale and purchase, whereby the owner of the goods transfers the general property in the goods to another person. This will be the most common form of supply of goods. The definition does not include the grant of the use or right to use any goods. Leases of property therefore are treated as supplies of services. **For an example of the treatment of leases as supplies of goods, see Vatopia VAT Act, section 4(1)(a).**

A lay-by sale is a supply of goods. Possession is retained by the seller only until the full price is paid. At that time, the supplier will transfer ownership to the purchaser.

A supply of goods will cover other situations where there is a change in the ownership of the goods. For example, an exchange of goods whereby the price of each is set off against the value of the goods exchanged, or where goods are to be paid for partly in money and partly by other goods, such as a trade-in of a motor vehicle, is a supply of

goods. Similarly, a barter transaction under which there is an exchange of goods without any reference to monetary value is a supply of goods. It is not necessary for there to be consideration for an arrangement to be a supply of goods, but a supply without consideration is not a taxable supply within the section 2 definition. For example, a gift of goods to another person whether a related person or customer is a supply of those goods.

A supply of goods will include the hire of goods under a hire purchase agreement. Such an agreement is not an agreement for sale or purchase as the hirer does not agree to purchase the goods, rather the hirer has an option to purchase. Similarly, a lease of goods under a finance lease is a supply of goods. Finance lease is defined in section 2. While there may be some overlap between a hire purchase agreement and a finance lease, the concept of a finance lease is broader than a hire purchase agreement as it covers any lease of goods which is in substance a sale of the goods because the lease term covers substantially all of the expected life of the goods leased, there is an option to purchase, or the estimated residual value of the goods is negligible. Special rules are provided for determining the time of supply (section 15) and taxable value (section 21) of a supply of goods under a hire purchase agreement or finance lease. The broad effect of these rules is to treat such a supply as the equivalent of a sale of the goods.

There are a number of transactions that are not supplies of goods, even if possession of the goods is transferred. For example, the transfer of goods as security for a loan is not a supply of goods if the pledgee does not have the right to sell or otherwise exercise ownership over the goods unless the pledgor defaults on the loan. Likewise, a transfer of goods on consignment or similar terms is not a supply of goods if the consignee does not have any legal obligation to pay for the goods that he does not sell and can return some or all of the goods to the consignor.

Section 11(2) treats a supply of thermal or electrical energy, heating, gas, refrigeration, air conditioning, or water as a supply of goods. While thermal or electrical energy, heating, gas, refrigeration, air conditioning, or water is expressly included within the definition of the goods, by virtue of the nature of those goods, the general rule in section 11(1) may not apply to the provision of those goods; hence the need for the special rule in section 11(2).

Section 11(3) provides that a supply of goods for consideration consisting of either goods or services is a supply of goods.

Section 11(4) treats the change in the use of goods or services as a supply of the goods or services. This rule covers the application of goods to own use. It also treats the provision of goods or services to an employee for personal use as a supply of those goods or services. A special rule is needed in this case because an application to own use may not involve any disposition of the property. An application to own use is defined in section 2.

While the definition of supply of goods in section 11 is drafted broadly, a supply of goods is taxable under section 6 only if it is a taxable supply under section 2 -- a supply of goods for consideration in Republica as part of the person's taxable activities that is not an exempt supply.

12. Supply of Services

This section defines a supply of services. This is also a key definition because it provides the foundation for determining whether there has been a taxable supply. Taxable supply is defined in section 2 to include a supply of services for consideration (other than an exempt supply) in Republica as part of the person's taxable activities.

Supply of services is defined broadly in section 12(1) to mean any supply which is not a supply of goods or money. This is consistent with the approach to the definitions of "goods" and "services" in section 2. In broad terms, the intention is that anything that adds value that is not a supply of goods is a supply of services. Consequently, like the definitions of "goods" and "services", the definitions of supply of goods and supply of services are intended to be mutually exclusive but jointly exhaustive of all types of supply.

The section 12(1) concept of a supply of services includes the performance of services for another person -- the most common form of supply of services. The definition also includes the making available of any facility or advantage. It covers the refraining from an activity, such as a covenant not to compete. Section 12(1) is not in any way intended to limit the generality of the test of supply of services stated in that section.

Section 12(1)(b) defines a supply of services as including a lease or rental of goods. Consequently, the rules relating to time of supply, place of supply, and taxable value applicable to the supply of services apply to leases. A finance lease is treated as a supply of goods and does not come within this provision.

Section 12(2) provides a special rule for supplies of services by employees (that is, individuals under contracts of employment to others). The service provided by an employee for an employer as part of the employee's employment is not a supply of services. These services therefore are not taxable services rendered by employees.

Section 12(3) provides that a supply of services for consideration consisting of either goods or services is a supply of services.

13. Mixed Supplies

This section provides rules for dealing with mixed supplies; that is, where goods and services are supplied together for a single consideration. The rules in this section apply in priority to the general rules in sections 11 and 12 because the rules in those sections are expressed to apply unless otherwise provided for under the Act. The case of mixed supplies, therefore, is an example of where provision is otherwise made under the Act.

Sections 13(1)(a) and (13)(1)(b) provide two opposite rules for dealing with a mixed supply of goods and services. In each case, if the supply is mainly of one kind, so that the supply of the other kind is incidental, then the supply is regarded as being only of that first kind. For example, the sale and installation of substantial capital equipment will involve both a supply of goods (the equipment) and a supply of services (the installation of the equipment). Where the installation is incidental to the supply of goods, the whole transaction is regarded as a supply of goods for the purposes of the Act.

Section 13(1)(c) provides a similar rule in relation to the import of goods. Where a supply of services is made that is incidental to the import of goods, the supply of services

is treated as part of the import of goods. Section 23(c) ensures that the value of imported goods includes the value of incidental services to which section 13(1)(c) applies.

The Minister is empowered to issue regulations that treat certain mixed supplies as either a supply of goods or a supply of services. Section 13(2).

14. Supply by Agent

Section 14 deals with supplies made through an agent. Where a person (referred to as the “principal”) makes a supply of goods or services through an agent to another person, the supply is made not by the agent but by the principal. Where an agent is used, therefore, the principal and not the agent must account for VAT on any taxable supplies the principal makes through the agent. Whether in a particular case an intermediary is an agent will depend on the precise legal nature of the contract between the persons involved.

This rule only applies to a supply of goods or services and not to an import of goods where an agent may be liable to account for VAT on the import (see section 7(b), and the definition of “importer” in section 2).

An agent will generally be entitled to a fee or commission for the services rendered to the principal. Section 14(2) makes it clear that the rule in section 14(1) does not apply to the services supplied by the agent to the agent's principal. Consequently, the agent is liable to account for VAT in respect of fees and commissions received for the supply of such taxable agency services.

VAT regimes may include rules governing other specific situations where there are sales by agents. For example, this section could be expanded to treat a supply of goods by auction as a supply by the auctioneer in connection with the auctioneer’s taxable activity.

15. Time of Supply

This section provides rules to determine when a supply of goods or services occurs. The time of supply dictates other consequences, such as when a tax invoice covering a supply must be issued (section 29), when input tax can be claimed as a credit (section 28), and when the fair market value of a supply is to be determined under section 21(2). These rules may govern when tax is payable (section 39(1)(d)). Sections 25 and 26 explain how a taxable person calculates net tax due for each tax period under the cash and accrual methods.

Section 15(1) provides the general rules for determining the time of supply. A supply of goods occurs at the earliest of the date the goods are delivered or made available, the date payment for the goods is received, or the date the invoice is issued. A supply of services occurs at the earliest of the date on which the performance of the service is completed, the date payment is received, or the date the invoice covering the services is issued. The supplier possesses the information necessary to determine when each of these events occur.

Under section 15(2), if goods are applied to a different use, including application to own use or to an employee for personal use, the supply occurs on the date the goods

are first applied to a different use. For services, the supply also occurs when the services are first applied to a different use. Under section 15(3), a gift of goods or services occurs on the date when ownership in the goods passes or the performance of the services is completed. In both cases, the person making the supply must keep a record of the date on which the supply occurred (section 15(7)).

Section 15(4) provides that a supply of goods under a hire purchase or a finance lease occurs on the date of commencement of the agreement or lease. These transactions are treated like sales transactions; that is, output tax on the supply must be accounted for in the tax period in which agreement or lease commenced.

Section 15(5) provides a special timing rule for rental agreements and for continuous supplies under which periodic payments are required. A supply of goods under a rental agreement is any agreement for letting of goods other than a hire purchase agreement or finance lease—section 15(8). A supply of goods or services on a continuous basis includes a supply of electricity or the supply of consulting services. In both situations, what would otherwise be a single supply (or an infinite number of supplies) is treated as a series of separate successive supplies with the time of each supply determined by reference to the date on which payment for the supply is due or received.

If a supply is paid for by installments, section 15(6) provides that each installment is treated as a separate supply. Each supply occurs on the earlier of the date on which the installment is due or received. This rule does not apply to a supply to which section 15(4) applies (hire purchase agreements and finance leases) or to which section 15(5) applies (rental agreements or continuous supplies).

16. Time of Imports

Section 6(b) imposes tax on the import of goods. This section provides a timing rule governing the imports of goods. The time of import is important in determining when tax on an import is payable (see section 39(1)(c)). If the importer is a taxable person, the time of import may govern when the importer can claim a credit for the VAT paid on import (see section 28).

The time of import depends on whether customs duty is payable on the import. If customs duty is payable, then the time of the import is the date on which the customs duty is payable. If no duty is payable, the time of the import is the date on which the goods are brought into Republica (generally the date on which the goods physically cross the border).

If goods are placed in a bonded warehouse before they enter the country for VAT purposes, the imports generally are not taxed until they are removed from the warehouse. This is the result under most VATs. For the value of an import that is not taxed until removed from a bonded warehouse, see section 23.

17. Place of Supply of Goods

This section and section 18 provide rules to locate a supply. These rules are necessary to determine whether a supply comes within Republica's jurisdiction to tax. Under sections 6(a) and the section 2 definition of a taxable supply, it is only taxable

supplies made "in Republica" that are subject to tax.

Section 17(1) states the general "place" or "location" rules that apply to a supply of goods. The intention is to locate the supply where the goods are delivered or otherwise made available. If the supply involves the transportation of the goods, the supply occurs where the transportation commences. In the case of international supplies, the supply occurs at the place of export. In other words, an export of goods from Republica is treated as a supply in Republica. An export by a taxable person generally is a taxable supply subject to a zero tax rate (see section 24(3), and Schedule III, section 1(a). A taxable export supply is subject to tax, and the taxable person making the supply can claim an input tax credit with respect to purchases attributable to the export (see section 28).

Section 17(2) covers the supply of certain goods, namely thermal or electrical energy, heating, gas, refrigeration, air conditioning, and water (see section 2 definition of goods and section 11(2)). The location of the supply of these goods is the place where the supply is received.

18. Place of Supply of Services

Section 18 tackles the difficult problem of establishing rules to locate the supply of services. Services pose special problems because many services cannot be physically identified and elements of a single service may have connections with a number of countries. For example, an architect in London may prepare drawings for a structure to be built in Republica by a corporation with a home office in the United States. To prepare these drawings, employees from the London office may have to travel to Republica to perform some tasks there.

Section 18(1) adopts the general rule that a supply of services takes place at the supplier's place of business from which the service is supplied.

Section 18(2) links the place of supply for enumerated services to the location where the recipient of the services uses or obtains the advantage of the services. These services involve

- (1) the transfer or assignment of a copyright, patent, license, trademark, or similar intellectual property,
- (2) professional services of a consultant, engineer, lawyer, architect or accountant, as well as data processing and other information services,
- (3) advertising services,
- (4) an agreement not to pursue or exercise taxable activity, employment, or a right described in this subsection,
- (5) supply of personnel (such as temporary workers),
- (6) an agent's services for the principal in obtaining services described in this subsection, and

(7) leasing movable property, other than transport property.

Section 18(3) provides that cultural, artistic, sporting, education or similar activities, or services associated with movable goods takes place where the service is physically carried out. This rule does not apply to services described in section 18(2).

Section 18(4) provides that a supply of services in connection with immovable property takes place where the property is located. This provision does not apply to services described in section 18(2).

Section 18(5) provides a special rule for supplies of, or incidental to, transport. Such services are located at the place where the transportation occurs. This provision does not apply to services described in section 18(2). While international transport is zero-rated (see section 24(3) and Schedule III, section 3), the taxable person making the supply may be entitled to a credit for input tax paid in respect of the supply and, therefore, it is necessary to have a location rule. Services independent of the transport are not covered by this rule. For example, if an airline provides ground transportation as part of the cost of the plane ticket, the ground transportation is not considered a part of the supply of zero-rated international transport.

Section 18(6) provides a special rule covering exported services subject to a zero tax rate under section 24(3) and Schedule III. This section locates the supply of such services in Republica to make them taxable supplies under sections 6(a) and the section 2 definition of a taxable supply, eligible for zero rating.

19. Exempt Supply

Section 19 identifies supplies that are exempt supplies. Under section 19(1), a supply of goods or services is an exempt supply if it is specified in Schedule II. An exempt supply is not a taxable supply (section 2 definition) and, therefore, the supply is not subject to tax. A taxable person cannot claim credit for input tax on purchases or imports related to an exempt supply (see section 28).

Section 1(k) of Schedule II provides that a supply of goods as part of the transfer of a business or part of a business as a going concern by a taxable person to another taxable person is an exempt supply. To qualify for this exemption, section 19(2) requires a notice in writing to be filed with the Commissioner. The notice must be signed by the transferor and transferee and filed within [five] days after the transfer takes place. The notice must include the details of the transfer. This provision is designed to ensure that the parties to the transfer do not take inconsistent tax positions, with one claiming that the transfer is exempt and other claiming that it is taxable. For a discussion of the individual exemptions, see the commentary to Schedule II.

Section 20(3) is an ordering rule. If a supply is both exempt under Schedule II and zero-rated under Schedule III, zero rating takes priority.

20. Exempt Import

This section defines what is an exempt import. The definition is relevant to section 6(b) that charges to tax every import of goods other than an import exempt under this section.

Section 20 provides for two classes of exempt import. First, an import of goods that is exempt from customs duty is an exempt import. This is subject to an exception where the Minister provides otherwise by notice in the Gazette. Secondly, an import of goods is an exempt import if, instead of the transaction being an import it was a domestic supply, then the supply would be an exempt supply under Schedule II other than section 1(k). See the definition of an exempt supply under section 19.

21. Value of a Taxable Supply

This section provides rules for determining the value of a supply of goods or services. The value determined under this section is then used as the basis for determining the tax payable by a taxable person in respect of a taxable supply under section 24. The value of a taxable supply is also relevant in determining whether a person meets the registration threshold in section 8.

Section 21(1) states the general rule that the value of a supply of goods or services is the total consideration for the supply. "Consideration" is defined in section 2 (see the commentary to that definition). Consideration in kind is valued at fair market value at the time of the supply. See section 21(5).

Section 21(2) covers two situations in which the value of the supply is the fair market value of the supply at the time of the supply, exclusive of the tax. The fair market value of a supply is determined in accordance with the rules in section 3. The time of the supply is determined in accordance with the rules in section 15. The two specific kinds of supplies subject to the fair market value rules are:

- (1) a taxable supply of goods under a credit agreement – a hire purchase agreement or finance lease; and
- (2) a taxable supply of goods resulting from a change in the use of the goods under section 11(4).

For an different valuation rule covering the change in the use of goods, see Vatopia VAT Act, section 14(4). There are additional valuation rules covering a variety of other transactions in the Vtopia VAT Act, section 14.

Section 21(3) states a rule of considerable importance, particularly for smaller retailers. If a taxable supply is made without a separate amount of the consideration identified as being a payment of VAT, the value of the supply is the price less the VAT element in the price. In other words, such a supply is treated as having been made on a tax-inclusive basis so that the total amount received is treated as consisting of both the consideration for the supply and the VAT on the supply. The value of the supply is the price reduced by an amount equal to the tax fraction multiplied by the price. The "tax fraction" formula is the percentage tax rate divided by the sum of one plus that tax rate applicable to the supply. Section 21(4). For example, if the tax-inclusive price is 110 republicans and the tax rate is 10 percent, the value of the supply is 100, calculated as $110 \times .10/1.10$.

22. Adjustments

This section deals with a number of situations where the consideration for a taxable supply is subject to some adjustment after the supply is made, thereby resulting in the taxable person incorrectly accounting for output tax in respect of the supply.

Section 22(1) sets out the circumstances where the section is intended to apply. Broadly, the section applies where a taxable, registered person has accounted for an incorrect amount of output tax in respect of a taxable supply either in a tax invoice (see section 29) issued by the person or in the person's return (section 31) for a tax period. See section 22(2). The accounting for an incorrect amount of output tax must be the result of one of the following events (referred to as "adjusting events") having occurred after the supply—

- (1) the supply is cancelled;
- (2) the tax consequences of the supply change because there occurs a fundamental change in the nature of the supply;
- (3) the previously agreed consideration for the supply has been subsequently altered by agreement with the recipient of the supply, whether due to an offer of a discount or any other reason; or
- (4) the goods or services or part thereof have been returned to the supplier.

It is noted that (3) is only intended to apply to discounts or rebates that are accounted for after the supply has occurred. A discount that is allowed and accounted for at the time of the supply is taken into account in determining the consideration for the supply (see section 2 definition of consideration).

Where output tax has been incorrectly accounted for as a result of the occurrence of one of the events stated above, section 22(3) obliges the taxable, registered person making the supply to make an adjustment as specified in section 22(4) or (5).

Section 22(4) applies where the output tax properly chargeable in respect of the supply (i.e. having regard to the adjustment event) exceeds the output tax that has actually been charged in respect of the supply. In other words, section 22(4) applies where output tax has been undercharged in respect of the supply. In this case, the amount of the excess is treated as output tax charged in respect of a taxable supply made by the taxable person in the tax period in which the relevant event giving rise to the adjustment occurred. As such it must be included in the taxable person's return for that period.

Where section 22(4) applies and the taxable person has provided a tax invoice to the recipient of the supply, the taxable person is obliged to provide the recipient of the supply with a debit note as specified in section 30(2). A taxable person who fails to provide a debit note as required by section 30(2) is guilty of an offense under section 58.

Section 22(5) applies where the output tax actually charged in respect of the supply exceeds the output tax properly chargeable (i.e. having regard to the adjustment event). In other words, output tax has been overcharged. In this case, the amount of the excess is allowed as a credit to the taxable person making the supply. The credit is allowed in the tax period in which the event giving rise to the credit occurred and the

credit is treated for purposes of the Act as an input tax credit (section 22(6)).

Where section 22(5) applies and the taxable person has provided a tax invoice to the recipient of the supply, the taxable person is obliged to provide the recipient of the supply with a credit note as specified in section 30(1). A taxable person who fails to provide a credit note as required by section 30(1) is guilty of an offense under section 58.

Section 22(5) does not apply where the recipient of the supply is a person who is not a registered person unless the amount of the excess input tax has been repaid to the recipient of the supply. This rule in section 22(7) will apply, for example, to retail sales made by a taxable person to a consumer. This rule is necessary to prevent a taxable person from both recovering the excess tax in the price of the goods and receiving a credit for the excess tax.

23. Value of Imports

This section provides for the determination of the value of an import of goods. The value determined under this section is then used as the basis for determining the VAT payable on the import (section 6(b)).

It is the sum of—

- (1) the value of the goods ascertained for the purposes of customs duty under the [Customs Law];
- (2) the amount of the customs duty, excise tax, or any other fiscal charge (other than VAT) payable on those goods as a result of the import; and
- (3) the value of any services incidental to the import that are treated by section 13(1)(c) as part of the import and which has not been included in the value of the goods for the purposes of customs duty under (1). **This provision may be omitted where the customs valuation is CIF.**

24. Calculation of Tax Payable on a Taxable Transaction

This section provides for the calculation of the tax payable in respect of each individual taxable transaction. By virtue of the section 2 definition, a “taxable transaction” is a supply of goods in Republica or an import of goods (other than an exempt import) that is subject to tax under section 6 of the Act.

Section 24(1) states the general rule that the tax payable is calculated by applying the rate of tax to the value of the transaction. The rate of tax is provided for in section 24(2) and (3). The value of a taxable supply is determined under section 21 and the value of an import of goods is determined under section 23. In the ordinary case, the value of a taxable supply will be the consideration for the supply exclusive of VAT. For example, assuming that the rate of tax is 10 percent and the value of a taxable supply is 100,000 republicans, then the tax payable in respect of the supply is 10,000 republicans (100,000 republicans x 10 percent).

Sections 24(2) and (3) provide for two rates of tax. Section 24(2) provides for a [] rate of tax; while section 24(3) provides for a zero rate of tax. The zero rate applies to

the taxable supplies specified in Schedule III to the Act (see commentary to that Schedule). As discussed above, the zero-rating of these supplies means that they are subject to the charge to tax in section 6(a) but no tax is collected. Because a zero-rated supply is a taxable supply, the taxable person making the supply is entitled to claim a credit for input tax paid in respect of purchases related to the zero-rated supplies. This may be compared with an exempt supply where a taxable person making the supply is not entitled to claim an input tax credit on purchases related to such supplies (see section 28(6) and (8)).

25. Calculation of Tax Payable by Taxable Person for a Tax Period

This section provides for the basic method of accounting for the tax payable by a taxable person on taxable supplies. This provision is not relevant to imports as the tax payable on an import of goods is paid in all cases at the time of the import (see sections 16 and 39(1)(c)). This is the case regardless of whether the importer is also a taxable person.

The tax payable in respect of taxable supplies is collected on a monthly return basis (see sections 31 and 39). The general rule specified in section 25 is that both VAT and tax credits are accounted for on an “invoice” basis. The tax payable for a month is the sum of the tax payable in respect of taxable supplies made during the month, less the sum of the input credits available to the taxable person for the month.

The total tax payable is determined by reference to the tax payable in respect of taxable supplies made during the period regardless of whether the tax has actually been paid to the taxable person by the recipient of the supply. In other words, the relevant event is the making of the supply and not the receipt of the tax. The main provision that is relevant in determining the tax payable in respect of taxable supplies is section 24. The total tax payable for a month will also include any tax that is treated as payable in that month under section 22(4) (where an adjustment event has occurred) or section 27 (as a result of a change of accounting method).

The total credit allowed to a taxable person in a month is primarily determined under section 28(1). Under this section, credit is allowed for the tax payable in respect of taxable supplies made to the taxable person during the month where the supply is for use in the business of the taxable person. Again the relevant event is the making of the supply to the taxable person rather than the actual payment of the tax. A credit is also allowed under section 22(5) for adjustment events resulting in VAT being overcharged. It is noted that a credit is also allowed for certain imports made by a taxable person, but because the tax is payable at the time of the import, the credit for the tax will always be accounted for on a cash basis.

26. Cash Basis Accounting

This section provides cash basis accounting as an alternative to section 25 for those eligible to use it. The cash method allows taxable persons to defer the reporting of tax on sales until the sales proceeds are received and denies credit for input tax until the tax is paid. The Act does not provide a bad debt adjustment for taxable persons that report on the invoice method under section 25. The cash method avoids this problem because supplies are not reported until payment is received. **For an example of a bad debt adjustment for a person reporting on the invoice method, see Vatopia VAT**

Act, section 25.

Under the EU Sixth VAT Directive, Article 10(1)(b), Member States generally must require taxable persons to account for VAT on the accrual method. Article 27 of the Directive allows Member States to adopt measures to simplify the reporting of VAT, so long as it does not have more than a negligible effect on the "tax due at the final consumption stage." In the United Kingdom, businesses may use the cash method if their annual taxable supplies do not exceed the statutory threshold. There are other variations in Japan and New Zealand.

Section 26(1) allows a taxable person to use the cash method if the person does not elect to use the invoice method under section 25, and if the person's taxable supplies for every preceding three-month period do not exceed twice the registration threshold under section 8(2) []. The use of the cash method is automatic if a business meets the requirements. Once a business has taxable sales exceeding twice the threshold amount, under section 26(1), that business is no longer eligible to use the cash method, even if its taxable sales dip below that level.

A taxable person eligible to use the cash method may make an irrevocable election to use the section 25 invoice method for the current and future periods. Section 26(2). The election must be made on the tax return for any period. Whichever method applies, a taxable person must use that method for determining both the VAT payable on taxable supplies and the tax credits that may be claimed for each tax period. In other words, both VAT and tax credits must be accounted for on the same basis. See section 26(3).

A taxable person that reports on the cash basis calculates tax payable for each tax period as the output tax actually received during the tax period on taxable supplies, less the input tax credit allowed for the period.

27. Consequences of a Change in Accounting Basis

This section regulates changes in accounting basis. In particular, it ensures that VAT is properly accounted for as a result of the change.

Section 27(1) provides that every taxable person whose accounting basis is changed from the cash to invoice basis is liable for VAT in the tax period in which the change occurred.

This change from the cash to the invoice basis may occur if the taxable person elects to use the invoice method. Section 26(2). Under 27(1), the switch to the invoice method triggers the reporting of tax on amounts that would have been due at the time of the change if the taxable person had been using the invoice method then. The taxable person also can claim credit for input tax that would have been creditable at the time of the change if the taxable person had been using the invoice method then. **To facilitate a subsequent audit of the change to the invoice method, the taxable person could be required to provide a list of creditors and debtors on the day preceding the change.**

The tax payable under section 27(1) is the total output tax that would be payable on amounts due to the taxable person at the time of the change if the person accounted

for tax on an invoice basis, less the amount of input tax that would have been credited at that time if the person accounted for credits on an invoice basis. This recognition is necessary because the actual payment of the output tax and input tax credit after the change will not be recognized under the invoice method.

Section 27(2) provides that if the tax resulting from the application of the formula in section 27(1) is a negative amount, then that amount is to be refunded in accordance with section 49(1).

Section 27(3) confirms that the tax due or refundable under this section is in addition to the tax calculated under section 25 for the tax period.

28. Input Tax Credit

This section provides for the claiming of a credit for input tax in relation to taxable supplies to, or imports of goods by, a taxable person.

Sections 28(1)-(3) provide for the circumstances in which an input tax credit may be claimed. Section 28(1) applies if the taxable person is required to account on an invoice basis. In this case, the event giving rise to the credit is the making of the supply to, or the import of goods by, the taxable person (see also section 28(4)(a)). In relation to taxable supplies, it is not relevant whether the input tax has actually been paid by the taxable person receiving the supply.

Section 28(2) applies if the taxable person is required to account on a cash basis. In this case, the event giving rise to the credit is the actual payment of the input tax by the taxable person receiving the supply or importing the goods. In relation to taxable supplies, the actual supplies received during the month are not relevant in determining the amount of input tax credit that may be claimed (see also section 28(4)(b)).

Section 28(3) provides a special rule applicable to a taxable person who has become registered. Such a person is entitled to a credit for input tax paid or payable (depending on the method of accounting) in respect of taxable supplies of goods made to, or import of goods by, the person before becoming registered. The credit is only available for goods that are on hand at the time of registration (i.e., the goods are still owned by the newly-registered taxable person) and that were acquired within six months before becoming registered. Section 28(3) applies to all goods including capital goods, such as plant or equipment.

In each of the cases specified in section 28(1)-(3), a credit is allowed only if the supply or import was for use in the business of the taxable person. No credit is allowed for a taxable supply to, or import of goods by, a taxable person if the supply or import is wholly for the personal use of the person. For purposes of sections 28(1)-(3), the business of the taxable person includes only activity related to the supply of goods or services in Republica or for export, not activity related to foreign operations. See section 28(14) definition of business of the taxable person.

If a taxable supply to, or import of goods by, a taxable person is only partly for business use, section 28(6) provides that the amount of the input tax credit allowed is limited to that part relating to the business use. This would be determined on a prorata basis having regard to the extent of the respective uses. This is subject to the section

28(7) exception denying a credit for input tax on petroleum products, unless those products are entirely for use in the business of the taxable person. The 28(7) disallowance rule for petroleum products not used entirely in the taxable person's business is consistent with the disallowance rule governing passenger automobiles that may be used for partly personal purposes and that is difficult to monitor by audit.

Two further limits on the availability of input tax credits are specified. First, section 28(5) provides that no input tax credit is allowed in respect of two classes of taxable supply or import, namely passenger automobiles (including repair and maintenance thereof and spare parts therefor) and entertainment. An input tax credit is allowed, however, if the taxable person is in the business of dealing in, or hiring of, such automobiles, or is in the business of providing entertainment (for example, a restaurant) or the entertainment is provided to an employee as a fringe benefit. "Entertainment" and "passenger automobile" are defined in section 28(14).

Secondly, under section 28(8), an input tax credit is allowed only to the extent that the tax is on domestic purchases and imports attributable to taxable supplies made by the taxable person. It is only input tax attributable to the business of the taxable person that is taken into account. The basic rule is that if the taxable person only makes taxable supplies, then the input tax credit is wholly allowed. If the taxable person makes partly taxable and partly exempt supplies, then the input tax credit is prorated by reference to the percentage of taxable supplies over total supplies. This is subject to the *de minimis* rule in section 28(9) and (10) and to the discretion in the Commissioner under section 28(11) to determine the amount of the input tax credit on some other basis (for example, by reference to the actual use of the goods or services acquired in making taxable supplies, or by reference to the amount of floor space or payroll).

While the credit arises on the date of supply or import (section 28(1) and (4)), the date of payment of input tax (section 28(2) and (4)), or the date of registration (section 28(3) and (4)), section 28(12) provides that the credit cannot actually be claimed until the tax period in which the taxable person has an original tax invoice (or sometimes a copy under section 29(2)), customs documentation evidencing the input tax paid, or credit note required under section 30(1). Notwithstanding section 28(12), the Commissioner has a discretion under section 28(13) to allow a credit even though the taxable person does not have an original tax invoice. The discretion may only be exercised in the circumstances specified in section 28(13).

29. Tax Invoices

This section provides rules for issuing tax invoices. Section 29(1) obliges a taxable person who is registered (a registered supplier) and who makes a taxable supply to provide the recipient of the supply with an original tax invoice covering the supply. The tax invoice must be provided at the time of the supply as determined under section 15. In other words, a tax invoice generally cannot be given at any time other than the time of the supply. But see sections 28(3) and 29(3). Further, section 29(2) provides that a tax invoice must not be provided to a person in any circumstances other than those specified in section 29(1). A registered supplier may issue a copy of the invoice, marked as such, if requested by the recipient because the original invoice was lost.

If it is desirable to limit the issuance of tax invoices in order to prevent or minimize the fraudulent sale or use by registered persons of invoices issued to

unregistered persons, the statute could limit the power to issue tax invoices to taxable supplies to registered persons. This change will impose increased compliance costs on registered persons who must distinguish between supplies to registered and unregistered persons, and who must issue a different kind of invoice or receipt to the latter.

The taxable person making the supply also must retain one copy of the tax invoice. Section 29(1). Under section 52(3), this copy must be retained by the taxable person making the supply for a period of [six] years after the end of the tax period in which the supply was made. A person who fails to retain a tax invoice as required by sections 29(1) and 52 is guilty of an offence under section 61 or, alternatively, may be liable for a penal tax under section 74.

A tax invoice provides the needed documentary proof to support a claim for an input tax credit (see section 28(12)). Section 29(3)-(5) provides a mechanism whereby a taxable person who has not received a tax invoice or who has become registered may request that their supplier provide them with a tax invoice. The request must be made within [sixty] days after the date of the supply, or [sixty] days of the date of registration. A supplier receiving a request under section 29(4) is obliged under section 29(5) to comply with the request within [fourteen] days after receiving the request.

A tax invoice must contain the particulars specified in section 1 of Schedule IV. Section 29(6).

A person who fails to provide a tax invoice as required by section 29(1) or (5) or provides a tax invoice in circumstances other than those specified in section 29(1) or (5) is guilty of an offence under section 58.

30. Credit and Debit Notes

This section obliges a taxable person to provide a credit or debit note in respect of a taxable supply to which an adjustment has been made under section 22(2)(a). A credit or debit note must contain the particulars specified in section 2 or 3 of Schedule IV.

Section 30(1) applies where a tax invoice has been issued in the circumstances specified in section 22(2)(a) and the amount of output tax shown on the invoice as charged for the supply exceeds the output tax properly chargeable for the supply. Section 30(1) applies to overcharges of VAT. In this case, the taxable person making the supply is obliged to provide the recipient of the supply with a credit note containing the particulars specified in section (2) of Schedule IV. A person who fails to provide a credit note as required under section 30(1) commits an offence under section 58(1), and a person who provides a credit note other than as provided for in section 30 commits an offence under section 58(2).

Section 30(2) applies where a tax invoice has been issued in the circumstances specified in section 22(2)(a) and the amount of the output tax properly chargeable for the supply exceeds the amount of output tax shown on the invoice as charged for the supply.

This section applies to undercharges of VAT. In this case, the taxable person making the supply is obliged to provide the recipient of the supply with a debit note containing the particulars specified in section (3) of Schedule IV. A taxable person who fails to provide a debit note as required under section (3) commits an offence under section 58(1), and a

person who provides a debit note other than as provided for in section 30 commits an offence under section 58(2).

31. Returns

This section provides for the filing of monthly (see section 2 definition of tax period as a calendar month) VAT returns by taxable persons.

Section 31(1) obliges a taxable person to file with the Commissioner a tax return for each month within 21 days after the end of the month or by such later date as the Commissioner may permit under section 31(4). A taxable person who fails to file a return as required by section 31 is guilty of an offence under section 59 and, in addition, is liable for penal tax under section 72.

Section 31(2) provides that a tax return filed by a taxable person must be in the prescribed form and state the amount of tax payable for the period or the amount of input tax credit claimed as a refund, and such other matters as may be prescribed by the Commissioner. If an error on a return is subsequently discovered, section 32(4) provides that the person may apply to the Commissioner to alter that return.

In addition to or instead of any return required under section 31(1), section 31(3) empowers the Commissioner to require any person (whether or not a taxable person) to file additional, fewer or other returns in the prescribed form. A person may be required to file a return under this section on the person's own behalf, or as agent or trustee for another person. The discretion to permit smaller businesses to file fewer returns may be exercised in order to reduce administration and compliance costs, but generally only if the Commissioner is satisfied that the lengthening of the tax period will not increase the risk of noncompliance by the taxable person

Section 31(5) obliges the importer of taxable goods to furnish an import declaration and pay the tax on the import.

32. Assessments

This section empowers the Commissioner to make an assessment of the VAT payable by a person in five circumstances. The first four circumstances are specified in section 32(1), the fourth in 32(4). The first circumstance is where a person fails to file a return or fails to furnish an import declaration. This applies to a return that a taxable person is required to file under section 31(1), an import declaration under section 31(5), and to a return that any person is required to file under section 31(3). An assessment under section 32(1) may be made at any time. See section 32(2).

The Commissioner can assess tax if a return has been filed but the Commissioner is not satisfied with the return. Section 32(1)(b). In this situation, under section 32(2), the Commissioner generally must make an assessment within three years after the return is filed. If the person has committed fraud, or gross or wilful neglect, or did not file a return, the Commissioner may make an assessment at any time. The terms "fraud", "gross neglect" and "wilful neglect" are intended to have their general law meanings. Thus, section 32(2)(a) will apply, for example, to a deliberate understatement in a return of the amount of taxable supplies made by a person or a deliberate overstatement in a return of the amount of taxable supplies received by the person. Section 32(2)(a) would also

apply, for example, where a person recklessly failed to check the amount of taxable supplies made or received by the person as reported in a return. The fraud, or gross or wilful neglect may be committed by the person who furnished the return, or a by a person acting on behalf of that person, such as an accountant or other tax adviser.

The Commissioner can assess tax if the Commissioner has reasonable grounds to believe that a person will become liable to pay VAT but is unlikely to pay the amount due. Section 32(1)(c). This applies to any person liable for VAT under section 7, including an importer. The power to assess under section 32(1)(c) may be used, for example, if the Commissioner has reasonable grounds to believe that a taxable person will leave Republica permanently before the liability for VAT crystallizes under section 39. The Commissioner may make this assessment at any time. Section 32(2).

In each of the above cases, section 32(3) permits the Commissioner to estimate the VAT payable by a person for the purposes of making the assessment. An estimate of the VAT payable under section 32(3) must be based on the information available to the Commissioner about the person's VAT affairs. In other words, in estimating the tax payable by a person for the purposes of making an assessment, the Commissioner is not permitted to simply "pluck a figure out of the air."

The Commissioner may make an assessment if a taxable person applies to amend a filed return. Section 32(4). Section 32(5) requires that an application under section 32(4) must be in writing and specify in detail the grounds upon which it is made. An application under section 32(4) must be made within [three] years after the return was filed.

Where an application has been made under section 32(4), section 32 (6) obliges the Commissioner to consider the application and make an assessment of the amount of VAT that, in the Commissioner's opinion, is payable.

Section 32(7) provides that where an assessment has been made under section 32, the Commissioner is obliged to serve a notice of the assessment on the person assessed. See section 80 for the rules relating to service of notices under the Act. The assessment must contain the particulars specified in section 32(7).

The Commissioner generally may, within three years after the return was filed, amend an assessment by making such alterations or additions to the assessment as the Commissioner considers necessary to make a correct assessment. Section 32(8). An amended assessment may increase or decrease the person's liability. The Commissioner is obliged to serve a notice of the amended assessment on the person assessed. Under section 32(9), an amended assessment is treated in all respects as an assessment under the Act. This means, for example, that it may be challenged under Division II of Part VIII in the same way as an original assessment.

33. General Provisions Relating to Assessments

See Vtopia VAT Act, Explanatory Notes to section 33.

34. Interpretation

This section provides definitions of “Commissioner of Appeals”, “objection decision” and “appealable decision” being terms used in Division II of Part VIII.

35. Objections

See Vatopia VAT Act, Explanatory Notes to section 34.

36. Appeal to the Commissioner of Appeals

See Vatopia VAT Act, Explanatory Notes to section 35.

37. Appeal to High Court

See Vatopia VAT Act, Explanatory Notes to section 36.

38. Burden of Proof

See Vatopia VAT Act, Explanatory Notes to section 37.

39. Due Date for Payment of Tax

This section provides for the due date for the payment of VAT.

The due date depends on the basis of the liability. Under section 39(1)(a), the VAT payable in respect of taxable supplies made by a taxable person during a month is due and payable on the date by which the return for that month must be lodged by the taxable person. According to section 31(1), the due date for the return is 21 days after the end of the month.

Section 39(1)(b) provides that the tax payable under an assessment issued by the Commissioner is due and payable on the date specified in the notice of assessment. This applies to an assessment issued under section 32 or 46, and to an assessment of penal tax arising under Sub-division II of Division VII of Part VIII of the Act (sections 71-76). Section 39(2) provides that the due date for payment of VAT under an assessment is not affected by the fact that the person liable has challenged the assessment through the objection and appeal procedures in Division II of Part VIII.

Section 39(1)(c) provides that the tax payable on an import of goods is due and payable at the time specified in section 16. Tax is due and payable at the time duty is payable or upon entry of the goods (see section 16).

Section 39(1)(d) provides that, in all other cases, VAT is due and payable on the date the taxable transaction occurs. This is relevant to the import of goods which is charged to tax under section 6(b). In all cases (including imports by taxable persons), the VAT payable in respect of the import is due and payable on the date specified in section 16. In the ordinary case, this is the date when the customs duty in respect of the import is payable.

In each case, section 39(3) empowers the Commissioner to extend the due date for payment of VAT, or to make any other appropriate arrangement for payment of the tax due (such as payment by instalments). This power may be exercised only where good

cause is demonstrated by the person liable. There are two conditions that must be satisfied before the Commissioner may exercise this discretion. First, a written application must be made to the Commissioner by the person liable for the tax asking the Commissioner to grant an extension of time, or come to some other arrangement, for payment of tax. Secondly, the Commissioner must be satisfied that the person liable for the tax has shown good cause for the exercise of the Commissioner's discretion. The Commissioner's extension of time of payment or the making of other arrangements does not alter the due date for purposes of the liability for interest under section 40.

40. Interest on Underpayment

See Vatopia VAT Act, Explanatory Notes to section 26.

41. Recovery of Tax as Debt Due

See Vatopia VAT Act, Explanatory Notes to section 39.

42. Security

See Vatopia VAT Act, Explanatory Notes to section 40(1)-(3).

43. Preferential Claim to Assets

See Vatopia VAT Act, Explanatory Notes to section 41.

44. Seizure of Goods

See Vatopia VAT Act, Explanatory Notes to section 42. **The Vatopia VAT Act also provides for the seizure of vehicles used in transporting goods subject to seizure.**

45. Distress Proceedings

See Vatopia VAT Act, Explanatory Notes to section 43.

46. Recovery of Tax from Recipient of Supply

See Vatopia VAT Act, Explanatory Notes to section 44.

47. Recovery of Tax from Third Parties

See Vatopia VAT Act, Explanatory Notes to section 45.

48. Duties of Receivers

See Vatopia VAT Act, Explanatory Notes to section 46.

49. Refund of Overpaid Tax

This section provides for the refund of overpaid tax in two circumstances:

First, section 49(1) deals with the situation where a taxable person has an excess of input tax credit over tax payable for a month. In this case, the Commissioner is obliged to refund the excess to the taxable person within [six] months of the due date for the return for the month in which the excess occurred. Failure to refund the excess within that time gives rise to obligation in the Commissioner to pay interest under section 50(2).

Secondly, sections 49(2)–(7) provide a mechanism for a person who has otherwise overpaid tax (for example because of computational error) to recover the tax overpaid. Section 49(3) provides that a claim for a refund on this basis must be made in a return within three years after the end of the month in which the tax was overpaid. No refund is allowed in this class of case where the output tax has been paid in respect of a taxable supply to a person who is not a registered person (for example, a consumer), unless the Commissioner is satisfied that the excess tax has been repaid to the recipient of the supply. Section 49(5). The Commissioner is obliged to provide to a person claiming a refund a written notice of the decision on the claim. Section 49(6).

The Commissioner's decision in respect of an application for a refund under section 49(2) may be challenged only through the objection and appeal procedure in Division II of Part VIII. Section 49(7).

Some nations require quicker refunds to exporters. See Vatopia VAT Act, section 47(2)(b). Persons with excess input credits may be required to carry forward claims for small refunds. See Vatopia VAT Act, section 47(2)(c).

50. Interest on Overpayments

This section obliges the Commissioner to pay interest on refunds of VAT in two circumstances: first, where an objection decision, the decision on appeal, or the decision by the High Court results in the refund of tax (section 50(1)); and second, where the Commissioner fails to refund the excess input credit within [six] months as required by section 49(1) (section 50(2)).

In each case, the interest is payable at the [ruling Commercial Bank lending rate] applicable during the period for which the interest is payable. In the first class of case, interest is payable for the period commencing from the date the person paid the tax and ending on the date the refund is made. In the second class of case, interest is payable for the period commencing after the end of the six-month period specified in section 49(1) and ending on the date the refund is made.

51. Refund of Tax to Diplomats and Diplomatic and Consular Missions

See Vatopia VAT Act, Explanatory Notes to section 49, other than 49(1)(d).

Some nations provide travellers leaving the country with goods purchased domestically a refund of tax on those goods exported as accompanied baggage. See Vatopia VAT Act, section 49(1)(d).

52. Records

See Vatopia VAT Act, Explanatory Notes to section 56 and 57.

The proper maintenance of records is vital for the effective functioning of a VAT system. Consequently, substantial penalties are imposed on a person who fails to comply with this section. Such a person is guilty of an offence under section 61 with the level of penalty depending on the degree of culpability of the person in relation to a particular failure to comply. Alternatively, the person may be liable for penal tax under section 74. See section 76(3) and (4). Further, a person who fails to maintain proper records but who wishes to challenge an assessment may not be able to satisfy the burden of proving that an assessment is excessive as required by section 38.

53. Access to Records, Computers, and Goods

See Vtopia VAT Act, Explanatory Notes to section 58, except for section 58(1)(g).

54. Notice to Obtain Information or Evidence

See Vtopia VAT Act, Explanatory Notes to section 60.

A person who fails to comply with a notice under this section is guilty of an offence under section 63.

55. Records not in Republican Language

This section provides the Commissioner with a procedure for the translation of records not in the Republican language to which the Commissioner seeks access under section 53 or production under section 54. The Commissioner's demand must be in writing. The translation is to be at the expense of the person keeping the records. The translator must be approved by the Commissioner.

It is noted that records required to be maintained by section 52 must be kept in the [Republican] language, and that failure to do so is an offence under section 61 or may give rise to a liability for penal tax under section 74. See section 76(3) and (4).

56. Taxpayer Identification Number

This section provides that the Commissioner may require a person to include the taxpayer identification number of the person on any return, notice, or other document required for the purposes of the Act. This is in addition to the documents in relation to which the Act obliges a person to include their taxpayer identification number (see Schedule IV in relation to tax invoices, credit notes, and debit notes).

A nation that does not use a single taxpayer identification number (TIN) for all taxes may provide for a VAT registration number instead of a TIN.

57. Offences Related to Registration

This section provides for a number of offences in relation to registration.

Under this section, it is an offence to fail—

- (1) to apply for registration as required under section 8(1) or (4);
- (2) to notify the Commissioner of a change in circumstances as required by section 9(9); or
- (3) to apply for cancellation of registration as required by section 10(1).

In each case, the penalty for committing an offence under this section depends on the degree of culpability of the person involved with a more severe penalty provided where the failure is made knowingly or recklessly.

The prosecution under this section is an alternative to the civil penalties imposed under section 71. See section 76 (3) and (4).

58. Offences Related to Tax Invoices, Credit Notes, and Debit Notes

This section provides for offences in relation to tax invoices, credit notes, and debit notes.

Section 58(1) provides that a taxable person who fails to provide a tax invoice as required by section 29(1) or (5), or a credit or debit note as required by section 30 is guilty of an offence. The penalty is intended to reflect the serious nature of the offence as the provision of these documents as and when required is essential to the proper operations of the Act.

Section 58(2) provides that a person who provides these documents otherwise than as required under the Act is guilty of an offence. The penalty for committing an offence under section 58(2) depends on the degree of culpability of the person involved, with a more severe penalty provided where the failure is made knowingly or recklessly.

59. Failure to Lodge a Return

This section provides that a person who fails to lodge a return or import declaration as required under the Act is guilty of an offence.

The failure to lodge a return or import declaration does not have to be the result of deliberate or reckless conduct for an offence to have been committed under section 59(1). An offence is committed when, as a matter of fact, a person fails to lodge with the Commissioner a return or declaration required by the Act regardless of the reason for the omission.

Section 59(2) provides that a person convicted under section 59(1) who continues to fail to lodge the return or declaration as required by the Commissioner is guilty of a further offence. The penalty is intended to reflect the seriousness of an offence under section 59(2).

A civil penalty is imposed under section 72 for failure to lodge a required return.

60. Failure to Comply with Recovery Provisions

This section provides for an offence where a person fails to comply with a section 47 notice (collection of tax from a third party) or with the requirements of section 48 (duties of receivers).

If a person is convicted of an offence under section 60(1), section 60(2) gives a court discretion to impose an additional monetary amount, not exceeding the amount the person failed to pay or set aside.

61. Failure to Maintain Proper Records

This section provides that a person who fails to maintain proper records in accordance with the requirements of the Act is guilty of an offence. The main section imposing an obligation to keep records is section 52. The penalty for committing an offence under section 61 depends on the degree of culpability of the person involved, with a more severe penalty provided where the failure was made knowingly or recklessly.

62. Failure to Provide Reasonable Assistance

This section provides that a person who fails to provide the Commissioner or authorized taxation officer reasonable facilities and assistance as required by section 53(3) is guilty of offence.

63. Failure to Comply with a Notice to Obtain Information or Evidence

This section provides that a person who fails to comply with a notice issued under section 54 is guilty of an offence. An offence under this section may be committed where a person fails to provide information as required by the Commissioner under a section 54(1)(a) notice, where a person fails to attend and give evidence as required by a section 54(1)(b) notice, or where a person fails to produce any record, or computer-stored information within their control as required by a section 54(1)(b) notice.

64. Improper Use of Taxpayer Identification Number

This section provides that a person who knowingly uses a false taxpayer identification number (including the taxpayer identification number of another person) on a return, notice or other document prescribed or used for the purposes of the Act is guilty of an offence.

Section 64(2) provides that no offence is committed where the person has used the taxpayer identification number of another person with the permission of that other person on a return, notice, or other document related to the tax affairs of that other person. This would cover, for example, an accountant who uses the taxpayer identification number of a client in completing the return of a client.

65. False or Misleading Statements

See Vatopia VAT Act, Explanatory Notes to section 62.

66. Obstructing Taxation Officers

See Vatopia VAT Act, Explanatory Notes to section 63.

67. Offences by Taxation Officers

See Vatopia VAT Act, Explanatory Notes to section 64.

68. Offences by Companies

See Vatopia VAT Act, Explanatory Notes to section 65(1)-(2).

69. Compounding of Offences

See Vatopia VAT Act, Explanatory Notes to section 66.

70. Failure to Comply With Secrecy Rules

Section 78 provides for the confidentiality of tax information. A taxation officer who fails to comply with this confidentiality obligation by impermissible disclosure of documents or information commits a criminal offence under section 70.

71. Penal Tax for Failure to Register

This section provides for the imposition of penal tax on a person who fails to apply for registration as required by section 8(1) or (4). The amount of the penal tax is [double] the amount of VAT payable during the period commencing on the last day of the application period to the day either the person files an application for registration or the Commissioner registers the person under section 9(6).

The penal tax imposed under this section is as an alternative to prosecution under section 57 (see section 76).

72. Penal Tax for Failure to Lodge Return

This section imposes penal tax on a person who fails to lodge a return within the time required under the Act. In the ordinary case, a return must be lodged within [21] days after the end of the month (see section 31(1)). The amount of penal tax is [2%] of the tax payable under the return per month (or part of a month) the return is outstanding.

Penal tax under this section is in addition to any penalty resulting from conviction of an offence under section 59.

73. [omitted]

74. Penal Tax in Relation to Records

This section imposes penal tax on a person who fails to maintain proper records for a month as required under the Act. The main provision requiring the maintenance of records in section 52. The amount of the penal tax is [double] the VAT payable for the month in which the records were not maintained. Penal tax imposed under this section is an alternative to prosecution under section 61 (see section 76).

For a different approach to this penalty, see Vatopia VAT Act, section 57(4)-

(6).

75. Penal Tax for Making False or Misleading Statements

See Vatopia VAT Act, Explanatory Notes to section 67(1) and (2).

Penal tax imposed under this section is an alternative to prosecution under section 65 (see section 76).

76. Recovery or Remission of Penal Tax

This section provides for the recovery or remission of penal tax by the Commissioner.

Penal tax is imposed automatically under Sub-division II of Division VII of Part VIII. The Commissioner is given a discretion under section 76(1) to remit the whole or part of any penal tax payable. This discretion may only be exercised where the person liable has shown good cause by notice in writing to the Commissioner.

Subject to section 76(3), section 76(2) provides that penal tax is imposed in addition to any fine or prison sentence which the person may be liable for on conviction of an offence under sections 57-70. Section 76(3) provides that penal tax imposed under section 71, 74, or 75 is an alternative to prosecution under section 57, 61, or 65 respectively. If penal tax has been paid under section 71, 74, or 75 and the Commissioner commences prosecution under section 57, 61 or 65 for the same act or omission, then section 76(4) requires that the penal tax be refunded by the Commissioner, and the penal tax is not payable unless the prosecution is withdrawn.

Section 76(5) provides that, for the purpose of the Act, penal tax is to be treated as tax of the same nature as the output tax to which it relates and is payable in and for the same month as that output tax. Under section 76(5), penal tax is to be assessed by the Commissioner in the same manner as the output tax to which it relates.

77. Administration of the Act; Exercise of Powers and Performance of Duties

See Vatopia VAT Act, Explanatory Notes to section 70.

78. Secrecy

See Vatopia VAT Act, Explanatory Notes to section 71(1)-(4).

79. Forms and Notices; Authentication of Documents

See Vatopia VAT Act, Explanatory Notes to section 72.

80. Service of Notices and Other Documents

See Vatopia VAT Act, Explanatory Notes to section 73.

81. Nominated Person

This section provides the rules for appointment and notification of resident individuals as nominated persons for taxable persons operated by partnerships, trusts, companies, non-resident individuals, or resident individuals who are outside Republica for more than one tax period.

The taxable person shall notify the Commissioner of the name of the nominated person. Section 81(2). If the taxable person fails to notify the Commissioner under section 81(2), the Commissioner shall specify the person who is the nominated person. Section 81(3). The taxable person may change the nominated person. Section 81(4).

Subject to section 82 applying the Act to partnerships and unincorporated associations, the nominated person is liable for obligations imposed by the Act on partnerships, trusts, companies, or individuals. Section 81(5). These obligations imposed on the nominated person do not relieve a taxable person from duties the nominated person fails to perform. Section 81(6).

82. Application of Act to Partnerships and Unincorporated Associations

See Vatopia VAT Act, Explanatory Notes to section 53(1) and (2).

If a person is prosecuted for an offence under section 82(1)(c) or 82(2), the person charged can defend the charge by proving that the person did not aid, abet, counsel, or procure the act or omission, and the person was not knowingly a party to or involved in the relevant act or omission. Section 82(3).

83. Trustee

This section makes it clear that a person acting in the capacity of trustee (see section 2 definition) in respect of more than one trust is treated as a separate person in relation to each trust.

84. Currency Conversion

See Vatopia VAT Act, Explanatory Notes to section 76.

85. Schemes for Obtaining Undue Tax Benefits

See Vatopia VAT Act, Explanatory Notes to section 75.

86. International Agreements

This section provides for a reconciliation rule to resolve any inconsistencies between the terms of the Act and the terms of any treaty or other international agreement (including an agreement with a public international organization - see section 2 definition and Schedule 1) to which Republica is a party. The general rule is that, in the event of inconsistency, the terms of the treaty or other international agreement prevail over the Act. The only exception to this is the application of the general anti-avoidance provision in section 85.

See Vatopia VAT Act, Explanatory Notes to section 77.

87. Regulations and Amendment of Schedules

This section provides the Minister with a general power to make regulations for the better carrying into effect of the Act. The regulations contemplated by this section are not confined to those necessary to the interpretation of the Act, rather it is intended that, where rules necessary to carry out a particular section of the Act are not contained in the Act itself, they may be prescribed by regulations. Section 87(1)(a)–(c) permits the Minister to make regulations to amend the Schedules to the Act, any monetary amount set out in the Act, and the rate of penal tax imposed under sections 72 and 73. Under section 87(2) it is intended that transitional provisions not covered under section 89 will be made by way of regulation. Regulations also may prescribe offences for a breach of the regulations.

Regulations may take effect on or after the Act comes into effect, whether they are published before or after the Act is published in the [Gazette].

88. Repeal

This section repeals the Acts and Orders specified in Schedule V – presumed to be the [*Sales Tax Act*]. Any reference to sales tax in Acts, other than this VAT, is treated as a reference to VAT under this Act.

89. Transitional

See Vatopia VAT Act, Explanatory Notes to section 85(1)-(10).

SCHEDULES

Schedule I Public International Organizations

This schedule lists the organization which are public international organizations for the purposes of the Act within the definition in section 2.

Schedule II Exempt Supplies

This schedule lists the supplies that are treated as exempt supplies for the purposes of section 19 of the Act. The categories of exempt supplies are included for illustrative purposes. The scope of various categories of exempt supplies is to be established by regulations to be issued by the Minister. **If the scope of the exemptions is to be established by the legislature, this Schedule should be expanded to set boundaries for each category of exempt supplies.**

To the extent provided in regulations, the following are exempt supplies:

1. The supply of unprocessed foodstuffs, including agricultural livestock.
2. The supply of postage stamps.
3. The supply of financial services. "Financial services" is defined in paragraph 2 to the Schedule. Paragraph (a) of the definition exempts services supplied in connection with loans and credits, together with any security or guarantees connected with loans and credits. The supply of the service of a loan, whether secured or unsecured, therefore, is an exempt supply. This includes a loan for the purchase of goods, except where the loan can be regarded as an incidental part of the supply of the goods so as to be treated as part of the supply of the goods under section 13(1)(a). The exemption covers any interest charged on a loan, and any premium or management fee charged for arranging the loan, plus any further fees charged for managing the loan, if the fees are charged by the person making the loan.

Paragraph (b) covers the converse of paragraph (a), namely savings and banking transactions. The reference to deposit and current accounts is a reference both to savings and to operating bank accounts and similar arrangements. The exemption also applies to other banking services: the supply of methods of payments, such as checks and negotiable instruments; and the supply of payment services, such as transfers and payments. The services of debt collecting and factoring (*i.e.* the service of providing a creditor with an advance against outstanding debts, and then collecting the debts on behalf of the creditor in exchange for a fee often based on a percentage of the total debt) are not exempt and, therefore, VAT may be payable on the fee paid to the debt collector or factor.

Paragraph (c) covers investment vehicles that represent interests derived from other financial instruments. The exemption covers financial derivatives, forward contracts, options to acquire equity or debt instruments, and similar arrangements.

Paragraph (d) is intended to provide an exemption for supplies relating to all forms of financial instruments, including any transaction involving any form of equity in a company, such as shares and stocks, and also including any form of instrument involving debt, loan stock, or bonds (secured or unsecured) created by a company.

A dividend payable to a shareholder is not covered by this paragraph, because a dividend is not a supply for consideration and, therefore, is outside the scope of VAT. However, paragraph (d) exempts the issue or sale of the share itself, as is any payment related to loan stock, bonds, and debentures. The exemption does not apply to custodial activities, for example, where a bank agrees to provide a safety deposit box for the share certificates for a fee.

Paragraph (e) exempts the supply of the service of managing investment funds, such as mutual funds, or unit trusts, or other undertakings for collective investment in securities.

Some nations tax fee-based financial services, even if they fit within the above definition of financial services. Fee-based financial services that are exported may be zero-rated.

4. The supply of insurance services, including life, property and casualty, and other forms of insurance.

Some nations tax non-life insurance, such as property and casualty insurance.

5. The supply of unimproved land. The exemption is confined to the supply of unimproved land and, therefore, the sale of land with a building affixed to the land will not be an exempt supply. Where, however, the sale is made by a person of his or her private residence, the sale will not be a taxable supply as it is not made by a taxable person as part of the person's taxable activities (see section 5). As the sale is not a taxable supply, it will not be charged to VAT under section 6.

On the other hand, the sale of commercial premises by a taxable person will be a supply of goods for consideration as part of the taxable activities of that person and, therefore, will be a taxable supply liable for VAT under section 6.

6. A supply by way of lease or letting of immovable property. There are several exceptions to this exemption: first, a lease or letting of commercial premises; secondly, a lease or letting of hotel or holiday accommodation; thirdly, a lease or letting for a period not exceeding two months; and finally, a lease or letting for parking or storing cars or other vehicles. Generally, therefore, this means that a lease or letting of residential accommodation (other than holiday and other short-term accommodation) is an exempt supply.

7. The supply of education services. "Education services" is defined broadly in section 2 to the Schedule and covers all levels of education from pre-primary to tertiary

education. It also includes adult education and vocational training provided by an institution established for that purpose.

8. The supply of medical, dental, and nursing services.

9. The supply of social welfare services. "Social welfare services" is defined in section 2 to the Schedule.

10. The supply of betting, lotteries, and games of chance.

11. The supply of goods as part of the transfer of a business or a part of a business as a going concern by a taxable person to another taxable person. Note the obligations imposed on both taxable persons under section 19(2).

Some nations zero rate sales of going businesses. See, for example, Vatopia VAT Act, Schedule I, section 2(o).

12. The supply of burial and cremation services.

13. The supply of precious metals and other valuables to the Bank of Republica for the [State Treasury].

14. The supply of passenger transportation services. "Passenger transportation services" is defined in section 2 to the Schedule to mean the transportation of fare-paying passengers and their personal effects by road, rail, water, or air.

Schedule III Zero-rated Supplies

This schedule lists the supplies that are treated as zero-rated supplies for the purposes of section 24(3) of the Act. The following are zero-rated supplies:

1. The supply of goods or services where the goods or services are exported from Republica as part of the supply. Under section 2(a) to Schedule III, goods are exported if the goods are delivered to, or made available at, an address outside Republica as evidenced by documentary proof acceptable to the Commissioner.

Under section 2(b) to Schedule III, services are exported if the services are supplied for use or consumption outside Republica as evidenced by documentary proof acceptable to the Commissioner. This is the case regardless of where the services are performed. Generally, the place of performance and the place of use or consumption will coincide; however, this may not always be the case. For example, a Republica printer may perform printing services in Republica for use by a customer outside Republica. This would involve an export of services.

2. The supply of goods or services in connection with the international transport of goods or passengers. Section 3 to Schedule III specifies what constitutes the international transport of goods and passengers.

Schedule IV
Tax Invoices, Credit Notes, and Debit Notes

This Schedule sets out the particulars that must be included in a tax invoice, credit note or debit note under sections 29 and 30. **One option is to require the Commissioner to issue pre-numbered invoices for taxable persons to use in connection with the VAT.**

Schedule V
Repeal of Laws

This Schedule sets out the repealed legislation for the purposes of section 88.