

VALUE ADDED TAX ACT
Commonwealth of Vatopia
EXPLANATORY NOTES

This section-by-section commentary provides a detailed explanation of the *Value Added Tax Act*. Any reference in the explanatory notes to the “Act” is a reference to the *Value Added Tax Act*. **Suggestions for additional or alternative wording are given in boldface.**

1. Short Title and Commencement

This section provides that the Act is to be called the *Value Added Tax Act*. The Act is to come into operation on a date prescribed by the Minister by order 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.**

2. Interpretation

This section provides definitions of commonly used terms in the Act. These definitions apply unless the context otherwise requires. The main definitions are discussed below; the other definitions are self-explanatory.

appealable decision

This term is relevant to Part X of the Act, which provides a procedure for challenging decisions of the Commissioner. This procedure is referred to as the objection and appeal procedure, and it applies not only to assessments of VAT but also

decisions in exercise of discretion by the Commissioner. The decisions to which the objection and appeal procedure applies are referred to as “appealable decisions”. The definition treats an assessment and any decision listed in the definition as an appealable decision. The reference to an assessment includes any assessment made by the Commissioner under the Act, not just an assessment made under section 34. Thus, it will include an assessment on the recipient of a supply under section 51 and an assessment of penalty under section 73(3).

The intention is that the objection and appeal procedure in Part X is the only basis on which a person can challenge an appealable decision. In other words, a person is precluded from relying on other remedies (such as judicial review of administrative action) to challenge an appealable decision. For assessments, this is the effect of section 35 and, for other decisions, this is the effect of each of the sections referred to in the definition of appealable decision.

capital goods

This term is relevant to several provisions in the Act, including sections 11(4), 16(17), and 24(4). Essentially, capital goods means any depreciable asset that is used in the course or furtherance of a taxable activity (see section 2 definition). An asset is a depreciable asset for this purpose if it is subject to the allowance for depreciation under section ___ of the *Income Tax Act*. An example of capital goods is plant and equipment used in the course or furtherance of a taxable activity.

cash value

This term is relevant to the determination of the value of a supply of goods under a credit agreement (see section 16(6)-(8)). “Credit agreement” is defined in section 2 to mean a hire-purchase agreement (as defined in section 2) and a financial lease (as defined in section 2). A hire purchase agreement is such an agreement for purposes of the Hire Purchase Act. A financial lease is an agreement which in form is a lease (so

that the lessee does not acquire legal ownership of the goods), but which in substance (because of the terms of the lease, including a lease term exceeding 75% of the effective life of the goods for income tax purposes) is a purchase and sale of the leased goods.

Under section 14(2), a supply of goods under a credit agreement is treated as occurring when the agreement commences. This means that, in the ordinary case, a supply of goods under a credit agreement occurs at the time of delivery of the goods. The supply is not treated as a periodic supply as is the case, for example, for operating leases. While the supply occurs when the agreement begins, payment for the goods under the agreement occurs periodically. Thus, it is necessary to provide a special rule for determining the value of the supply. This is in section 16(6) which provides that the value of a supply of goods under a credit agreement is the cash value of the supply.

The determination of the cash value of a supply of goods under a credit agreement depends on whether the supply is made by a financier or a dealer of the goods. Paragraph (a) of the definition of “cash value” provides for the determination of the cash value of a supply of goods under a credit agreement where the supplier is a financier (i.e., a bank or other financial institution). In this case, the cash value is essentially the consideration (see section 2 definition) paid by the financier for the goods. However, if the fair market value of a supply of the goods at the time of acquisition by the financier is greater than the consideration paid by the financier, then the cash value of the supply by the financier is the fair market value. The fair market value of a supply is determined under section 2.

The cash value of a supply of goods by a financier under a credit agreement also includes any consideration borne by the financier in respect of the erection, construction, assembly, or installation of the goods.

Paragraph (b) provides for the determination of the cash value of a supply of goods under a credit agreement where the supplier is a dealer in the goods. In this

case, the cash value is the consideration (see section 2 definition) for which the goods are normally sold by the dealer for cash. The cash value also includes any consideration borne by the dealer in respect of the erection, construction, assembly, or installation of the goods.

company

This term is primarily relevant to the definition of “person” in section 2. Under that definition, a company is included as a person for the purposes of the Act. This means that, unless a contrary intention appears, a reference to a person in any provision of the Act includes a company. For example, sections 11 and 12 provide for the registration of persons for the purposes of VAT and, thus, these provisions apply to companies.

“Company” is defined in broad terms to mean any association or body corporate or unincorporate. An association or body is treated as a company regardless of whether it is created or recognised under Vtopia law or the laws of another country. For example, a domestic or foreign company may be a “resident person” (see section 2 definition). Further, every association or body (whether incorporated or unincorporated) is treated as a company for the purposes of the Act whether it is created for profit or non-profit purposes.

The definition includes an incorporated association of persons given separate legal status under Vtopia or foreign corporations law, such as a statutory corporation or parastatal, or private company. However, the definition is broader than incorporated companies. It expressly includes an unincorporated body or association of persons, such as a club, or society. Thus, an unincorporated body or association is treated as a company and, therefore, a person for the purposes of the Act. This means, for example, that a club or society may be registered for the purposes of the Act.

The definition of company expressly excludes a partnership and a trust. For the purposes of the Act, “partnership” has its ordinary meaning, namely an association of

persons carrying on business for joint profit. “Trust” is defined in section 2.

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, 9, and 10).

consideration

This term is primarily relevant to the concept of a taxable activity (section 6), to the determination of the value of a supply (see section 16), to the value of an import of services (section 20(2) and (3)), or to a change in the taxation of a supply or the tax rate (section 85).

“Consideration” is defined as the total amount paid or payable by any person, directly or indirectly, in money or in kind for a supply or import of goods or services. The amount of any consideration in kind is the fair market value of the in-kind consideration. The consideration for a supply or import includes amounts paid or given by *any* person in respect of the supply or import (and not just amounts paid or given by the recipient of the supply). Similarly, the consideration for a supply or import includes all amounts paid or given for the supply or import regardless of to whom the amounts have been paid or given. In this case, the supplier must account for output tax on the total consideration for the supply.

Consideration expressly includes any duties, levies, fees, and charges paid or payable on, or by reason of the supply or import. However, it does not include “tax” which is defined in section 2 to mean the tax imposed under the Act, i.e., VAT (thus, consideration is expressed as a VAT-exclusive amount). It also includes any deposit on returnable containers. Price discounts or rebates allowed and accounted for at the time of the supply or import (such as a trade discount) reduce the amount of the

consideration. Any price discounts or rebates given at a later time (such as a prompt payment or periodic quantity discount) are dealt with under section 26 (post-sale adjustments).

The consideration for a supply or import does not include several items. An unconditional gift made in cash to an association not for gain (see section 2 definition) is not consideration and therefore is not subject to tax. An unconditional gift is any payment voluntarily made to an association not for gain for the furtherance of the purposes of that association where there is no identifiable direct benefit to the person making the gift (or to a related person). A deposit (other than on a returnable container) is not consideration, whether it is refundable or not, except to the extent the supplier applies the deposit as consideration for a supply or the deposit is forfeited. Under this exception, a deposit constitutes consideration when the deposit is so applied or forfeited (see section 14(12)).

goods

This term is central to the operation of the VAT as section 9(1)(a) imposes VAT on every taxable supply by a taxable person in Vatopia. “Taxable supply” is defined in section 2 as a supply of goods or services in the course or furtherance of a taxable activity (other than an exempt supply). Thus, VAT is imposed in respect of taxable supplies of goods and services. The intention under the VAT is that tax is imposed on every taxable transaction that adds value and this is achieved by dividing transactions into those involving “goods” and those involving “services”. The definitions of goods and services are mutually exclusive (i.e., something cannot be both goods and services at the same time) and, except for money, jointly exhaustive (i.e., everything that adds value is treated as either goods or services). Other than exempt imports, section 7(1)(b) taxes all imported goods and only a limited category of imported services.

Goods is defined broadly. It includes all corporeal movable or immovable property. Movable property includes stock-in-trade and the capital goods of a business.

Immovable property is defined in section 2 to mean any land (including any building or other developments to the land (such as fencing, drainage and sewerage)), and any real right to such property (such as a usufruct or servitude).

The definition is confined to corporeal property and, thus, incorporeal property (such as intellectual or industrial property (copyrights, patents, trade marks and the like) and shares, stocks and securities) is not treated as goods. However, incorporeal property may be treated as services for the purposes of VAT.

The definition expressly includes thermal or electrical energy, heat, gas, refrigeration, air conditioning and water. Thus, the transfer or provision of these utilities is treated as a supply of goods (not services) for the purposes of the VAT (see section 4(1)(a)(iii)).

The definition expressly excludes money which is separately defined in section 2. "Money" means any coins or notes recognized in Vatopia as legal tender. It also includes coins or notes of a foreign country that is used or that circulates in a foreign country or in Vatopia as currency. Any bill of exchange, bank draft, promissory note, postal order, money order, or similar instrument is treated as money. However, coins or notes that are a collector's piece, an investment article or an item of numismatic interest are excluded from the definition of money (and thus come within the definition of goods).

import

This term is primarily relevant to section 9(1)(b) which imposes VAT on every import of goods or services, other than an exempt import. "Import" is defined separately for goods and services. In relation to goods, paragraph (a) defines import to mean bringing the goods into Vatopia, or causing the goods to be so brought into Vatopia.

Paragraph (b) provides for the definition of import in relation to services. There

are four conditions that must be satisfied for a supply of services to be an import -

- (1) The supply must be made to a “resident person” as defined in section 2. By virtue of that definition, this includes a supply to a non-resident person carrying on an activity through a fixed place in Vatopia.
- (2) The supply must be made by a non-resident person (see section 2 definition) or by a resident person from a business carried on outside Vatopia. By virtue of the definition of “resident person”, a supply of services by a non-resident person from a fixed place of business in Vatopia will not satisfy this condition as it is treated as a supply by a resident person from a business carried on in Vatopia.
- (3) The services supplied are to be utilised or consumed in Vatopia. An apportionment rule (as expressed by the words “to the extent”) applies where the services are partly to be utilised or consumed in Vatopia and partly outside Vatopia.
- (4) The services are not to be used by the recipient for the purposes of making taxable supplies. This means that the recipient must be an unregistered person or registered person where the services are for the purposes of making exempt supplies (such as supplies of exempt financial services).

The definition is subject to section 4(12) which treats an import of services that is incidental to an import of goods as part of the import of the goods.

An example of an import of services is a supply of accounting services by an accountant in a foreign country to a bank in Vatopia where the services relate to the supply of exempt financial services in Vatopia by the bank.

importer

This term is primarily relevant to section 9(2)(b) which provides that the VAT payable on an import of goods is to be paid by the importer, and to section 22(1)) which requires the importer of goods to furnish an import declaration and pay the tax on the import. Importer includes the owner of the goods, and a person who at the time of import possesses or has a beneficial interest in the goods.

input tax

This term is primarily relevant to sections 23-25. Section 23 provides for the calculation of the VAT payable by a taxable person for a tax period. In broad terms, the VAT payable by a taxable person for a tax period is the total output tax of the person for the period less the total input tax of the person for the period. Section 24 provides rules in relation to input tax, both general and for specific categories of transactions. For example, sections 24(1)(f)-(h) contain rules for the calculation of input tax on certain purchases of second-hand goods. Section 25 contains rules limiting the deductibility of input tax in certain circumstances. A transaction may not be a supply in the course of a taxable activity if it involves goods with respect to which an input tax was not allowed (sections 4(6), (17), and(22)). For changes in input tax required for some post-sale adjustments, see section 26. As part of the transition rules, some sales tax may be deductible as input tax (section 89(7)).

As its name implies, “input tax” is essentially the tax paid by a taxable person on acquisition of the person’s inputs. It is the VAT charged under section 9(1)(a) on a taxable supply to the taxable person and the VAT charged under section 9(1)(b) on an import of goods by the person. Input tax does not include any penalty imposed on a taxable person under various provisions of the Act, including Division II of Part XIV.

non-resident person

This term is primarily relevant to the definition of import of services in section 2, to the treatment of a person as a representative under section 54, and to the treatment

of exports as zero-rated supplies under Schedule I.

The basic rule is that a non-resident person is a person who is not a resident person (see section 2 definition). In other words, every person who is not a resident person is treated as a non-resident person for the purposes of the VAT. In this way, ordinarily the definitions of resident person and non-resident person are mutually exclusive. However, there is one situation where a person may be both a resident person and a non-resident person at the same time. This is where a person (who is not otherwise a resident person - i.e., the person does not come within paragraphs (a)-(c) of the definition of “resident person”) carries on any activity (taxable or otherwise) through a fixed base in Vatopia. Such a person is treated under paragraph (d) of the definition of “resident person” as a resident person to the extent of those activities and, under the definition of “non-resident person”, the person is treated as a non-resident person in relation to the person’s other activities. Thus, such a person is both a resident and non-resident at the same time, but not in relation to the same activities.

output tax

This term is primarily relevant to sections 23, 26, and 36. Section 23 provides for the calculation of the VAT payable by a taxable person for a tax period. In broad terms, this is the total output tax less the total input tax of the person for the period. Section 26 provides for post-sale adjustments, and section 36 provides for a tax refund if the input tax deduction exceeds the output tax for a tax period.

As its name implies, “output tax” is essentially the tax payable on the person’s outputs. It is the VAT charged under section 9(1)(a) on a taxable supply by a taxable person. Sales of taxable goods and services by a person not taxable (and not required to register) are not subject to tax.

person

This term is relevant to many sections in the Act that refer to a person. For example, sections 10-12 provide for the registration of persons for the purposes of VAT. Under section 9, 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 laws of Vatopia. The definition specifically includes entities which may not ordinarily be regarded as legal persons. The intention is to include within the definition of person, every entity through which a taxable 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 in relation to the partnership's activities (see also section 57). There is no definition of partnership in the Act and, therefore, it 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 under general law, the specific inclusion of a company within the definition of person ensures that an unincorporated association or body which is treated as a company for the purposes of the Act (see section 2 definition) is treated as a person (see also section 57).

The definition also specifically includes the State, a local authority (each defined in section 2), a board (i.e., a statutory body), and a natural person.

promoter of public entertainment

The term is relevant to sections 6(6), 11(8), 12(4)(b), 13(9), 47(2) and (5) of the Act. Under section 6(6), public entertainment is taxable activity for purposes of the Act. A promoter of public entertainment must register before making the first taxable supplies in connection with public entertainment, regardless of the level of the promoter's taxable turnover. This provision requires promoters, including non-resident promoters, who arrange for a single public entertainment event to register, regardless of expected total taxable supplies in Vatopia (section 11(8)). Registration takes effect and the promoter becomes a taxable person when the promoter starts making taxable supplies of public entertainment (section 12(4)(b)). A promoter of public entertainment may be required to provide security for any tax that may become due from the public entertainment event (section 47(2)) and cannot allow the public entertainment to take place unless the security is provided and the promoter receives the Commissioner's written approval to conduct the event (section 47(5)).

A promoter of public entertainment is broadly defined in section 2 to include the staging of public entertainment to which the general public is invited. Public entertainment (as defined in section 2) is musical entertainment, a sporting event, theatrical or dance performances, a comedy show, The term does not include entertainment by certain educational institutions (or parent-teacher associations), a church, or a person who regularly provides entertainment.

recipient

This term is primarily relevant to section 7(2)(c) which provides that the recipient of an import of services is liable for the VAT payable on the import. See also section 38(1)(c). An import of services is defined in section 2 as essentially a supply of services by a person from outside Vatopia to a person in Vatopia where the services are to be utilised or consumed in Vatopia, other than in the making of taxable supplies. Section 27(1) requires a taxable person who is registered to issue a tax invoice to the recipient of a taxable supply. See also Schedule IV. Section 44 provides that the

Commissioner may recover tax from a recipient of a supply if the recipient is responsible, by fraud or misrepresentation, for the failure of the government to collect tax due on a supply.

“Recipient” is defined as the person to whom a supply or import is made. The definition applies to an import of services as the definition of “import” in relation to services refers to a supply of services. Thus, in the case of an import of services, the recipient is the person to whom the services are supplied. For imported goods, the recipient is the person for whom the goods are intended.

related persons

This term is primarily relevant to the value of supply rules. The Act includes special valuation rules (sections 16(3) and 20(3)) applicable to supplies between related persons. The concept of fair market value (section 3) relies on the value of a supply or import made between persons who are not related persons. While a supply made without consideration is not part of a taxable activity and therefore is not taxed, a supply between related persons for no consideration is treated as a supply for consideration that may constitute part of a taxable activity. A person may be required to register if the person has taxable supplies exceeding the threshold prescribed under section 9. For this purpose, taxable supplies made by related persons may be aggregated (section 9(2)).

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) an ancestor, lineal descendant of the person's grand parents, stepfather, stepmother, or stepchild; or
- (c) any spouse of a person 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.

A company (other than a stock company) and a member thereof (paragraph (c)) who holds a 25% interest (taking into account both holdings of related persons and indirect holdings).

A stock company and a shareholder in a stock company if the shareholder directly or indirectly controls 25% or more of the voting power of the stock company or the rights to distributions of capital or profits of the stock company (paragraph (d)). 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.

Two companies are treated as related where a person, alone or together with other related persons, 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 (e) 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.

A taxable person and a branch or division of that person that is separately registered under section 56(3) are related persons (paragraph (f)). In addition, the separately registered branches or divisions are related persons (paragraph (g)).

resident person

This term is primarily relevant to paragraph (b) of the definition of “import”.

Paragraph (a) treats the State or a local authority in Vatopia as a resident person.

Paragraph (b) treats a natural person who is resident in Vatopia as a resident person.

Paragraph (c) provides two alternative tests of residence for companies (as defined in section 2), partnerships and trusts (as defined in section 2), and boards. Under the first test, such an entity is a resident person if it is formed or created under the laws of Vatopia. Under the alternative test, such an entity is a resident person if it is managed and controlled from Vatopia, regardless of where it is formed or created. The reference to “managed and controlled” is a reference to the test of corporate residence developed under [the income tax]. It is intended that the same basic principles apply also to partnerships, trusts, and boards.

Paragraph (d) treats a person who does not come with paragraphs (a)-(c) as a resident person to the extent the person carries on any activity (taxable or otherwise) through a fixed base in Vatopia. This is essentially treating a non-resident person with a fixed place of activity in Vatopia as a resident person, but only to the extent of that activity. For other purposes, the person is treated as a non-resident (see above).

services

This term is central to the operation of the VAT as section 9(1)(a) imposes VAT on every taxable supply by a taxable person. “Taxable supply” is defined in section 2 as any supply of goods or services in the course or furtherance of a taxable activity (other than an exempt supply). Thus, VAT is imposed in respect of supplies of goods and services. The intention under the VAT is that tax is imposed on every transaction that

adds value and this is achieved by dividing transactions into those involving “goods” and those involving “services”. The definitions of goods and services are, except for money, mutually exclusive (i.e., something cannot be both goods and services at the same time) and jointly exhaustive (i.e., everything that adds value is treated as either goods or services). “Services” is defined as anything that is not goods or money. “Goods” and “money” are both defined in section 2. This includes, for example, intellectual and industrial property rights, and other intangible rights. Other than exempt imports, section 9(1)(b) taxes all imported goods and only a limited category of imported services.

taxable supply

This term is central to the operation of the VAT as section 9(1)(a) imposes VAT on every taxable supply by a taxable person. Thus, it is not every supply that is subject to VAT. It is only taxable supplies by taxable persons that are subject to VAT.

“Taxable supply” is defined as any supply of goods or services in Vatopia in the course or furtherance of a taxable activity, other than an exempt supply. Thus, there are three situations where a supply (as defined in section 4) will not be a taxable supply. First, the supply is not made in the course or furtherance of a taxable activity (as defined in section 6). For example, a purely private transaction is not a taxable supply. Secondly, an exempt supply (as defined in section 18) is not a taxable supply. Thirdly, the supply is made outside Vatopia. To make certain that some exports of services are taxable supplies eligible for zero rating, an export of services is treated as a supply in Vatopia (see section 15(8)).

tax fraction

This term is primarily relevant to determining the value of a supply where pricing is tax-inclusive. Under section 16(2), the value of a supply made for a price that includes tax is the price reduced by an amount equal to the tax fraction multiplied by the

price. The term also applies to an import of services where pricing is tax-inclusive (section 20(4)), to a bet placed with a person operating a game of chance (section 16(15)), and to payments made on a tax-inclusive basis, such as winnings paid on a winning bet (section 24(1)(d)).

“Tax fraction” is defined as the formula $R/(1 + R)$, where **R** is the percentage rate of tax applicable to the supply. This means that, for a supply subject to tax at 10%, R is 0.10 and the tax fraction is $.10/1.10$, or $1/11$.

trust

This definition is primarily relevant to the definition of “person” in section 2. Under that definition, a trust is included as a person for the purposes of the Act. This means that, unless a contrary intention appears, a reference to a person in the Act includes a trust. For example, sections 10-12 provide for the registration of persons for the purposes of VAT. Thus, a trust may be a taxable person under the Act if it carries on a taxable activity.

“Trust” is defined to mean any relationship where property is under the control or management of a trustee. Thus, trust takes its meaning from the definition of trustee in section 2. “Trustee” is a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law. Trustee also has an extended meaning which includes relationships that would not ordinarily be regarded as a trust under general law. Trustee includes a person who has or takes upon himself the administration or control of property subject to a trust. In addition, every relationship under which a person has control or management of property within the definition of trustee is treated as a trust. For example, a deceased or insolvent estate is treated as a trust.

3. Fair market value

This section provides rules for determining the fair market value of a supply or import of goods or services. It is primarily relevant to determining the value of a supply (section 16), or a taxable import (section 20(1) (goods), and section 20(3) (services)).

Subsection (2) contains the basic rule for determining the fair market value of a supply or import at a given date. This is the consideration (see section 2) in money which the supply or import (as the case may be) would generally fetch if that supply or import was freely offered in similar circumstances in Vatopia on the same day between persons who are not related persons (see section 2).

Subsection (3) applies where the fair market value of a supply or import at a given date cannot be determined under subsection (2). In this case, the fair market value is the consideration in money which a similar supply or similar import (as the case may be - see below) would generally fetch if the similar supply or similar import was freely offered in similar circumstances in Vatopia on the same day as the first-mentioned supply or import between persons who are not related persons.

Subsection (1) defines “similar supply” and “similar import” for the purposes of the section. A supply is a similar supply to another supply if it is identical to, or closely or substantially resembles that other supply. Similarly, an import is a similar import to another import if it is identical to, or closely or substantially resembles that other import. In both cases, this is determined by having regard to the characteristics, quality, quantity supplied, functional components, and reputation of, and materials comprising, the goods or services that are the subject of the two supplies or imports. The similar supply or similar import may be made by the same person who made the other supply or import, or by another person.

Subsection (4) applies where the fair market value of a supply or import cannot be determined under subsection (2) or (3) (for example, a supplier does not supply the relevant goods to unrelated persons and there are no similar supplies by other persons). In this case, the fair market value of a supply or import is determined in

accordance with any method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for the supply or import if it had been freely offered and made between persons who are not related persons.

The definition of consideration in section 2 includes the amount of any consideration in kind. It is intended that the amount of any consideration in kind is the fair market value of the in-kind consideration. Subsection (5) provides that the fair market value of a supply or import is determined at the time of the supply or import as determined under the Act (see sections 14 (supplies) and 19 (imports)).

4. Supply

This section defines a supply of goods and a supply of services for the purposes of the Act. The section also provides rules to deal with special cases (including mixed supplies) and identifies some transactions as neither supplies of goods nor supplies of services. This section is central to the operation of the VAT. A supply of goods and a supply of services are part of the subject matter of the tax. Section 9 imposes tax on every taxable supply by a taxable person. A taxable supply is any supply of goods or services in the course or furtherance of a taxable activity, other than an exempt supply (section 2). A taxable activity, under section 6, involves the continuous or regular supply of goods or services for consideration.

It is not necessary for there to be consideration for an arrangement to be a supply of goods or a supply of services, but a supply without consideration generally is not taxable. This result occurs because section 9 imposes tax on the value of a supply, and the value of a supply is the amount of the consideration for the supply (see section 16(1)). For example, trade samples provided to a customer is a supply of those goods even though the goods are supplied free of charge. However, the value of the supply is zero and, thus, the supply is not taxed (see section 16(14)).

Subsection (1) provides the basic rules for determining what is a supply of goods and what is a supply of services. Paragraph (a) defines a supply of goods. Sub-paragraph (i) provides that a sale of goods is a supply of goods. “Sale” is defined in section 2. The definition expressly includes an agreement of sale and purchase (the most common form of a supply of goods), and any other transaction in which the owner of the goods transfers the general property or ownership of the goods to another person. 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. Under section 4(4), a supply of goods for consideration consisting of either goods or services, or both, is a supply of goods. The supply is classified according to the nature of the item supplied.

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 pledger 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 the consignee does not sell and can return some or all of the goods to the consignor. A transfer of goods to a person acting in a representative capacity to the transferor is not a supply of goods. See subsection (16).

Sub-paragraph (ii) provides that any lease or other grant of the use or right to use any goods is a supply of goods. Thus, a supply of goods includes a lease or rental of goods under which the owner parts or will part with possession of the goods, even though ownership does not and will not change as part of the arrangement. The term includes the right to use goods, whether or not a driver, pilot, crew, or operator is provided. A wide variety of agreements come within the concept of a lease or rental, including any rental or charter agreement, credit agreement (see section 2), freight

contract, or agreement governing the use or right to use goods. **An alternative is to treat leases or rentals as supplies of services. This is the approach taken in the Sixth VAT Directive in the European Union. The difference relates mainly to the timing and place of supply rules, which are different for goods and for services.**

The grant of the use or right to use any goods under a credit agreement is a supply of goods under sub-paragraph (ii). “Credit agreement” is defined in section 2 to mean a hire purchase agreement or a finance lease (see definition in section 2). Special rules are provided for determining the time of supply (section 14(2)) and the value of a supply (section 16(6)) of goods under a credit agreement. The broad effect of these rules is to treat a hire purchase agreement and a finance lease as the equivalent of a sale of the goods. If goods supplied under a credit agreement are repossessed, the repossession is treated as a supply of the goods by the debtor to the person repossessing the goods (subsection (7)). The repossession may not be taxable to the debtor if the repossessed goods were not used in connection with the debtor’s taxable activity. The time of the supply by the debtor is determined under section 14(5) and the value of the supply is determined under section 16(7). For the tax treatment to a taxable person who repossesses the used goods, see section 24(1)(f)-(h).

Sub-paragraph (iii) treats a supply of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water as a supply of goods. By virtue of the nature of the items just described, the general rule in section 4(1)(a)(i) may not apply to them; hence the need for the special rule in section 4(1)(a)(iii).

Paragraph (b) of subsection (1) defines a supply of services. The basic rule is in the introductory words to the definition, namely a supply of services is anything done which is not a supply of goods or money. This is consistent with 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 and, except for money, jointly exhaustive

of all types of supply. Section 4(5) provides that a supply of services for consideration consisting of either goods or services, or both, is a supply of services. The supply is classified according to the nature of the item supplied.

Paragraph (b) clearly includes the performance of services for another person—the most common form of supply of services. However, the service provided by an employee for an employer as part of the employee's employment is not a supply of services (section 4(15)) and, therefore, is not subject to VAT.

A supply of services expressly includes the granting, assignment, cessation, or surrender of any right, as well as the making available of any facility or advantage (section 4(1)(b)(i) & (ii)). An agreement not to compete, to refrain from an activity, or to tolerate any activity is also treated as a supply of services (see section 4(1)(b)(iii)). The specific inclusions in sub-paragraphs (i)-(iii) are not in any way intended to limit the generality of the test of a supply of services stated in the introductory words of paragraph (b).

Subsection (2) provides that the disposition of a person's entire taxable activity as a going concern or a portion of the taxable activity capable of separate operation is a supply of goods made in connection with such taxable activity. To qualify as a taxable activity capable of separate operation, subsection (3) requires that the transferor must supply all of the goods and services needed to continue operating that taxable activity (or a portion of that taxable activity), and the transferor must operate the taxable activity up to the time that it is transferred to the transferee. A transfer qualifying as a supply under subsection (2) may be zero-rated under section 17 if it meets the conditions in Schedule I, paragraph 2(o).

The acquisition of a going concern may itself constitute a supply by the recipient in connection with that person's taxable activity if the transaction was a zero-rated supply to the transferor, but only to the extent that the acquired goods or services are not going to be used in making taxable supplies (subsection (18)). This rule applies

where the transferor makes taxable supplies and the recipient makes both taxable and exempt supplies. This rule does not apply if less than ten percent of the goods and services comprising the acquired taxable activity will be used for purposes other than making taxable supplies (subsection (19)). The time of a subsection (18) supply is determined under section 14(10) and the value under section 16(16).

A lay-by agreement between a taxable person and a customer is not a supply by the taxable person at the time it is entered into or as the customer makes periodic payments. The supplier retains ownership and possession of the goods until the full price is paid. At that time, the supplier will transfer ownership and possession to the purchaser. The time of delivery of the goods is the time of supply under a lay-by agreement (section 14(3)). If a lay-by agreement is cancelled or terminates and the seller either retains some consideration paid by the purchaser or recovers some of the amount owed by the purchaser, subsection (8) provides that the cancellation or termination is a supply of services by the seller. The time of the subsection (8) supply is determined under section 14(6) and the value of the supply under section 16(9).

Subsection (9) provides that the placing of a bet with a person operating a game of chance (see section 2) is a supply of services by the person operating the game of chance.

Subsections (10)-(14) provide rules for dealing with mixed supplies; that is, where goods and services are supplied together for a single consideration. Subsections (10) and (11) provide two 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 (subsection (10)). Subsection (12) provides a similar rule in relation to the import of goods. Where a supply or import of

services is incidental to the import of goods, the supply of services is treated as part of the import of goods. See also, section 22(2). The Act imposes a positive rate of tax and a zero rate. A single supply may consist of items taxable at a positive rate and the zero rate. In this situation, subsection (14) provides that each portion of the supply is to be treated as a separate supply if each portion is reasonably capable of being supplied separately. **If tax is imposed at more than one positive rate, then subsection (14) must be amended to add a paragraph providing: “a supply charged with tax at a different positive rate.”** Subsection (13) provides that the Minister is authorized to issue regulations to treat a mixed supply of goods and services as either a supply of goods or a supply of services. This will be primarily relevant to cases where goods and services are supplied for a single consideration and the supply is not mainly of one kind or the other.

Section 4 provides rules to cover special or unusual transactions. These rules treat some transactions as supplies in connection with a taxable activity and therefore subject to tax, and treat other transactions as “non” supplies and therefore not subject to the tax. When a taxable person converts goods or services acquired for use in a taxable activity to a different use, the change in use generally is treated as a supply of the goods or services in connection with that person’s taxable activity (subsection (6)). For example, the provision of goods or services acquired for use in a taxable activity to an employee for personal use is a supply in connection with the employer’s taxable activity. If an employer provides fringe benefits to officers and employees in the form of payment of goods and services for them which, if purchased directly by the employees and officers, would attract VAT, the provision of those benefits is a supply in connection with the employer’s taxable activity. For example, this rule covers the employer’s payment of school fees for an employee’s child. This rule in subsection (6) does not apply to the extent the taxable person was denied an input tax deduction for tax on the cost of those goods and services. See subsection (17). This change in use is treated as a supply only if the taxable person was allowed an input tax deduction for tax attributable to those goods or services. The timing rule in relation to the supply is determined under section 14(4) and the valuation rule under section 16(4). A similar

supply rule is provided under section 11(11) when the registration of a taxable person is cancelled.

If a taxable person was denied an input tax deduction on the acquisition of goods or services and those goods or services are subsequently supplied, subsection (17) treats the supply as though it were not made in connection with a taxable activity and therefore is not subject to tax. For example, assume that a taxable person that makes taxable supplies of goods also leases residential property that is exempt from tax under section 18 and Schedule II, paragraph 2(d). The taxable person purchases equipment used in maintaining the rental property for 10,000 vatopians plus 1,000 VAT. The 1,000 tax on the acquisition of this equipment is not deductible because it is used in making exempt supplies. If the taxable person later sells the used equipment for 4,000 vatopians, the supply of the equipment is not a supply in connection with a taxable activity and, therefore, is not subject to tax.

Subsection (20) provides that, if a person issues a token, voucher, gift certificate, or stamp for a consideration in money, the issuance is not a supply, except to the extent that the person receives more than the monetary value stated on the token, voucher, gift certificate, or stamp. This rule does not apply to the sale of a postage stamp under the *Post Office Act*. This rule also does not apply to phone cards, prepayments on cellular phones, or plans similar to phone cards where services must be paid for in advance (subsection (21)). The time of a supply under subsection (22) is determined under section 14(11) and the value under section 16(10).

5. Supply by Agent or Auction

This section contains rules governing supplies to and by an agent and supplies by an auctioneer.

Generally, a supply of goods or services by an agent on behalf of the principal is a supply by the principal (subsection (1)(a)). The agent may issue tax invoices as if the

agent were the supplier (section 83(1)). A supply to an agent for the principal is a supply to the principal (subsection (1)(b)). At the request of the agent, the tax invoice covering this supply may be issued to the agent (section 83(2)). These rules do not apply to the services an agent renders to the agent's principal (subsection (2)). Subsection (1) does not apply where the principal is a non-resident. Supplies on behalf of a non-resident principal may be considered a supply by the agent, so that the agent is subject to the rules of the Act.

An auctioneer (section 2 definition) is required to register, regardless of the level of its taxable turnover or the date the person becomes an auctioneer (section 11(7)), and the registration is effective on that date (section 12(4)(b)). An Auctioneer is not eligible to apply to have registration cancelled if the auctioneer's taxable supplies drop below the registration threshold (section 13(9)). If an auctioneer sells goods under distress proceedings, the auctioneer can apply the auction proceeds toward the cost of taking, keeping, and selling the goods before the proceeds are applied to tax due (section 50(5)). An auctioneer may serve as agent for the owner of the auctioned goods, but for purposes of the tax, a supply by auction is treated as a supply for consideration by the auctioneer as supplier in the conduct of the auctioneer's taxable activity (subsection (3)). The auctioneer is subject to the VAT on the auction sales. The tax payable by the auctioneer is chargeable to and recoverable from the purchaser (section 83(3)).

6. 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 9(1)(a) imposes VAT on every taxable supply by a taxable person. "Taxable supply" is defined in section 2 to mean any supply of goods or services 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 supplies in section 4. For example, the disposition of a taxable activity as a going concern is a supply of goods in the course or furtherance of the taxable activity (section 4(2)). Mandatory registration applies only to persons engaged in a taxable activity (section 11(1)), and registration may be cancelled if a taxable activity ceases (section 13).

Subsection (1) sets out the definition of “taxable activity”. An activity carried on continuously or regularly by any person wholly or partly in Vatopia 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 Vatopia is conducting an activity partly in Vatopia. An activity may be a taxable activity within paragraph (a), whether or not it is carried on for pecuniary profit. It includes an activity of a local authority that involves, in whole or in part, the supply of taxable goods or services for consideration. Taxable activity also includes a supply of public entertainment (subsection (6)).

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 2) 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 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 (treated as a supply under section 4(6)); and a transfer of a taxable activity as a going concern to a person who does not use all of the goods or services transferred for the purpose of making taxable supplies (treated as a supply under section 4(18)). 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 any 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 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 any activity to the extent that it involves the making of exempt supplies (see section 18 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 deductions for tax paid on acquisitions used in making the exempt supplies (see sections 25(3) and (5)).

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.

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

This section provides that the Commissioner is responsible for carrying out the provisions of the Act (subsection (1)). This section also provides for general matters relating the exercise of powers by the Commissioner and taxation officers.

The Commissioner's powers and duties under the Act may be exercised or performed by the Commissioner personally or by any taxation officer carrying out the provisions of the Act under the Commissioner's control, direction, or supervision (subsection (2)).

Subsection (3) provides that any decision, notice or communication issued or signed by a taxation officer (including the Commissioner) under subsection (2) may be withdrawn or amended by the Commissioner or the taxation officer concerned. Until withdrawn or amended, it is treated as having been made, issued, or signed by the Commissioner. An exception is provided under subsection (4). If all of the material facts relating to a decision made by a taxation officer (other than the Commissioner) in the exercise of discretionary power were known when the officer made the decision, the decision cannot be withdrawn or amended more than two years after written notice of the decision or a notice of assessment was given.

Subject to subsections (6) and (7), decisions made and notices or other communications issued and signed by the Commissioner or his delegate may be withdrawn or amended at any time (subsection (5)).

If the Commissioner makes a decision to a person that registration is required or not required and the decision subsequently is withdrawn, the withdrawal does not affect

the liability or non-liability of the person with respect to any transaction concluded or event that occurred before the decision was withdrawn (subsection (6)). This result applies only if the person accepted the decision and the Commissioner knew all of the material facts when the original decision was made. The same rules apply if the Commissioner makes a decision on the nature of a transaction concluded by a person and that decision is withdrawn (subsection (7)). For example, subsection (7) applies if the Commissioner issues a decision that a particular transaction is exempt and subsequently rules that the transaction is taxable. The withdrawal does not affect the tax consequences of any transaction concluded or event that occurred before the withdrawal of the decision, assuming that the person accepted the decision and the Commissioner knew all of the material facts when the decision was made.

8. Secrecy

This section provides for the confidentiality of tax information.

Subsection (1) obliges every taxation officer (see section 2 definition) to preserve confidentiality with regard to all information or documents pertaining to any other person that may come to the officer's knowledge in an official capacity in the performance of duties under the Act. The prohibition extends to disclosures to any other person or that person's representative. The only exceptions to this are where the communication is in the performance of the officer's duties under the Act, is required by order of a Court, or is permitted under subsection (2) (see below). Subsection (1) also prohibits a taxation officer from providing any person access to records in the Commissioner's possession or custody.

Subsection (2) provides for six classes of permitted disclosure by the Commissioner –

- (1) Information or documents may be disclosed to a person where the disclosure is necessary for the purposes of the Act or the application of any other fiscal law

(paragraph (a)(i)).

- (2) Information or documents may be disclosed to the Auditor-General where the disclosure is necessary for the performance of duties under the [Audit Act] (paragraph (a)(ii)).
- (3) Information or documents may be disclosed to the competent authority of the government of a country with which Vatopia has an agreement for avoidance of double taxation or for the exchange of information, but only to the extent permitted under that agreement (paragraph (a)(iii)).
- (4) Information or documents may be disclosed to a person in the [corruption department] where the disclosure is necessary for the performance of duties under the [Corruption Act] (paragraph (a)(iv)).
- (5) Information and documents may be disclosed to a law enforcement agency if the Minister issues written authorization to make the disclosures necessary for the enforcement of the laws under that agency's authority (paragraph (a)(v)).
- (6) Information may be disclosed if the disclosure does not identify any specific person to a person in a revenue or statistical department of the State if the disclosure is necessary for the recipient of the information to perform official duties (subsection (2)(b)).

Subsection (3) obliges any person receiving documents or information under subsection (2) to keep them confidential as required under subsection (1), except to the minimum extent necessary to achieve the purposes for which the disclosure was made.

Subsection (4) permits the Commissioner to use any information or documents obtained in the performance of the Commissioner's duties under the Act for the purposes of any other fiscal law administered by the Minister or Commissioner.

A person can consent in writing to the disclosure of information otherwise confidential to another person (subsection (5)). The Commissioner also can disclose information about a person to a person claiming to be the taxpayer or that person's authorised representative if the Commissioner obtains reasonable assurance that the claim to be the taxpayer or the taxpayer's authorised representative is authentic (subsection (6)).

Subsection (7) provides that any person who fails to comply with the confidentiality obligation in this section commits a criminal offence and, on conviction, is subject to a fine of up to [...vatopians] or a prison term of up to [2] years, or both.

9. Imposition of Tax and Persons Liable

The purpose of this section is to impose the VAT. Subsection (1) provides for the imposition of VAT in two broad classes of case. Paragraph (a) imposes VAT on the value of every taxable supply by a taxable person in Vatopia. Section 15 provides rules to determine if a supply takes place in Vatopia. Supplies outside Vatopia are beyond the scope of VAT. Special rules apply to the export of goods or services from Vatopia to give effect to the zero rating of such supplies (see section 17). "Taxable supply" is defined in section 2 to mean any supply of goods or services in the course or furtherance of a taxable activity, other than an exempt supply (see section 18). Section 4 defines a supply of goods and a supply of services, and section 6 defines a taxable activity.

A taxable supply is subject to tax only if it is made by a taxable person. Section 10 defines "taxable person" to mean any person who is registered or is required to register for the purposes of the Act (see, particularly, sections 11 and 12). The requirement that the taxable supply be made by a taxable person means that supplies made by persons who are not taxable persons are not subject to VAT. Further, VAT is not levied on purely personal transactions of a taxable person. If a taxable person

converts business goods to personal use (see section 4(6)), then the person is deemed to have made a supply of those goods in connection with a taxable activity. Otherwise, however, VAT is not levied on supplies of personal items not connected with a taxable person's taxable activity. For example, if a sole proprietor operating a clothing store sells her used personal refrigerator, the sale of the refrigerator is not subject to VAT as the supply is not in the course or furtherance of the person's taxable activity. But if the refrigerator had been purchased for use in the store and an input credit obtained, the supply will be taxable.

Paragraph (b) of subsection (1) imposes VAT on every import of goods or services, other than an exempt import (see section 21). "Import" is defined in section 2. By virtue of paragraph (b) of that definition, an import of services only occurs if the recipient of the services utilises or consumes them in Vatopia, other than in making taxable supplies. There are other conditions related to the nature of the supplier and the recipient. The purpose for the taxation of these imported services is to prevent tax avoidance if a person who is not able to deduct input tax acquires services outside Vatopia rather from Vatopia suppliers of the same services. **The EU Sixth VAT Directive, article 2, nominally imposes tax only on the import of goods, but under article 9(2)(e) of that Directive, some imported services are treated as supplied in the country where the customer is located, so the services are taxed as domestic services.**

A transaction that may be taxable as a supply under subsection (1)(a) and as an import under subsection (1)(b) is treated under subsection (3) as a supply under subsection (1)(a).

Subsection (1) imposes tax at a single [10] percent rate on the value of the supply or import. The value of a supply is determined under section 16, and the value of an import is determined under section 20.

Subsection (2) identifies the person who is obligated to pay the VAT imposed on

a taxable supply or taxable import. Paragraph (a) provides that the taxable person who makes a taxable supply of goods or services must account for the tax on the supply. The VAT payable by a taxable person is collected with the person's periodic (typically monthly) returns (see sections 31 and 32). The amount of VAT payable by a taxable person for a tax period is net of the deductible VAT payable by the person on taxable supplies to, or imports by, the person (see sections 23 and 24).

Paragraph (b) provides that the importer must pay the VAT imposed on an import of goods. "Importer," according to section 2 includes the person who owns, possesses, or has a beneficial interest in the goods. Persons serving in a representative capacity or persons appointed by the Commissioner as an agent of a taxable person may be liable under section 9 (see sections 54 and 55). The VAT on imports of goods generally is payable when the goods enter Vatopia (see section 22(1)).

Paragraph (c) provides that the recipient of an import of services must pay the VAT imposed on the imported services. The recipient must file an import declaration and pay the VAT within [30] days after the import (section 22(2)).

10. Taxable Person

This term is central to the operation of the VAT as section 9(1)(a) imposes VAT on every taxable supply by a taxable person, and section 32(1) requires every taxable person to file VAT returns. Section 23 provides the calculation of tax liability of a taxable person. Only a taxable person can claim an input tax deduction (section 2 definition of input tax). Section 43(1)(a) requires a taxable person to pay tax due by the due date of the return for each tax period.

A "taxable person" is a person who is registered or is required to register under section 11 (see subsection (1)). Essentially, a person is liable to be registered for the purposes of the Act if the person engaged in a taxable activity makes or is expected to

make taxable supplies in excess of the registration threshold (see section 11(1) and paragraph 1 of Schedule V). A person liable to be registered under subsection (1) because the person's taxable supplies exceed that registration threshold must apply to the Commissioner for registration within 21 days of the date specified in subsection (1). The Commissioner is obliged under section 12(2) to register a person who is liable to be registered under the Act. Persons who are not liable to be registered may still apply for registration under section 11(5) and, with one exception, the Commissioner is obliged under section 12(2) to register such persons. Thus, the reference in the Act to a "registered person" is a reference to a person who is registered under section 12(2).

The estate of a deceased or insolvent taxable person is treated as a taxable person under section 58(1), and a mortgagee in possession treated as a taxable person under section 58(2).

Subsection (2) specifies the effective date on which a person is a taxable person. A person is treated as a taxable person on the same date that the person's registration becomes effective under section 12(4) (subsection (2)). For example, if a person is required to register because the person's taxable supplies in the past 12 or fewer months exceeded the threshold under section 11(1)(a), the person is a taxable person from the beginning of the tax period immediately following the end of the period of 12 or fewer months (sections 10(2)(a) and 12(4)(a)).

11. Registration

This section provides for the registration of persons for the purposes of VAT. Under section 23(1), it is only a taxable person who can deduct input tax on business inputs. Section 10 defines a taxable person as a person who is registered or required to register. Registration therefore is central to the VAT system. The section provides for both mandatory and voluntary registration.

It is mandatory for four classes of person to be registered. First, under

subsection (1)(a), a person who carries on a taxable activity and is not already registered is required to apply for registration within 21 days of the end of any period of twelve or fewer months if during that period the person made taxable supplies the value of which exceeded the threshold specified in paragraph 1 of Schedule V. The test in subsection (1)(a) is a continuing test applied by reference to a twelve-month period. This means that an unregistered person may need to calculate the value of total taxable supplies at the end of each month to check whether the person is liable to be registered. Consequently, persons who are not registered must keep the level of their business activities under continuous review.

Secondly, under subsection (1)(b), a person who carries on a taxable activity and is not already registered is required to apply for registration within 21 days of the beginning of any period of twelve 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 threshold specified in paragraph 1 of Schedule V. This is primarily aimed at new businesses, although it will also apply to expanding businesses.

The threshold for mandatory registration under subsection (1) is tested by reference to the value of taxable supplies made, or reasonably expected to be made, by the person during the relevant twelve month period. Only taxable supplies are taken into account. "Taxable supply" is defined in section 2 to mean a supply of goods or services in the course or furtherance of a taxable activity, other than an exempt supply (see section 18). A supply of goods or services is not in the course or furtherance of a taxable activity if, on the acquisition of such goods or services, an input tax deduction was denied (section 4(17)). This means that supplies made otherwise than in the course or furtherance of a taxable activity and exempt supplies are not taken into account in determining whether a person is liable to be registered. A person conducting a business which largely involves making exempt supplies may not be liable to be registered for VAT.

Subsections (2) and (3) provide rules relevant to determining whether a person is

required to apply for registration. Subsection (2) provides that, for the purpose of determining whether a person is required to apply for registration, the value of taxable supplies made by a related person (see section 2 definition) may be taken into account. This is intended to prevent avoidance of the registration requirement through fragmentation of a taxable activity among related persons. For example, taxable supplies by branches given authority to register separately under section 56(3) and treated as related persons must be aggregated. Subsection (3) provides that, for the purpose of determining whether a person is liable to be registered, the value of taxable supplies made by the person is determined in accordance with the section 16 valuation rules.

Subsection (4) provides an exception to the subsection (1) cases where the Commissioner is satisfied that a person made taxable supplies in excess of the amount specified in paragraph 1 of Schedule V only because of abnormal transactions, namely the disposal of goods in consequence of the cessation or substantial, reduction in the taxable activity of the person, or the replacement of capital goods (see section 2) used in the taxable activity. In this case, the person does not become liable to be registered under subsection (1).

Under subsection (6), the third class of person required to apply for registration is the State, and any local authority that carries on a taxable activity (see section 6). These are required to apply for registration from the date of commencement of the taxable activity. **It is anticipated that different agencies of government will be required to register as separate taxpayers.** The requirement for the State or local authority to apply for registration is not subject to the registration threshold applicable under subsection (1). By virtue of section 54(1)(c), the person having responsibility for accounting for the receipt and payment of monies or funds on behalf of the State or the authority is responsible for performing any duties imposed under the Act on the State or authority, including making an application for registration.

Under subsection (7), the fourth class of person required to apply for registration

is an auctioneer. The auctioneer's requirement to apply for registration is not subject to the registration threshold applicable under subsection (1). An auctioneer is liable to be registered on the day the person becomes an auctioneer.

Under subsection (8), a promoter of public entertainment is required to apply for registration before the promoter starts making taxable supplies in connection with the first promoted public entertainment. The same rule applies to a licensee or proprietor of a place of public entertainment.

Any person who fails to apply for registration as required by subsection (1), (7) or (8) commits a criminal offence and, upon conviction, is subject to a fine or imprisonment, or both (subsection (9)). If the failure was made knowingly or recklessly, the fine is up to [...vatopians] or a prison term of up to [2] years, or both. In any other case, the fine is up to [...vatopians] or imprisonment for up to [1] year, or both.

Subsection (10) provides for the imposition of a penalty for failure to apply for registration required under subsection (1). The penalty for the civil violation is [double] the amount of output tax (see section 2 definition) payable from the time the person became liable to be registered until the application is filed with the Commissioner. The penalty does not apply if the person was convicted of the criminal offence under subsection (9) for the same act (subsection (11)).

Subsection (12) provides that if the civil penalty under subsection (10) was paid and the Commissioner brings a criminal proceeding against the person for the same act under subsection (9), the Commissioner must refund the penalty paid. The penalty is not payable unless the prosecution under subsection (10) is withdrawn.

Subsection (5) provides for voluntary applications for registration. A person who is not liable to be registered but who is making, or intends to make taxable supplies may apply to the Commissioner to be registered. There are compliance costs associated with registration, including accounting and record keeping requirements. A

person who is neither making nor intends to make taxable supplies (such as person who only makes exempt supplies) cannot apply for registration. Voluntary registration is not automatic (see section 12(2)).

12. Requirements for Registration

This section provides for the making of applications for registration and for the mechanics of registration.

Subsection (1) provides that an application for registration must be in the form approved by the Commissioner for this purpose. Further, the applicant is obliged to provide any further information that the Commissioner may require.

Subsection (2) obliges the Commissioner to register a person who has applied for mandatory registration unless the Commissioner is satisfied that the person is not eligible to be registered for the purposes of the Act. Broadly, this means that the Commissioner must refuse to register a person who is neither making nor intends to make taxable supplies (such as a person who only makes exempt supplies or otherwise does not carry on a taxable activity). In the case of an application for voluntary registration under section 11(5), the Commissioner must register the person unless the Commissioner is satisfied that 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 file proper returns. The Commissioner ordinarily must register the applicant within [10] days from the receipt of the application. **Alternatively, this deadline could simply be omitted from the law. In any case, the appropriate deadline will differ from country to country, depending among other things on whether procedures are manual or computerized.**

Where the Commissioner registers a person under subsection (2), the registration takes effect from the date specified in subsection (4). The date of registration specified in subsection (4) depends on the basis of the application for

registration. Paragraph (a) treats a person who is liable to be registered under section 11(1)(a) (the threshold was satisfied on the basis of taxable supplies for the past 12 or fewer months) as registered from the beginning of the tax period (see section 31) following the end of the twelve-month or shorter period.

Paragraph (b) treats a person who is liable to be registered under section 11(1)(b) (the threshold is expected to be satisfied in the following 12 months) as registered from the beginning of the twelve-month period. Similarly, paragraph (b) treats the State or a local authority that is liable to be registered under section 11(5) or an auctioneer that is liable to be registered under section 11(7) as registered from the commencement of the person's taxable activities or when the person becomes an auctioneer, as the case may be. Paragraph (b) treats a promoter of public entertainment required to register under section 11(8) as registered from the date the promoter begins making taxable supplies in connection with the public entertainment.

Paragraph (c) treats a person who has applied for voluntary registration as registered from the beginning of the tax period (see section 31) immediately following the end of the period in which the person applied for registration.

Subsection (5) obliges the Commissioner to serve a notice on a person in respect of the decision to register or refuse to register a person under subsection (2). Such a notice must be in writing and served by the Commissioner on the applicant for registration within [10] days of the receipt of the application. The rules for service of notices are set out in section 77. The rules governing the Commissioner's withdrawal of this decision are set out in section 7(6). The Commissioner's decision to register or refuse to register the applicant is an "appealable decision" (section 2) for purposes of the Act. Subsection (6) provides that a person dissatisfied with a registration decision may only challenge the decision under the objection and appeal procedure in Part X of the Act. This excludes an applicant for registration from challenging the decision on any other basis (such as judicial review of administrative action).

Subsection (3) provides that if a person who is required to apply for registration under the Act (see section 11(1), (6), (7), and (8)) fails to apply for registration (see section 11), the Commissioner may register the person from the date prescribed by the Commissioner.

The Commissioner is obliged to issue each registered person a certificate of registration containing details of the registered person, the date the registration becomes effective, and a VAT registration number (subsection (7)). The Commissioner is required to maintain a register that includes the details of all registered persons (subsection (8)).

Subsection (9) requires every registrant to display the certificate of registration in a conspicuous place at each location at which he engages in taxable activities.

Subsection (10) obliges a taxable person to notify the Commissioner in writing of any change relating to the person's taxable activity. This subsection includes changes in the name, address, place of business, constitution, the nature of the person's principal activities, or a decision to cease operations or to close temporarily. Such notification must be made within [21] days of the change occurring.

A taxable person who fails to comply with subsection (10) commits a criminal offence and is liable upon conviction to a fine or imprisonment, or both (subsection (10)). If the failure to comply is made knowingly or recklessly, the fine is up to [...vatopians] or a prison term of up to [2] years, or both (paragraph (a)). In any other case, the fine is up to [...vatopians] or up to [1] year in prison, or both.

13. Cancellation of Registration

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

Subsection (1) requires a taxable person who ceases to conduct taxable activities to notify the Commissioner of that fact within [21] days of such cessation, and the Commissioner must cancel the registration. The cancellation is effective from the last day of the tax period in which the activities ceased, or a date set by the Commissioner.

Subsection (2) provides that the Commissioner shall not cancel a taxable person's registration if the Commissioner has reasonable grounds to believe that the person will engage in taxable activity within the 12-month period after the cessation.

Subsection (1) obliges a taxable person to notify the Commissioner in writing if the person ceases to carry on all taxable activities (see section 6). The notification must be made in writing within [21] days of ceasing taxable activities. The notification must include the matters specified in subsection (3) – the date the person ceased to carry on taxable activities, and a statement that the person intends or does not intend to carry on taxable activities within the next 12 months. Notification under subsection (1) is mandatory where a taxable person has ceased to carry on all taxable activities.

Subsection (4) provides that where the Commissioner is satisfied that a person is not engaging in taxable activity, or is neither required nor entitled to apply for registration, the Commissioner may cancel the person's registration from the last day of the tax period in which the Commissioner was so satisfied, or from such other date as the Commissioner may determine. The Commissioner shall notify the person in writing of the effective date the registration is cancelled.

Subsection (5) gives the Commissioner authority to cancel a voluntary registration if the registered person has no fixed place of business, has not kept proper records, or has not submitted regular and reliable required returns.

The effective date for the cancellation of registration under subsection (4) or (5)

may be retrospective, but not earlier than the last day of the tax period in which taxable activity ceased, or the effective date of registration if the person did not carry on taxable activity since that date.

A taxable person generally can apply for cancellation of registration if the value of the person's taxable supplies in the past 12 months has not been or in the next 12 months will not be more than the registration threshold under section 11(1)(b) (subsection (7)). **(The latter clause (subsection 7(b) may be omitted if it is considered too complex.)** However, a person required to register who ceases to satisfy the requirements under section 11(1) or a person who voluntarily registered can apply for cancellation only after the expiration of two years from the date the registration took effect (subsection (8)). This is intended to prevent a person being registered for the purpose only of securing input tax deductions under section 24 in relation to the acquisition of capital goods and other goods or services. Subsection (9) provides that subsection (7) does not apply to the State, an agency of the State, or a local authority liable to be registered under section 11(6), an auctioneer under section 11(7) (because the turnover threshold in section 16(1) does not apply to these persons), or a promoter of public entertainment under section 11(8) .

If the Commissioner is satisfied that the person applying under subsection (7) or (8) is entitled to have registration cancelled, the Commissioner is required to cancel the registration effective from the end of the tax period in which cancelled, or an earlier date set by the Commissioner (subsection (10)).

Subsection (11) 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 a taxable person. When a registration is cancelled, subsection (12) requires the Commissioner to remove the person's name and details from the register described in section 12(8).

The Commissioner's decision to cancel or not to cancel the person's registration

is an “appealable decision” (section 2) for purposes of the Act. Subsection (13) provides that a person dissatisfied with a decision to cancel or not to cancel the person’s registration may only challenge the decision under the objection and appeal procedure in Part X of the Act. This excludes a person from challenging the decision on any other basis (such as judicial review of administrative action).

Subsection (14) provides for a criminal offence for a person who fails to notify the Commissioner of the cessation of taxable activity. The penalty, upon conviction for the offence, depends on the degree of culpability of the person involved. The more severe penalty applicable when the failure was made knowingly or recklessly is a fine of up to [...vatopians] or imprisonment for up to [2] years, or both. For other failures, the penalty is up to [...vatopians] or up to [1] year in prison, or both.

14. 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 output tax on taxable supplies is reportable (section 23(1)), when input tax can be deducted (section 24(1)(a)(i)), and when the fair market value of a supply is to be determined (section 3(5)).

Subsection (1) provides the general rule for determining the time of supply. A supply of goods or services occurs at the earliest of the date the goods are delivered or made available or services are completed, the date the supplier issues an invoice, or the date any payment for the supply is received. “Invoice” is defined in section 2 to mean any document notifying an obligation to make payment (and is not confined to a tax invoice). The reference to “document” is intended to be interpreted broadly. Besides an ordinary invoice for a supply, this could include a creditor’s statement or a contract. As regards payment, the reference is to “any payment”. Thus, a part payment for a supply will trigger the VAT liability on the full value of the supply, unless section 14 provides otherwise (e.g., under the successive supplies rule (see below)). **To make**

the administration of the tax simpler, the time of supply could be the earlier of the date the invoice is issued or the date payment is received. Some statutes apply this “earlier” of two dates rule only if the invoice is issued within a specified period of time after the delivery of goods or the rendition of services. The “earlier” rule could be combined with a section providing for the acceleration of the time of supply for transactions between related persons to the date the goods are delivered or the services are rendered.

This general rule is subject to exceptions for specified kinds of supplies. Many of these link to transactions or events treated as supplies under section 4. A deposit (other than a deposit on a returnable container) is not consideration for a supply unless and until the deposit is forfeited. Subsection (12) provides that the forfeit of a deposit (other than a deposit on a returnable container) is a supply of services when the deposit is forfeited.

A supply of goods under a credit agreement is treated under the VAT in the same way as a sales transaction. Section 2 defines a “credit agreement” as a hire-purchase agreement (defined in section 2 as an agreement under the Hire-Purchase Act) or a finance lease (defined in section 2). Subsection (2) provides that a supply of goods under a credit agreement occurs at the date the agreement commences.

Section 4(7) treats the repossession of goods pursuant to a credit agreement as a supply of the goods by the debtor to the person exercising the right of repossession. Subsection (5) provides generally that this supply occurs when the goods are repossessed. If the debtor’s rights under the credit agreement may be reinstated, the supply does not occur until the day after the last day the debtor’s rights may be reinstated.

Subsection (3) provides that a supply pursuant to a lay-by agreement occurs when the goods are delivered to the purchaser. If a lay-by agreement is cancelled or terminates and the seller retains amounts paid by the purchaser or recovers the amount

the purchaser owes, section 4(8) provides that the cancellation or termination is a supply of services by the seller. Subsection (6) provides that the section 4(8) supply occurs when the seller obtains the right to retain the amount paid or recovers the amount owing by the purchaser.

If a taxable person applies goods or services that were acquired for use in a taxable activity to a different use, section 4(6) treats this change in use as a supply in connection with the taxable activity. This rule applies only if the taxable person was allowed an input tax deduction with respect to the acquisition of those goods or services. Subsection (4) provides that the section 4(6) supply occurs when the goods or services are first applied to a different use.

If a person makes supplies through a vending machine, meter, or other device and receives the consideration for the supplies in money (coin or note) or a token deposited in those devices, subsection (7) provides that the supply occurs when the money or token is taken from the machine, meter or device by or on behalf of the supplier.

Subsection (8) provides a special timing rule for goods supplied under a rental agreement and for services supplied under an agreement requiring periodic payments. "Rental agreement" is defined in section 2 to mean any agreement for letting of goods other than a hire-purchase agreement or a finance lease. The time of supply under a hire-purchase agreement or a finance lease is determined under subsection (2) (see above). An example of a supply of services under an agreement requiring periodic payments is consulting services where progressive payments are provided for under the contract. In both situations, what would otherwise be a single supply is treated under subsection (8) as a series of separate successive supplies with the time of each supply occurring at the earlier of the date on which payment for the supply is due or the date on which payment is received.

A different timing rule is provided in subsection (9) for other goods and services

that are successively supplied or supplied over a long period of time. This applies to thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water (treated as a supply of goods under section 4(1)(a)(iii)) and to goods and services supplied directly in connection with certain construction or engineering work if the consideration is payable in instalments or periodically. These supplies are treated as a series of separate successive supplies, with each supply occurring at the earliest of the time payment becomes due, or payment is received, or an invoice (see section 2 definition) relating to a payment is issued.

Generally, if certain conditions are met, a disposition of a portion of or an entire taxable activity (as a going concern) by a registered person to another registered person is a zero-rated supply by the supplier under section 17 and Schedule I, paragraph 2(o). The acquisition of this taxable activity does not usually have any tax consequences to the recipient; that is, the recipient does not pay any tax on a zero-rated purchase and therefore is not entitled to deduct any input tax with respect to the acquired taxable activity. However, the acquisition is treated under section 4(18) as a supply by the recipient to the extent goods and services acquired by the recipient as part of the taxable activity are to be used by the recipient for purposes other than the making of taxable supplies. Subsection (10) provides that a section 4(18) supply occurs at the time of the disposition of that taxable activity to the recipient.

Generally, the issuance of a token, voucher, gift certificate, or stamp (other than a postage stamp) that can be used to receive goods or services for the monetary value stated on the token, voucher, gift certificate, or stamp is not a supply and, therefore, with one exception, is not subject to VAT at the time of issuance. The exception is where the consideration received exceeds the monetary value stated on the token, voucher, gift certificate, or stamp. In this case, section 4(20) treats the issuance of the token, voucher or stamp as a supply to the extent of the excess. To the extent that the issuance is a supply under section 4(20), subsection (11) treats the supply as occurring when the token, voucher, or stamp is issued.

When a person's registration is cancelled, the person is deemed to have made a taxable supply in Vatopia of any goods or services on hand if the person claimed an input tax deduction on the acquisition of such goods or services (subsection 4(22)). The supply is deemed to have occurred at the time the registration is cancelled (subsection (13)).

15. Place of Supply

This section provides rules to locate a supply. These rules are necessary to determine whether a supply comes within Vatopia's jurisdiction to tax. Under section 9(1)(a), it is only taxable supplies made "in Vatopia" that are subject to tax.

Some countries have adopted a broader jurisdictional rule that taxes all supplies by a firm resident in the country and some supplies by non-residents deemed made in the country. See New Zealand Goods and Services Tax. The scope of the tax base may be narrowed by removing supplies made by the resident's branch or main office operating outside the country if that foreign operation maintains separate records and can be separately identified.

Section 15(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 shipment of goods from Vatopia, the supply occurs at the place of export. In other words, an export of goods from Vatopia is treated as a supply in Vatopia (subsection (1)). An export by a taxable person generally is a taxable supply subject to a zero tax rate (see section 2 definition of a taxable supply, section 17(1), and Schedule I, paragraph 2. A taxable export supply is subject to tax, and the taxable person making the supply can claim an input tax deduction with respect to purchases attributable to the export (see section 24).

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

Subsections (3)-(8) address 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 Vatopia 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 Vatopia to perform some tasks there.

Subsection (3) adopts the general rule that a supply of services takes place at a supplier's place of business from which the services are supplied.

Subsection (4) links the place of supply for enumerated goods and services to the location where the recipient of the goods or 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 (paragraph (a)),

(2) professional services of a consultant, engineer, lawyer, architect or accountant, as well as data processing, information, and similar services (paragraph (b)),

(3) advertising services (paragraph (c)),

(4) an agreement not to pursue or exercise taxable activity, employment, or a right described in this subsection (paragraph (d)),

(5) supply of personnel (such as temporary workers) (paragraph (e)),

(6) an agent's services for the principal in obtaining services described in this subsection (paragraph (f)), and

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

Subsection (5) provides that cultural, artistic, sporting, educational 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 subsection (4).

Subsection (6) 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 subsection (4).

Subsection (7) 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 subsection (4). While international transport is zero-rated (see section 17, and Schedule I, paragraph (2)(f)), 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.

Subsection (8) provides a special rule covering exported services subject to a zero tax rate under section 17 and Schedule I, paragraph 2. This subsection locates the supply of such services in Vatopia to make them taxable supplies under the section 2 definition, and eligible for zero rating under section 17, and Schedule I, paragraph 2. Accordingly, an input credit is allowed for inputs to these supplies.

16. Value of Supply

This section provides rules for determining the value of a supply of goods or services, whether that supply is taxable or exempt from tax. 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 23. The taxable value of a taxable supply is also relevant in determining whether a person meets the registration threshold in section 11, and in determining the allowable input tax deductions under section 24.

Subsection (1) states the general rule that the value of a supply of goods or services is the consideration for the supply. "Consideration" is defined in section 2. Except as otherwise provided in this section, if a supply is made for no consideration, subsection (14) provides that the value of the supply is nil. If the consideration for a supply includes more than the consideration for a taxable supply, subsection (13) provides that the value of the taxable supply is equal to the portion of the consideration that is properly attributable to it.

Subsection (2) states a rule of considerable importance, particularly for smaller retailers. If a taxable supply is made without a separate amount identified as being a payment of VAT, the supply is treated as having been made on a tax-inclusive basis so that the total price is treated as consisting of both the consideration for the supply and the VAT on the supply. In this case, the value of a supply is the price, reduced by an amount equal to the tax fraction multiplied by that price. The "tax fraction" formula, defined in section 2, is $R/(1 + R)$, where "R" is the tax rate applicable under section 7(1). For example, if goods subject to a 10 percent rate are supplied for 1,100 vatopians and the tax is not separately stated, the value of the supply is 1,000 ($1,100 - (1,100 \times .10/1.10)$). This means that the tax-inclusive price of 1,100 vatopians comprises 1,000 as the value of the supply and 100 as the VAT on the supply.

Subsection (3) identifies two classes of case where the value of the supply is the fair market value of the supply at the time of the supply, not the price charged. The fair

market value of a supply is determined under the rules in section 3, and the time of supply is determined under the rules in section 14. The first class of case is where a taxable supplier and the recipient of the supply are related persons and the supply has been made for no consideration or for a consideration that is less than the fair market value of the supply (paragraph (a) and (b)(i)).

The second class of case is where a taxable person makes a supply to a charitable organization, institution of religious worship, educational institution, old-age home, orphanage, children's home, or similar institution for no consideration or for a consideration that is less than the fair market value of the supply (paragraph (a) and (b)(ii)). This second case is aimed at countering the tax incentive that a taxable supplier may otherwise have to supply goods or services to a charitable or similar organization at below fair market value in order to reduce the tax payable on the supply. The recipient, to the extent that it makes supplies exempt from tax, is not entitled to deduct the input tax on such purchases.

The fair market value rule may also apply in another case (supplies under section 4(6)), but only as an alternative. If a taxable person applies goods or services acquired for use in a taxable activity to a different use, the change in use is treated as a supply by the taxable person (section 4(6)) at the time the goods are applied to the different use (section 14(4)). Subsection (4) provides that the value of the section 4(6) supply is the lesser of (a) the consideration paid or payable by the taxable person for the goods or services treated as supplied, or (b) the fair market value of the supply when the change in use occurs. Subsection (5) provides that the Minister may issue regulations to determine the value of the supply under this change in use rule if the taxable person applies less than the entire goods or services to a different use.

In the ordinary case, the value of a section 4(6) supply under subsection (4) will be the consideration paid or payable for the goods or services applied to a different use. This reflects the intention in this class of case of recapturing the input tax deduction that the taxable person had claimed on the acquisition of the goods or services. In other

words, the taxable person is put in the same position that the person would have been in if the goods or services had always been acquired for the changed use. The fair market value standard will apply where the goods or services have declined in value between the date of acquisition and the date of change in use.

Subsection (6) provides that the value of a supply under a credit agreement is the cash value of the supply. “Credit agreement” and “cash value” are defined in section 2.

Section 4(7) treats a repossession of goods under a credit agreement as a supply of the goods by the debtor to the person exercising the right of repossession. Subsection (7) provides that the value of the section 4(7) supply by the debtor is the balance of the cash value of the supply of those goods to the debtor that has not been recovered at the time of the section 4(7) supply as determined under section 14(5). Subsection (8) provides that the balance of the cash value is the cash value less the payments made by the debtor under the credit agreement properly regarded as made with respect to that cash value of the supply (this excludes interest or other finance charges).

If a lay-by agreement is cancelled or terminates and the seller retains amounts paid by the purchaser or recovers an amount the purchaser owes, section 4(8) provides that the cancellation or termination is a supply of services by the seller. Subsection (9) provides that the value of a section 4(8) supply is equal to the amount that is retained or recoverable by the seller.

Generally, the issuance of a token, voucher, gift certificate, or stamp (other than a postage stamp) that can be used to receive goods or services for the monetary value stated on the token, voucher, gift certificate, or stamp is not a supply and, therefore, with one exception, is not subject to VAT at the time of issuance. The exception is where the consideration received exceeds the monetary value stated on the token, voucher, gift certificate, or stamp. In this case, section 4(20) treats the issuance of the

token, voucher, gift certificate, or stamp as a supply to the extent of the excess. Subsection (10) provides that the value of the section 4(20) supply is equal to the amount by which the consideration exceeds the monetary value of the token, voucher, gift certificate, or stamp.

If a taxable person issues a token, voucher, gift certificate, or stamp for no consideration, and the holder can surrender the token, voucher, gift certificate, or stamp to another person (a supplier) and obtain a discount on the price of the goods or services supplied to the holder, subsection (11) provides that the supplier of the goods or services must include the monetary value stated on the token, voucher, gift certificate, or stamp as part of the value of the goods or services supplied, less the tax fraction of the monetary value if the token, voucher, gift certificate, or stamp is surrendered for a taxable supply. Consistently, for the purposes of subsection (11), subsection (12) provides that the monetary value includes the tax. For example, if goods sold for 1,000 vatopians (tax-exclusive price) are taxable at a 10 percent rate, the tax-inclusive price is 1,100. If the holder with a voucher for 110 vatopians can apply the 110 monetary value of the voucher toward the 1,100 tax-inclusive price and pays the 990 balance in cash, the value of the supply includes the 100 tax-exclusive portion of the token (110, less $10/110 \times 110$).

Section 4(9) treats the placement of a bet with a person operating a game of chance as a supply of services by the person operating that game of chance to the person placing the bet. The operations of many games of chance must be conducted with the tax included in the amount of the bets placed and the amount of winnings paid out. For example, blackjack dealers take in losing bets and pay out winnings on an ongoing basis. Subsection (15) contains a special rule for persons operating games of chance on a tax-inclusive basis. Subsection (15) provides that the value of a supply under section 4(9) is the amount received as a bet less the tax component in the bet (i.e., the tax fraction multiplied by the amount bet). The person operating a game of chance also can deduct as input tax the tax fraction multiplied by the winnings paid out (section 24(1)(d)). The same result can be accomplished by multiplying the tax fraction

by the net of bets received less winnings paid out. This short-cut calculation serves as the output tax on the bets received less the allowable input tax deduction on the winnings paid. In addition, the person operating a game of chance is entitled to input tax deductions for tax on purchases (such as furniture and equipment) used in making taxable supplies, the same deductions available to a taxable person that is not operating a game of chance.

The acquisition of a taxable activity is treated under section 4(18) as a supply by the recipient to the extent goods and services acquired by the recipient as part of the taxable activity are to be used by the recipient for purposes other than the making of taxable supplies. Subsection (16) provides that the value of a section 4(18) supply is the consideration for the recipient's acquisition of the taxable activity less the following percentage of that total consideration. The percentage is calculated by the ratio that the intended use or application of the taxable activity to make taxable supplies bears to the total intended use or application of the taxable activity. For example, if the taxable activity is acquired by the recipient for 10,000,000 vatopians and the recipient intends to use 80 percent of the taxable activity to make taxable supplies with the remainder for other purposes, the value of the acquired goods and services used for purposes other than to make taxable supplies is 2,000,000 vatopians. This is calculated as follows - it is the consideration for the acquisition of the taxable activity (10,000,000), less that consideration (10,000,000) multiplied by 80 percent (the ratio of the taxable activity intended to be used in making taxable supplies to the total taxable activity), or 10,000,000 less 8,000,000, or 2,000,000 vatopians. **An alternative to this subsection may be to state the rule in the form of a formula, as follows: "For purposes of section 4(18), the value shall be calculated according to the formula $A - AB$, where A is the consideration for the acquisition, and B is the percentage of the acquired assets to be used in making taxable supplies.**

Subsection (17) provides a valuation rule for a supply of goods or services by a person whose registration is cancelled under section 13 (see section 4(22)). When such supply is made, the value of the supply is equal to the fair market value of the

goods or services deemed to be supplied at the time of cancellation (subsection 17 (a)). In the case of capital goods subject to the allowance for depreciation under the Income Tax Act, the value of the supply is the undepreciated cost of the goods deemed to be supplied at the time of cancellation is the value of the supply (subsection 17(b)).

17. Zero Rating

A zero-rated supply is a taxable supply that is taxed at a zero rate. The output tax on the supply is nil, and the supplier is entitled to deductions for input tax on acquisitions related to the zero-rated supply (see section 24). Thus, the supply is completely free of tax.

Subsection (1) provides that a supply of goods or services by a taxable person in connection with a taxable activity conducted by that person that otherwise is taxable under section 9(1)(a) is taxed at a zero rate if it is specified in paragraph 2 of Schedule I. To enable the Commissioner to verify that a supply is entitled to zero rating, subsection (2) requires a taxable person who makes a zero-rated supply to substantiate the claim that the supply is zero-rated. The taxable person must obtain and retain documentary evidence, as is acceptable to the Commissioner, that proves that the supply is a zero-rated supply.

18. Exempt Supply

An exempt supply is not subject to VAT under section 9(1)(a). Only taxable supplies by taxable persons are subject to VAT and the definition of “taxable supply” in section 2 excludes an exempt supply. A taxable person making exempt supplies is not entitled to deduct input tax payable on its purchases related to the making of exempt supplies (see sections 24(1) and 25(3)) and is not entitled to issue tax invoices covering exempt supplies (see section 29(1) and (3)). A taxable person that purchases goods or services exempt from tax (not a taxable supply) is not entitled to claim an input tax deduction for any tax embedded in the prices of those purchases, even if acquired for

use in a taxable activity (see sections 24(1)(a) and (2)(a)).

Subsection (1) provides that a supply of goods or services is an exempt supply if it is specified in paragraph 2 of Schedule II. If a supply is both exempt because it is specified in paragraph 2 of Schedule II and zero-rated because it is specified in section 17(1), and paragraph 2 of Schedule I, subsection (2) provides that zero rating takes priority.

19. Time of Import

This section provides rules for determining the time of an import. These rules are primarily relevant to the determination of the time of the liability for VAT on the import (see sections 22 and 43(1)(c)). They are also relevant to the claiming of any input tax deduction in respect of the import (see section 24).

Subsection (1) provides rules for determining the time of an import of goods. The time of the import is the time the goods are entered for purposes of the [Customs Act].

Subsection (2) provides that an import of services takes place at the time determined under section 14 on the basis that the import is a supply of services. Thus, in the ordinary case, an import of services takes place at the earliest of the time the performance of services is completed, the time an invoice for the supply is issued, or the time any payment is received. The timing rule in section 14(8) would apply in the case of an import of services on a continuous basis under an agreement that provides for periodic payments.

20. Value of Import

This section provides rules for determining the value of an import. The value determined under this section is then used as the basis for determining the VAT payable on the import (section 9(1)(b)).

Subsection (1) provides for the determination of the value of an import of goods. The value of an import is the sum of the value of the goods for customs duty purposes under the [Customs Act], the amount of duty payable in respect of the import under that Act, and the value of services discussed next (paragraphs (a) and (c)). To the extent that they are not included in the value of the goods for customs duty purposes, paragraph (b) provides that the value of an import includes the cost of insurance and freight. **This provision may be omitted where customs valuation is CIF.**

Subsection (2) provides that the value of an import of services is the amount of consideration for the import. "Consideration" is defined in section 2. An exception to this rule applies where the supplier and recipient are related persons (see section 2), and the import of services is made for no consideration or for a consideration that is less than the fair market value of the import. In this case, subsection (3) provides that the value of the import is the fair market value of the import. This is determined under section 3. If the price of an import of services includes tax that is not accounted for separately, the value of the import is the price less an amount equal to the tax fraction (see section 2) multiplied by that price (subsection (4)).

21. Exempt Import

This section sets out the imports that are treated as exempt imports for the purposes of the Act. VAT is not charged under section 9(1)(b) on an exempt import.

Most countries provide a list of imports that are exempt; typically, imports many of the imports exempt from customs duties. Schedule III provides the statutory structure for these details. Paragraph (a) provides that an import specified in Schedule III is an exempt import. Paragraph (b) provides that an import is an exempt import if the same transaction taking place in Vatopia would be an exempt or zero-rated supply.

22. Import Declaration and Payment of Tax

This section provides for the payment of VAT on an import and for certain administrative arrangements relating to the collection of the tax.

Subsection (1) provides for the payment of VAT on an import of goods. The obligation to pay the VAT is on the importer under section 9(2)(b). When goods are entered for customs purposes, the importer is required to furnish the Commissioner with an import declaration. The tax is to be paid in accordance with the arrangements with the Commissioner of Customs established under subsection (4).

Subsection (5) provides that the provisions of the [Customs Act] applicable to the import, transit, coastwise carriage, clearance of goods, and payment and recovery of duty apply also for the purposes of the VAT charged on an import of goods. The Minister may by regulation prescribe exceptions, modifications, and adaptations of these rules for VAT charged on imported goods. The Commissioner of Customs may exercise any power conferred by the Customs Act as if the reference to duty in that legislation included a reference to VAT charged on imported goods under this Act (subsection (6)).

Subsection (2) provides for the payment of VAT on an import of services. The obligation to pay the VAT is on the recipient of the services under section 9(2)(c). Where VAT is imposed on an import of services, the recipient of the services is required to furnish the Commissioner with an import declaration (see subsection (3)) and pay the VAT due within [thirty] days of the time of the import (as determined under section 19(2)). This rule does not apply if the imported services are treated as part of imported goods because they are incidental to those goods (section 4(12)).

Subsection (3) requires an import declaration to be in the form and to be submitted in the manner prescribed by the Commissioner. The declaration must contain the information necessary to calculate the tax payable on the import.

Subsection (4) provides that the Commissioner of Customs shall, at the time of import, collect tax due on imported goods. When goods are imported, Customs is to obtain the name and VAT registration number (if any) of the importer, the import declaration, and the invoice values of the imported goods (paragraph (a)). Customs also is to make arrangements with the [Postal Services] to handle imports through the postal services (paragraph (b)). **Some additional rules may be required where tax is not collected at the border on imports by pipeline, electric grid, or similar cross-border continuous supplies.**

Subsection (7) provides for an offence relating to a failure to furnish an import declaration within the time required under the Act. An import declaration in relation to an import of goods must be furnished at the time of import (subsection (1)) and, in relation to an import of services, must be furnished within [30] days after the time of import (subsection (2)). The failure to furnish an import declaration does not have to be the result of deliberate or reckless conduct for an offence to have been committed under subsection (7). An offence is committed when, as a matter of fact, a person fails to furnish the Commissioner an import declaration required by the Act when due regardless of the reason for the failure. A person who commits this criminal offence is liable on conviction to a fine of up to [...vatopians] or a prison term of up to [1] year, or both.

Subsection (8) provides that a person convicted under subsection (7) who fails to furnish the import declaration within the further period specified in the Commissioner's written notice commits a further offence. The penalty is intended to reflect the seriousness of a continued failure to furnish the import declaration. If convicted, the person is subject to a fine of [...vatopians] for each day the failure continues and to a prison term of [3] months, or both. **If a more severe penalty is desired, this subsection could require both penalties and provide that there is "no option of a fine in lieu of imprisonment."**

Subsection (9) provides for the imposition of a penalty on a person who fails to

furnish an import declaration within the time required under the Act. The penalty for this civil violation is the greater of the following two amounts: [...vatopians] per day that the failure continues, or [10] percent of the tax payable for each month or portion of month the failure to furnish continues. Subsection (10) caps this penalty at 100 percent of the tax payable with the import declaration.

Subsection (11) provides for the imposition of a penalty on a person who fails to pay tax on an import by the due date. For goods, the tax is due when the goods enter Vatopia; for services, within [30] days after import. The penalty for this civil violation is the greater of the following two amounts: [...vatopians] per day or portion of day that the tax remains outstanding, or [10] percent of the tax outstanding for each month or portion of month that it remains outstanding. Subsection (12) caps this penalty at the amount of the unpaid tax – a 100 percent penalty.

Subsection (13) provides that if any person paid a penalty for a civil violation under subsection (12) and the VAT to which it relates is found not to have been due and payable by the person and is refunded, then the penalty (or so much of it that relates to the amount of VAT refunded) shall also be refunded to the person.

Subsection (14) provides that the penalty for a civil violation under subsection (11) is in addition to interest charged under section 28 in relation to the failure to pay the tax. The interest is compensation for late payment, while the penalty is punishment for the wrongful act of failing to pay the tax by the due date.

23. Tax Payable for Tax Period

This section provides the rules for a taxable person to calculate, for each tax period, the net tax payable for a tax period. This section is not relevant to the tax payable on imports. The tax payable on an import of goods generally is paid at the time of the import (see section 22(1), independent of any VAT return, whether or not the importer is also a taxable person. For imports of services, an import declaration must

be filed and tax must be paid within [30] days after the import (section 22(2)), independent of any VAT return that this person may be required to file.

Most taxable persons must file returns and pay tax on a monthly return basis (sections 31 and 32). Subsection (1) provides that the tax payable for a tax period in respect of taxable supplies is the output tax payable in respect of taxable supplies made during the tax period less the input tax deductions allowed to the taxable person for the tax period. Any net tax payable for the tax period generally must be paid by the due date of the return for that period (see section 43). If a taxable person's deductible input tax for a tax period exceeds the output tax payable for that period, the excess is subject to refund in accordance with section 36 (subsection (2)).

For each tax period, the general rule in subsection (1) is that output tax on taxable supplies is reportable for taxable supplies made during the tax period. The timing rules in section 14(1) provide that taxable supplies occur at the earliest of the date the goods are delivered or made available or the performance of services is completed, the date when the invoice covering the supply is issued, or the date when any payment for the supply is received. For example, a taxable person will be reporting output tax in the tax period in which the invoice covering a taxable supply is issued, even if the tax has not been paid to the taxable person by the recipient of the supply. Sections 24 and 25 provide the rules to determine what input tax is deductible in a tax period. Subject to exceptions, a deduction may be available for input tax on taxable supplies, tax on imports of goods, the tax element in post-sale adjustments, and the tax fraction of certain other payments made by a taxable person. An input tax deduction is not available for tax on the import of services because that tax is imposed only if any such input tax is not deductible; that is, the import is not used to make taxable supplies (see section 2 definition of "import", paragraph (b), and section 25(3)). To claim an input tax deduction, the taxable person generally must have a supporting document, such as a tax invoice, a tax debit or tax credit note for a supply, or a bill of entry or validating bill of entry for an import (section 24(2)).

24. Input Tax Deduction

The total input tax deduction allowed to a registered person in a tax period for purposes of section 23 is primarily determined under sections 24 and 25. Section 24 provides generally for the allowance of the deduction with respect to acquisitions or other transactions or adjustments, such as post-sale adjustments and bad debts, and generally requires documentation of tax on acquisitions in order to claim the deductions. Section 25 provides allocation rules when not all of a taxable person's supplies are taxable supplies, and disallowance rules for tax on some acquisitions that may have attributes of business use and personal consumption.

Section 24(1) provides for the allowance of input tax deductions for purposes of section 23 in a series of enumerated transactions. Paragraph (a) provides for a deduction for the input tax payable in respect of taxable supplies made to the taxable person during the tax period, and for tax paid on imported goods. The deduction is available to the extent that the supply or import is for use in the taxable person's taxable activity. The relevant event for domestic purchases is the making of the taxable supply to the taxable person rather than the actual payment of the tax. For imported goods, the tax is payable at the time of import and the deduction for the tax will be accounted for on a cash basis. **The deduction can be liberalized by allowing an input tax deduction for tax on supplies during the preceding tax period in cases where there was a delay in receiving the tax invoice and the tax was not previously claimed as a deduction.**

An input tax deduction may be allowed under section 24(1)(b) with respect to some post-sale adjustments (section 26), and with respect to some bad debts (section 27). Paragraph (c) allows an input tax deduction to a newly-registered, taxable person to the extent provided under subsection (4).

In most taxable activities, a taxable person who is registered issues tax invoices to customers and receives tax invoices from suppliers. The tax generally must be

separately stated on tax invoices and a taxable person is not able to claim input tax deductions unless the person possesses a tax invoice or other document as required under subsection (2). For a person operating a game of chance, payments for items in the nature of business inputs are made to persons who are not taxable and therefore are precluded from issuing tax invoices. Subsection (1)(d) takes this situation into account by providing special input tax deduction rules applicable to prizes or winnings paid out by operators of games of chance. Since these payments will be made on a tax-inclusive basis, the input tax deduction will be calculated on the basis of the tax fraction (see section 2) of the payments made. For administrative convenience, persons operating games of chance are authorized to calculate their output tax liability for a tax period on the basis of the net of bets placed less cash winnings paid out. When this method of calculation is utilized, the tax fraction of the cash winnings paid out are not allowed as input tax deductions under this subsection.

Under section 16(11), if a token, voucher, gift certificate, or stamp (other than a postage stamp) is issued by a taxable person for no consideration and the holder obtains a discount on the price of goods or services when the token, voucher, gift certificate, or stamp is surrendered to a supplier (generally not the issuer) for goods or services, the value of the supply by the person supplying the goods or services includes the monetary value stated on the token, voucher, gift certificate, or stamp, less the tax fraction of such monetary value. Subsection (1)(e) allows the issuer (the taxable person) of the token, voucher, gift certificate, or stamp an input tax deduction for the tax fraction of the amount the issuer pays upon the redemption of the token, voucher, gift certificate, or stamp by the supplier of the goods or services who took the token, voucher, gift certificate, or stamp in partial payment for such goods or services. For example, assume that a manufacturer issues, without charge, a voucher for 440 vatopians that the holder of the voucher can use to make partial payment on the retail price of the manufacturer's product. The retailer supplies the product for 1000 vatopians plus a 10 percent VAT (100), or 1,100, and the purchaser pays 660 vatopians in cash and 440 with the surrender of the voucher. When the manufacturer pays the retailer 440 on the redemption of the voucher, the manufacturer can take an input tax

deduction of 40 vatopians, the tax fraction (10/110) of the P440 paid on the redemption.

Subsection (1)(f)-(h) allows a taxable person to take an input tax deduction attributable to the acquisition of second-hand goods in a transaction not subject to tax. A taxable person supplying second-hand goods may acquire those goods from persons who are registered or not registered. Purchases from a registered person generally are eligible for input tax deductions under subsection (1), and purchases from persons who are not registered generally are not eligible for input tax deductions, except as provided in subsections (1)(f)-(h). These latter subsections do not apply to goods acquired for lease. To the extent that these subsections limit the deduction to tax imposed on the acquisition of the goods by the person supplying the second-hand goods, the Commissioner may require the person claiming the input tax deduction under subsection (1)(f)-(h) to substantiate the tax imposed by being in possession of documents the Commissioner requires (see subsection (2)(c)).

Second-hand goods are defined in section 2 as goods that were previously owned and used. The term includes immovable property, but does not include livestock. Goods that were used or treated or stored by a previous owner in such a manner that they could no longer be regarded as new are considered second-hand goods.

Subject to exceptions, a taxable person can deduct input tax attributable to second-hand goods acquired in Vatopia in the tax period in a transaction that was not subject to VAT, but only if the goods were acquired for the purpose of re-supplying the goods in a taxable transaction, and a supply of this kind of good is taxable under the Act at a positive rate (subsection (1)(f)). For example, if a taxable person purchases a second-hand desk in a transaction not subject to VAT and the purchaser uses that desk in conducting a taxable activity, but not for resale, the taxable person is not allowed a deduction with respect to the desk. The deduction provided under subsection (1)(f) is available whether the goods were acquired from a person who is registered or not registered (although acquisition from a registered person will normally not qualify because usually such a transaction will be subject to tax). The input tax deduction is

calculated by multiplying the tax fraction (10/110 according to the definition in section 2 if the tax rate is 10 percent) by the lesser of the --

- (1) amount paid for the second-hand goods; or
- (2) fair market value, including tax, of the second-hand goods.

For example, if a taxable person acquired second-hand goods qualifying under this subsection for 550 vatopians and the tax-inclusive fair market value of the same goods is 605, the allowable input tax deduction under section 22 is 10/110 of 550, or 50 vatopians.

A special rule limits the input tax deduction on second-hand goods acquired from a related person (see section 2 definition). The input tax deduction provided in a transaction meeting the same requirements as in subsection (1)(f) is calculated the same as in subsection (1)(f), except that the input tax deduction cannot exceed the tax imposed on the supply of the goods to the related person from whom the goods were acquired (subsection (1)(g)). This rule applies, whether the related person is registered or not registered for VAT. In the above example, if the goods were acquired from a related person and the related person acquired the goods for 450 vatopians plus 45 VAT, the taxable person acquiring the second-hand goods can deduct no more than the 45 VAT paid by the related person.

Subsection (1)(h) grants an input tax deduction with respect to second-hand goods acquired by a creditor from a defaulting debtor. The available deduction is equal to the tax fraction of the fair market value, including tax, of the repossessed goods. If the goods were originally sold by the creditor for 1,000 vatopians plus 100 VAT and were worth 660 vatopians (tax-inclusive value) when repossessed, the input tax deduction is $10/110 \times 660$, or 60 vatopians. To qualify under subsection (1)(h), the goods must be repossessed in Vatopia (not imported from outside Vatopia) during the tax period in which the deduction is claimed. The creditor must be a taxable person, and the defaulting debtor can be registered or not registered. The repossession must be in a transaction that is not subject to VAT, and if the repossessed goods were supplied in Vatopia, the transaction would be a supply of the goods subject to VAT at a

positive rate. Repossessions from a registered defaulting debtor generally will be deemed to be a supply of the goods and therefore taxable without this rule, unless the goods were not used in the defaulting debtor's taxable activity (section 4(7)) or the defaulting debtor was denied an input tax deduction on the acquisition of the goods (section 4(17)).

To qualify for the input tax deduction, the creditor must acquire the second-hand goods for purpose of re-supplying them in a taxable transaction. There is a limit on the allowable deduction. The deduction cannot exceed the VAT imposed on the goods when previously acquired by the defaulting debtor. For example, if the goods were acquired by the defaulting debtor for 1,000 vatopians plus 100 VAT and the goods were worth 1,210 vatopians (tax-inclusive) when acquired by the creditor, the creditor's allowable input tax deduction is limited to the 100 tax imposed on the defaulting debtor's acquisition of the goods.

Subsection (1)(i) provides that the excess input deductions that must be carried forward rather than being refunded (section 36(2)) is treated as an input tax deductible in the tax period to which the excess deductions are carried.

Subsection (2) provides that a taxable person is not allowed a deduction for input tax otherwise available with respect to a supply or import unless it is supported by documentary proof held by that person. The person claiming a deduction with respect to the acquisition of second-hand goods also must possess documentary evidence required by the Commissioner (subsection (2)(c)). A taxable person claiming a deduction with respect to a supply generally must be holding a tax invoice, a tax debit note, or a tax credit note pertaining to that supply, as the case may be, by the time the return claiming the input tax deduction is lodged (subsection (2)(a)). This rule does not apply if a tax invoice is not required to be provided (e.g., section 29(2)). A taxable person claiming a deduction with respect to an import must be holding a bill of entry, a validating bill of entry, or a document issued by Customs or the Commissioner evidencing payment of tax for that import by the time the return claiming the input tax

deduction is lodged (subsection (2)(b)).

The Commissioner, under subsection (3), can allow a taxable person to deduct input tax without the supporting tax invoice if the Commissioner is satisfied that the person took all reasonable steps to obtain the tax invoice, failure to obtain the tax invoice was not the taxable person's fault, and the claimed deduction is correct.

When an unregistered person engages in business, the person is not entitled to deduct any input tax on purchases used in that business. The cost of goods on hand therefore will include the tax. If this person becomes a taxable person, supplies made after the registration becomes effective will be subject to tax, even if those supplies include goods with respect to which tax had been paid and not deducted. To place this newly-registered, taxable person in a position similar to a business that had always been registered, subsection (4) allows the newly-registered, taxable person to claim input tax deductions on previously-acquired goods in the return for the first tax period as a taxable person. No input tax deduction is allowed with respect to previously-acquired services. A deduction under this subsection is allowed for input tax on taxable supplies of goods made to the newly-registered, taxable person, including tax on capital goods as defined in section 2 (paragraph (a)). A deduction also is allowed for tax on imports of goods, including capital goods, by the newly-registered, taxable person (paragraph (b)). For the tax on the previously-acquired goods to qualify for the deduction, the goods must be for use or re-supply in a taxable activity conducted after registration. In addition, the acquisition or import of the goods must have occurred not more than [4] months before the date the registration takes effect under section 12(4), and the goods must be on hand when the registration takes effect (subsection (5)). **The period can vary.** For a transition rule applicable to the input tax deduction for sales tax paid, see section 89.

For revenue reasons, the input tax deduction could be denied for capital goods purchased during a prescribed period before registration. The denial may have some economic consequences if businesses delay capital purchases

during this period.

25. Input Tax Deduction Allocation and Disallowance Rules

This section disallows a deduction for input tax with respect to passenger vehicles, entertainment, or membership in organizations providing sporting, social, or recreational services. It also provides rules on the available input tax deduction for a taxable person who supplies both taxable supplies and other supplies. If a taxable person makes both taxable and exempt supplies, notwithstanding the statutory rule on the allocation of the input tax deduction, the Commissioner may determine the allowable deduction on some other reasonable basis.

Subsection (2)(a) provides that a taxable person cannot deduct any input tax paid or payable on the acquisition of a passenger vehicle, unless that person is in the business of dealing in, or hiring of, such vehicles and it was acquired for purposes of that business. This rule applies to a passenger vehicle supplied to or imported by the taxable person. For this purpose, a passenger vehicle is defined in subsection (1) to mean a road vehicle designed or adapted to transport not more than nine seated persons. A double cab vehicle is a passenger vehicle. A commercial truck, trailer, farm equipment, and similar vehicles designed or adapted to transport goods, not passengers, is not a passenger vehicle for this purpose, even if it seats a few passengers. **The disallowance rule could be expanded to cover repairs and maintenance, as well as petrol costs for a passenger vehicle, unless the taxable person can prove that the vehicle was used wholly in making taxable supplies. The problem of distinguishing between the personal and business use of a passenger vehicle applies to repairs, maintenance and related costs.**

Subsection (2)(b) provides that a taxable person cannot deduct any input tax paid or payable on goods or services acquired for entertainment or to provide entertainment, except in the following two cases. The input tax deduction is not disallowed if the person claiming the deduction is in the business of providing

entertainment and the taxable supply to or import of these goods or services by the taxable person relates to that person's provision of taxable supplies of entertainment in the ordinary course of that business (subsection (2)(b)(i)). The input tax deduction also is not disallowed if the taxable person provides taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service (subsection (2)(b)(ii)). For this purpose, entertainment is broadly defined in subsection (1) to mean a taxable person's supply of food, beverages, tobacco, accommodation, amusement, recreation, or other hospitality, directly or indirectly, to any person in connection with the taxable person's taxable activity. A shop selling food, beverages, or tobacco is not subject to the disallowance rule on the purchase of these items because it is selling these items in the ordinary course of its business.

Subsection (2)(c) provides that a taxable person cannot deduct any input tax paid or payable on fees or subscriptions for membership in a club, association, or society providing sporting, social, or recreational services.

Generally, if a taxable person makes both taxable supplies and exempt supplies during a tax period, the allowable input tax deduction on supplies to the person (referred to as domestic purchases) or on imports of goods by the person under section 24(1)(a) is determined under the following rules in subsection (3) -

- (1) The full amount of input tax is deductible if it relates to domestic purchases or imports directly allocable to the making of taxable supplies (paragraph (a)).
- (2) No input tax is deductible if it relates to domestic purchases or imports directly allocable to the making of exempt supplies (paragraph (b)).
- (3) The formula $A \times B/C$ is used to allocate input tax on domestic purchases or imports used to make both taxable supplies and exempt supplies (paragraph (c)).

For the purposes of the formula in (3), **A** is the total allowable input tax on domestic purchases and imports during the tax period, less the input tax accounted for in (1) and (2). **B** is the total taxable supplies that the taxable person made during the preceding financial year, and **C** is the total supplies (taxable and exempt) that the taxable person made during the preceding financial year. There is a transitional rule to calculate the fraction B/C for the taxable person's first financial year. During the first year, the period referred to in B/C is the total number of tax periods, including the current period, during which the person is a taxable person. **The fraction is subject to manipulation if B and C are based on the data for each tax period, rather than for the prior financial year.**

There is a rule of administrative convenience if a very large percentage of total supplies were taxable supplies. If the fraction **B/C** in (3) is more than 0.90, subsection (4) provides that the taxable person may deduct the entire input tax on the domestic purchases and imports described in subsection (3)(c) that are used both to make taxable supplies and exempt supplies. **The rule in subsection (4) is designed to reduce tax administration and taxpayer compliance costs. If desired, it could be omitted.**

If a taxable person makes both taxable and exempt supplies in a tax period, subsection (5) authorizes the Commissioner to use a basis other than that in subsection (3) to calculate the allowable input tax deduction for the tax period. The Commissioner may use any basis that the Commissioner considers reasonable. For example, the Commissioner may allocate the input tax attributable to taxable and exempt supplies on the basis of the amount of floor space or payroll for each. A taxable person dissatisfied with the basis determined by the Commissioner under subsection (5) may appeal that decision according to Part X (subsection (6)).

26. Post-Sale Adjustments

This section deals with a number of situations where the consideration for a

supply is subject to an adjustment after the supply has been made, thereby resulting in the registered person making an incorrect accounting for VAT in respect of the supply.

Subsection (1) sets out the circumstances in which the section is intended to apply. Broadly, the section applies where a registered person has accounted for an incorrect amount of output tax in respect of a taxable supply either in a tax invoice (see section 27) issued by the person or in the person's return (section 30) for a tax period (subsection (2)). The accounting for an incorrect amount of output tax must be due to one of the following events (referred to as "adjustment events") having occurred after the supply:

- (1) the supply is cancelled;
- (2) there occurs a fundamental variation in, or alteration of, 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 (subsection (1)).

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 VAT has been incorrectly accounted for as a result of the occurrence of one of the events stated above, subsection (3) obliges the registered person making the supply to make an adjustment as specified in subsection (4) or (6).

Subsection (4) applies where the output tax properly chargeable in respect of a 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, subsection (4) applies where output tax has been under-charged in respect of a supply. In this case, the amount of the excess is treated as output tax charged by the supplier in respect of a taxable supply made in the tax period in which the adjustment event occurred. As such it must be included in the supplier's return for that period.

Where subsection (4) applies and the supplier has provided a tax invoice to a registered recipient of the supply, the supplier is obliged under section 28(3) to provide the recipient of the supply with a tax debit note. A registered person who fails to provide a tax debit note as required by section 30(3) is guilty of an offence under section 30(7). The issuance of an incorrect tax debit note is an offence under section 30(8).

Subsection (5) provides that the tax specified in a tax debit note provided as a result of the application of subsection (4) shall be treated as additional tax payable in respect of the original supply. The input tax, if deductible by the registered recipient under section 24, may be claimed in the tax period in which the tax debit note is received (subsection (5)).

Subsection (6) 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 over-charged. In this case, the supplier is allowed an input tax deduction for the amount of the excess in the tax period in which the adjustment event occurred.

Where subsection (6) applies and the supplier has provided a tax invoice to a registered recipient of the supply, the supplier is obliged under section 30(1) to provide the recipient of the supply with a tax credit note. A taxable person who fails to provide a tax credit note as required by section 30(1) is guilty of an offence under section 30(7). The issuance of an incorrect tax credit note also constitutes a serious offence under

section 30(8).

Subsection (7) provides that the recipient of a tax credit note provided as a result of the application of subsection (6) shall treat the additional tax specified in the note as output tax payable by the recipient in respect of a taxable supply made by the person in the tax period in which the tax credit note is received.

By virtue of subsection (8), subsection (6) does not apply (there is no input tax deduction) where the recipient of the supply is not registered, unless the amount of the excess output tax charged has been repaid to the recipient of the supply in cash or by credit against an amount the recipient owes the registered person. This rule will mainly apply to a sale to a consumer. This rule is necessary to prevent a taxable person from both recovering the excess tax in the price of the goods or services and receiving a deduction for the excess input tax. Consequently, the input tax deduction will only be available under subsection (6) if the excess tax has been refunded to the recipient of the supply. If the taxation of the supply changes, the excess tax is the only amount that must be repaid. For other adjustments, the deduction is available for only the excess tax component in the amount refunded; that is, the deduction is the tax fraction of the amount repaid.

27. Bad Debt

This section provides rules to account for bad debts on supplies reported for VAT purposes. A taxable person can deduct, as an input tax deduction, the tax on a prior taxable supply if all or a portion of the consideration for the supply is treated as a bad debt (subsection (1)). The deduction is treated as section 24(1) input tax in calculating the net tax liability for the tax period and for purposes of any available tax refund under section 36. The bad debt deduction is allowed only if the taxable supply giving rise to the bad debt was made to an unregistered person (subsection (5)(a)), or that taxable supply was made to a registered person and the purchaser was issued a tax credit note listing the claimed bad debt deduction (subsection (5)(b)).

The input tax deduction for bad debts (referred to as the bad debt deduction) is equal to the portion of the tax on the taxable supply attributable to the amount of the bad debt (subsection (2)). The bad debt deduction arises when the bad debt is written off in the taxable person's accounts. (subsection (3)).

If a taxable person recovers any portion of a debt that gave rise to a deduction under subsection (1), the taxable person must report the following amount as a tax on a taxable supply in the tax period the debt is wholly or partially recovered (subsection (4)). The amount reportable is calculated according to the formula $A \times B/C$, where **A** is the allowable bad debt deduction under subsection (1), **B** is the amount of the recovered bad debt, and **C** is the total bad debt previously written off. For example, if the original bad debt deduction under subsection (1) was 1 000 vatopians, the debt recovered was 3 000, and the bad debt written off was 10 000, the tax reportable on the recovered debt is 300 vatopians ($1\ 000 \times 3\ 000/10\ 000$).

It is anticipated in this Act that a person operating a game of chance will calculate output tax liability in a special way. The output tax is expected to be calculated as the tax rate multiplied by the difference between bets placed and prizes or winnings paid out. If any bet is written off as a bad debt, as contemplated in this section, the amount written off is treated as a payment of a prize or winnings for purposes of section 24(1)(d) (subsection (6)). Where an amount treated as payment of a prize or winnings under subsection (6) is recovered, the taxable person operating the game of chance must report the recovery as the placement of a bet under section 4(9) in the period it is recovered (subsection (7)).

28. Interest on Unpaid Tax

This section provides for the imposition of interest on the late payment of VAT or on a penalty under the Act.

Subsection (1) imposes a liability for interest on any person who fails to pay tax or penalty by the due date under the Act. The due date of tax is determined under section 43. As a penalty is collected by assessment (section 73(3)), the rules in section 43 as to assessments apply to determine the due date of any penalty. Interest is imposed at the rate specified in paragraph (2) of Schedule V – [2 percent] per month or part thereof. Interest is imposed on the unpaid amount from the due date for payment until payment is made. Interest is calculated at simple interest for each month, or part of month (subsection (2)).

Subsection (3) provides that any interest paid by a person on an amount that is ultimately held not to have been payable is to be refunded.

The liability for interest arises under this section by reason of the late payment of tax or penalty. There is no need for the Commissioner to raise an assessment for the interest. Subsection (3) provides that the Commissioner may use the payment, collection and recovery provisions in Part XI of the Act (sections 43-53) for the purposes of collecting any interest due under this section as if the interest were tax due under the Act.

29. Tax Invoices and Sales Invoices

This section provides for the issuing of tax invoices by a taxable person who is registered. This person referred to as the “registered supplier,” is required to issue an invoice in respect of a taxable supply made to another person, whether the recipient is registered or not registered.

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 must issue a different kind of invoice or receipt to the latter.

Tax invoices play a crucial role in the administration and enforcement of the VAT and are at the heart of the "self-policing" nature of the tax. The VAT is said to be a self-policing tax because every registered person acquiring goods or services in a taxable supply will seek a tax invoice for the supply so as to be entitled to claim a deduction for input tax payable in respect of the supply (see section 24(1) and (2)). The invoice serves as evidence of a taxable supply by a taxable person who made the supply and can be used to check the calculation of the output tax accounted for by that person in respect of the supply.

Subsection (1) obliges a taxable person making a taxable supply ("registered supplier") to another person ("recipient") to provide the recipient with an original tax invoice in respect of the supply. A tax invoice must contain the particulars set out in paragraph (1) of Schedule IV. A tax invoice covering taxable (standard-rated and zero-rated) and exempt supplies must show each type of supply separately and identify the VAT imposed on the standard-rated supplies. A supplier who fails to provide a tax invoice as required under subsection (1) or who provides a tax invoice improperly commits an offence under subsection (7) or (8) discussed below.

Subsection (2) provides an exception to subsection (1) where the total consideration for the taxable supply is in cash and does not exceed the amount specified in paragraph (3) of Schedule V – [... vatopians). In this case, the registered supplier is authorised to issue a sales invoice in lieu of a tax invoice.

Subsection (3) provides that a tax invoice must not be provided by any person in any circumstances other than those specified in this section. An unregistered person is not permitted to issue a tax invoice. Any person who provides a VAT invoice otherwise than as provided for this section commits an offence under subsection (8).

Subsection (4) provides that a registered supplier shall only issue one tax invoice in respect of a taxable supply. This is subject to subsection (6), which provides for the issue of a copy of the invoice clearly marked as such where the recipient claims to have lost the invoice. A person who issues a tax invoice in breach of subsection (4) commits an offence under subsection (8) discussed below.

Subsection (5) provides a mechanism whereby a registered recipient who has not received a tax invoice required by subsection (1) may demand a tax invoice. The power to request a tax invoice in respect of a taxable supply is important because an input tax deduction can only be claimed for the supply when the registered recipient has a tax invoice (see section 24(2)).

Subsection (5) provides for the making of a request in writing for a tax invoice when none has been provided. Such a request must be made within 60 days after the date of the supply (see section 14). A registered supplier receiving a request for a tax invoice is required to comply with the request within 14 days of receiving the request.

Subsection (7) provides that a registered person who fails to provide a tax invoice required by this section commits a criminal offence. The penalty is intended to reflect the serious nature of the offence as the provision of tax invoices as and when required is essential to the proper operation of the VAT. If convicted, the registered person is subject to a fine of up to [... vatopians] or a prison term of up to 2 years, or both.

Subsection (8) provides that a person who provides a tax invoice otherwise than as required under this section commits a criminal offence. The penalty depends on the degree of culpability of the person in breach with a more severe penalty provided where the incorrect provision of tax invoices is deliberate or reckless. The penalty for a violation that is made knowingly or recklessly is a fine of up to [... vatopians] or a prison term of up to 2 years, or both. For other violations, the penalty is a fine of up to [...vatopians] or a prison term of up to 1 year, or both.

30. Tax Credit and Debit Notes

This section provides for the issuing of tax credit notes and tax debit notes in respect of post-sale adjustments made under section 26.

Subsection (1) applies where a tax invoice has been issued in the circumstances specified in section 26(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. This subsection applies to overcharges of VAT. In this case, the registered person making the supply is obliged to provide a registered recipient of the supply with a tax credit note containing the particulars specified in paragraph (2) of Schedule IV. A registered person who fails to provide a tax credit note as required under subsection (1) commits an offence under subsection (7).

Subsection (3) applies where a tax invoice has been issued in the circumstances specified in section 26(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 subsection applies to undercharges of VAT. In this case, the registered person making the supply is obliged to provide a registered recipient of the supply with a tax debit note containing the particulars specified in paragraph (3) of Schedule IV. A registered person who fails to provide a tax debit note as required under subsection (3) commits an offence under subsection (7).

Subsections (2) and (4) make it clear that a person is not permitted to provide a tax credit note or tax debit note in circumstances other than those specified in subsections (1) and (3). Further, subsection (5) provides that a registered person shall only issue one tax credit note or one tax debit note for the amount of the excess stated in subsections (1) and (3), respectively. The only exception to subsections (2), (4) and (5) is where the original is lost and the registered person receiving the original requests that a copy be provided. In this case, subsection (6) provides that a copy clearly marked

as such may be provided. A person who provides a tax credit note or tax debit note in breach of subsection (2), (4) or (5) commits an offence under subsection (8).

Subsection (7) provides that a registered person who fails to provide a tax credit note or tax debit note as required by this section commits a criminal offence and, upon conviction, is subject to a fine of up to [... vatopians] or a prison term of up to 2 years, or both.

Subsection (8) provides that a person who provides these documents other than as required under the Act commits a criminal offence. The penalty depends on the degree of culpability of the person, with a more severe penalty provided where the violation is deliberate or reckless. Where the failure is made knowingly or recklessly, the penalty is a fine of up to [...vatopians] or a prison term of up to 2 years, or both. For other violations, the penalty is a fine of up to [...vatopians] or a prison term of up to 1 year, or both.

31. Tax Period

This section provides for the tax period of a taxable person. This is the period for which a taxable person must account for VAT. The calculation of the VAT payable by a taxable person under section 23 is made by reference to the person's tax period. In the ordinary case, the VAT payable by a taxable person for a tax period is the total amount of output tax payable on taxable supplies made by the person during the period less the total amount of input tax deduction allowed to the person under section 24 during the period, including tax paid on any import of goods by the person during the period for use in the person's taxable activity. Section 32(1) obliges every taxable person to file a VAT return for each tax period within 21 days after the end of the period. Section 43(1)(a) obliges a taxable person to pay the VAT due and payable for a tax period (as calculated under section 23) by the due date for the return for the period.

Generally, the tax period of a taxable person is the period of one calendar month

(subsection (1)). The Minister has authority to prescribe different tax periods for specific categories or classes of taxable persons (subsection (2)). The Minister shall exercise this authority by prescribing these different periods in regulations.

32. Returns

This section provides for the filing of VAT returns by taxable persons.

Subsection (1) obliges every taxable person to furnish to the Commissioner a VAT return for each tax period. The return must be lodged within 21 days after the end of the tax period. A registered person is obliged to lodge a return for a tax period regardless of whether or not any tax is payable by the person (as calculated under section 23) for that period. The tax period of a taxable person generally is the calendar month and, thus, a VAT return generally must be lodged by the 21st of the month next following the tax period.

Subsection (2) provides that a VAT return lodged by a taxable person for a tax period must be in the form prescribed by the Commissioner and lodged in the manner prescribed by the Commissioner. The return must include all the information necessary to calculate the tax payable by the taxable person under section 23 for the tax period. If an error on a return is subsequently discovered, it should be promptly declared to the Commissioner in the form and containing the information the Commissioner requires (see section 34(6)).

Subsection (3) empowers the Commissioner, by notice in writing, to require any person (whether or not a taxable person) to lodge a further or other return for the purposes of the Act. A person required to lodge a further or other return under subsection (3) may be required to do so on his or her own behalf (i.e., in relation to his or her own activities) or as agent or trustee of another person. An alternative to requiring a person to lodge a further or other return is for the Commissioner to raise an assessment under section 34(1)(b). Examples of situations where the Commissioner

may choose this latter course of action are where the Commissioner has sufficient information to raise an assessment (although, the Commissioner is permitted under section 34(5) to estimate the tax payable under an assessment) or where the Commissioner is concerned that the person will unreasonably delay in lodging the required return.

A further or other return must be in the form prescribed by the Commissioner and lodged as and when required by the Commissioner. The decision of the Commissioner to require a person to lodge further, fewer, or other returns is an “appealable decision” for the purposes of the Act (section 2, definition of “appealable decision”). Subsection (8) provides that a person dissatisfied with a decision of the Commissioner to require a person to lodge further, fewer, or other returns may only challenge the decision under the objection and appeal procedure applicable to appealable decisions in Part X of the Act.

A person who fails to lodge a return (including a return required under subsection (3)) commits an offence under subsection (4) (and possibly subsection (5)) and may be liable for a penalty under subsection (6). This reflects the importance of the lodging of returns to the operation of the VAT.

Subsection (4) provides that a person commits an offence if the person fails to lodge a VAT return within the time required under the Act and, upon conviction, is subject to a fine of up to [...vatopians] or a prison term of up to 1 year, or both.

Subsection (5) provides that an offence may also be committed under this section in relation to a failure to lodge a return within a further time specified by a written notice by the Commissioner. Upon conviction for this criminal offence, a person is subject to a fine of [...vatopians] for each day that the failure to file continues, or is subject to a prison term of 3 months, or both.

Subsection (6) provides for the imposition of a civil penalty on a person who fails

to lodge a return within the time required under the Act. The penalty is the greater of [... vatopians] per day that the return remains outstanding or 10 percent of the tax payable for the period of the return for each month the return remains outstanding. Subsection (7) provides that the penalty is capped at the amount of tax payable with the return. At the maximum, it amounts to a 100 percent penalty. **This subsection may be omitted where it is desired to impose a penalty notwithstanding the fact that the amount of tax may be small or zero.**

33. Extension of Time

Subsection (1) empowers the Commissioner to grant an extension of time for the lodging of a return. This applies to an ordinary return required to be lodged under section 32(1) and a further or other return required to be lodged under section 32(3). A person seeking an extension of time for the lodging of a return must apply to the Commissioner in writing for the extension. The Commissioner may grant an extension of time under subsection (1) only where the Commissioner is satisfied that the person seeking the extension has shown good cause for the extension.

Subsection (2) provides that the granting of an extension of time for the lodging of a return does not alter the due date for the payment of tax in relation to the return. The due date for payment of tax is determined under section 43. In the ordinary case, the tax payable by a registered person for a calendar month tax period is due and payable by the 21st of the month following the end of the tax period.

The decision of the Commissioner in respect of an application by a person for an extension of time to lodge a return is an “appealable decision” for the purposes of the Act (section 2, definition of “appealable decision”). Subsection (3) provides that a person dissatisfied with a decision of the Commissioner in respect of an application for a extension of time to lodge a return may challenge the decision only under the objection and appeal procedure applicable to appealable decisions in Part X of the Act.

34. Assessments

This section empowers the Commissioner to make an assessment of the VAT payable by a person.

Subsection (1) identifies six classes of case in which the Commissioner may make an assessment of the VAT payable by a person, or the amount of tax a person represents is payable. First, under paragraph (a), the Commissioner may make an assessment of the VAT payable by a person where the person fails to lodge a return as required under section 32 or an import declaration as required under section 22(1) (in relation to an import of goods) or section 22(2) (in relation to an import of services). In the case of returns, paragraph (a) applies both to an ordinary return under section 32(1) and a further or other return under section 32(3). Subsection (2)(c) provides that the person required to account for the tax is the person who is to be assessed under paragraph (a). Subsection (3) provides that an assessment may be raised by the Commissioner in this class of case at any time.

Secondly, under paragraph (b), the Commissioner may make an assessment of the VAT payable by a person where the Commissioner is not satisfied with a return or import declaration furnished by the person. In the case of returns, paragraph (b) applies both to an ordinary return under section 32(1) and a further or other return under section 32(3). Subsection (2)(c) provides that the person required to account for the tax is the person who is to be assessed under paragraph (b). Except in the case of fraud, or gross or wilful neglect, subsection (4)(b) provides that the Commissioner may only raise an assessment in this class of case within [3] years after the date the return or import declaration was furnished. Subsection (4)(a) provides that no time limit applies where the default is due to fraud, or gross or wilful neglect, if committed by, or on behalf of, the person who furnished the return or import declaration.

The terms “fraud”, “gross neglect” and “wilful neglect” are intended to have their general law meanings. Thus, subsection (4)(a) will apply, for example, to a deliberate

understatement in a return of the amount of taxable supplies made by a taxable person or a deliberate overstatement in a return of the amount of taxable supplies received by the person. Subsection (4)(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 taxable person who furnished the return, or a by a person acting on behalf of that person, such as an accountant or other tax adviser.

Thirdly, under paragraph (c), the Commissioner may make an assessment of the VAT payable by a person where the Commissioner has reason to believe that a person will become liable to pay VAT, but is unlikely to pay the amount due. Subsection (2)(c) provides that the person required to account for the tax is the person who is to be assessed under paragraph (c). Subsection (3) provides that an assessment may be raised by the Commissioner in this class of case at any time.

Fourthly, under paragraph (d), the Commissioner may make an assessment of the VAT payable by a person where the person is not a taxable person, but supplies goods or services and represents that an amount of tax is charged in respect of the supply. VAT is not otherwise payable in respect of a supply of goods or services by a person who is not a taxable person. The critical requirement under paragraph (d) is the representation by a person who is not a taxable person that tax is payable in respect of a supply by that person. Subsection (2)(a) provides that the person making the supply is the person who is to be assessed under subsection (1)(d). This is the case even though that person is not a taxable person. Subsection (3) provides that an assessment may be raised by the Commissioner in this class of case at any time. Subsection (12) provides that the amount assessed under subsection (1)(d) is to be treated, for all purposes of the Act, as tax charged under the Act. This means, for example, that the payment, collection and recovery provisions in the Act apply to the tax assessed under subsection (1)(d).

Fifthly, under paragraph (e), the Commissioner may make an assessment of the

VAT payable where a taxable person represents that the correct positive rate of tax has been charged in respect of a supply of goods or services in circumstances where the supply is an exempt supply or taxable supply subject to a zero rate. The assessment in this class of case is of the tax represented as having been charged when in fact no tax is payable, or of the difference between the tax represented as charged and the actual tax payable. Subsection (2)(a) provides that the person making the supply is the person who is to be assessed under subsection (1)(e). Subsection (3) provides that an assessment may be raised by the Commissioner in this class of case at any time. Subsection (12) provides that the amount assessed under subsection (1)(e) is to be treated, for all purposes of the Act, as tax charged under the Act. This means, for example, that the payment, collection and recovery provisions in the Act apply to the tax assessed under subsection (1)(e).

Finally, under paragraph (f), the Commissioner may make an assessment of the VAT payable by a person where the Commissioner has determined the liability of the person under the general anti-avoidance provision in section 79(2). The person whose liability has been determined under section 79(2) is the person assessed (subsection (2)(b)). Subsection (3) provides that an assessment may be raised by the Commissioner in this class of case at any time. Subsection (12) provides that the amount assessed under subsection (1)(f) is to be treated, for all purposes of the Act, as tax charged under the Act. This means, for example, that the payment, collection and recovery provisions in the Act apply to the tax assessed under subsection (1)(f).

In each case specified in subsection (1), subsection (5) permits the Commissioner to estimate the VAT payable by the person for the purposes of making an assessment. An estimate of the VAT payable must be based on the information available to the Commissioner. It is not permissible for the Commissioner to simply “pluck a figure out of the air”.

If a taxable person is not satisfied with a submitted return, the person may apply in writing to the Commissioner to amend the return (subsection (6)). The application

must be filed within [3] years after the return was filed and must specify in detail the grounds for the addition or alteration of the return (subsection (7)). If the Commissioner makes an assessment after the [3]-year period, the taxable person may apply to amend the return within [60] days after receiving the notice of assessment. After considering the application under subsection (6), the Commissioner shall make an assessment of the amount the Commissioner considers payable (subsection (8)). By virtue of section 35(1), an assessment may be challenged only under the objection and appeal procedure in Part X of the Act.

Where the Commissioner has made an assessment of the tax payable under subsection (1), subsection (9) obliges the Commissioner to serve a notice of the assessment on the person assessed. The rules in section 72 relating to the service of notices under the Act apply for the purposes of the service of a notice of an assessment. A notice of assessment must state the amount of tax payable under the assessment, the date that the tax assessed is due and payable, and the time, place, and manner of objecting to the assessment (as set out in section 39).

Subsection (10) empowers the Commissioner to amend an assessment by making such alterations or additions to the assessment as the Commissioner considers necessary to make a correct assessment of a person's VAT liability. The amended assessment must be made within [3] years after the notice of assessment is served or, for assessments under subsection (4), within the time period prescribed in subsection (4). An amended assessment may either increase or decrease the amount of tax payable under the original assessment. The Commissioner is obliged to serve a notice of the amended assessment on the person assessed. Again, the rules in section 77 relating to the service of notices under the Act apply for the purposes of the service of a notice of an assessment. Subsection (11) provides that an amended assessment is to be treated for all purposes of the Act as an assessment under the Act. This means, for example, that it may be challenged under Part X in the same way as the original assessment.

35. General Provisions Relating to Assessments

This section provides general provisions relating to assessments.

Subsection (1) provides that the original or a certified copy of a notice of assessment is to be receivable in any proceedings as conclusive evidence of the due making of the assessment, and that the amount and all particulars of the assessment are correct. The only exception is proceedings under Part X of the Act (i.e., the objection and appeal proceedings). The purpose of this subsection is to ensure that the objection and appeal procedure under the Act is the only basis on which a person can challenge an assessment raised by the Commissioner. This means, for example, that if the Commissioner has sued a person under section 45 for recovery of the VAT due under an assessment, then that person cannot raise as a defence to the recovery action the ground that the assessment is excessive or otherwise wrong. This can only be done under the objection and appeal procedure where strict time limits apply.

Subsection (2) provides that no assessment or other document purporting to be made, issued, or executed under the Act shall be quashed or treated as void or voidable for want of form or in any way affected by reason of mistake, defect or omission, provided the assessment or document is, in substance and effect, in conformity with the Act and the person assessed, intended to be assessed, or affected by the document is designated in it according to common understanding.

36. Carry Forward of Excess Credits and Refund of Tax

This section provides for the carrying forward of excess credits and the making of refunds of tax.

The section identifies two classes of case where excess tax payments or excess input tax deductions may be carried forward or refunded to a person. The first class of case is stated in subsection (1)(a). This is where the total amount of input tax deductible

for a tax period by a taxable person (section 24) exceeds the total amount of output tax payable by the person for that period.

Basically, except for the case where at least 50% of the amount of the taxable supplies of a taxable person for the taxable period is taxed at a zero rate (see subsection (5)), the amount of excess stated in subsection (1)(a) is carried forward to the next tax year period and treated as input tax deductible in that period (subsection (2)).

When the excess for a particular tax period remains unused after carrying forward for [three] consecutive tax periods, the taxable person may file with the Commissioner a claim for refund for the amount remaining. The taxable person who wishes to be refunded for the amount remaining must file a claim in the form and with the documentation specified in regulations (subsection (3)).

When a taxable person files a claim for refund under subsection (3), to the extent that the Commissioner is satisfied that the taxpayer is entitled to the claimed refund, the Commissioner may apply the amount of the refund claimed in reduction of any tax, levy, interest or penalty payable by the person under this Act, under other taxes collected by the Commissioner, and unpaid amounts under the repealed [sales tax]. The Commissioner must refund any excess remaining. The Commissioner must apply the excess and issue a refund by the end of the [second] calendar month following the date the taxable person files the claim for refund (subsection (4)).

If the Commissioner orders an audit of the claim for refund under subsection (3), then to the extent the Commissioner is satisfied that the claimant is entitled to the claimed refund, the Commissioner is subject to a different deadline by which to apply the excess and issue a refund. The Commissioner must take this action by the later of (a) the end of the second calendar month following the filing of the claim for refund or (b) within 10 days after conclusion of the audit (subsection (4)).

Subsection (5) provides a shorter deadline for the Commissioner to apply excess deductions to reduce VAT obligations or issue a refund if at least 50 percent of the taxable supplies for the tax period for which a taxable person is applying for a refund is taxed at a zero-rated. This taxable person may file with the Commissioner a claim for refund for the excess deductions attributable to the zero-rated supplies without being required to carry forward these excess input tax deductions. The refund claim must be submitted in the form and with the documentation specified in regulations. When a taxable person may file a claim for refund under subsection (5), then to the extent the Commissioner is satisfied that the person is entitled to the claimed refund for the excess deductions attributable to the zero-rated supplies, the Commissioner may apply this amount against the claimant's other VAT obligations or obligations under other taxes collected by the Commissioner or the repealed [Sales Tax], and refund the excess by the end of the first calendar month following the date the refund claim is filed (subsection (6)). For example, if over 50 percent of a taxable person's taxable supplies for a tax period is zero-rated, the person has EC\$100,000 excess deductions, with EC\$60,000 of the excess deductions attributable to the zero-rated supplies, the taxable person can file a claim for a refund under subsection (5) for the EC\$60,000, not EC\$100,000 of the excess deductions.

If the Commissioner orders an audit of the refund claimed under subsection (5), the Commissioner has a longer deadline by which to apply excess deductions and issue refunds. In this case, the Commissioner may apply the excess input tax deductions and must issue any required refund by the later of (a) the end of the first calendar month following the filing of the claim for refund or (b) within 10 days after conclusion of the audit (subsection (6)) .

When the available refund under subsection (4)(b) or (6)(b) does not exceed the amount specified in paragraph 4 of Schedule V, the Commissioner is not required to issue a refund. Instead, the excess available for refund must be carried forward to the next succeeding tax period and applied against the output tax for that period as an input

tax deduction under section 24 (1)(i).

The second class of case where tax may be refunded is provided in subsection (1)(b). This is where a person (registered or not registered) has overpaid tax (e.g., a person may have made a calculation error in determining the person's tax liability). Subsection (8) provides that such a person may file with the Commissioner a claim for a refund of the overpaid tax. The filing must include documentary proof as required by regulations that tax has been overpaid. When the Commissioner is satisfied that tax has been overpaid by a person filing a claim for refund, then if the claimant is a taxable person, the Commissioner is required to treat the claim as a claim under subsection (3) (subsection (9)(a)). In addition, if the claim for refund is filed by a taxable person and the output tax claimed to be refundable was borne by an unregistered person (unregistered recipient), the output tax is refundable only to the extent that the amount refunded will be repaid to the unregistered recipient (subsection (9)(b)). The repayment may be in cash or as a credit against the amount the unregistered recipient owes the taxable person.

Subsections (10)-(13) provide general rules in relation to both classes of overpayments. Subsection (10) provides that, where a taxable person has failed to lodge a required return for any tax period, the Commissioner may withhold payment of a refund until the return is lodged. Subsection (11) sets three years as the time limit for the lodging of a return or a written application to claim a refund of overpaid tax under subsection (3), (5), or (8). Subsection (12) obliges the Commissioner to serve a person claiming a refund with a notice in writing of the Commissioner's decision on the application. The Commissioner's decision is an "appealable decision" (section 2) for purposes of the Act. Subsection (13) provides that a person dissatisfied with a decision of the Commissioner in relation to a refund claim may challenge the decision only under the objection and appeal procedure in Part X of the Act. This excludes a person from challenging the decision on any other basis (such as judicial review of administrative action).

Subsection (14) provides that a person who improperly claims a refund under this section commits a criminal offence and, upon conviction, is subject to a fine of up to [... vatopians] or imprisonment for up to 3 years, or both. The severe nature of the penalty reflects the seriousness of the offence.

37. Interest on Overpayment

This section provides for the payment of interest if the Commissioner fails to pay a refund in a timely manner.

Subsection (1) provides that if the Commissioner fails to pay a refund of excess deductions under section 36 by the date specified in that section, the Commissioner is required to pay interest, calculated from the date the refund was due until the date the refund is made. The interest rate is specified in paragraph (5) of Schedule V – [1 percent] simple interest per month or part thereof.

Subsection (2) covers the payment of interest on refunds resulting from decisions on objections or appeals. If the Commissioner must refund tax as a result of an objection decision (section 39), a decision of the Commissioner of Appeals (section 40), or a decision of the [High Court] (section 41), the Commissioner is required to pay interest at the rate specified in paragraph (5) of Schedule V, from the date the person paid the tax that was refunded until the refund is made.

38. Others Eligible for Tax Refund

This section provides for the refund of tax to certain persons.

Subsection (1)(a)-(d) empowers the Minister, consistent with regulations issued in consultation with the [Minister of Foreign Affairs], to grant a refund of tax on a supply to or import by -

- (1) any person entitled to relief from VAT under the [*Diplomatic Immunities and Privileges Act*], an international convention having force of law in Vatopia, or under recognised principles of international law. The refund is available only to the extent provided for in the Act, convention, or international law (subsection (1)(a)).
- (2) a diplomatic or consular mission of a foreign country established in Vatopia, to the extent the transactions involve the official purposes of the mission (subsection (1)(b)).
- (3) an organization or government to the extent relief from tax is provided under a technical assistance or humanitarian assistance agreement entered into with the Government of Vatopia (subsection (1)(c)).
- (4) a non-resident individual on goods exported from Vatopia as accompanied luggage, but only for goods specified in regulations and only if the total tax on such goods exceeds the threshold specified in paragraph (6) of Schedule V – [...vatopians] (subsection (1)(d)).

The intention is that the scope of the refund is determined by reference to the primary source of the tax relief (i.e., the *Diplomatic Immunities and Privileges Act*, an international convention, or the general principles of international law).

Subsection (1)(d) empowers the Commissioner to refund tax paid on goods exported from Vatopia by a non-resident. The provision does not oblige the Commissioner to grant this refund, but provides the mechanism to do so. To be eligible for the refund, the applicant must file a claim supported by documentary evidence that tax was paid on the goods and that the goods are exported. This evidence may include the production of a tax invoice showing that tax was paid on the goods, and the physical inspection of the goods to be exported at the border or airport. The refund applies only

to goods purchased by the exporter in Vatopia and removed from Vatopia as part of the exporter's personal accompanied baggage.

Subsection (2) provides that the refund provided for under (1)(a) and (d) above is not available to any citizen or permanent resident of Vatopia.

Subsection (3) empowers the Minister to authorize relief under this section on the conditions and subject to the restrictions the Minister deems fit. The claim for refund must be made in the form and at the time the Minister prescribes (subsection (4)). The claim for refund must be supported by proof of payment of tax.

Subsection (4) provides that the Minister may by notice apply this section to a public international organization, its officials, and its employees.

39. Objections

This section provides for the first step in the procedure for challenging an appealable decision (including an assessment). This is the lodging of an objection to the decision. The lodging of an objection is a prerequisite to appealing the decision to the courts. In other words, if no objection is lodged, then the person is precluded from otherwise appealing the decision to the courts.

Subsection (1) provides that any person who is dissatisfied with an appealable decision (section 2) may lodge an objection to the decision with the Commissioner within 30 days after the person has been served with notice of the decision.

Subsection (2) provides the Commissioner with discretion to accept an objection lodged after the 30 day period in subsection (1) has expired. There are three conditions that must be satisfied before the Commissioner may exercise the discretion to accept an objection out of time. First, a written application must be made to the Commissioner by the person dissatisfied with an appealable decision asking for the Commissioner to

accept the objection out of time. Secondly, the Commissioner must be satisfied that the reason for failing to lodge the objection within time was due to absence from Vatopia, sickness or any other reasonable cause. Thirdly, there has been no unreasonable delay by the person in lodging the objection. A decision of the Commissioner on an application under subsection (2) is itself an “appealable decision” under the definition in section 2 and, in turn, can only be challenged under the objection and appeal procedures in Part X (subsection (7)).

Subsection (3) requires that an objection to an appealable decision must be in writing and specify in detail the grounds upon which it is made. The statement of grounds must be sufficiently explicit so as to alert the Commissioner to the particular aspects of the decision that the person regards as wrong and the reasons for that view. A statement of vague grounds, such as that an assessment is “excessive” or “arbitrary”, does not satisfy the requirements of subsection (3) and, thus, is not a valid objection.

Subsection (4) provides that, in the case of an objection to an assessment (see section 34), the Commissioner may consider the objection only if the person assessed has either paid the tax due under the assessment or satisfied the Commissioner that he or she is unable to pay the entire tax due and has provided the Commissioner with sufficient security for the amount of unpaid tax and any penalty that may become payable (to the extent able to provide such security).

Subsection (5) obliges the Commissioner to consider an objection. The Commissioner may either allow the objection in whole or part and amend the assessment or decision accordingly, or disallow the objection. The Commissioner is obliged under subsection (6) to serve a written notice of the decision on the objection on the person who has lodged the objection. The requirements for service of notices under the Act are specified in section 77. A person dissatisfied with the Commissioner’s decision under subsection (5) may appeal that decision under section 40.

40. Appeals to Commissioner of Appeals

This section provides for appeals in relation to section 39(5) objection decisions of the Commissioner.

Subsection (2) provides that any person dissatisfied with an objection decision may, within 30 days after being served with notice of the objection decision, lodge a notice of appeal with the Commissioner of Appeals. (subsection (1)). The person appealing must serve a copy of the notice of appeal on the Commissioner. The Commissioner of Appeals is appointed by the Minister to hear and decide disputes between the Commissioner and any person pertaining to the person's liability or assessment under the Act.

Subsection (3) provides the Commissioner of Appeals with discretion to accept a notice of appeal lodged after the 30 day period in subsection (2) has expired. There are three conditions that must be satisfied before the Commissioner of Appeals may exercise the discretion to accept a notice of appeal out of time. First, a written application must be made to the Commissioner of Appeals by the person dissatisfied with an objection decision asking for the Commissioner of Appeals to accept the notice of appeal out of time. Secondly, the Commissioner of Appeals must be satisfied that the reason for failing to lodge the notice within time was due to absence from Vatopia, sickness or any other reasonable cause. Thirdly, there has been no unreasonable delay by the person in lodging the notice. A decision of the Commissioner of Appeals on an application under subsection (3) is an "appealable decision" under the definition in section 2 and, in turn, can only be challenged under the objection and appeal procedures of Part X of this Act (subsection (7)).

Subsection (4) provides a default rule governing appeals if the Commissioner fails to make an objection decision within [60] days after the objection was lodged. In this situation, a person objecting under section 39 may appeal to the Commissioner of Appeals under subsection (2), as if the Commissioner had disallowed the objection.

In an appeal to the Commissioner of Appeals against an objection decision, the person is limited to the grounds for the objection described in section 39(3), unless the Commissioner of Appeals grants the person leave to add new grounds.

The Commissioner of Appeals has broad powers as to the form his or her order may take. The Commissioner of Appeals may affirm, reduce, increase, or vary the assessment being appealed, or may remit the assessment to the Commissioner for reconsideration under directions issued by the Commissioner of Appeals (subsection (6)). Consequently, if the Commissioner of Appeals wholly or partly agrees with the objection, the Commissioner of Appeals has the power to amend the assessment. In other words, the Commissioner of Appeals does not necessarily have to remit the assessment back to the Commissioner. Alternatively, the Commissioner of Appeals may remit the assessment back to the Commissioner for reconsideration in accordance with the directions and recommendations of the Commissioner of Appeals.

Subsection (8) provides that [sections ... of the Income Tax Act] apply to appeals under this Act to the extent not inconsistent with the provision of this Act.

41. Appeal to High Court

This section provides for an appeal to the [High Court] from a decision by the Commissioner of Appeals.

Subsection (1) provides that a person can appeal to the [High Court] if dissatisfied with a decision by the Commissioner of Appeals. The appeal must be lodged with the [Registrar of the High Court] within [30] days after being notified of the decision by the Commissioner of Appeals. The appealing party must serve a copy fo

the notice of appeal on the other party to the proceedings before the Commissioner of Appeals.

Subsection (2) limits appeals to the [High Court] to questions of law, including questions of mixed fact and law. The notice of appeal must state the questions of law to be addressed on appeal. While the distinction between questions of law and questions of fact may not always be easy to draw in particular cases, some broad principles may be stated. First, a question of what actually happened is a question of fact; for example, the question of whether a supply of goods was made by a taxable person is a question of fact. A question of fact may only be decided by the Commissioner and the Commissioner of Appeals (as reviewer of the merits of the Commissioner's decision). The decision of the Commissioner of Appeals on a question of fact cannot be appealed to the High Court, unless the decision reveals an error of law. Secondly, the interpretation of a particular provision in the VAT legislation is regarded as a question of law and, therefore, the decision of the Commissioner of Appeals on such a question may be appealed to the High Court. Thirdly, a question of whether particular facts ascertained come within a particular provision in the VAT legislation is regarded as a question of law and, therefore, the decision of the Commissioner of Appeals on this question may be appealed to the High Court.

As the High Court only reviews the legal correctness of the decision of the Commissioner of Appeals (rather than the merits of the decision), an appeal to the High Court will only be successful if the Commissioner of Appeals has made an error of law, including questions of mixed fact and law, which has resulted in a different decision to that which would have been made if the error had not occurred.

42. Burden of Proof

The section provides that the burden of proving that an assessment is excessive or that a decision of the Commissioner is wrong is on the person objecting to the assessment or decision. This means that, in the case of an assessment, unless the

person objecting to an assessment can prove that the assessment is excessive, the assessment stands irrespective of whether or not there are any facts that give prima facie support to the assessment. Thus, there is no obligation on the Commissioner to prove that the assessment is correct. The person objecting must prove his or her case on the balance of probabilities (i.e., the person objecting must establish that it is more likely than not that the position is as he or she contends).

43. Due Date for Payment of Tax

This section provides for the due date for payment of tax under the Act. The due date depends on the basis of the liability.

Subsection (1)(a) provides that tax payable by a taxable person for a tax period is due and payable by the due date for furnishing the return for the tax period. The amount of tax payable by a taxable person for a tax period is calculated under section 23. The tax period of a taxable person is determined under section 31. The due date for furnishing a return for a tax period is 21 days after the end of the tax period (section 32). The tax period of a taxable person generally is the calendar month, so that tax is due and payable by the 21st of the following month.

Subsection (1)(b) provides that tax payable by a person under an assessment is due and payable on the date specified in the notice of assessment served on the person. This applies to an assessment of tax under section 34 or 51, and to an assessment of penalty under section 73(3). Subject to section 39(4), subsection (2) provides that the date that tax is due and payable under an assessment is not affected by the fact that the person liable for the tax has challenged the assessment under the objection and appeal procedure in Part X of the Act.

Subsection (1)(c) provides that the tax payable on an import of goods is due and payable at the time specified in section 22. Tax is due and payable at the time of entry of goods (see section 22(4)). In the case of a recipient of an import of services, tax is

due and payable within 30 days after the time of import (section 22(2)).

Subsection (1)(d) is the default rule. For any person not covered in subsection (1)(a)-(c), tax is due and payable by the date the taxable transaction occurs.

Subsection (3) provides the Commissioner with discretion to grant an extension of time for payment of tax or to make any other appropriate arrangement to ensure that tax is paid. An example of the latter is allowing a person liable for tax to pay the tax due in instalments. 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 28. A decision of the Commissioner on an application under subsection (3) is an "appealable decision" under the definition in section 2 and can only be challenged under the objection and appeal procedures in Part X of the Act (subsection (4)).

44. Allocation of Payments

This section provides for the allocation of payment to satisfy any payment due and payable by any person under this act. A person may have both unpaid tax and unpaid interest or penalty in relation to unpaid tax. Such a person may make a payment to the Commissioner that is less than the total amount due. When any payment made by the person in respect of tax under this Act, interest, or penalty which is less than the total amount due, the payment applies first to the penalty, then to interest, and finally to any tax that is due.

While "tax" is defined in section 2 to include any amount treated as tax for the

purposes of the Act, this only applies unless a contrary intention is shown. It is clear that a contrary intention is shown in this section, so that the reference to tax does not include interest and penalty. However, it will include other amounts treated as tax, such as security under section 47(3).

45. Recovery of Tax as Debt Due

This section provides for the recovery of tax by the Commissioner.

Subsection (1) provides that any tax due and payable under the Act by a person is a debt due to the State and is recoverable by the Commissioner in the manner set out in the section.

Subsection (2) provides that where tax has not been paid by the due date, the Commissioner may file a certified statement setting out the amount of tax due and payable by the person (the defaulter) with the clerk or registrar of any court of competent jurisdiction. The statement is treated as a civil judgment in favour of the Commissioner for a debt in the amount set out in the statement. This procedure applies to any unpaid tax and to any unpaid amount that is treated as tax for the purposes of the Act under the section 2 definition of “tax” (e.g., unpaid security treated as tax under section 47(3)). The court shall issue a writ of execution against the defaulter on the judgment referred to in subsection (2).

Subsection (3) imposes conditions that must be satisfied before the writ is issued. The court must give notice informing the defaulter that a writ will be issued covering the unpaid tax owed by the defaulter, unless the defaulter provides the court with proof of payment satisfactory to the court. The defaulter has [14] days from the date the court served notice on the defaulter to produce that proof. A writ shall not be issued before the expiration of the [14-day] period.

Subsection (4) empowers the Commissioner to withdraw the statement referred to in subsection (2). The withdrawal must be given by notice in writing to the clerk or registrar of the relevant court. Upon withdrawal, the statement ceases to have any effect. The Commissioner may institute new proceedings under subsection (2) for any tax referred to in the withdrawal statement.

Subsection (5) provides that the customs legislation, with modifications ordered by the Minister, applies to tax chargeable on imported goods, unless the contrary intent appears. As a result, the [Commissioner of Customs] may exercise the powers conferred on that person by the customs legislation as if references in the customs legislation to customs duty and excise tax included a reference to tax on imported goods under this Act (subsection (6)).

46. Recovery of Monies from Persons Leaving Vatopia

This section provides the Commissioner with power to prevent a person from leaving Vatopia without paying tax due. The power may only be exercised where the Commissioner has reasonable grounds for believing that a person will leave Vatopia without paying tax due. **This subsection could be expanded to cover tax that may become due.**

The Commissioner exercises the power by issuing a certificate to the [Chief Immigration Officer] setting out the amount of tax due, and requesting the [Chief Immigration Officer] to prevent the person from leaving Vatopia until the person makes payment in full or an arrangement satisfactory to the Commissioner for the payment of the tax(subsection (1)). Subsection (2) obliges the Commissioner to serve a copy of the subsection (1) certificate on the person named in the certificate, but only if it is practicable to do so.

Subsection (3) provides that a person named in a subsection (1) certificate is permitted to leave Vatopia if the person pays the amount set out in the certificate to a

[customs or immigration officer], or produces a certificate signed by the Commissioner stating that the tax has been paid or that satisfactory arrangements for the payment of tax have been made (such as the giving of security).

47. Security

This section empowers the Commissioner to require a taxable person to give security for the tax that is or may become due and payable by the person.

Subsection (1) provides the Commissioner with the power to require security for the payment of tax. The power may be exercised in relation to tax already due and payable, or in relation to tax that may become due and payable. The Commissioner must provide the person against whom the power is exercised with written notice of the requirement to furnish security. The Commissioner may exercise the power only where it is reasonable to do so for the protection of the revenue, or is provided for in the Act. For example, section 39(4) provides that the Commissioner may consider an objection to a assessment or decision only if the person assessed has paid the tax or satisfied the Commissioner that he or she is unable to pay the entire tax and has provided the Commissioner with sufficient security for the unpaid tax and any penalty that may become due. The Commissioner may require security if the Commissioner decides that there is a risk that the person liable for tax may leave the country.

Subsection (2) provides that any security required to be furnished under subsection (1), including security required from a promoter of public entertainment, shall be for such amount, in such form (e.g., cash, bond or a combination of both) and furnished within such period as the Commissioner may specify in the notice obliging a person to furnish security.

Subsection (3) provides that where any cash security is no longer required, the Commissioner is required to refund the amount of the security in accordance with the rules in section 36(2). In particular, this means that the Commissioner must first apply

the amount of the security in payment of any unpaid VAT, [customs duties, income tax, or sales tax], including any interest or penalty payable in respect of the unpaid amounts.

Subsection (4) provides that the Commissioner's decision under subsection (1) to require security is an "appealable decision" under the definition in section 2, and can be challenged only under the objection and appeal procedures in Part X of the Act.

Subsection (5) provides that a promoter of public entertainment must not allow the public entertainment to take place unless the promoter paid the amount required under subsection (2) and received the Commissioner's written approval.

48. Preferential Claim to Assets

This section confirms the Commissioner's preferential claim for recovery of tax due and payable under the Act. The preferential claim of the Commissioner is set out in the [Insolvency Act]. The preferential claim applies to tax and all amounts treated as tax for the purposes of the Act (e.g., interest (section 28(3)), penalty (section 73(3)) and security (section 47(3)).

Subsection (2) provides that where a person is in default of paying tax, the Commissioner may inform the person of the Commissioner's intention to register a security interest in any asset the person owns in order to cover any unpaid tax in default, together with any expense incurred in recovery proceedings. The Commissioner must give such notice in writing.

Subsection (3) provides that if the person who is served notice under subsection (2) fails to pay the amount specified in the notice within 30 days after the date of service, the Commissioner may direct the [Registrar] that the asset shall be the subject of security for the total amount of unpaid tax to the extent of the defaulter's interest.

When a notice is served on the [Registrar] by the Commissioner, the [Registrar] is

required to register the notice of security without fee, as if the notice were an instrument of mortgage over or charge on such asset owned by the defaulter (subsection (4)). While in effect, the registration (subject to any prior mortgage or charge) operates as a legal mortgage on the asset to secure the amount due.

49. Seizure of Goods and Vehicles

This section provides the Commissioner with a power to seize goods and vehicles.

The power of seizure is set out in subsection (1). Where the Commissioner has reasonable grounds to believe that tax on a supply or import of goods has not been or will not be paid, the Commissioner may seize the goods that are the subject of the supply or import. Subsection (3) requires that the seized goods be stored in a place approved by the Commissioner for the storage of such goods.

Subsection (2) provides that the Commissioner may seize a vehicle used in removing or carrying goods that can be seized under subsection (1). The Commissioner may sell the vehicle at public auction or deal with it in any manner the Commissioner directs. The Commissioner may not seize the vehicle if it is shown that the vehicle was used without the consent or knowledge of the owner or person lawfully in possession or charge of the vehicle.

Subsection (4) obliges the Commissioner to serve written notice on the owner, or the person who had custody or control of the goods immediately before their seizure, of the seizure of the goods. The notice must be served as soon as is practicable after the seizure of the goods. The rules relating to service of notices under the Act are set out in section 77. The notice must identify the goods seized, state that goods have been seized under section 49, state the reason for seizure, and set out the terms of subsections (7)-(9) (see below).

The obligation to serve a notice under subsection (4) is subject to the operation of subsection (5). This subsection provides that the Commissioner is not obliged to serve a notice under subsection (4) if the Commissioner does not have sufficient information to identify the person on whom the notice is to be served. However, before the Commissioner is relieved under subsection (5) of the obligation under subsection (4), the Commissioner must have made reasonable enquiries to identify the person on whom the subsection (4) notice should be served. Where subsection (5) applies, the Commissioner may subsequently serve a subsection (4) notice on any person claiming the goods, provided the person has given the Commissioner sufficient information to enable such a notice to be served (subsection (6)). In particular, the information must identify the person claiming the goods as either the owner of the goods, or the person having custody or control of the goods immediately before the seizure of the goods.

Subsections (7)-(9) set out the procedures for dealing with goods seized by the Commissioner under subsection (1). Subsection (7) permits the Commissioner to authorize the delivery of the goods to the person served with a subsection (4) notice in respect of the goods. The Commissioner may authorize delivery only where the person has paid the tax owing in respect of the supply or import of the goods, or provides the Commissioner with security for the payment of the tax due and payable or that will become due and payable. The provision of security is to be in accordance with section 47.

Where subsection (7) does not apply either because no notice is served under subsection (4) on any person or the person on whom a notice has been served does not comply with subsection (7) (i.e., does not pay the tax or provide security), the Commissioner is required to detain the goods for the period specified in subsection (8) and, upon expiry of that period, may dispose of the goods as specified in subsection (9). In the ordinary case, the goods must be detained until the later of [10] working days after the seizure of the goods or [10] working days after the due date for payment of the tax in respect of the supply or import of the goods (as determined under section 43) (subsection (8)(b)). Where the goods are perishable (such as fresh foodstuffs), the

Commissioner is only obliged to detain the goods for such period as is reasonable having regard to the condition of the goods (subsection (8)(a)).

Once the detention period has expired, the Commissioner is permitted to dispose of the goods in the manner specified in section 50(4). This means that the goods may be sold either at public auction or in such other manner as the Commissioner may direct. The proceeds of the sale must be applied in the manner specified in section 50(5). This means that the proceeds of sale must be applied first against the costs of taking, keeping, and selling the seized goods, then towards the tax due and payable in respect of the supply or import of the seized goods, with the balance of the proceeds (if any) restored to the person liable for the tax on the supply or import of the goods.

Notwithstanding the provisions in this section, subsection (10) provides that the Commissioner may use the judgment debt procedure in section 45 to recover the costs of sale, and any tax due and payable that is not met out of the proceeds of sale of the seized assets.

50. Distress Proceedings

This section provides for the recovery of unpaid tax by way of a statutory right of distress to be exercised against the movable property of the person liable for the tax. The power of distress differs from the seizure power in section 49 in two respects. First, distress applies in respect of any unpaid liability of a person and not just that relating to a particular supply or import of goods (as is the case under section 49). Secondly, distress may be levied against any movable property of the person liable for unpaid tax and not just against the goods that are the subject of the supply or import to which the unpaid tax relates (as is the case under section 49). Importantly, distress is confined to movable property and, thus, cannot be exercised against the immovable property of the person liable for the unpaid tax. The requirements as to detention of the property (so as to give the person time to pay), the power of sale and the distribution of the proceeds of sale are similar to the rules for seized goods under section 49 (see above). Further, the

Commissioner may use the judgment debt procedure in section 45 to recover any tax due and payable that is not met out of the proceeds of sale of the distress (subsection (6)).

Subsection (1) provides that the Commissioner may use distress proceedings to recover unpaid tax by issuing a written order specifying the person liable, the location of the property, and the tax liability to which the distress proceedings relate. Under subsection (2), in order to execute distress, the Commissioner may at any time enter the premises covered by the Commissioner's order authorising distress, and may require a police officer to be present when distress is being executed.

Subsection (3) provides that property on which distress is levied (other than perishable goods) must be kept for [10] working days at the place where distress was levied or any other place the Commissioner considers appropriate. The person liable for the tax must bear the cost of storage.

Subsection (4) authorizes the Commissioner to sell the property distrained at public auction or in any other manner the Commissioner provides in regulations. For property other than perishable goods, the property may be sold if the person liable does not pay the tax due plus the costs of distress within 10 working days after distress is levied. If the person does not pay the tax and costs, perishable goods may be sold within the period the Commissioner considers reasonable, having regard to the condition of the goods.

Subsection (5) provides an ordering rule for the application of the proceeds of sale by the seller or auctioneer. The proceeds are applied first toward the cost of taking, keeping and selling the distrained property. The proceeds then are applied to the tax due. Any remaining proceeds shall be restored to the person liable for the tax.

If the proceeds of the distress are not adequate to meet the costs of distress and the tax due, the Commissioner can proceed under the general recovery rules in section

45 (subsection (6)).

All costs incurred by the Commissioner in respect of a distress may be recovered from the person whose property has been subject to distress as if those costs are tax due under this Act (subsection (7)). In particular, this means that the payment, collection and recovery provisions in Part XI apply (sections 43-53).

51. Recovery of Tax from Recipient of Supply

This section permits the Commissioner to recover unpaid tax in respect of a taxable supply from the recipient where tax has not been properly charged by the taxable supplier because of fraudulent action or misrepresentation by the recipient of the supply. It is not mandatory for the Commissioner to collect from the recipient before going against the supplier. The section applies in two classes of case -

- (1) A taxable supply has been incorrectly treated by the supplier as an exempt supply because of fraudulent action or misrepresentation by the recipient.
- (2) A taxable supply has been incorrectly treated by the supplier as a zero-rated supply because of fraudulent action or misrepresentation by the recipient

In each of these cases, subsection (1) permits the Commissioner to raise an assessment upon the recipient of the supply for the amount of any unpaid tax in respect of the supply. The Commissioner may also recover any interest (section 28) and penalty (section 43) accruing in respect of the unpaid tax. An assessment under subsection (1) may be raised against any recipient of a supply, whether registered or unregistered.

Subsection (2) obliges the Commissioner to serve a notice of a subsection (1) assessment on the recipient of the supply. The notice of assessment must state the amount of tax payable under the assessment, the date that the tax assessed is due and

payable, and the time, place, and manner of objecting to the assessment (as set out in section 39). The rules relating to service of notices under the Act are set out in section 77.

Subsection (3) provides that a subsection (1) assessment is treated as an assessment for all purposes of the Act and subsection (7) provides that the amount assessed is to be treated for all purposes of the Act as tax charged under the Act. In particular, this means that the payment, collection and recovery provisions in Part XI apply.

Subsection (4) provides that the raising of a subsection (1) assessment on the recipient of a supply does not preclude the Commissioner from also seeking to recover the unpaid tax, interest, or penalty from the taxable person making the supply. However, the Commissioner cannot recover tax on the same taxable supply twice, thus, tax recovered from one person is credited against the liability of the other person (subsection (5)). If the tax, interest, or penalty is ultimately paid by the taxable supplier, then subsection (6) provides that the taxable supplier may recover the amount paid from the recipient of the supply.

52. Recovery of Tax from Third Parties

This section empowers the Commissioner to recover unpaid tax from third parties owing money to, holding money for, or authorized to pay money to the person liable for the unpaid tax.

Subsection (1) provides that if a person liable to pay tax fails to do so by the due date, the Commissioner may serve a notice in writing on any such third person requiring that person to pay the amount set out in the notice to the Commissioner on the date specified in the notice. Where a subsection (1) notice is served on a person, the Commissioner obtains a statutory right to payment of the amount set out in the notice which cannot be defeated by any subsequent dealing with, or action taken in respect of,

the moneys specified in the notice.

The Commissioner is permitted to serve a subsection (1) notice on another person only where the person liable to pay tax has not paid the tax by the due date. Thus, the Commissioner cannot use the power in subsection (1) in anticipation of a failure to pay tax. Further, the amount specified in the subsection (1) notice must not exceed the amount of the unpaid tax. Where the person served with a subsection (1) notice is obliged to make a series of payments to the person liable for the unpaid tax (e.g., instalments of price), a subsection (1) notice may specify that a set amount is to be deducted from each payment and paid to the Commissioner until the tax liability is satisfied.

A subsection (1) notice may be served only on a person who comes within one of the three classes of person specified in paragraphs (a)-(c) of subsection (1). The definition of “person” in section 2 applies for the purposes of this section, so that a subsection (1) notice may be served on, inter alia, a local authority, partnership, or trust.

First, a notice may be served on any person who owes, or may owe money to the person liable for the unpaid tax (paragraph (a)). This allows the Commissioner to recover unpaid tax from the debtors of the person liable for the tax, including persons who may become debtors. For example, the Commissioner could serve a subsection (1) notice on a financial institution requiring the institution to pay to the Commissioner an amount standing to the credit of the person liable for unpaid tax in a savings account with the institution. Subsection (2) provides that a subsection (1) notice must specify a date for payment to the Commissioner that is not before the date the money becomes due to the person liable for the unpaid tax or held on that person’s behalf. In the above example, if the amount is in a term deposit with the financial institution, then the Commissioner cannot require the institution to pay the amount over before the term deposit matures.

Secondly, a notice under subsection (1) may be served on any person who

holds, or may hold, money for, or on account of, the person liable for the unpaid tax (paragraph (b)). For example, the Commissioner could serve a subsection (1) notice on a real estate agent who holds the proceeds of sale of immovable property on behalf of a person liable for unpaid tax, or a lawyer or accountant who may hold money on trust for such a person as a client.

Thirdly, a notice under subsection (1) may be served on a person having authority from another person to pay money to the person liable for the unpaid tax (paragraph (c)). This is intended to prevent the section being avoided by an arrangement under which a person owing money to a person liable for unpaid tax directs another person to pay an amount on behalf of the first-mentioned person to the person liable for the unpaid tax.

A copy of a subsection (1) notice served on a third person must be served on the person liable for the unpaid tax (subsection (3)). The rules in section 77 apply to service of both the notice and the copy.

Subsection (4) provides that a person who complies with a subsection (1) notice and makes a payment to the Commissioner is treated as having acted under the authority of the person liable for the unpaid tax and of all other persons concerned, and is indemnified with respect to the payment. This is intended to protect a person complying with a subsection (1) notice from any liability that may arise from the making of the payment to the Commissioner, such as a liability that may arise under an action for breach of contract.

Subsection (5) provides that the Commissioner may use the payment, collection and recovery provisions in Part XI (sections 43-53) in relation to any amount owing by a person served with a subsection (1) notice as if it were tax due under the Act.

A person who fails to comply with a subsection (1) notice commits a criminal offence and is subject on conviction to a fine of up to [... vatopians] or imprisonment for

up to 1 year, or both (subsection (6)). A person convicted of an offence under subsection (6) may be ordered by the court to pay to the Commissioner, in addition to the fine or prison sentence, an additional amount not exceeding the amount which the person failed to pay as required under this section (subsection (7)).

53. Duties of Receivers

This section provides a procedure for the collection of VAT owing by a person who is in financial difficulties, is deceased, or is otherwise not capable of conducting business. The section applies where a liquidator, receiver, trustee for a [bankrupt or insolvent person], or mortgagee in possession that has control of the person's assets. It also applies to an executor of the estate of a deceased person, or a person conducting the business of a legally incapacitated person. These persons are referred to as “receivers” for the purposes of the section (see subsection (1)).

Subsection (2) provides that a person is obliged to give notice in writing to the Commissioner within [fourteen] days of the earlier of being appointed receiver or of taking possession of an asset in Vatopia. Subsection (3) provides that the Commissioner may notify the receiver in writing of the amount necessary to cover present and anticipated VAT liabilities of the person whose assets are in the possession of the receiver. The receiver is obliged under subsection (4) to set aside out of the proceeds of sale of such an asset sufficient funds to meet the liability notified by the Commissioner and is liable to the Commissioner for the amount so set aside. The amount required to be set aside can be a lesser amount if agreed upon by the Commissioner. This obligation is subject to any debts which have priority over the Commissioner's claim for the VAT owing (although see section 48).

Subsection (5) provides that a receiver who fails to comply with the requirements of the section is personally liable for the amount required to be set aside under the section. Further, a receiver who fails to comply with the section commits a criminal offence and if convicted, is subject to a fine of up to [... vatopians] or to a prison term of

up to 1 year, or both (subsection (6)).

Subsection (7) provides that where a person is found guilty of failing to set aside an amount required under subsection (4), the court may, in addition to the fine or prison sentence, order the convicted person to pay to the Commissioner an additional amount not exceeding the amount that the person failed to set aside.

54. Persons Acting in a Representative Capacity

This section identifies the representative person who is responsible for performing any duties imposed by the Act on a taxable person, including the lodging of returns and the payment of tax (subsection (2)). This person is referred to as the “representative” of the taxable person. The section provides for a representative in the case of every taxable person other than a resident individual (a non-resident individual is covered by paragraph (g) of the definition of “representative”). Subsection (1) defines a representative with respect to a company (in liquidation or not in liquidation), the State, a local authority or board, a partnership, a trust, and a non-resident person.

A representative is personally liable for the tax in the circumstances specified in subsection (4). There are two classes of case where the representative is personally liable for tax payable by the representative in his representative capacity because of action the representative takes while the tax remains unpaid. The first occurs if the representative alienates, charges, or disposes of money received or accrued in respect of which the tax is payable (paragraph (4)(a)). The second occurs if the representative transfers funds of the taxable person in the representative’s possession or that comes to the representative after the tax is payable (paragraph (4)(b)). The second class of case applies only if the tax could legally have been paid from those funds. A person who, in a representative capacity, pays tax payable by a taxable person is entitled to recover such amounts from the taxable person or retain such moneys of the taxable person in the representative’s possession or under his or her control (subsection (3)).

The representative's liability could be limited to assets in the representative's possession or under the representative's control. If so, the following could be added:

“Subject to subsection [...], any tax that, by virtue of subsection (..), is payable by any representative of a registered person shall be recoverable from the representative only to the extent of any assets of the registered person that are in the possession or under the control of the representative.”

It is provided in subsection (5) that nothing in the section is intended to relieve any taxable person from performing any duties imposed on the person under the Act that the representative failed to perform.

55. Power to Appoint Agent

This section provides that the Commissioner may declare any person to be an agent of a taxable person if the Commissioner considers it necessary to do so (subsection (1)). The agent is treated as a representative of the taxable person for the purposes of section 54.

Subsection (2) provides that a person dissatisfied with the Commissioner's decision to declare a person an agent of a taxable person may only challenge the decision under the objection and appeal procedure in Part X of the Act.

56. Branches

This section provides rules when a taxable person operates a taxable activity in branches or divisions. Where a taxable person conducts a taxable activity in branches or divisions, the taxable person generally is treated as a single person for the purposes of the Act (subsection (1)). The registration is required to be in the name of the taxable person, not in the names of its branches or divisions (subsection (2)). In other words, generally there is no separate registration of branches.

There is an exception under which one or more branches or divisions of a taxable person may be taxable as separate taxable persons (subsection (3)). To obtain separate registration, a taxable person must apply in writing and must satisfy the Commissioner that the requested branch or division maintains an independent accounting system and can be separately identified from the rest of the applicant's business by the nature of its activities or location. The Minister may impose conditions and restrictions on the separate registration of a branch or division under subsection (3) (subsection (4)).

It is expected that the discretion to separately register branches or divisions will be exercised only in limited cases where reporting combined operations as a single taxable person will impose a severe hardship on the taxable person. When this discretion is exercised, each separately registered branch or division will file separate returns under section 32.

57. Bodies of Persons (other than Incorporated Companies)

This section provides special rules for the application of the Act to partnerships and unincorporated associations or bodies.

Subsection (1) applies to partnerships. Under the section 2 definition of "person", a partnership is treated as a person for the purposes of the Act. This is confirmed by subsection (1). This means, for example, that it is the partnership that will be registered under the Act in relation to the partnership's activities rather than the individual partners.

Subsection (1) treats a partnership as a person subject to the special rules specified in paragraphs (a)-(c). Paragraph (a) provides that the obligations that would be imposed on the partnership (for example, the furnishing of returns and other documents with the Commissioner) are instead imposed on each partner, but may be discharged by any of the partners (see also section 54). Paragraph (b) provides that the

partners are jointly and severally liable to pay any amount due under the Act by the partnership. This would include a liability for VAT, interest and penalty. Paragraph (c) provides that any offence committed under the Act by a partnership is treated as having been committed by each of the partners.

Subsection (3) provides for continuation of a partnership for the purposes of the Act notwithstanding that there has been a change in the composition of the partnership, unless the Commissioner otherwise directs. To be treated as a continuation for tax purposes, the new partnership must conduct the taxable activity of the old partnership. This is intended to reverse the position at general law under which a change in the composition of a partnership is treated as a dissolution of the partnership and the creation of a new partnership.

Subsection (2) applies to an unincorporated association or body. Such association or body is included in the section 2 definition of "company" and as such is included in the section 2 definition of "person". This means that it is the unincorporated association or body (and not the members) that is treated as a person for the purposes of the Act. This is confirmed by subsection (2). This means, for example, that it is the unincorporated association or body that will be registered under the Act in relation to the association or body's activities rather than the individual members.

Subsection (2) treats an unincorporated association or body as a person but provides that the obligations that would be imposed on the association or body (for example, the furnishing of returns or other documents with the Commissioner) are instead imposed on each member of the committee of management of the association or body, but may be discharged by any of those members (see also section 54). Subsection (3) provides for the continuation of an unincorporated association or body for purposes of the Act notwithstanding that there has been a change in the members, unless the Commissioner otherwise directs. The new unincorporated association or body must conduct the taxable activity of the old unincorporated association or body.

58. Death or Insolvency of Taxable Person; Mortgagee in Possession

Where the executor or trustee of a deceased or insolvent estate continues to carry on any taxable activity of a deceased or insolvent taxable person (even if only to terminate the activity), the estate represented by the executor or trustee is treated as the taxable person in respect of the taxable activity (subsection (1)). Similarly, where a mortgagee in possession of land or other property continues to carry on any taxable activity of the mortgagor who is a taxable person, the mortgagee is treated as the taxable person in respect of the taxable activity. The mortgagee is treated as the taxable person conducting the taxable supply from the time the mortgagee took possession of the land or property until the mortgagee ceases to be in possession of the land or property (subsection (2)).

59. 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 for the purposes of the Act as a separate person in relation to each trust.

60. Interpretation

This section provides a very broad definition of the term "records". The definition applies for the purposes of the Part XIII (sections 56-60) which provides for the keeping of records by taxable persons and other persons liable for VAT, and for investigations relating to VAT by the Commissioner. "Records" are accounting records, accounts, books, and computer-stored information, as well as any other documents.

61. Record-keeping

This section obliges a person liable for VAT under the Act (whether registered or not) to maintain the records and documents specified in subsection (1).

Subsection (1) imposes an obligation on every person liable for VAT to maintain in Vatopia the following records –

- (1) Original tax invoices, tax credit notes and tax debit notes received by the person. This obligation is relevant to registered persons as these documents are provided to a registered recipient of a taxable supply (see sections 29 and 30).
- (2) A copy of all tax invoices, tax credit notes, and tax debit notes issued by the person. This obligation is relevant to taxable persons who are registered as these documents can only be provided where a taxable supply is made by a taxable person who is registered (see sections 29 and 30).
- (3) Customs documentation relating to imports and exports by the person. In the case of imports, this obligation relates to all persons, not just taxable persons, as any person who makes an import may be liable for the VAT on the import.
- (4) Accounting records relating to taxable activities conducted in Vatopia and any other records (see section 60) as may be prescribed by regulations.

The records required to be kept include all documents that affect the amount of VAT paid or claimed, and records necessary to verify VAT returns, including records relating to exempt supplies. Records must be kept up to date and in sufficient detail to enable correct calculation of VAT to be paid or claimed. Records should be kept in a way that enables easy checking of the figures used to complete the VAT return.

The records specified in subsection (1) must be maintained in Vatopia. This means, for example, that a non-resident person who is operating a taxable activity in Vatopia is required to keep the records specified in Vatopia rather than, say, at its head office outside Vatopia. While records must be maintained in Vatopia, persons liable for VAT do not have to maintain them at their business premises. They may keep them, for example, at the business premises of their accountant in Vatopia. The requirement that

the accounts and records be maintained in Vatopia is intended to ensure that they are readily accessible to the Commissioner. Ready access to these records is vital to the effective enforcement of the Commissioner's investigation powers in sections 62, 63, and 64.

Subsection (2) provides that the records specified in subsection (1) must be retained for [six] years after the end of the tax period to which they relate.

The proper maintenance of records is vital for the effective functioning of VAT. Consequently, substantial penalties are imposed on a person who fails to comply with this section. Such a person commits a criminal offence, with the level of penalty depending on the degree of culpability of the person in relation to a particular failure to comply. Subsection (3) provides generally for a fine of up to [...vatopians] or a prison term of up to [1] year, or both (paragraph (b)). If the failure to maintain proper records is done knowingly or recklessly, the penalty is increased to a fine of up to [...vatopians] or up to [2] years in prison, or both.

Alternatively, the person may be liable for a penalty under subsection (4). Subsection (4) provides that a person who fails to maintain proper records in a tax period commits a civil violation and is subject to a penalty of [...vatopians] per day for each day the failure continues. The penalty under subsection (4) does not apply if the person was convicted of an offence under subsection (3) for the same act or omission (subsection (5)). If a penalty under subsection (4) was paid and the Commissioner proceeds under subsection (3) with respect to the same act, the Commissioner is required to refund the subsection (4) penalty paid unless the prosecution is withdrawn (subsection (6)). 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 42.

Importantly, this section is not intended to give the Commissioner any investigatory powers, rather it is intended to ensure that there is created and maintained

in Vatopia a minimum "pool" of information that may be accessed under the Commissioner's investigation powers in sections 62, 63, and 64.

62. Access to Records, Computers, Goods, and Vehicles

This section provides the Commissioner with broad powers of access to premises, places, records and computers, and powers of seizure of records and computers.

Subsection (1) sets out the broad scope of the Commissioner's access and seizure powers. These powers may be exercised by either the Commissioner or any taxation officer (see section 2 definition) authorized by the Commissioner for the purposes of this section (referred to as an "investigator"). It is intended that an investigator will be authorized generally to exercise the powers in subsection (1), rather than being authorized specifically for each exercise of the power. It is also intended that this power will provide the main legal basis for the conduct of field audits of taxable persons and importers. The authorization for a taxation officer must come from the Commissioner and must be in writing.

Paragraph (a) provides that an investigator shall have full and free access at any time to any premises or place where records (see section 60) are kept, and may search the premises or place for any records. The premises or place does not have to be that of the person liable for VAT under investigation. For example, the power in paragraph (a) may be used to gain access to records kept by a taxable person's accountant or in a bank safety deposit box. The investigator is not required to give advance warning that access under the section will be sought. Further, it is intended that paragraph (a) authorizes a "roving enquiry", i.e., where the investigator merely suspects that access may provide relevant information. In other words, it is not necessary for the investigator to specify in advance the records sought.

Paragraph (b) provides that, in carrying out a search under paragraph (a), an

investigator may open any article in which the investigator suspects that records are kept. For example, an investigator may open (or cause to be opened) any locked drawer, filing cabinet or safety deposit box. This power carries with it the implication that the investigator may use reasonable force to gain access to any locked article if there is a refusal or failure to open it. The investigator is empowered to take the article away for this purpose.

Paragraph (c) provides that an investigator is authorized to seize any record that, in the investigator's opinion, may afford evidence that may be material in assessing the liability of any person for the tax payable under the Act.

Paragraph (d) provides that any record seized by an investigator under paragraph (c) may not be retained indefinitely, but only for as long as required for determining the liability of a person under the Act or for any proceedings under the Act.

Paragraph (e) provides that an investigator may examine and make extracts from, and copies of, any records. An investigator may also require any person to provide an explanation of an entry in the records. This latter power is separate from the formal administrative summons power in section 64 and is intended to be exercised incidentally to the exercise of the access power under the section.

Paragraph (f) provides that an investigator may seize a computer where a hard copy or computer disk of information stored on the computer is not provided. In this case, the computer can only be retained for as long as it takes to copy the information required.

Paragraph (g) provides that an investigator may stop and board any vehicle that the investigator has reasonable cause to believe is importing goods into Vatopia. The investigator is empowered to search any vehicle or any person in the vehicle and may question the person in respect of any matter dealt with in the Act. By virtue of the definition of "taxation officer" in section 2 this power may be exercised by a Customs

officer if properly authorized by the Commissioner for the purposes of the Act.

Subsection (2) provides that a failure by an investigator to produce a written authorisation when requested by the occupier of the premises or place to do so removes the statutory right of access provided under subsection (1). The investigator, however, may still be entitled to remain on the premises pursuant to some other right, for example, at the invitation of the occupier. If there is no other right of access, then the investigator may not enter, or must leave, the premises.

Subsection (3) provides that the owner, manager, or any other person (including an employee) lawfully on the premises or place to which access is sought under subsection (1) must provide all reasonable facilities and assistance for the effective exercise of the access power. This would include, for example, indicating the location of books or records and opening locked storage facilities. A person who fails to provide all reasonable facilities or assistance as required by subsection (3) commits a criminal offence under subsection (7) and upon conviction, can be fined up to [...vatopians] or be imprisoned for up to [1] year, or both. In addition, a person who obstructs the Commissioner in the general exercise of powers under this section (such as preventing access to a building) may be guilty of an offence under section 68.

Subsection (4) entitles the owner of a record or computer seized under subsection (1) to have access to them during regular business hours under the supervision determined by the Commissioner. The person with access has the right to examine, make copies or extracts from the records or computer.

Subsection (5) empowers an investigator to request a Customs officer or police officer to be present during any audit or enforcement activity conducted by the investigator under subsection (1). The Customs or police officer must render assistance required by the investigator.

This section has effect notwithstanding any rule of law relating to privilege or the

public interest pertaining to the production of records or access to records (subsection (6)).

If it is desirable to add a provision to hold the taxation or police officer harmless for damage resulting during an examination or search, the following could be added:

“An authorized taxation officer or any other person accompanying the officer to any premises who conducts an examination or search for the purposes of this Act shall not be held responsible for any involuntary damage to any article or thing suffered in the course of the examination or search.”

63. Records not in Vatopian Language

This section provides the Commissioner with a procedure for the translation of records required under section 60 in relation to which the Commissioner seeks access under section 62 which are not in the Vatopian language. The Commissioner's demand to translate records must be in writing. This translation procedure applies to records required under section 61, because the records referred to in section 60 are records required under section 61. The translation is at the expense of the person keeping the record. The translator must be approved by the Commissioner.

64. Notice to Obtain Information or Evidence

This section provides for an administrative summons procedure under which the Commissioner may obtain information and documents from any person. The exercise of the power is not confined to persons liable for VAT.

Subsection (1) provides that the Commissioner may, by notice in writing, require any person to –

- (1) furnish the Commissioner with such information as is specified in the notice. The information may relate to the VAT affairs of that person or any other person.

(2) attend at the time and place designated in the notice for the purpose of being examined on oath concerning the VAT affairs of the person or any other person. The person may be examined by the Commissioner or a taxation officer specifically authorized by the Commissioner for this purpose. The person may be required to produce any record or computer in the control of the person.

Subsection (2) provides that it is not necessary that such a record or computer is described with complete accuracy, rather it is sufficient if it is described with reasonable certainty. Records and computers are regarded as in the control of a person if they are in the physical possession of the person or, while lacking physical possession, the person has the right or power to require another person to produce them (for example, accounts kept with an accountant).

Subsection (3) provides special rules relating to the service of notices under this section. These rules apply to the exclusion of the general rules in section 77. A notice under this section is required to be served by a signed copy delivered by registered post, by hand, or left at the person's last and usual place of abode. The certificate of service signed by the person serving the notice is evidence of the facts stated therein.

Subsection (4) provides that this section has effect notwithstanding any rule of law on privilege or the public interest relating to the furnishing of information or the production of records or documents.

A person who fails to comply with a notice under this section commits a criminal offence and is liable on conviction to a fine of up to [...vatopians] or a prison sentence of up to [1] year, or both.

65. Power to Bring Criminal Charges

This section provides for the Commissioner's authority to bring charges and seek prosecution under this Act.

Subsection (1) provides that no criminal proceedings in respect of any offence under this Act can be commenced except where the Commissioner determines to bring charges and seek prosecution. The proceedings under this Act are commenced in the name of the Commissioner (subsection (2)).

When the Commissioner decides to bring charges or to seek prosecution under this Act, he or she is obliged to refer the matter to the Attorney-General (subsection (3)).

66. Time Limits for Proceedings to be Taken

This section provides for the time limits for criminal proceedings. There are separate time limits for three categories of offences.

First, in the case where the offence alleged has involved the doing of any act, the proceeding must be commenced within [three] years after the discovery of the act (subsection (a)).

Secondly, in the case where the offence alleged has involved the failure to do any act, the proceeding must be commenced within [three] years after the Commissioner has become aware of such failure (subsection (b)).

Thirdly, in the case where the offence alleged has involved the non-disclosure or incorrect disclosure by any person of information relating to that person's liability to tax for a tax period, the proceeding must be commenced within [one] year after his correct liability to tax has become final for that tax period (subsection (c)).

67. False or Misleading Statements

This section provides for an offence where a person makes a statement to a taxation officer (see section 2 definition) that is false or misleading in a material

particular or where a person omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular (subsection (1)(a) and (b)).

Whether a statement is false is a question of fact. A statement or omission is misleading if it is reasonably likely to mislead a person belonging to the class of persons to whom the statement is directed. It is not necessary that the statement or omission be knowingly or recklessly made for an offence to be committed under this section. The fine is up to [...vatopians] or a prison term of up to [1] year, or both (subsection (1)(d)). However, a more severe penalty is imposed under subsection (1) where the statement or omission is made knowingly or recklessly. The fine then is up to [...vatopians] or a prison term of up to [2] years, or both (subsection (1)(c)).

Subsection (2) sets out a list of the circumstances where a statement is regarded as being made by a person to a taxation officer acting in the performance of the officer's duties. A statement made to a taxation officer refers to a statement made orally, in writing, or in any other form. It includes –

- (1) A statement made in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under the Act.
- (2) A statement in any information required to be furnished.
- (3) A statement in a document furnished to a taxation officer that is not pursuant to the Act.
- (4) A statement answering a question a taxation officer asked a person.
- (5) A statement to a person knowing or reasonably expecting it to be conveyed to a taxation officer.

The application of this section is not confined to false or misleading statements or omissions relating to the VAT affairs of the person making the statement or omission. It is intended to also apply to statements or omissions made by a person in relation to the VAT affairs of another person. This would include, for example, statements or omissions made to a taxation officer by an adviser to a person liable for VAT.

Subsection (3) provides that it is a defence to a prosecution under subsection (1) that the person did not know and could not reasonably be expected to have known that the statement in question was false or misleading.

A person who commits a violation under this section may be liable for a penalty under section 72 as an alternative to prosecution under this section (see section 72(3)).

68. Obstructing Taxation Officers

This section provides that a person who obstructs a taxation officer (see section 2 definition) in the performance of his or her duties under the Act commits a criminal offence and, if convicted, is subject to a fine of up to [...vatopians] or a prison term of up to [2] years, or both. Examples of actions which may constitute obstruction include physical obstruction (such as failing to permit the Commissioner or authorized officer access as required by section 62), locking a room or cabinet containing documents relating to a person's VAT affairs and hiding the key, or otherwise hiding or destroying documents relevant to a person's VAT affairs.

69. Offences by Taxation Officers

This section provides for offences by taxation officers (see section 2 definition).

A taxation officer is guilty of an offence if, in carrying out the provisions of the Act, he or she seeks or takes a payment or reward that he or she is not legally entitled

to receive. The offence is committed even if the officer receives only a promise or security for an improper payment or reward, whether or not pecuniary (paragraph (a)).

An offence also is committed if a taxation officer participates in an agreement to do, abstain from doing, permit, conceal or connive at any act or thing that results or may result in defrauding the revenue, or is contrary to the Act or to the officer's proper execution of duties (paragraph (b)).

In addition to a fine of up to [...vatopians] or imprisonment for up to [5] years, or both, the Court may order the convicted person to pay the tax that was not paid and cannot be recovered from the person liable for the tax as a result of the officer's wrongdoing.

70. Offences by Companies, Aiders and Abettors

Subsection (1) applies where an offence has been committed by a company (as defined in section 2). In these circumstances, every person who, at the time the offence was committed, was a representative officer, Commissioner, general manager, secretary, or other similar officer of the company, or any person acting or purporting to act in such capacity is treated as having committed the offence committed by the company.

Subsection (2) provides that subsection (1) does not apply if the offence was committed without the person's consent or knowledge, and the person exercised proper diligence to prevent the commission of the offence. Proper diligence depends on the nature of the person's duties in the company and all of the other circumstances.

Subsection (3) provides that a person aiding and abetting the commission of an offence under the Act is guilty of that offence and, upon conviction, is liable to the same penalties applicable to the person committing the offence.

71. Compounding of Offences

This section provides for the compounding of an offence as an alternative to prosecution for the offence. Compounding an offence means agreeing not to prosecute the offence in exchange for payment of a fine.

Subsection (1) provides that where a person who committed an offence (other than a violation of the secrecy rules under section 8 or an offence by a taxation officer under section 69), the Commissioner may before commencing court proceedings, compound the offence and order the person to pay a monetary amount, not exceeding the maximum fine prescribed for the offence. The Minister's approval is required in order for the Commissioner to compound the offence.

The Commissioner shall only compound an offence if the person who committed the offence admits the wrongdoing. The admission by that person must be in writing.

When the Commissioner compounds an offence, subsection (3) provides that the order under subsection (1) must satisfy the following conditions –

- (1) The order must be in writing and specify the offence committed, specify the money to be paid and the due date for payment, and include by attachment the person's written admission of wrongdoing (paragraphs (a) and (b)).
- (2) The order must be served on the person who committed the offence (paragraph (c)).
- (3) The order shall be final and not appealable (paragraph (d)).

Subsection (4) provides that when there is a compounding of an offence, the person cannot be prosecuted for the same offence or for penalty under section 11(9)

(failure to apply for registration), 61(4) (failure to maintain proper records), or 72 (making false or misleading statements).

Some countries follow the practice of publishing the names of persons who are guilty of severe violations of the law, such as intentionally failing to register, failing to keep required records, making false or misleading statements, or aiding or abetting in the commission of an offense. If there is a compounding of an offence, the person should be exempt from the publication rule. If the Act includes authority to publish names, it should require the publication to include:

- “(a) the name, address, and principal enterprise of the registered person;**
- (b) such particulars of the offence as the Commissioner may think fit;**
- (c) the tax period or tax periods in which the offence occurred;**
- (d) the amount or estimated amount of the tax evaded; and**
- (e) the amount, if any, of the additional tax imposed.**

The amount payable under subsection (1) is recoverable as tax due and payable (subsection (5)).

72. Penalty for Making False or Misleading Statements

This section imposes a penalty on any person who knowingly or recklessly makes a statement to a taxation officer that is false or misleading in a material particular or who omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular (subsection (1)). Section 67(2) applies in determining whether a person made such a statement or omitted a material particular (subsection (2)). A penalty is only imposed under this section where the VAT properly payable exceeds the tax that would have been payable if the tax had been assessed on the basis that the statement or omission was not false or misleading. The penalty under this section is [double] the amount of excess VAT payable (subsection (1)).

A penalty imposed under this section is an alternative to prosecution under section 67 for the same act or omission (subsection (3)). If a penalty is paid under this section and the Commissioner proceeds under section 67 for the same act or omission,

the Commissioner must refund the penalty paid, unless the prosecution is withdrawn (subsection (4)).

73. Recovery or Remission of Penalties

This section provides for the remission or recovery of a penalty by the Commissioner.

A penalty is imposed automatically under the penalty provisions of the Act. The Commissioner is given discretion under subsection (1) to remit the whole or part of any penalty payable. This discretion may only be exercised where the person liable for the penalty has shown good cause by notice in writing to the Commissioner.

Subsection (2) provides that, except as otherwise provided in this Act, a penalty for a civil violation is in addition to any fine or prison sentence which the person may be liable for on conviction of a criminal offence under specified provisions of the Act. The criminal offences are under sections 8(7), 11(9), 12(11), 13(14), 22(7) or (8), 29(7) or (8), 30(7) or (8), 32(4) or (5), 36(14), 52(6), 53(6), 61(3), 62(7), 64(5), 75(2), or under Division I of Part XIV.

Subsection (3) provides that any penalty may be assessed and collected by the Commissioner as if the penalty is tax due under the Act.

The Commissioner's decision under subsection (1) is an "appealable decision" (section 2) for purposes of the Act. Subsection (4) provides that a person dissatisfied with the Commissioner's decision to remit or not remit a penalty may only challenge the decision under the objection and appeal procedure in Part X of the Act.

74. Temporary Closure of Business Premises

This section authorizes the Commissioner to close a person's business premises

on a temporary basis when the person repeatedly commits certain offences under the Act.

Subsection (1) provides that the Commissioner may forcibly close on a temporary basis [between 3 and 30 days] one or more business premises of a person who repeatedly violates –

- (1) section 29 on issuing tax invoices,
- (2) section 30 on issuing tax debit notes, or tax credit notes.
- (3) section 32 on failing to lodge returns.
- (4) section 36 on improperly claiming tax refunds.
- (5) section 68 on obstructing taxation officers.
- (6) section 22 or 43 on failing to pay tax when due.

The Commissioner must obtain a court order before closing business premises.

To carry out the closure under subsection (1), subsection (2) provides that the Commissioner may use reasonable force and police assistance. It includes barring access with locks, fencing, boarding, or other appropriate methods.

Subsection (3) provides for the definition of ‘repeated violation’ under this section. A repeated violation means a violation that is committed within one year of receipt by the person of a written warning (a) that a violation of such kind has been committed more than once within the year preceding the year of the warning, and (b) that repetition may result in closure under this section.

75. VAT Registration Number

This section provides that the Commissioner may require a person to include the VAT registration number of the person in any return, notice, or other document required for the purposes of the Act (subsection (1)). This is in addition to the requirement that a

person include the VAT registration number in certain documents (see Schedule IV in relation to tax invoices, tax credit notes, and tax debit notes).

Subsection (2) provides that improper use of a VAT registration number is an offence. A person who knowingly uses a false number, including another person's number, on a return, notice or other document required by the Act commits a criminal offence and, on conviction, is subject to a fine of up to [...vatopians] or a prison term of up to [2] years, or both.

Subsection (3) provides that no offence is committed under subsection (2) where the person has used the VAT registration number of another person with that person's permission on a return, notice or other document relating to the VAT affairs of that other person. This would cover, for example, an accountant who uses the VAT registration number of a client in completing the client's VAT return.

76. Forms and Notices; Authentication of Documents

This section authorizes the Commissioner to determine the form required for forms, notices, returns, and other documents, the places where they are available, and the manner of authenticating them.

Subsection (1) provides that the Commissioner shall determine the specifications for forms, notices, returns, and other documents prescribed or published for the efficient administration of the tax. The Commissioner is not required to publish these documents in the [Gazette].

Subsection (2) authorizes the Commissioner to decide where and how to make the documents referred to in subsection (1) available to the public.

Subsection (3) provides that any notice or other document issued, served, or given by the Commissioner under the Act is sufficiently authenticated if the name or title

of the Commissioner, or authorized taxation officer, is printed, stamped, or written on the document.

77. Service of Notices

This section provides the general rules for service of notices under the Act. These rules apply unless a particular section provides for its own rules for service (e.g., section 64(3)).

Subsection (1) provides that a notice required to be in writing is required to be served on the recipient of the notice.

A notice under subsection (1) to be served on an individual other than in a representative capacity can be personally served, or left at or sent by registered post to the person's usual or last known place of abode, office, or business in Vatopia (subsection (2)(a)). Service by registered post also can be sent to the person's usual or last known address in Vatopia.

Subsection (2)(b) provides that a notice or other document to be served on any person not covered in subsection (2)(a) can be personally served on the representative of the person, left at the person's registered office or address for service of notices under the Act, or , if there is no such office or address, left at or sent by registered post to the person's office or place of business in Vatopia.

78. Tax-inclusive Pricing

This section provides for certain matters relating to the pricing of taxable supplies under the VAT.

Subsection (1) provides that any price charged by a taxable person in respect of a taxable supply (section 9(1)(a)) is treated as inclusive of the VAT payable on the

supply, regardless of whether the taxable person has included VAT in the price. For example, if goods are sold for 1,000 vatiopians and no mention is made of VAT, the price is deemed to be inclusive of VAT.

Subsection (2) provides that any price advertised or quoted by a taxable person in respect of a taxable supply must include VAT and this is required to be stated in the quote or advertisement. This is subject to subsection (3) under which a taxable person may advertise or quote a price in respect of a taxable supply as exclusive of tax provided the quote or advertisement also states the tax charged and the tax-inclusive price. The quote or advertisement must give equal prominence or impact to both the tax-inclusive price and tax-exclusive price.

Subsection (4) relieves a taxable person from stating on individual price tickets that prices are inclusive of VAT provided that the tax-inclusive pricing policy is prominently displayed at all entrances to premises where the taxable person conducts a taxable activity, including all places of payments in the person's business premises. Subsection (5) allows the Commissioner to approve any other method for a taxable person or class of taxable person to display prices of goods or services.

79. Schemes for Obtaining Tax Benefits

This section provides for a general anti-avoidance provision applicable to schemes for obtaining tax benefits. The section empowers the Commissioner to determine the liability of a person under the Act as if the scheme had not been carried out.

The terms "scheme" and "tax benefit" are broadly defined to include a wide variety of agreements, and arrangements designed to reduce tax liability, increase input tax deductions, increase refunds, or avoid or postpone tax liability, whether or not legally enforceable (subsection (1)).

Subsection (2) provides that, notwithstanding anything in the Act, the Commissioner can calculate the tax liability of a person who entered into or carried out a scheme as if the scheme had not been entered into or carried out, or in some other manner that the Commissioner considers appropriate to prevent or reduce the tax benefit. This subsection applies if the Commissioner is satisfied that a person misused the provisions of the Act to obtain a tax benefit in connection with the scheme and it could be concluded (on the basis of the substance of the scheme) that the person entered into or carried out the scheme for the sole or dominant purpose of obtaining the tax benefit. For example, the Commissioner can restructure a transaction if a person places property in an investment vehicle or entity and transfers the ownership in that investment vehicle rather than in the underlying property in order to avoid tax on the supply, claiming, for example, that the transfer is an exempt financial service under Schedule II.

80. Currency Conversion

Subsection (1) requires that all amounts of money must be expressed in Vatopians for the purposes of the VAT. Subsection (2) provides a currency conversion rule applicable where an amount of money is expressed in a currency other than Vatopians. For supplies, the rule requires the foreign currency to be converted to Vatopians at the exchange rate between the foreign currency and the Vatopians applicable at the time the amount is taken into account under the Act. In the case of a taxable supply, for example, this would be the time of the supply as determined under section 14. For imports, the foreign currency must be converted at the exchange rate as determined under the [Customs Act].

81. International Agreements

This section provides for the entering into of a broad range of international agreements relating to VAT.

Subsection (1) defines an international agreement as an agreement between Vatopia and a foreign government or international organization.

Subsection (2) provides that if the terms of a treaty or other international agreement to which Vatopia is a party are inconsistent with the VAT Act (other than section 79), the terms of the treaty or international agreement prevail

For a country that wants to authorize the Minister to negotiate agreements with other countries covering the avoidance of tax and exchange of VAT information, the following section could be added:

- (1) The Minister may, on behalf of the Government, enter into an agreement with the government of another country or territory, referred to as the “other Contracting State”, whereby arrangements are made with that government -**
 - (a) for the prevention, mitigation, or discontinuance of the levying, under the laws of Vatopia and the other Contracting State, of value added tax or any other similar tax where a supply of goods or services is subject to such tax in both Vatopia and the other Contracting State;**
 - (b) for the refunding of value added tax or any similar tax, or any portion of such tax, levied under the laws of Vatopia and the other Contracting State, in respect of the supply of goods or services in Vatopia or the other Contracting State, as the case may be, where such goods or services are imported into Vatopia or the other Contracting State, as the case may be;**
 - (c) for regulating or co-ordinating any matter with regard to the levying and collection under the laws of Vatopia or the other Contracting State of value added tax or any similar tax; or**
 - (d) for the rendering of reciprocal assistance in the administration and collection of value added tax or any similar tax under the laws of Vatopia and the other Contracting State, or in respect of the execution of the arrangements provided for in any agreement entered into in terms of this section.**
- (2) As soon as may be possible after the conclusion of any such agreement, the agreement shall be laid before the National Assembly, but shall not take effect unless or until it is approved by resolution of the National Assembly, when it shall come into operation or be deemed to have come into operation from the date specified in the agreement.**
- (3) The Minister may at any time by order, which shall be laid before the National Assembly, amend or cancel any agreement entered into under subsection (2), and if the amendment or cancellation is**

approved by resolution of the National Assembly, shall stand amended or cancelled from the date specified in such order, but any cancellation of the agreement shall not affect the validity of anything previously done thereunder.

82. Registration of Certain Goods Prohibited in Certain Circumstances

This section prevents the registration of certain goods requiring registration under any law where VAT has not been paid in relation to the acquisition of the goods. A registering authority cannot register any goods required to be registered (registrable goods) without documentary proof that VAT was paid on the change in ownership or on the import of those goods into Vatopia. A “registering authority” is a person appointed to issue licences, permits, certificates, concessions, or other authorizations (subsection (1)). “Registrable goods” are an aircraft, boat, fishing vessel, ship, yacht, motor cycle, motor vehicle, tractor, caravan, or trailer (subsection (2)).

For registrable goods that are supplied in Vatopia or are imported into Vatopia, subsection (2)(a) requires the production of a receipt or customs document issued by the [Commissioner of Customs] or a document issued by the Commissioner showing the tax payable was paid or that no tax is payable.

Subsection (2)(b) provides that a declaration issued by a registered person who supplied the goods in the ordinary course of a taxable activity and certifying that the tax payable has been, or will be, paid is sufficient for purposes of this section. The declaration must be in the form prescribed by the Commissioner.

Subsection (2)(c) provides that a certificate issued by the Commissioner confirming that the supply or import was exempt from tax is acceptable documentary proof under this section. The Commissioner may issue documentation other than a certificate as acceptable documentary proof that the supply or import of the goods was exempt from tax.

83. Auctioneer and Agent

This section covers the issuance of tax invoices by or to an agent for purposes of the Act. It obliges an auctioneer to charge tax on a supply and recover the tax from the purchaser.

Subsection (1) provides that when a taxable supply made by an agent is treated as a supply by the principal (section 5(1)(a)), the agent may issue a tax invoice as if the agent made the supply. In that case, the principal cannot issue a tax invoice covering the same supply.

When a taxable supply made to an agent is treated as a supply to the principal (section 5(1)(b)), the agent may request that the tax invoice be issued to the agent (subsection (2)). In that case, the supplier may not issue a tax invoice to the principal covering the same supply.

When a supply by auction is treated as a supply by the auctioneer subject to tax (section 5(3)), the auctioneer is required to charge and add the tax to the successful bid and is required to recover the tax from the purchaser (subsection (3)). In the case of sales out-of-hand, the tax must be added to the purchase price.

84. Regulations

This section provides the Minister with a general power to make regulations.

Subsection (1) provides that the Minister may make regulations for any matter to be prescribed by regulations under the Act, or 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.

Subsection (1) gives the Minister power to issue regulations of a saving or transitional nature. Regulations may cover transitional issues not covered under section 89. Regulations also may prescribe offences for breaches of the regulations

Regulations may take effect on or after the Act comes into effect, whether they are published in the [Gazette] before or after the Act is published in the [Gazette] (subsection (2)).

85. Variation of Consideration on a Change in Rate

This section provides for the effect on the consideration for a supply where there has been a change in the rate of VAT after the consideration has been agreed.

Subsection (1) provides that where, after a registered person entered into an agreement to supply goods or services, tax is imposed on the supply or the tax rate increases, the supplier can recover the newly-imposed tax or the increased tax from the recipient of the supply. This right exists notwithstanding anything to the contrary in any agreement or law. The supplier has the right to collect this tax in addition to amounts already payable by the recipient.

Subsection (2) covers the case where tax on a supply is withdrawn or the rate of tax on a supply is reduced after a registered person enters an agreement to supply goods or services. In this situation, the supplier must reduce the amount payable by the recipient by the amount of tax withdrawn or the amount of the tax reduction, as the case may be.

Subsection (3) provides that where subsection (1) or (2) applies to a supply of goods or services subject to a fee, charge, or other amount prescribed by or determined

pursuant to an Act, regulation or measure having the force of law, the fee, charge, or other amount may be increased by the amount of tax or additional tax, or must be decreased by the lesser tax chargeable. This subsection applies to a fixed, maximum, or minimum fee, charge, or other amount. Subsection (3) does not apply if the fee, charge, or other amount has already been altered to take account of the imposition, increase, decrease, or withdrawal of tax (subsection (4)). The alteration may be provided in an Act, regulation, or measure having the force of law. Subsection (3) cannot be used to justify a further increase or require a further decrease, as the case may be, in a fee, charge, or other amount calculated as a percentage or fraction of another amount that represents the consideration in money for a taxable supply (subsection (5)).

86. Application of Increased or Reduced Rate

This section provides for the application of changes in the rate of VAT.

Subsection (1) provides rules to determine the tax consequences of a supply where goods (other than immovable property) are provided before the date a change in tax rate becomes effective, or before the date a tax is imposed or withdrawn with respect to the supply, and the section 14 time of supply rules treat the supply as occurring on or after such date. When the rate changes after the goods are provided, the supply is subject to the old tax rate (paragraph (a)). When tax is imposed after the goods are provided, the supply is not subject to tax (paragraph (b)). When tax is withdrawn after the goods are provided, the supply is subject to tax as if the tax had not been withdrawn (paragraph (c)).

Subsection (2) provides rules to determine the tax consequences of a supply where services are performed, or goods (other than immovable property) are provided in transactions treated as successive supplies under section 14(8) or (9). Section 14(8) covers goods supplied under a rental agreement or services performed under an agreement providing for periodic payments. Section 14(9) covers thermal or electrical

energy, heat, gas, refrigeration, air conditioning, and water. It also covers goods and services supplied in the construction of a building or engineering work if the consideration is payable in instalments or periodically. To come within subsection (2), the services must be performed or the goods must be provided during a period that begins and ends before the date that a tax rate change becomes effective, a tax is imposed, or a tax is withdrawn that affects such a supply of services or goods, and the section 14 rules treat the supply as occurring on or after that date. When the rate changes after the services are performed or the goods are provided, the supply is subject to the old rate (paragraph (c)). When tax is imposed after the services are performed or the goods are provided, the supply is not subject to tax (paragraph (d)). When tax is withdrawn after the services are performed or the goods are provided, the supply is subject to tax as if the tax had not been withdrawn (paragraph (e)).

Subsection (3) provides rules for the same goods or services covered in subsection (2), except that the services are performed or the goods are provided over a period that straddles the date that the tax rate change becomes effective, or the date that the tax is imposed or withdrawn, and the supply is treated under the section 14 rules as having been made on or after that date. On the basis of a fair and reasonable apportionment, the value of the supply is split between the portion occurring before that date (the “first part”) and the portion on or after that date (the “second part”). When a tax rate change occurs, the tax payable on the first part is at the old rate, and the tax payable on the second part is at the new rate (subsection (4)(a)). When tax is imposed, the first part is not taxed; the second part is taxed (subsection (4)(b)). When tax is withdrawn, the first part is taxed as if the tax had not been withdrawn; the second part is not taxed (subsection (4)(c)).

For purposes of subsections (1), (2), and (3), the supplier is treated as providing the goods when they are delivered to the recipient, and the supplier is treated as providing goods supplied under a rental agreement when the recipient takes possession or occupation of the goods (subsection (5)).

Subject to the transitional rules in section 89, subsection (6) provides rules where a written agreement covering the sale of immovable property, or the construction of a new dwelling by a taxable person conducting a construction business is concluded before a tax rate increase becomes effective. The supply is subject to the tax rate under section 9 that would have applied if the supply took place on the date that the agreement was concluded. The rule applies to two classes of case. The first class of case is the sale of immovable property that consists of a dwelling together with land on which it is erected, or consists of any real right conferring a right to occupy a dwelling (paragraph (a)(i)). It also covers land or any real right conferring a right to occupy land to erect or purchase a dwelling or dwellings on the land, if the transaction is confirmed by the purchaser in writing (paragraph (a)(ii)). The land must be obtained for the sole or principal purpose of erecting or purchasing the dwelling. The second class of case is the construction of a new dwelling by a taxable person conducting a construction business. For subsection (6) to apply, the transaction must satisfy two conditions. First, the price for the sale or construction must be determined and stated in an agreement in force before the date the rate increase becomes effective and the agreement must be signed by the parties before that date (paragraph (c)). Second, the supply of the immovable property or construction services must be treated under the section 14 time of supply rules as occurring on or after that date (paragraph (d)).

87. Orders to Amend Schedules or Change Amounts or Tax Rate

This section empowers the Minister, by order published in the *Gazette*, to vary a rate of tax, amend Schedules, or change monetary amounts in the Act.

Subsection (1) gives the Minister authority to amend the Schedules to this Act, increase or decrease any monetary amount set out in this Act, or increase or decrease a rate of tax under section 9(1). This authority must be approved by an affirmative resolution of Parliament (subsection (2)).

88. Repeal of Laws and Interpretation

Subsection (1) repeals the acts specified in Schedule VI to the Act.

Subsection (2) makes it clear that a reference to [Sales Tax] in any other Act is not treated as a reference to VAT under this Act.

89. Transitional

This section provides for transitional rules applicable to the introduction of VAT. It is intended that further transitional rules may be provided by way of regulations under section 84.

[Subsections (1)-(11), (15)-(16), and (20) depend on the existence of a sales tax that will be replaced by the VAT]

Subsection (2) provides that the relevant repealed legislation [the sales tax] is to continue to apply to a supply or import of goods or services prior to the commencement of VAT. For example, this means that the levy, payment, assessment, reporting, and recovery of tax provisions in any sales tax act may be relied upon for the collection of unpaid sales tax at the date of commencement of VAT and the enforcement of the sales tax.

Subsection (3) provides that all appointments made under [any repealed sales tax] and subsisting at the date of commencement of VAT are treated as appointments made under the VAT. An oath of secrecy taken under that [repealed sales tax] by a person whose appointment under that tax continues under the VAT is treated as having been taken under the VAT.

Subsection (4) provides that all forms and documents used in relation to the [repealed sales tax] may continue to be used under the VAT. All references in those forms or documents to provisions of, and expressions appropriate to, the [repealed

sales tax] are treated as references to the corresponding provisions and expressions in the VAT legislation.

Subsections (5) - (10) provide a sales tax deduction for sales tax payable by a taxable, registered person before the commencement of VAT in respect of certain goods on hand at the time of commencement of the VAT. The amount available under subsection (6) may be claimed under subsection (7) as an input tax deduction under section 24 (subsection (5)). The input tax deduction under this section for sales tax paid is available, notwithstanding the section 24(4) deduction for input tax available to newly-registered persons. Section 24(4) provides a deduction for VAT paid before a person's registration becomes effective.

The sales tax deduction is available for sales tax paid on qualifying goods or qualifying vehicles held by the newly-registered person at the end of the last business day before the first tax period after the VAT becomes effective (subsection (6)). Thus, if the VAT becomes effective on July 1, the sales tax deduction is calculated on the basis of sales tax paid on qualifying goods held on the previous day, June 30. Qualifying goods are inventory -- any stock held for sale in the ordinary course of business (subsection (1)).

To qualify for the sales tax deduction, subsection (6) provides that the person must be registered when the VAT becomes effective. The deduction applies to qualifying goods acquired or imported within the 4 months before the VAT becomes effective. Using the above example, with the tax effective July 1, the deduction applies only to qualifying stock acquired or imported on or after March 1 of the same year. The sales tax deduction is available with respect to qualifying goods only if the Commissioner is satisfied that sales tax was paid on those goods.

The sales tax deduction is the amount of sales tax paid on qualifying goods or qualifying vehicles, but for each item, the deduction is limited to the amount of VAT that would have been payable on the goods if the goods were subject to VAT. For example,

if sales tax was paid on goods exempt or zero-rated under the VAT, no sales tax deduction is available with respect to those goods.

Subsection (7) provides that sales tax deductible under subsection (5) is treated as input tax deductible under section 24. The sales tax on any goods is not deductible under subsection (5) if VAT imposed on such goods after the VAT becomes effective would not qualify for the input tax deduction (subsection (8)). For example, sales tax paid on a passenger vehicle, denied an input tax deduction under section 25(2)(a), does not qualify for the sales tax deduction.

Subsection (9) provides that a person wishing to claim the sales tax deduction is required to be registered on the date the VAT Act enters into force.

Subsection (10) provides that a person claiming a sales tax deduction is required to attach to the VAT return an inventory of qualifying goods on hand when the tax comes into effect, and documentary evidence that sales tax was paid on those goods.

Subsection (11) provides that the disallowance of a deduction for sales tax shall not be treated as a disallowance of a deduction of VAT for the purposes of section 4(17). As a result, the supply of goods denied the sales tax deduction may be subject to VAT.

Subsections (12) and (13) provide rules relating to contracts entered into before and after commencement of the VAT with no provision in the contract relating to tax. For a contract entered into before VAT becomes effective, the supplier can recover from the recipient the tax due on taxable supplies after the effective date (subsection (12)). A contract concluded after the VAT becomes effective is deemed to include VAT, even if there is no provision relating to VAT in the contract (subsection (13)).

Subsection (14) contains an anti-avoidance rule. It prevents a person from making a payment or issuing an invoice before the tax becomes effective in order to

avoid tax on a supply made after the VAT effective date. If payment is received or an invoice is issued within the 9-month period before the tax comes into effect, and title to goods passes, delivery of goods is made, or services are rendered after the tax becomes effective, for purposes of determining when the supply occurs or when an input tax deduction is allowable, the payment is deemed made or the invoice is deemed issued on the VAT effective date. VAT generally will be imposed on that supply. This rule does not apply to an agreement covering building or civil engineering work under subsection (16).

Subsection (15) covers services subject to sales tax that were rendered before the VAT effective date. If services subject to sales tax were rendered before the VAT effective date, the services are not subject to VAT, so long as payment for these services is made within [4] months after the tax becomes effective.

Subsection (16) covers services and successive supplies that straddle the VAT effective date. If services subject to sales tax are rendered or successive supplies under section 14(8) or (9) are provided during a period that straddles the VAT effective date, VAT generally is imposed only on the consideration for the services rendered after the effective date. If the consideration for these services rendered before the effective date is paid more than [4] months after the tax becomes effective, the payment is treated as consideration for a supply occurring on the day after the end of that 4 month period. These services then are subject to VAT. Section 14(8) includes goods supplied under a rental agreement and services supplied under an agreement requiring periodic payments. Section 14(9) includes instalments or periodic payments for supplies directly related to construction or manufacture of a building or civil engineering work. It also covers the provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water.

Subsection (17) contains a special rule, notwithstanding subsection (16), taxing only the value of building or civil engineering work done after the VAT effective date, where the agreement for the work was executed before the effective date and the

property was made available to the recipient after that date. To obtain this treatment, the supplier must determine the value of the work performed before the VAT became effective. This value must be determined in a manner approved by the Commissioner and submitted to the Commissioner by the end of the supplier's first VAT period after the VAT becomes effective.

Subsection (18) covers the rental of immovable property for a period that straddles the effective date of the VAT. The rental for the period before the effective date is not taxable.

Section 24(1)(d) provides that a taxable person operating a game of chance can claim an input tax deduction for the tax fraction (see section 2 definition) of prizes or winnings paid out. Subsection (19) denies this input tax deduction with respect to prizes and winnings attributable to obligations or contingent obligations existing immediately before the VAT takes effect. For example, a person operating a game of chance is denied any input tax deduction with respect to the portion of a progressive slot machine jackpot payable if the patron placing the last bet immediately before the VAT becomes effective won the jackpot.

Subsection (20) empowers the Minister to issue regulations covering other transitional issues arising from the repeal of the sales tax, the introduction of VAT, or the transition from sales tax to VAT.

Schedule I

Zero-rated Supplies for Purposes of Section 17

Schedule I contains a list of supplies that are zero-rated under some VATs in use today. The zero-rated supplies predominantly involve the export of goods and some exported services that will not be re-imported into Vatopia by the exporter. The supply of a going concern between registered persons is zero-rated if certain conditions are satisfied.

The following is a list of some of the supplies that are zero-rated under Schedule I, assuming that any goods supplied will not be re-imported to Vatopia by the supplier:

1. Goods exported from Vatopia by the supplier.
2. Goods located outside Vatopia at the time of the supply that are not to be imported into Vatopia by the supplier.
3. The lease or rental of goods to be used exclusively outside Vatopia.
4. Repairs and other work done on goods temporarily in Vatopia, including goods consumed or used in that repair work.
5. International transport services involving goods and passengers, as defined in paragraph 1 of this schedule.
6. Services on land and improvements located outside Vatopia.
7. Services rendered on foreign-going aircraft and railway trains, and services performed outside Vatopia on movable property located outside Vatopia.
8. Specified services rendered directly to a non-resident who is not a taxable person.
9. Services physically rendered outside Vatopia.
10. Specified services associated with intellectual property rights for use outside Vatopia.
11. A supply of a going concern between registered persons that complies with the notice of the details of the transactions and other requirements.

Schedule II

Exempt Supplies for Purposes of Section 18

Schedule II lists the supplies that are exempt from tax under section 18. The supplies listed as exempt are those commonly exempt under other VATs. Some countries have reduced the scope of the exemption for financial services, so that fee-based financial services and casualty and other insurance (other than life insurance) are taxed.

The exemption included in Schedule II are:

1. Financial services to the extent provided in regulations. If the regulations do not exempt some financial services, they are taxable.
2. Prescription drugs and medical services to the extent provided in regulations. The regulations can exempt only a specific list of prescription drugs or can exempt all drugs purchased on a prescription ordered by a specified medical practitioner. All medical services rendered by specified medical practitioners can be exempt or the exemption can be limited to medical services rendered in qualified medical facilities.
3. Education services, as defined in paragraph 1 of this schedule, are exempt from tax.
4. The rental or lease of a dwelling used predominantly as a place of residence of a natural person, along with its land and appurtenances, is exempt from tax. Commercial rental establishments, as defined in paragraph 1 of the schedule, do not come within the exemption. This exception covers short-term holiday and similar accommodations. The effect of these rules is to tax the sale of new residential property by a taxable person, but not the rental or the sales of used residential property by nontaxable persons. Sales and rentals of commercial property are taxed.
5. Goods and services supplied by the State, a local authority, or an association not for gain is exempt if the supplier charges a nominal consideration for the goods or services that is not intended to recover the supplier's costs.

Schedule III
Exempt Imports for Purposes of Section 21

Schedule III does not identify the imports that are exempt for purposes of section 21, other than to include goods exempt from customs duties. The Minister can by notice in the [Gazette] provide that some goods exempt from customs duties are subject to VAT.

Schedule III provides the framework for a country to add other imports that are not subject to VAT, if there are policy reasons for doing so.

Schedule IV
Particulars for Tax Invoices, Tax Credit Notes, and Tax Debit Notes
for Purposes of Sections 29 and 30

Section 29(1) requires a registered person to issue an original tax invoice for each taxable supply. There is an exception under section 29(2) for supplies for nominal consideration as specified in paragraph 3 of Schedule V. The required tax invoices must contain the particulars specified in paragraph 1 of Schedule IV. Paragraph 1 lists those particulars, including the words “tax invoice” in a prominent place, some information about the supplier and the recipient, and information about the goods or services supplied, including the amount of tax charged.

Section 30(1) requires a registered person to issue a tax credit note when excessive tax was charged in the original tax invoice covering a supply to a registered recipient. The tax credit note must contain the particulars specified in paragraph 2 of Schedule IV. The particulars in paragraph 2 include the words “tax credit note” in a prominent place; some information about the registered supplier and registered recipient; some information about the original taxable supply, including the original and corrected values of the supply and the tax on the difference; and an explanation of the reasons why a tax credit note must be issued.

Section 30(3) requires a registered supplier that undercharged tax on a taxable supply to issue a tax debit note to a registered recipient of the supply. The tax credit note must contain the particulars specified in paragraph 3 of Schedule IV. The particulars in paragraph 3 include the words “tax debit note” in a prominent place; some information about the taxable, registered supplier and the registered recipient; some information about the original taxable supply, including the original and corrected values of the supply and the tax on the difference; and an explanation of the reasons why a tax debit note must be issued.

Schedule V
Registration Threshold, Interest Rates, and Other Amounts
for Purposes of Various Sections of the Act

Schedule V contains monetary and other amounts required to be specified under a variety of sections of the Act. Most of these amounts must be added, including the threshold to be set for mandatory registration (paragraph 1). The level of the threshold depends on the level of record-keeping by small businesses in the country, the expected revenue and cost for the Commissioner to administer the tax and for businesses to comply with the Act.

The schedule must include interest rates on underpayments by taxpayers and on delayed refunds by the Commissioner (paragraphs 2 and 5).

The schedule must set the thresholds below which a taxable person is not required to issue a tax invoice (paragraph 3), and below which the Commissioner is not required to issue a timely refund (paragraph 4).

If the Minister authorises tax refunds to travellers who export goods as part of their accompanied luggage, the schedule must set the threshold amount that must be purchased before the traveller is entitled to a refund (paragraph 6).

Schedule II, sub-paragraphs (b) and (c)(ii) of the paragraph 1 definition of a commercial rental establishment provide that a person must receive a minimum amount of annual receipts from the lease of accommodations before that person is treated as renting a commercial rental establishment and therefore not covered by the tax exemption. This minimum amount must be set in Schedule V (paragraph 7).

Schedule VI

Repeal of Laws and Interpretation for Purposes of Section 88

Schedule VI provides the framework to specify the tax laws that are being repealed as part of the introduction of a value added tax. The assumption in the section 89 transition rules is that the value added tax is replacing a sales tax. The only repealed law listed in Schedule VI is the [Sales Tax Act].