

June 13, 2003

Commonwealth of Republica

VALUE ADDED TAX ACT

An Act to provide for the imposition and collection of value added tax.

Be it enacted by the [legislature] as follows:

ARRANGEMENT OF SECTIONS

Part I
Preliminary

1. Short title and commencement
2. Interpretation
3. Fair market value
4. Related persons
5. Taxable activity

Part II
Charge to Tax

6. Charge to tax
7. Persons liable to pay tax

Part III
Registration

8. Registration
9. Requirements of registration
10. Cancellation of registration

Part IV
Supplies of Goods and Services

11. Supply of goods
12. Supply of services
13. Mixed supplies
14. Supply by agent
15. Time of supply
16. Time of import
17. Place of supply of goods
18. Place of supply of services

Part V
Taxable Supplies

19. Exempt supply

- 20. Exempt import

Part VI
Taxable Value

- 21. Value of a taxable supply
- 22. Adjustments
- 23. Value of imports

Part VII
Calculation of Tax Payable

- 24. Calculation of tax payable on a taxable transaction
- 25. Calculation of tax payable by a taxable person for a tax period
- 26. Cash basis accounting
- 27. Consequences of a change in accounting basis
- 28. Input tax credit
- 29. Tax invoices
- 30. Credit and debit notes

Part VIII
Procedure and Administration

Division I
Returns and Assessments

- 31. Returns
- 32. Assessments
- 33. General provisions relating to assessments

Division II
Objections and Appeals

- 34. Interpretation
- 35. Objections
- 36. Appeal to Commissioner of Appeals
- 37. Appeal to High Court
- 38. Burden of proof

Division III
Collection and Recovery

- 39. Due date for payment of tax
- 40. Interest on underpayment
- 41. Recovery of tax as debt due
- 42. Security
- 43. Preferential claim to assets
- 44. Seizure of goods
- 45. Distress proceedings
- 46. Recovery of tax from recipient of supply

- 47. Recovery of tax from third parties
- 48. Duties of receivers

Division IV
Refund of Tax

- 49. Refund of overpaid tax
- 50. Interest on overpayments
- 51. Refund of tax to diplomats and diplomatic and consular missions

Division V
Records and Investigation Powers

- 52. Records
- 53. Access to records, computers, and goods
- 54. Notice to obtain information or evidence
- 55. Records not in Republican language

Division VI
Taxpayer Identification Number

- 56. Taxpayer identification number

Division VII
Offences and Penal Tax

Sub-division I: Offences

- 57. Offences related to registration
- 58. Offences related to tax invoices, credit notes, and debit notes
- 59. Failure to lodge a return
- 60. Failure to comply with recovery provisions
- 61. Failure to maintain proper records
- 62. Failure to provide reasonable assistance
- 63. Failure to comply with a section 54 notice
- 64. Improper use of taxpayer identification number
- 65. False or misleading statements
- 66. Obstructing taxation officers
- 67. Offences by taxation officers
- 68. Offences by companies
- 69. Compounding of offences
- 70. Failure to comply with secrecy rules

Sub-division II: Penal Tax

- 71. Penal tax for failure to register
- 72. Penal tax for failure to lodge return
- 73. Penal tax for failure to pay tax when due
- 74. Penal tax in relation to records
- 75. Penal tax for making false or misleading statements
- 76. Recovery or remission of penal tax

- 77. Administration of the Act; exercise of powers and performance of duties
- 78. Secrecy

Part IX
General Provisions

- 79. Forms and notices; authentication of documents
- 80. Service of notices and other documents
- 81. Nominated person
- 82. Application of Act to partnerships and unincorporated associations
- 83. Trustee
- 84. Currency conversion
- 85. Schemes for obtaining undue tax benefits
- 86. International agreements
- 87. Regulations and amendment of schedules
- 88. Repeal of laws and interpretation
- 89. Transitional

Schedules

Schedule I -- Public international organisations

Schedule II -- Exempt supplies

Schedule III -- Zero-rated supplies

Schedule IV -- Tax invoices, credit notes, and debit notes

Schedule V – Repeal of laws

**PART I
PRELIMINARY**

Short Title and Commencement

- 1. This Act may be cited as the Value Added Tax Act and shall come into operation on the date that the Minister may by Order prescribe.

Interpretation

- 2. In this Act, unless the context otherwise requires –

“application to own use”, in relation to goods, means applying the goods to personal use, including personal use by a relative;

“capital goods” means any asset, or any component of any asset, which is of a character subject to a depreciation or comparable deduction for income tax purposes, and which is used in the course or furtherance of a taxable activity;

“Commissioner” means the Commissioner of Value Added Tax;

“company” means any association or body corporate or unincorporate, whether created or recognised under a law in force in Republica or elsewhere, and whether created for profit or non-profit purposes, but not including a partnership or trust;

"consideration", in relation to a supply of goods or services, means the total amount in money or in kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees, and charges paid or payable on, or by reason of, the supply, reduced by any discounts or rebates allowed and accounted for at the time of the supply, and by the amount of VAT on the supply included in the consideration;

“credit agreement” means a hire-purchase agreement or a finance lease;

"exempt import" has the meaning in section 20;

"exempt supply" means a supply of goods or services to which section 19 applies;

“fair market value” has the meaning in section 3;

"finance lease", in relation to goods, means a lease of goods where –

- (a) the lease term exceeds 75% of the expected life of the goods; or
- (b) the lease provides for transfer of ownership at the end of the lease term or the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or
- (c) the estimated residual value of the goods to the lessor at the expiration of the lease term (including the period of any option to renew) is less than 20% of its fair market value at the commencement of the lease; or
- (d) the leased goods are custom-made for the lessee and at the end of the lease term will not be usable by anyone other than the lessee;

"goods" means all kinds of corporeal movable or immovable property, thermal or electrical energy, heat, gas, refrigeration, air conditioning, and water, but does not include money;

"hire purchase agreement" means an agreement that is a hire purchase agreement for the purposes of the [Hire Purchase Act];

"import" means to bring, or cause to be brought, into Republica from a foreign country or place;

"importer", in relation to an import of goods, includes the person who owns the goods, or any other person for the time being possessed of or beneficially interested in the goods;

"input tax" means VAT paid or payable in respect of a taxable supply to, or an import of goods by, a taxable person;

"local authority" means [a political subdivision of government, including a city, a town, a township, or a district];

"Minister" means the Minister responsible for Finance;

"money" means –

- (a) a coin or paper currency that the National Bank of Republica has issued as legal tender; or
- (b) a coin or paper currency of a foreign country that is used or circulated as currency; or
- (c) a bill of exchange, promissory note, bank draft, postal order, or money order, other than a coin or paper currency that is a collector's piece;

"non-resident person" means any person who is not a resident person and any person referred to in paragraph (d) of the definition of "resident person" to the extent that the person is not a resident person;

"output tax", in relation to a taxable person, means the tax charged under section 6 on a taxable supply made by the person;

"person" includes a natural person, partnership, company, trust, board, government, and local authority;

"public international organisation" means an organisation listed in Schedule I to this Act;

"recipient", in relation to a supply or import, means the person to whom the supply or import is made or in the case of an import of goods, for whom the goods are intended;

"registered person" means a person registered or treated as such under this Act;

"relative", in relation to any natural person, means -

- (a) the spouse of the person; or
- (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild, or adopted child of that person or her spouse, and in the case of an adopted child her adopter; or
- (c) any spouse of any person referred to in paragraph (b), and for the purposes of this definition, any adopted child is treated as related to her adoptive parent within the first degree of consanguinity;

"resident person" means -

- (a) the State or a local authority in Republica; or

- (b) any natural person resident in Republica; or
- (c) any company, partnership, board, or trust which is formed or created under the laws of Republica or which is managed and controlled in Republica; or
- (d) any other person to the extent that such person carries on in Republica any taxable or other activity and has a fixed place in Republica relating to such activity;

"services" means anything that is not goods or money;

"supplier", in relation to a supply, means the person making the supply;

"tax" or "VAT" means the tax imposed under this Act, and includes any amount to the extent that it is treated as tax for the purposes of this Act;

"taxable activity" has the meaning assigned to it under section 5;

"taxable person" is a person who is registered or is required to register under section 8;

"taxable supply" means any supply of goods or services for consideration in Republica in the course or furtherance of a taxable activity, other than an exempt supply;

"taxable transaction" means a taxable supply or an import of goods that is subject to tax under this Act;

"taxation officer" means the Commissioner and any other person in the service of the Government who is appointed to an office in the [VAT Department], or is acting on behalf of the [VAT Department];

"tax period" means the calendar month;

"trust" means any relationship where property is under the control or management of a trustee;

"trustee" means a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law.

"value", in relation to a taxable supply or an import of goods is determined under Part VI of this Act;

Fair Market Value

3. (1) When referred to in this Act, the term "fair market value" refers to the consideration that a similar and contemporaneous supply, freely offered and made between persons who are not related persons, would generally fetch.

(2) If the fair market value as described in subsection (1) is not ascertainable for lack of a "similar supply," the fair market value shall be determined by the Commissioner on the basis of all of the facts and circumstances.

(3) In this section, "similar supply", in relation to a supply, means a supply that is identical to, or closely or substantially resembles, the supply, having regard to the characteristics, quality, quantity supplied, place of supply, functional components, reputation of, and materials comprising, the goods or services that are the subject of the supply.

Related persons

4. (1) "Related persons" means -
- (a) a natural person and a relative of that natural person; or
 - (b) a trust and a person who is or may be a beneficiary in respect of that trust or whose relative is or may be a beneficiary; or
 - (c) a partnership, unincorporated association or body, or private company and any member thereof who, together with shares or other membership interests held by persons who are related to such member under another clause of this definition, owns 25 percent or more of the rights to income or capital of the partnership, unincorporated association or body, or private company; or
 - (d) a shareholder in a company, other than a private company, and the company if the shareholder, together with shares held by persons who are related to such shareholder under another clause of this definition -
 - (i) controls 25 percent or more of the voting power in the company; or
 - (ii) owns 25 percent or more of the rights to dividends or of the rights to capital; or
 - (e) two companies, if a person, either alone or together with a person or persons who are related to such person under another clause of this definition,
 - (i) controls 25 percent or more of the voting power in both companies; or
 - (ii) owns 25 percent or more of the rights to dividends or of the rights to capital in both companies;

(2) For purposes of paragraphs (c), (d), and (e), of subsection (1) a person is treated as owning, on a pro rata basis, shares or other membership interests which are owned or controlled by such person indirectly through one or more interposed persons.

Taxable activity

5. (1) For the purposes of this Act, "taxable activity" means -
- (a) an activity which is carried on continuously or regularly by any person -
 - (i) in Republica,
 - (ii) or partly in Republica,whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of taxable goods or

services to any other person for consideration; or
(b) without limiting the generality of paragraph (a), an activity of a local authority or unincorporated association or body that involves, in whole or in part, the supply of taxable goods or services for consideration.

- (2) Taxable activity does not include -
- (a) an activity carried on by a natural person essentially as a private recreational pursuit or hobby or 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; or
 - (b) an activity to the extent that the activity involves the making of exempt supplies.
- (3) Anything done in connection with the commencement or termination of a taxable activity is treated as carried out in the course or furtherance of that taxable activity.
- (4) Subject to subsection (5), a supply is made for consideration if the supplier directly or indirectly receives any payment for the supply from the recipient or any other person, including any payment wholly or partly in money or kind.
- (5) A supply made for consideration includes —
- (a) a supply made between related persons for no consideration; or
 - (b) a supply of goods for use only as trade samples; or
 - (c) a supply referred to in section 11(4).

PART II CHARGE TO TAX

Charge to Tax

6. A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on the value of –
- (a) every taxable supply ; and
 - (b) every import of goods other than an import that is exempt under section 20.

Persons Liable to Pay Tax

7. Except as otherwise provided in this Act, the tax payable –
- (a) in the case of a taxable supply, is to be accounted for by the taxable person making the supply; or
 - (b) in the case of an import of goods, is to be paid by the importer.

PART III REGISTRATION

Registration

8. (1) A person who carries on a taxable activity and is not already registered is required to apply to be registered in accordance with section 9 –

(a) within [twenty] days of the end of any period of [three or fewer months] if during that period the person made taxable supplies, the total value of which exceeded the registration threshold set out in subsection (2); or

(b) at the beginning of any period of [three months] where there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed the registration threshold set out in subsection (2).

(2) The registration threshold is [] or such other amount as the Minister may provide under section [87(1)(b)].

(3) A person supplying goods or services for consideration as part of the taxable activities of the person, but who is not required by subsection (1) or (4) to apply for registration may apply to be registered in accordance with section 9.

(4) Notwithstanding subsection (1), the State or a local authority or body that carries on taxable activities is required to apply for registration at the date of commencement of those activities.

Requirements for Registration

9. (1) An application for registration under section 8 shall be in the form approved by the Commissioner and the applicant shall provide the Commissioner with such further information as the Commissioner may require.

(2) The Commissioner shall register a person who applies for registration unless the Commissioner is satisfied that the person is not eligible to apply for registration under section 8 or, in the case of an application under section 8(3) –

(a) the person has no fixed place of abode or business; or

(b) the Commissioner has reasonable grounds to believe that the person –

(i) will not keep proper records; or

(ii) will not submit regular and reliable tax returns as required by section 31.

(3) Registration takes effect –

(a) in the case of an application under section 8(1) or 8(4), from the beginning of the tax period immediately following the period in which the duty to apply for registration arose; or

(b) in the case of an application under section 8(3), from the beginning of the tax period immediately following the period in which the person applied for registration.

(4) The Commissioner shall issue to each person registered a certificate of registration which states the name and other relevant details of the registered person, the date on which the registration takes effect, and the taxpayer identification number of the registered person.

(5) The Commissioner is required to establish and maintain a register containing the relevant details of all registered persons.

(6) The Commissioner may register a person who the Commissioner has reasonable grounds to believe is required to apply for registration under section 8 but who has failed to do so, and such registration takes effect from the date specified in the certificate of registration.

(7) The Commissioner shall serve a notice in writing on a person of a decision to refuse to register the person under subsection (2) or to register the person under subsection (6) within fourteen days of making the decision.

(8) A person dissatisfied with a decision referred to in subsection (7) may challenge the decision only under Division II of Part VIII.

(9) A taxable person shall notify the Commissioner in writing within [fourteen] days of any change –

- (a) in the person's name, address, or principal taxable activities;
- (b) in the name or address from which any taxable activity is carried on by the person; or
- (b) in circumstances if the person ceases to operate or closes on a temporary basis in a situation not covered in section 10(1).

Cancellation of Registration

10. (1) A local authority or body, within [fourteen] days after ceasing to engage in taxable activities, and any other taxable person, within [fourteen] days after ceasing to make taxable supplies, must apply in writing to have the person's registration cancelled.

(2) Subject to subsection (3), a taxable person (other than a local authority or body) may apply in writing to have the person's registration cancelled if, with respect to the most recent three-month period, the person's taxable supplies do not exceed the registration threshold in section 8.

(3) In the case of a taxable person who applied for registration under section 8(3), an application under subsection (2) may be made only after the expiration of two years from the date the registration took effect.

(4) The Commissioner is required to cancel the registration of a person who is required or is permitted to apply for cancellation under subsection (1) or (2).

(5) The Commissioner is required to cancel the registration of a person who has not applied for cancellation of registration if the Commissioner is satisfied that the person is neither required nor entitled under section 8 to apply for registration.

(6) The Commissioner may cancel the registration of a person who is not required to apply for registration under section 8 if the person –

(a) has no fixed place of abode or business; or

(b) has not kept proper accounting records relating to any taxable activity carried on by that person; or

(c) has not submitted regular and reliable tax returns as required by section 31.

(7) The Commissioner shall serve a notice in writing on a taxable person of a decision to cancel or to refuse to cancel the registration of the person under this section within [fourteen] days of making the decision.

(8) The cancellation of registration takes effect from the end of the tax period in which the registration is canceled unless the Commissioner orders the cancellation to take effect at an earlier date.

(9) Where the registration of a person is cancelled, the Commissioner is required to remove the person's name and details from the register described in section 9.

(10) A person dissatisfied with a decision referred to in subsection (7) may challenge the decision only under Division II of Part VIII.

(11) A taxable person whose registration has been cancelled under this section is treated as having made a taxable supply in Republica equal to the fair market value of all goods on hand (including capital goods) at the date the registration is cancelled, but only if an input tax credit was claimed with respect to the goods.

(12) Any obligation and liability under this Act, including the lodging of returns, of any person in respect of anything done or omitted to be done by that person while the person was a taxable person, is not affected by cancellation of the person's registration.

PART IV SUPPLIES OF GOODS AND SERVICES

Supply of Goods

11. (1) Except as otherwise provided by or under this Act, a supply of goods means a transfer of the right to dispose of tangible property as owner, including an agreement of sale and purchase.

(2) A transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water, is a supply of goods.

(3) A supply of goods for goods or services is a supply of goods.

(4) Subject to section 10(11), the application by a registered person of goods or services acquired for use in a taxable activity to a different use, including an application to own use or the provision of goods or services to an employee for personal use, is a supply of those goods or services by the registered person in the course or furtherance of that taxable activity, but only if the registered person has been allowed a deduction for input tax in respect of those goods or services.

Supply of Services

12. (1) Except as otherwise provided by or under this Act, a supply of services means anything done which is not a supply of goods or money, including –

- (a) making available any facility or advantage; or
- (b) granting the use or right to use any goods; or
- (c) refraining from or tolerating any activity.

(2) A supply of services by an employee to an employer by reason of employment is not a supply by the employee.

(3) A supply of services for goods or services is a supply of services.

Mixed supplies

13. (1) Except as otherwise provided in regulations—

- (a) A supply of services incidental to a supply of goods is part of the supply of goods;
- (b) A supply of goods incidental to a supply of services is part of the supply of services; and
- (c) A supply of services incidental to an import of goods is part of the import of goods.

(2) Regulations may provide that a supply of goods and services is a supply of goods or a supply of services.

Supply by Agent

14. (1) A supply of goods or services—

- (a) made by a person as agent for another person ("the principal") is a supply by the principal; or
- (b) made to a person as agent for a principal is a supply to the principal.

(2) Subsection (1) does not apply to services supplied by an agent to the agent's principal.

Time of Supply

15. (1) Except as otherwise provided by or under this Act, a supply of goods or services occurs on the earliest of the date on which –

- (a) the goods are delivered or made available or the performance of the service is completed;
- (b) payment for the goods or services is received; or
- (c) the invoice is issued.

(2) A supply of goods or services under section 11(4) occurs when the goods or services are applied to a different use.

(3) Where goods or services are supplied by way of gift, the supply of the goods or services occurs on the date on which ownership in the goods passes or the performance of the services is completed.

(4) The supply of goods under a hire purchase agreement or finance lease occurs on the date of commencement of the agreement or lease.

(5) Where –

- (a) goods are supplied under a rental agreement; or
- (b) goods or services are supplied under an agreement or law that provides for periodic payments,

the goods or services are treated as successively supplied for successive parts of the period of the agreement or as determined by such law, and each successive supply occurs on the earlier of the date on which payment is due or received.

(6) For the purposes of subsection (1), unless subsections (4) or (5) applies, where two or more payments are made or are to be made for a supply of goods or services, each payment is treated as made for a separate supply to the extent of the amount of the payment, on the earlier of the date the payment is due or received.

(7) A person making a supply to which subsection (2) or (3) applies shall keep a record of the date on which the supply occurred.

(8) In subsection (5), "rental agreement" means an agreement for the letting of goods other than a hire purchase agreement or finance lease.

Time of Import

16. An import of goods occurs –

- (a) where customs duty is payable, on the date on which the duty is payable; or

- (b) in any other case, on the date the goods are brought into Republica.

Place of Supply of Goods

17. (1) Subject to this Act, a supply of goods takes place where the goods are delivered or made available by the supplier or, if the delivery or making available involves the goods being transported, the place where the goods are when the transportation commences.

(2) A supply of thermal or electrical energy, heating, gas, refrigeration, air conditioning, or water takes place where the supply is received.

Place of Supply of Services

18. (1) Subject to this section, a supply of services takes place at the location of the supplier's place of business from which the service is supplied.

(2) The supply of the following services takes place where the recipient uses or obtains the advantage of the services –

(a) a transfer or assignment of a copyright, patent, license, trademark, or similar right;

(b) the service of a consultant, engineer, lawyer, architect, or accountant, the processing of data or supplying information, or any similar service;

(c) an advertising service;

(d) the obligation to refrain from pursuing or exercising taxable activity, employment, or a right described in this subsection;

(e) the supply of personnel;

(f) the service of an agent in procuring for the agent's principal a service described in this subsection; or

(g) the leasing of movable property (other than transport property).

(3) The supply of cultural, artistic, sporting, educational, or similar activities, or services connected with movable goods, takes place where the service is physically carried out, unless the service is described in subsection (2).

(4) The supply of services connected with immovable property takes place where the property is located, unless the service is described in subsection (2).

(5) A supply of services of, or incidental to, transport takes place where the transport occurs, unless the service is described in subsection (2).

(6) Services supplied from a place of business in Republica which would be treated as supplied outside Republica under subsections (2) – (5) are considered as

supplied in Republica and are considered as exported from Republica for the purposes of Schedule III.

PART V EXEMPT SUPPLIES AND IMPORTS

Exempt Supply

19. (1) Subject to this section, a supply of goods or services is an exempt supply if it is specified in Schedule II.

(2) A supply under clause 1(k) of Schedule II is exempt only if a notice in writing signed by the transferor and transferee is filed with the Commissioner within [five] days after the transfer takes place and such notice includes the details of the transfer.

(3) A supply of goods or services is not an exempt supply if, in the absence of subsection (1), the supply would be charged with tax at the rate of zero under Schedule III.

Exempt Import

20. An import of goods is an exempt import -

(a) if the goods are exempt from customs duty under [Customs Law] unless the Minister provides otherwise by notice in the Gazette; or

(b) if the supply of the goods would be exempt under Schedule II (other than clause 1(k)) if supplied in Republica.

PART VI TAXABLE VALUE

Value of a Taxable Supply

21. (1) Except as otherwise provided by or under this Act, the value of a supply of goods or services is the amount of the consideration for the supply.

(2) The value of -

(a) a taxable supply of goods under a credit agreement; or

(b) a taxable supply of goods within section 11(4);

is the fair market value of the supply of the goods or services at the time of the supply, exclusive of the tax.

(3) Where a portion of the price of a supply represents tax imposed by this Act that is not accounted for separately, the value of the supply is the price reduced by an amount equal to the tax fraction multiplied by that price.

(4) In this section, "tax fraction" means the fraction calculated in accordance with the formula:

$$\frac{R}{1 + R}$$

where **R** is the rate of tax applicable to the taxable supply.

(5) For purposes of subsection (1), consideration in kind is valued at fair market value at the time of supply under the principles of section 3.

Adjustments

22. (1) This section applies where, in relation to a taxable supply by a taxable person who is registered, -

- (a) the supply is cancelled; or
- (b) the taxation of the supply changes because the nature of the supply is fundamentally varied or altered; or
- (c) the previously agreed consideration for the supply is altered, whether due to an offer of a discount or for any other reason; or
- (d) the goods or services or part thereof are returned to the supplier.

(2) Subsection (1) applies only where the taxable, registered person making the supply has –

- (a) provided a tax invoice in relation to the supply and the amount shown therein as the tax charged on the supply is incorrect as a result of the occurrence of one or more of the events described under subsection (1)(a) - (d); or
- (b) lodged a return for the tax period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply as a result of the occurrence of one or more of the events described under subsection (1)(a) - (d).

(3) Where subsection (1) applies, the taxable, registered person making the supply is required to make an adjustment as specified in subsection (4) or (5).

(4) Where the output tax properly chargeable in respect of the supply exceeds the output tax actually accounted for by the taxable person (the supplier), the amount of the excess is treated as output tax charged by the supplier in relation to a taxable supply made in the tax period in which the event referred to in subsection (1) occurred.

(5) Subject to subsection (7), where the output tax actually accounted for by the taxable, registered person exceeds the output tax properly chargeable in relation to the supply, the taxable, registered person shall be allowed a credit for the amount of the excess in the tax period in which the event referred to in subsection (1) occurred.

(6) The credit allowed under subsection (5) is treated as a credit for input tax.

(7) Where the supply has been made to a person who is not a registered person, a registered supplier is not allowed a credit under subsection (5), unless the amount of the excess tax has been repaid to the recipient of the supply, whether in cash or as a credit against an amount owing to the registered supplier by the recipient, or otherwise.

Value of Imports

23. The value of an import of goods is the sum of -

(a) the value of the goods for the purposes of customs duty under the [Customs Law]; and

(b) the amount of any customs duty, excise tax, or any other fiscal charge (other than VAT) payable on the import of such goods; and

(c) the value of services to which section 13(1) (c) applies which is not included in the customs value of the goods under paragraph (a).

PART VII CALCULATION OF TAX PAYABLE

Calculation of Tax Payable on a Taxable Transaction

24. (1) The tax payable on a taxable transaction is calculated by applying the rate of tax to the value of the transaction.

(2) Subject to subsection (3), the rate of tax is [].

(3) The rate of tax imposed on taxable supplies specified in Schedule III is zero.

Calculation of Tax Payable by Taxable Person for a Tax Period

25. Subject to section 26, the tax payable by a taxable person for a tax period in respect of taxable supplies is calculated according to the following formula:

$$A - B$$

where -

A is the total of the tax payable in respect of taxable supplies made by the taxable person during the tax period ; and

B is the total input tax credit allowed to the taxable person for the tax period.

Cash Basis Accounting

26. (1) This section applies to a taxable person if -
- (a) during every three-month period preceding the tax period, the person's taxable supplies did not exceed twice the registration threshold applicable for the period in question for purposes of section 8; and
 - (b) the person has not made an election under subsection (2).

(2) A taxable person may, on the tax return for any period, make an irrevocable election to calculate the tax payable under section 25 instead of under this section, for that period and future periods.

(3) Where this section applies to a taxable person, that person must account for both the output tax payable and the input tax credited on a cash basis, determining the tax payable for a tax period according to the following formula -

$$A - B$$

where -

A is the total output tax received by the taxable person during the tax period in respect of taxable supplies made by the person; and

B is the total input tax credit allowed to the taxable person for the tax period.

Consequences of a Change in Accounting Basis

27. (1) Where a taxable person changes from the method of accounting provided under section 26 (referred to as the "cash basis") to the method of accounting provided under section 25 (referred to as the "invoice basis"), the person is liable for tax in the tax period in which the change occurs in accordance with the following formula -

$$C - D$$

where -

C is the total amount of output tax that would have been accounted for on amounts due to the taxable person at the time of change in accounting basis if the taxable person had been accounting for tax on an invoice basis; and

D is the total amount of input tax that would have been credited on amounts due by the taxable person at the time of change in accounting basis if the taxable person had been accounting for tax on an invoice basis.

(2) If the amount determined in accordance with subsection (1) is a negative amount, the amount shall be refunded to the taxable person by the Commissioner in accordance with section 49(1).

(3) The tax under this section is in addition to the amount determined under section 25.

Input Tax Credit

28. (1) Where section 25 applies for the purposes of calculating the tax payable by a taxable person for a tax period, an input tax credit is allowed to the taxable person for the tax payable in respect of –

- (a) all taxable supplies made to the person during the tax period; or
- (b) all imports of goods made by the person during the tax period,

where the supply or import is for use in the business of the taxable person.

(2) Where section 26 applies for the purposes of calculating the tax payable by a taxable person for a tax period, an input tax credit is allowed to the taxable person for any tax paid in respect of taxable supplies to, or imports by, the taxable person where the supply or import is for use in the business of the taxable person.

(3) A credit is allowed to a taxable person on becoming registered for input tax paid or payable in respect of –

- (a) all taxable supplies of goods (including capital goods) made to the person prior to the person becoming registered; and
- (b) all imports of goods (including capital goods) made by the person prior to becoming registered,

where the supply or import was for use in the business of the taxable person, provided the supply or import occurred no more than [six months] prior to the date of registration and the goods are on hand at the date of registration.

(4) An input tax credit –

- (a) allowed under subsection (1) arises on the date the goods or services are supplied to, or imported by, the taxable person; or
- (b) allowed under subsection (2) arises on the date the tax is paid; or
- (c) allowed under subsection (3) arises on the date of registration.

(5) No credit is allowed to a taxable person for input tax paid or payable in respect of –

- (a) a taxable supply or import of a passenger automobile, and the repair and maintenance thereof (including spare parts) unless the taxable person is in the business of dealing in, or hiring of, such automobiles; or
- (b) a taxable supply or import of entertainment unless –
 - (i) the taxable person is in the business of providing entertainment and the taxable supply or import relates to the provision of entertainment in the ordinary course of that business; or

(ii) the taxable person provides the entertainment to an employee of the person as part of the reward for services rendered by the employee to the taxable person.

(6) Subject to subsection (7), where a taxable supply to, or an import of goods by, a taxable person is partly for a use set out in subsection (1), (2), or (3) and partly for another use, the amount of the input tax allowed as a credit is that part of the input tax that relates to the use set out in subsection (1), (2), or (3).

(7) No credit is allowed to a taxable person for input tax paid or payable in respect of petroleum products, unless they are wholly for use in the business of the taxable person.

(8) Subject to subsections (9) and (10), the input tax that may be credited by a taxable person for a tax period is –

(a) where all of the taxable person's supplies for that period are taxable supplies, the whole of the input tax specified in subsection (1) or (2); or

(b) where only part of the taxable person's supplies for that period are taxable supplies, the amount calculated according to the following formula –

$$A \times B/C$$

where –

A is the total amount of input tax for the period; and

B is the total amount of taxable supplies made by the taxable person during the period; and

C is the total amount of all supplies made by the taxable person during the period other than an exempt supply under clause 1(k) of Schedule II.

(9) Where the fraction **B/C** in subsection (8)(b) is less than 0.05, the taxable person may not credit any input tax for the period.

(10) Where the fraction **B/C** in subsection (8)(b) is more than 0.95, the taxable person may credit all input tax for the period.

(11) Notwithstanding subsection (8)(b), the Commissioner may determine the amount of input tax credit allowed for a tax period where a taxable person makes both taxable and exempt supplies during the period on such other basis as the Commissioner considers reasonable.

(12) Subject to subsection (13), an input tax credit allowed under this section may not be claimed by the taxable person until the tax period in which the taxable person has –

(a) an original tax invoice [or a copy as prescribed under section 29(2)] for the taxable supply; or

- (b) [a bill of entry or other document prescribed under the [Customs Law]], or
- (c) a credit note required under section 30(1),

evidencing the amount of input tax paid or payable, or the amount of excess tax under the credit note.

(13) Where a taxable person does not have a tax invoice evidencing the input tax paid or payable, the Commissioner may allow an input tax credit in the tax period in which the credit arises where the Commissioner is satisfied –

- (a) that the taxable person took all reasonable steps to acquire a tax invoice; and
- (b) that the failure to acquire a tax invoice was not the fault of the taxable person; and
- (c) that the amount of input tax claimed by the taxable person is correct.

(14) In this section –

"business of the taxable person" for purposes of subsection (1)–(3) and (7) includes activity related to the supply of goods or services in Republica or for export, not being activity related to foreign operations; and

"entertainment" means the provision of food, beverages, tobacco, accommodation, amusement, recreation, or other hospitality of any kind; and

"passenger automobile" means a road vehicle designed and used solely for the transport of sitting persons whose number does not exceed nine.

Tax Invoices

29. (1) A taxable person who is registered, referred to as the “registered supplier,” who makes a taxable supply to another person, referred to as the “recipient,” shall provide the recipient, at the time of supply, with an original tax invoice for the taxable supply, and shall retain one copy.

(2) An original tax invoice must not be provided to a person in any circumstances other than those specified in subsection (1), but a copy clearly marked as such may be provided if the person receiving the original invoice so requests because the original has been lost.

(3) A taxable person –

- (a) who has not received a tax invoice as required by subsection (1); or
- (b) to whom section 28(3) applies,

may request the registered supplier who has supplied goods or services to the taxable person, to provide a tax invoice in respect of the taxable supply.

(4) A request for a tax invoice under subsection (3) shall be made –

(a) in the case of a request under subsection (3)(a), within [sixty] days after the date of the supply; or

(b) in the case of a request under subsection (3)(b), within [sixty] days of the date of registration.

(5) A registered supplier who receives a request under subsection (4) shall comply with the request within [fourteen] days after receiving that request.

(6) A tax invoice is an invoice containing the particulars specified in Schedule IV(1).

Credit and Debit Notes

30. (1) Where a tax invoice has been issued in the circumstances specified in section 22(2)(a) and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the taxable person making the supply shall provide the recipient of the supply with a credit note containing the particulars specified in Schedule IV(2).

(2) Where a tax invoice has been issued in the circumstances specified in section 22(2)(a) and the tax properly chargeable in respect of the supply exceeds the amount shown as tax charged in that tax invoice, the taxable person making the supply shall provide the recipient of the supply with a debit note containing the particulars specified in Schedule IV(3).

PART VIII PROCEDURE AND ADMINISTRATION

DIVISION I RETURNS AND ASSESSMENTS

Returns

31. (1) Every taxable person shall lodge a tax return for each tax period with the Commissioner within [21] days after the end of the period, whether or not tax is payable in respect of that period.

(2) A tax return shall be in the form prescribed by the Commissioner and shall state the amount of tax payable for the period, the amount of input tax credit refund claimed, and such other matters as may be prescribed.

(3) In addition to or instead of any return required under this Act, the Commissioner may by notice in writing require a person, whether or not a taxable person, to lodge with the Commissioner, whether on that person's own behalf or as agent or trustee of another person, such fewer, additional, or other returns in the prescribed form as and when required by the Commissioner for the purposes of this Act.

(4) Upon application in writing by a taxable person, the Commissioner may, where good cause is shown by the taxable person, extend the period within which a tax return is to be lodged.

(5) Where tax is payable on an import of goods, the importer, upon entry of the goods, shall furnish the Commissioner with an import declaration and pay the tax due on the import.

Assessments

32. (1) Where –

(a) a person fails to lodge a return as required by section 31 or fails to furnish an import declaration as required by section 31(5); or

(b) the Commissioner is not satisfied with a return lodged by a person; or

(c) the Commissioner has reason to believe that a person will become liable for the payment of an amount of tax but is unlikely to pay such amount; or

(d) the Commissioner has determined the liability of any person in terms of section 85(1),

the Commissioner may make an assessment of the amount of tax payable by the person.

(2) An assessment under subsection (1)(a) or (1)(c) may be made at any time; an assessment under section (1)(b) –

(a) may be made at any time, if fraud, or gross or wilful neglect has been committed by, or on behalf of, the person, or if no return was lodged; or

(b) in any other case, may be made within [three] years after the date the return was lodged.

(3) The Commissioner may, based on the information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).

(4) Where a taxable person is not satisfied with a return lodged by that person under this Act, that person may apply to the Commissioner to make an addition or alteration to that return.

(5) An application under subsection (4) must be in writing and specify in detail the grounds upon which it is made and must be made within [three] years after the date the return was lodged by the taxable person.

(6) After considering an application under subsection (4), the Commissioner shall make an assessment of the amount that, in the Commissioner's opinion, is the amount of tax payable under this Act.

(7) Where an assessment has been made under this section, the Commissioner shall serve a notice of the assessment on the person assessed, which notice shall state –

- (a) the tax payable; and
- (b) the date the tax is due and payable; and
- (c) the time, place, and manner of objecting to the assessment.

(8) Except in the case of an assessment made under subsection (2)(a), the Commissioner may, within [three] years after the date the return was lodged, amend an assessment by making such alterations or additions to the assessment as the Commissioner considers necessary, and the Commissioner shall serve notice of the amended assessment on the person assessed.

(9) An amended assessment is treated in all respects as an assessment under this Act.

General Provisions Relating to Assessments

33. (1) The production of a notice of assessment or a certified copy of a notice of assessment is receivable in any proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings under Division II of Part VIII relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued, or executed under this Act shall be –

- (a) quashed or deemed to be void or voidable for want of form; or
- (b) affected by reason of mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with this Act and the person assessed, or intended to be assessed or affected by the document is designated in it according to common understanding.

DIVISION II OBJECTIONS AND APPEALS

Interpretation

34. In this Division,

"Commissioner of Appeals" means the Commissioner of Appeals as appointed by the Minister pursuant to the [Finance Act to hear and decide any matter in dispute between the Commissioner and any person in respect of the person's liability or assessment for tax]; and

"objection decision" means a decision by the Commissioner under section 35(5); and

"appealable decision" means an assessment or a decision described in section 9(8), 10(10), or 49(7).

Objections

35. (1) A person dissatisfied with an appealable decision may lodge an objection to the decision with the Commissioner within [thirty] days after the service of the notice of the decision.

(2) Where the Commissioner is satisfied that owing to absence from Republica, sickness or other reasonable cause, the person assessed was prevented from lodging an objection within the time specified in subsection (1) and there has been no unreasonable delay by the person in lodging the objection, the Commissioner may accept an objection lodged after the time specified in subsection (1).

(3) An objection to an appealable decision must be in writing and specify in detail the grounds upon which it is made.

(4) In the case of an objection to an assessment, the Commissioner may consider the objection only if –

(a) the person assessed has paid the tax due under the assessment; or

(b) the Commissioner is satisfied that the person objecting is unable to pay the full amount of tax due and has given sufficient security to the extent in a position to do so, for the amount of tax unpaid and any penal tax that may become payable.

(5) After considering the objection, the Commissioner may allow the objection in whole or part and amend the assessment or the decision objected to accordingly, or disallow the objection.

(6) The Commissioner shall serve the person objecting with notice in writing of the objection decision.

Appeal to Commissioner of Appeals

36. (1) A person dissatisfied with an objection decision may, within [thirty] days after being served with notice of the decision –

(a) lodge a notice of appeal with the Commissioner of Appeals; and

(b) serve a copy of the notice of appeal on the Commissioner.

(2) If the Commissioner has not made an objection decision, and [sixty] days have passed since the objection was lodged, an appeal may be made under subsection (1) at any time, as if the Commissioner had made a decision to disallow the objection.

(3) The Commissioner of Appeals may, where satisfied that owing to absence from Republica, sickness, or other reasonable cause, the person was prevented from lodging a notice of appeal within the time specified in subsection (1) and there has been no unreasonable delay by the person in lodging the notice, accept a notice of appeal lodged after the time specified under subsection (1).

(4) In an appeal to the Commissioner of Appeals against an objection decision, the person is limited to the grounds set out in the person's objection, unless the Commissioner of Appeals grants the person leave to add new grounds.

(5) In deciding an appeal, the Commissioner of Appeals may make an order –

(a) affirming, reducing, increasing, or varying the assessment under appeal; or

(b) remitting the assessment for reconsideration by the Commissioner in accordance with the directions of the Commissioner of Appeals.

Appeal to High Court

37. (1) A party who is dissatisfied with the decision of the Commissioner of Appeals may, within [thirty] days after being notified of the decision, lodge a notice of appeal with the [Registrar] of the High Court; and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the Commissioner of Appeals.

(2) An appeal to the High Court may be made on questions of law only, and the notice of the appeal shall state the questions of law that will be raised on the appeal.

Burden of Proof

38. 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.

DIVISION III COLLECTION AND RECOVERY

Due Date for Payment of Tax

39. (1) Tax payable under this Act is due and payable –

(a) by a taxable person for a tax period, by the due date for the return for the tax period; or

- (b) by a person assessed under an assessment issued under this Act, on the date specified in the notice of assessment; or
- (c) by an importer of goods, by the due date specified under section 16; or
- (d) by any other person, by the date the taxable transaction occurs as determined under this Act.

(2) Where an objection to, or a notice of appeal against, an assessment has been lodged, the tax payable under the assessment is due and payable under subsection (1), and may be recovered, notwithstanding that objection or appeal.

(3) Upon application in writing by a person liable for tax, the Commissioner may, where good cause is shown, extend the time for payment of tax by the person beyond the date on which it is due and payable under this section, or make such other arrangements as appropriate to ensure the payment of the tax due, and any such extension does not alter the due date for purposes of section 40.

Interest on Underpayment

40. (1) A person who fails to pay any tax or penal tax by the due date for payment under the Act is liable for interest [at the ruling Commercial Bank lending rate plus – percentage points] on the amount unpaid, calculated from the date on which payment was due until the date on which payment was made.

(2) Interest paid by a person under subsection (1) shall be refunded to the person to the extent that the tax or penal tax to which it relates is subsequently determined not to have been due and payable.

(3) The provisions of this Act relating to the collection and recovery of tax apply to any interest charged under this section as if the interest were tax due under this Act.

Recovery of Tax as Debt Due

41. (1) Any amount of tax due and payable under this Act shall be recoverable by the Commissioner as a debt due to the Government of Republica from the person liable therefor.

(2) Where a person fails to pay tax when it is due and payable, referred to as the “defaulter”, the Commissioner may file, with the clerk or registrar of a court of competent jurisdiction, a statement certified by the Commissioner setting forth the amount of the tax due and payable by that person, and that statement shall have the effect of a civil judgment lawfully given in that court in favour of the Commissioner for a debt in the amount specified in the statement; and the court shall issue a writ of execution in respect thereof against the defaulter.

(3) A writ of execution under subsection (2) shall not be issued until [14] days after service by the court on the defaulter of a notice informing the defaulter that a writ of execution will be issued by the court in respect of tax owed by the defaulter and

unpaid, unless before the expiration of that period of [14] days the defaulter produces proof of payment thereof satisfactory to the court.

(4) The Commissioner may, without prejudice to re-instituting proceedings under subsection (2), by notice in writing addressed to the clerk or registrar of the court, withdraw the statement referred to in subsection (2) and such statement shall thereupon cease to have any effect.

(5) Where, in addition to any amount of tax which is due and payable by any person under this Act, any amount of interest or penal tax is payable, any payment made by the person in respect of such tax, interest, or penal tax which is less than the total amount due shall be deemed to be made -

- (a) first in respect of such penal tax;
- (b) to the extent that such payment exceeds the amount of such penal tax, then in respect of such interest; and
- (c) to the extent that such payment exceeds the sum of such penal tax and interest, then in respect of such tax.

(6) Where the Commissioner has reasonable grounds to believe that a person may leave Republica without paying all tax due under this Act, the Commissioner may issue a certificate to the [Chief Immigration Officer] containing particulars of the tax due and request that the [Chief Immigration Officer] take the necessary steps to prevent the person from leaving Republica until the person makes -

- (a) payment in full; or
- (b) an arrangement satisfactory to the Commissioner for the payment of the tax.

(7) A copy of the certificate issued under subsection (6) shall be served by the Commissioner on the person named in the certificate if it is practicable to do so.

(8) If a certificate is issued under subsection (6), payment to a [customs or immigration officer] of the tax specified in the certificate or the production of the certificate signed by the Commissioner stating that the tax has been paid or satisfactory arrangements for payment have been made shall be sufficient authority for any immigration officer to allow the person to leave Republica.

(9) Except where the contrary intention appears, the [customs legislation] on imported goods shall, with such exceptions, modifications, and adaptations as the Minister may by Order prescribe, apply (so far as relevant) in relation to any tax chargeable on the import of goods.

(10) The [Commissioner of Customs] may, by virtue of subsection (9), exercise any power conferred on the [Commissioner of Customs] by the [customs legislation] as if the reference to customs duty or excise tax in that law included a reference to tax charged on imported goods under this Act.

Security

42. (1) Where it is reasonable to do so for the protection of the revenue or as provided for in the Act, the Commissioner, by notice in writing, may require a person to give security for the payment of tax that is or may become payable by the person under

this Act.

(2) Security required under subsection (1) shall be for such amount, in such form, and furnished within such period as the Commissioner may specify in the notice.

(3) Where security under subsection (1) is in cash and the Commissioner is satisfied that the security is no longer required, the amount of the security shall be applied by the Commissioner as specified under section 49.

Preferential Claim to Assets

43. From the date on which tax becomes due and payable, the Commissioner has a preferential claim as provided [in Insolvency Laws] upon the assets of the person liable to pay the tax until the tax is paid.

Seizure of Goods

44. (1) Where the Commissioner has reasonable grounds to believe that tax on the supply or import of goods has not been or will not be paid, the Commissioner may seize the goods.

(2) Goods seized under subsection (1) shall be stored in a place approved by the Commissioner for the storage of such goods.

(3) Where goods are seized under subsection (1), the Commissioner shall, as soon as practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing –

(a) identifying the goods; and

(b) stating that the goods have been seized under this section and the reason for seizure; and

(c) setting out the terms of subsections (6), (7), and (8).

(4) The Commissioner is not required to serve a notice under subsection (3) if, after making reasonable enquiries, the Commissioner does not have sufficient information to identify the person on whom the notice should be served.

(5) Where subsection (4) applies, the Commissioner may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Commissioner sufficient information to enable such a notice to be served.

(6) Subject to subsection (7), the Commissioner may authorise the delivery of any goods seized under subsection (1) to the person on whom a notice under subsection (3) has been served where that person pays, or gives security in accordance with section 42 for the payment of tax due and payable or that will become due and payable in respect of the supply or import of the goods.

(7) The Commissioner shall detain the goods seized under subsection (1) –

(a) in the case of perishable goods, for such period as the Commissioner considers reasonable having regard to the condition of the goods; or

- (b) in any other case, until the later of
 - (i) [ten] days after the seizure of the goods; or
 - (ii) [ten] days after the due date for payment of the tax on the supply or import of the goods.

(8) Where the detention period in subsection (7) has expired, the Commissioner may sell the goods in the manner specified in section 45(4) and apply the proceeds of sale as set out in section 45(5).

(9) Notwithstanding the provisions of this section, the Commissioner may proceed under section 41 with respect to any balance owed if the proceeds of sale are not sufficient to meet the costs thereof and the tax due.

Distress Proceedings

45. (1) The Commissioner may recover unpaid tax by distress proceedings against the movable property of the person liable to pay the tax, referred to as the "person liable," by issuing an order in writing, specifying the person liable, the location of the property, and the tax liability to which the proceedings relate.

(2) For the purposes of executing distress under subsection (1), the Commissioner may –

- (a) at any time enter any house or premises described in the order authorising the distress proceedings; and
- (b) require a police officer to be present while the distress is being executed.

(3) Property upon which a distress is levied under this section, other than perishable goods, shall be kept for [ten] days either at the premises where the distress was levied or at such other place as the Commissioner may consider appropriate, at the cost of the person liable.

(4) Where the person liable does not pay the tax due, together with the costs of the distress –

- (a) in the case of perishable goods, within such period as the Commissioner considers reasonable having regard to the condition of the goods; or
- (b) in any other case, within [ten] days after the distress is levied,

the property distrained upon may be sold by public auction, or in such other manner as the Commissioner may direct.

(5) The proceeds of a disposal under subsection (4) shall be applied by the auctioneer or seller first towards the cost of taking, keeping, and selling the property

distrained upon, then by the Commissioner towards the tax due and payable, and the remainder of the proceeds, if any, shall be restored to the person liable.

(6) Nothing in this section precludes the Commissioner from proceeding under section 41 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the tax due.

(7) All costs incurred by the Commissioner in respect of any distress may be recovered by the Commissioner from the person liable as tax due under this Act.

Recovery of Tax from Recipient of Supply

46. (1) Where, in respect of a taxable supply by a taxable person, the taxable person has, in consequence of a fraudulent action or misrepresentation by the recipient of the supply, incorrectly treated the supply as an exempt or zero-rated supply, the Commissioner may raise an assessment upon the recipient for the amount of unpaid tax in respect of the supply together with any interest that has become payable under section 40.

(2) The Commissioner shall serve notice of an assessment under subsection (1) on the recipient specifying –

- (a) the tax payable; and
- (b) the date the tax is due and payable; and
- (c) the time, place, and manner of objecting to the assessment.

(3) An assessment raised under subsection (1) is treated as an assessment for all purposes of the Act.

(4) Subsection (1) does not preclude the Commissioner from recovering the tax or interest from the taxable person making the supply.

(5) For purposes of subsection (4),

- (a) any amount recovered from the recipient is to be credited against the liability of the taxable person; and
- (b) any amount recovered from the taxable person is to be credited against the liability of the recipient.

(6) Where an amount of tax or interest referred to in subsection (1) is paid by the taxable person, the taxable person may recover the amount paid from the recipient.

(7) An amount assessed under this section shall be treated, for all purposes of this Act, as tax charged under this Act.

Recovery of Tax from Third Parties

47. (1) Where any person liable to pay tax under this Act, referred to as the “person liable,” fails to do so by the due date, the Commissioner may, by notice in writing, require any other person –

- (a) owing or who may owe money to the person liable; or
- (b) holding or who may subsequently hold money for, or on account of, the person liable; or
- (c) having authority from some other person to pay money to the person liable,

to pay the money to the Commissioner on the date set out in the notice, up to the amount of the tax due.

(2) The date specified in the notice under subsection (1) shall not be a date before the money becomes due to the person liable to pay tax, or held on the person's behalf.

(3) A copy of a notice issued under subsection (1) shall be served on the person liable.

(4) A person making a payment pursuant to a notice under subsection (1) shall be deemed to have acted under the authority of the person liable and of all other persons concerned and is indemnified in respect of the payment.

(5) The provisions of this Act relating to the collection and recovery of tax shall apply to any amount due under this section as if the amount were tax due under this Act.

Duties of Receivers

48. (1) A receiver shall in writing notify the Commissioner within [fourteen] days after being appointed to the position or taking possession of an asset in Republica, whichever first occurs.

(2) The Commissioner may in writing notify a receiver of the amount which appears to the Commissioner to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.

(3) A receiver –

- (a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Commissioner under subsection (2), or such lesser amount as is subsequently agreed on by the Commissioner; and
- (b) is liable to the extent of the amount set aside for the tax of the person who owned the asset; and
- (c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(4) A receiver is personally liable to the extent of any amount required to be set aside under subsection (3) for the tax referred to in subsection (2) if, and to the extent that, the receiver fails to comply with the requirements of this section.

(5) In this section, "receiver" means a person who, with respect to an asset in Republica, is –

- (a) a liquidator of a company; or
- (b) a receiver appointed out of court or by a court; or
- (c) a trustee for [a bankrupt person]; or
- (d) a mortgagee in possession; or
- (e) an executor of a deceased estate; or
- (f) any other person conducting a business on behalf of a person legally incapacitated.

DIVISION IV REFUND OF TAX

Refund of Overpaid Tax

49. (1) If, for any tax period, a taxable person's input tax credit exceeds the taxable person's liability for tax, the Commissioner shall refund the excess to the taxable person within [six] months of the due date of the return for the tax period.

(2) A person may claim a refund of any output tax paid in excess of the amount of tax due under this Act for a tax period.

(3) A claim for a refund under subsection (2) must be made in a return within three years after the tax was paid.

(4) Subject to subsection (5), where a person has claimed a refund under subsection (2) and the Commissioner is satisfied that the person has paid to the Commissioner an amount of tax in excess of the amount of tax due, the Commissioner shall refund the excess to the taxable person.

(5) No refund shall be allowed under subsection (4) in relation to a taxable supply that has been made to a person who is not a registered person, unless the Commissioner is satisfied that the amount of the excess tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against an amount owing to the taxable person by the recipient.

(6) The Commissioner shall serve on a person claiming a refund a notice in writing of a decision in respect of the claim.

(7) A person dissatisfied with a decision referred to in subsection (6) may challenge the decision only under Division II of Part VIII.

Interest on Overpayments

50. (1) Where the Commissioner is required to refund an amount of tax to a person as a result of –

- (a) an objection decision under section 35; or
- (b) a decision of the Commissioner of Appeals under section 36; or
- (c) a decision of the High Court under section 37,

the Commissioner shall pay interest [at the ruling Commercial Bank lending rate] on the amount of the refund for the period commencing from the date the person paid the tax refunded and ending on the date the refund is made.

(2) Where the Commissioner fails to make a refund required under section 49(1) within the time specified in that section, the Commissioner shall pay interest [at the ruling Commercial Bank lending rate] on the amount of the refund for the period commencing on the day after the latest date for making the refund and ending on the date the refund is made.

Refund of Tax to Diplomats and Diplomatic and Consular Missions

51. (1) The Minister may, with the concurrence of the [Minister of Foreign Affairs], authorise the granting of a refund of tax paid or borne on a supply to or import by –

- (a) a person to the extent provided under the [Diplomatic Immunities and Privileges Act], an international convention having force of law in Republica, or the recognised principles of international law; or
- (b) a diplomatic or consular mission of a foreign country established in Republica, relating to transactions concluded for the official purposes of such mission; or
- (c) an organization or government to the extent provided under a technical assistance or humanitarian assistance agreement entered into between the Government of Republica and an organization or government of any country.

(2) The refund provided for in subsection (1)(a) is not available to any citizen or permanent resident of Republica as prescribed under [the Immigration Act].

(3) The Minister may authorise any relief under this section on such conditions and subject to such restrictions as the Minister may deem fit.

(4) A claim for a refund of tax under this section is to be made in such form and at such time as the Minister may prescribe and shall be accompanied by proof of payment of tax.

(5) The Minister may by notice apply the terms of this section to a public international organisation and its officials and employees.

DIVISION V RECORDS AND INVESTIGATION POWERS

Records

52. (1) In the Division, “records” means any accounting records, accounts, books, computer-stored information, or any other documents.

(2) Every taxable person or any other person liable for tax under this Act shall maintain in Republica –

- (a) original tax invoices, credit notes, and debit notes received by the person;
and
- (b) a copy of all tax invoices, credit notes, and debit notes issued by the person;
and
- (c) customs documentation relating to imports and exports by the person; and
- (d) any other accounts and records as may be prescribed by the Commissioner.

(3) Records required to be maintained under subsection (2) shall be retained for at least [six] years after the end of the tax period to which they relate.

Access to Records, Computers, and Goods

53. (1) For the purpose of the administration of the Act, any taxation officer who has been authorised by the Commissioner in writing may –

- (a) without any prior notice and at any time, enter any premises or place where records are kept and on such premises search for any records;
- (b) in carrying out any search referred to in paragraph (a) and in any manner, open or cause to be opened or removed and opened, any article in which the officer suspects that any records are kept;
- (c) seize any records which in the officer’s opinion may afford evidence that may be material in determining the liability of any person for any tax payable under this Act;
- (d) retain any records seized under paragraph (c) for as long as they may be required for determining a person’s liability under the Act or for any proceeding under the Act;
- (e) examine and make extracts from, and copies of, any records, and

require from any person an explanation of any entry therein;

(f) where a hard copy or computer disk of computer-stored information is not provided, seize and retain the computer in which the information is stored for as long as is necessary to copy the information required.

(2) A taxation officer who attempts to exercise a power under subsection (1) on behalf of the Commissioner is not entitled to enter or remain on any premises or at any place if, upon being requested by the occupier of the premises or place, the taxation officer does not produce an authorisation in writing from the Commissioner to the effect that the officer is authorised to exercise that power under this section.

(3) The owner, manager, or any other person lawfully on the premises or at the place entered or proposed to be entered under this section is required to provide all reasonable facilities and assistance for the effective exercise of power under this section.

(4) A person whose records or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Commissioner may determine.

(5) A taxation officer exercising a power under subsection (1) may, at any time, request the assistance of any Customs officer or police officer as the taxation officer may consider reasonably necessary and any such Customs officer or police officer shall render such assistance as may be required by the taxation officer.

(6) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of, or access to records.

Notice to Obtain Information or Evidence

54. (1) The Commissioner may, by notice in writing, require any person, whether or not liable for tax under this Act –

(a) to furnish such information of that person or any other person as may be required by the notice; or

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath before the Commissioner or a taxation officer authorised by the Commissioner for this purpose concerning the tax affairs of that person or any other person, and for that purpose the Commissioner or the authorised officer may require the person examined to produce any record or computer in the control of the person.

(2) Where the notice requires the production of any record or computer, it is sufficient if such record or computer is described in the notice with reasonable certainty.

(3) A notice issued under this section shall be served by or at the direction of the Commissioner by a signed copy delivered –

(a) by registered post;

- (b) by hand to the person to whom it is directed; or
- (c) left at the person's last and usual place of abode,

and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

(4) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the furnishing of information or the production of records or documents.

Records not in Republican Language

55. Where any record referred to in sections 52, 53, or 54 is not in the Republican language, the Commissioner may, by notice in writing, require the person keeping the record to provide at that person's expense a translation into the Republican language by a translator approved by the Commissioner for this purpose.

DIVISION VI TAXPAYER IDENTIFICATION NUMBER

Taxpayer Identification Number

56. The Commissioner may require a person to include the taxpayer identification number issued by the Commissioner to that person in any return, notice, or other document prescribed or used for the purposes of this Act.

DIVISION VII OFFENCES AND PENAL TAX

Sub-division I: Offences

Offences Related to Registration

57. A person who fails –

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

commits an offence and is liable on conviction –

- (d) where the failure was made knowingly or recklessly, to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both]; or

- (e) in any other case, to a fine not exceeding [300,000 republicans or to imprisonment for a term not exceeding one year, or both].

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

58. (1) A taxable person who fails to provide a tax invoice as required by section 29(1) or (5), or a credit or debit note as required by section 30 commits an offence and is liable on conviction to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both].

(2) A person who provides a tax invoice otherwise than as provided for in section 29(1) or (5), or a credit or debit note otherwise than as provided for in section 30 commits an offence and is liable on conviction –

- (a) where the failure was made knowingly or recklessly, to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both]; or

- (b) in any other case, to a fine not exceeding [300,000 republicans or to imprisonment for a term not exceeding one year, or both].

Failure to Lodge a Return

59. (1) A person who fails to lodge a return or import declaration as required by this Act commits an offence and is liable on conviction to a fine not exceeding [300,000 republicans or to imprisonment for a term not exceeding one year, or both].

(2) If a person convicted of an offence under subsection (1) fails to furnish the return or import declaration within the period specified by the Commissioner, that person commits an offence and is liable on conviction to a fine of [50,000 republicans for each day during which the failure continues and to imprisonment for three months, or both].

Failure to Comply with Recovery Provisions

60. (1) A person who fails to comply with –

- (a) a notice under section 47; or

- (b) the requirements of section 48,

commits an offence and is liable on conviction to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding one year, or both].

(2) Where a person is convicted of an offence under subsection (1), the Court may, in addition to imposing a fine or prison sentence, order the convicted person to pay to the Commissioner an amount not exceeding the amount which the person failed to pay or set aside as required by section 47 or 48 respectively.

Failure to Maintain Proper Records

61. A person who fails to maintain proper records in accordance with the requirements of this Act commits an offence and is liable on conviction –

(a) where the failure was made knowingly or recklessly, to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both]; or

(b) in any other case, to a fine not exceeding [300,000 republicans or to imprisonment for a term not exceeding one year, or both].

Failure to Provide Reasonable Assistance

62. A person who fails to provide the Commissioner or authorised taxation officer with reasonable facilities and assistance as required by section 53(3) commits an offence and is liable on conviction to a fine not exceeding [300,000 republicans or to imprisonment for a term not exceeding one year, or both].

Failure to Comply with a Notice to Obtain Information or Evidence

63. A person who fails to comply with a notice issued under section 54 commits an offence and is liable on conviction to a fine not exceeding [300,000 republicans or to imprisonment for a term not exceeding one year, or both].

Improper Use of Taxpayer Identification Number

64. (1) A person who knowingly uses a false taxpayer identification number, including the taxpayer identification number of another person, on a return, notice, or other document prescribed or used for the purposes of this Act commits an offence and is liable on conviction to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both].

(2) Subsection (1) does not apply to a person who uses the taxpayer identification number of another person with the permission of that other person on a return, notice, or other document relating to the tax affairs of that other person.

False or Misleading Statements

65. (1) A person who –

(a) makes a statement to a taxation officer that is false or misleading in a material particular; or

(b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

commits an offence and is liable on conviction –

(c) where the statement or omission was made knowingly or recklessly, to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both]; or

(d) in any other case, to a fine not exceeding [300,000 republicans or to imprisonment for a term not exceeding one year, or both].

(2) 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 to which the prosecution relates was false or misleading.

(3) A reference in this section to a statement made to a taxation officer is a reference to a statement made orally, in writing, or in any other form to that officer acting in the performance of the officer's duties under this Act, and includes a statement made –

(a) in any application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act; or

(b) in any information required to be furnished under this Act; or

(c) in any document furnished to a taxation officer otherwise than pursuant to this Act; or

(d) in any answer to a question asked of a person by a taxation officer; or

(e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

Obstructing Taxation Officers

66. A person who obstructs a taxation officer in the performance of the officer's duties under this Act commits an offence and is liable on conviction to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both].

Offences by Taxation Officers

67. A taxation officer employed in carrying out the provisions of this Act who –

(a) directly or indirectly asks for, or takes in connection with any of the officer's duties any payment or reward, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or

(b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty,

commits an offence and is liable on conviction to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding five years, or both], and the Court may, in addition to imposing a fine, order the convicted person to pay to the Commissioner any amount of tax that has not been paid as a result of the officer's wrongdoing and which cannot be recovered from the person liable for the tax.

Offences by Companies

68. (1) Where an offence under this Act has been committed by a company, every person who at the time of the commission of the offence –

(a) was a nominated officer, director, general manager, secretary, or other similar officer of the company; or

(b) was acting or purporting to act in such capacity,

is deemed to have committed the offence.

(2) Subsection (1) does not apply where –

(a) the offence was committed without such person's consent or knowledge; and

(b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

Compounding of Offences

69. (1) Where a person has committed an offence under this Act other than an offence under section 67, the Commissioner may, with the approval of the Minister, at any time prior to the commencement of the court proceedings relating thereto, compound such offence and order the person to pay such sum of money as specified by the Commissioner, not exceeding the amount of the fine prescribed for the offence.

(2) The Commissioner shall compound an offence under this section only if the person concerned admits in writing that the person has committed the offence.

(3) Where the Commissioner compounds an offence under this section, the order referred to in subsection (1) –

(a) shall be in writing and specify the offence committed, the sum of money to be paid, and the due date for the payment, and shall have attached the written admission referred to in subsection (2); and

(b) shall be served on the person who committed the offence; and

(c) shall be final and not subject to any appeal; and

(d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(4) When the Commissioner compounds an offence under this section, the person concerned shall not be liable for prosecution in respect of such offence or for penal tax under section 71, 74, or 75.

Failure to Comply With Secrecy Rules

70. A taxation officer who discloses documents or information in violation of section 78 commits an offence and is liable on conviction to a fine not exceeding [500,000 republicans or to imprisonment for a term not exceeding two years, or both].

Sub-division II: Penal Tax

Penal Tax for Failure to Register

71. A person who fails to apply for registration as required by section 8(1) or 8(4) is liable for penal tax equal to [double] the amount of output tax payable from the time the person is required to apply for registration until either the person files an application for registration with the Commissioner or the Commissioner registers the person under section 9(6).

Penal Tax for Failure to Lodge a Return

72. A person who fails to lodge a return within the time required under this Act is liable for penal tax on the tax payable for the period of the return at the rate of [2%] per month or part of the month the return is outstanding.

Penal Tax in Relation to Records

74. A person who fails to maintain proper records in a tax period in accordance with the requirements of this Act is liable for penal tax equal to [double] the amount of tax payable by the person for the tax period.

Penal Tax for Making False or Misleading Statements

75. (1) Where a person knowingly or recklessly –
- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
 - (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

and the tax properly payable by the person exceeds the tax that would be payable if the person were assessed on the basis that the statement is true, the person is liable for penal tax equal to [double] the amount of the excess.

- (2) Section 65(3) applies in determining whether a person has made a statement to a taxation officer.

Recovery or Remission of Penal Tax

76. (1) Where good cause is shown, in writing, by the person liable for penal tax, the Commissioner may remit in whole or part any penal tax payable.

(2) Subject to subsection (3), the imposition of penal tax is in addition to any fine or prison sentence imposed as a result of a conviction for an offence under sub-division I of Division VII.

(3) No penal tax is payable under section 71, 74, or 75 where the person has been convicted of an offence under section 57, 61, or 65 in respect of the same act or omission.

(4) If penal tax under section 71, 74, or 75 has been paid and the Commissioner institutes a prosecution proceeding under section 57, 61, or 65 in respect of the same act or omission, the Commissioner shall refund the amount of penal tax paid; and that penal tax is not payable unless the prosecution is withdrawn.

(5) Penal tax is treated as tax of the same nature as the output tax to which it relates, is payable in and for the same tax period as that output tax, and is assessed in the same manner as that output tax.

DIVISION VIII ADMINISTRATION

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

77. (1) The Commissioner shall be responsible for carrying out the provisions of this Act.

(2) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act, may be exercised or performed by the Commissioner personally, or by any taxation officer engaged in carrying out the said provisions under the control, direction, or supervision of the Commissioner.

(3) Subject to subsection (4), any decision made and any notice or communication issued or signed by any officer referred to in subsection (2) may be withdrawn or amended by the Commissioner or by the officer concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued, or signed by the Commissioner.

(4) A written decision made by a taxation officer, other than the Commissioner, in the exercise of any discretionary power under the provisions of this Act shall not be withdrawn or amended after the expiration of [two years] from the date of the written notification of such decision or of a notice of assessment giving effect thereto, if all the material facts were known to the officer when the decision was made.

(5) A written decision made by the Commissioner or other taxation officer in the exercise of any discretionary power under the provisions of this Act shall not be withdrawn or amended by the Commissioner if all the material facts were known to the Commissioner at the time the decision was made.

(6) Where the Commissioner, knowing all the material facts at the time, makes a decision that a person is required or not required to register, and the person accepts the Commissioner's decision, and subsequently the Commissioner withdraws the decision, the Commissioner's decision shall govern the liability or non-liability of such person for

payment of tax on any transaction concluded or event which occurred before the withdrawal of the decision.

(7) Where the Commissioner, knowing all the material facts at the time, makes a decision as to the nature of a transaction concluded by a person, and the person accepts the Commissioner's decision, and the Commissioner subsequently withdraws the decision, the Commissioner's decision shall govern the liability or non-liability of that person for payment of tax on any transaction concluded before the withdrawal of the decision..

Secrecy

78. (1) A taxation officer carrying out the provisions of this Act shall not –

(a) disclose to any person or that person's representative any matter in respect of any other person that may in the exercise of the officer's powers or the performance of the officer's duties under the said provisions come to the officer's knowledge; or

(b) permit any person to have access to any records in the possession or custody of the Commissioner,

except in the exercise of the officer's powers or the performance of the officer's duties under this Act or by order of a court.

(2) Nothing in this section shall prevent the Commissioner from disclosing –

(a) any documents or information to –

(i) a person where the disclosure is necessary for the purposes of this Act or any other fiscal law;

(ii) the Auditor-General where the disclosure is necessary for the performance of duties under the [Audit Act];

(iii) the competent authority of the government of another country with which Republica has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under the agreement;

(iv) a person in the [corruption department] where the disclosure is necessary for the performance of duties under the [Corruption Act]; or

(v) a law enforcement agency not described above where the Minister issues written authorization to make disclosures necessary for the enforcement of the laws under the agency's authority; or

(b) any information which does not identify any specific person to any person in the service of the State in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties.

(3) A person receiving documents and information under subsection (2) shall keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure was made.

(4) Any documents or information obtained by the Commissioner in the performance of duties under this Act may be used by the Commissioner for the purposes of any other fiscal law administered by the Minister or Commissioner.

PART IX GENERAL PROVISIONS

Forms and Notices; Authentication of Documents

79. (1) Forms, notices, returns, and other documents prescribed or published by the Commissioner may be in such form as the Commissioner determines for the efficient administration of this Act, and publication of such documents in the [Gazette] is not required.

(2) The Commissioner shall make the documents referred to in subsection (1) available to the public at the Republica [Revenue Authority] and at any other locations, or by mail, as the Commissioner determines.

(3) A notice or other document issued, served, or given by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or authorised taxation officer, is printed, stamped, or written on the document.

Service of Notices and Other Documents

80. Unless otherwise provided in this Act, a notice or other document required or authorised by this Act to be served, is considered sufficiently served –

(a) on a person being an individual other than in a representative capacity, if it is –

(i) personally served on that person; or

(ii) left at the person's usual or last known place of abode, office, or place of business in Republica; or

(iii) sent by registered post to such place of abode, office, or place of business, or to the person's usual or last known address in Republica; or

(b) on any other person, if it is –

(i) personally served on the nominated person; or

(ii) left at the registered office of the person or the person's address for service of notices under this Act; or

(iii) where there is no such office or address, left at or sent by registered post to any office or place of business of the person in Republica.

Nominated Person

81. (1) Every taxable person being a partnership, trust, company, non-resident individual, or resident individual who is outside Republica for more than one tax period shall have a nominated person for tax purposes who is a resident individual.

(2) The name of the nominated person shall be notified to the Commissioner

(a) in the case of a partnership, trust, company, or non-resident individual, in the first tax period in which the partnership, trust, company or individual becomes a taxable person; or

(b) in the case of a resident individual who is outside Republica, in the first tax period in which the individual is outside Republica.

(3) Where a taxable person fails to comply with subsection (2), the nominated person will be the person specified by the Commissioner.

(4) A taxable person may by notice in writing to the Commissioner change the nominated person.

(5) Subject to section 82, the nominated person is responsible for any obligation imposed on the partnership, trust, company, or individual under this Act.

(6) Nothing in this section shall be construed as relieving a taxable person from performing any duties imposed by this Act on the taxable person which the nominated person of the person has failed to perform.

Application of Act to Partnerships and Unincorporated Associations

82. (1) This Act applies to a partnership as if the partnership were a person separate from the partners of the partnership, except that –

(a) obligations that would be imposed on the partnership are instead imposed on each partner, but may be discharged by any of the partners; and

(b) the partners are jointly and severally liable to pay any amount due under this Act that would be payable by the partnership; and

(c) any offence under this Act that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

(2) This Act applies to an unincorporated association as if it were a person separate from the members of the association, but the obligations that would be imposed on the association are imposed instead imposed on each member of the committee of management of the association, but may be discharged by any of those members.

(3) In a prosecution of a person for an offence that the person is taken to have committed under subsection (1)(c) or (2), it is a defence if the person proves that the person –

- (a) did not aid, abet, counsel, or procure the relevant act or omission; and
- (b) was not knowingly concerned in, or party to, the relevant act or omission.

Trustee

83. A person who is a trustee in more than one capacity is treated for the purposes of this Act as a separate person in relation to each of those capacities.

Currency Conversion

84. (1) For the purposes of this Act, all amounts of money are to be expressed in Republicans.

- (2) Where an amount is expressed in a currency other than republicans -
 - (a) in the case of imports, the amount shall be converted at the exchange rate as determined in terms of the [Customs Act]; or
 - (b) in all other cases, the amount shall be converted at the exchange rate applying between the currency and the republican at the time the amount is taken into account under this Act.

Schemes for Obtaining Undue Tax Benefits

85. (1) Notwithstanding anything in this Act, if the Commissioner is satisfied that a scheme has been entered into or carried out where –

- (a) a person has obtained a tax benefit in connection with the scheme in a manner that constitutes a misuse of the provisions of this Act; and
- (b) having regard to the substance of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,

the Commissioner may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Commissioner considers appropriate for the prevention or reduction of the tax benefit.

- (2) In this section –

"scheme" includes any agreement, arrangement, promise, or undertaking whether express or implied and whether or not enforceable, or intended to be enforceable,

by legal proceedings, and any plan, proposal, course of action, or course of conduct; and

"tax benefit" includes –

- (a) a reduction in the liability of any person to pay tax; or
- (b) an increase in the entitlement of a person to a credit or refund; or
- (c) any other avoidance or postponement of liability for the payment of tax.

International Agreements

86. (1) To the extent that the terms of a treaty or other international agreement to which Republica is a party are inconsistent with the provisions of this Act (apart from section 85), the terms of the treaty or international agreement prevail over the provisions of this Act.

(2) In this section, "international agreement" means an agreement between Republica and a foreign government or a public international organisation.

Regulations and Amendment of Schedules

87. (1) The Minister may make regulations for any matter which under this Act is to be prescribed and for the better carrying into effect of the purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for –

- (a) the amendment of the Schedules to this Act; or
- (b) the amendment of any monetary amount set out in this Act; or
- (c) the amendment of the rate of penal tax imposed under section 72.

(2) The regulations may –

- (a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
- (b) prescribe specific offences for breach of the regulations.

(3) If the regulations so provide, they may take effect from the date on which this Act comes into effect or a later date, regardless of whether they are published in the [Gazette] after a notice of this Act is published in the [Gazette].

[Sections 88 and 89 assume that the value added tax replaces a sales tax]

Repeal of Laws and Interpretation

88. (1) The Acts and Orders specified in Schedule V to this Act [and any regulations made thereunder], referred to as the "repealed legislation", are hereby repealed.

(2) No reference to sales tax in any Act, other than this Act, shall be treated as a reference to tax under this Act.

Transitional

89. (1) The repealed legislation, including the rules governing the levy, payment, assessment, reporting, and recovery of those taxes, continue to apply to a supply or import taking place prior to the date on which this Act comes into operation pursuant to section 1.

(2) All appointments made under the repealed legislation and subsisting at the date of commencement of this Act are treated as appointments made under this Act; and an oath of secrecy taken under the repealed legislation is treated as having been taken under this Act.

(3) All forms and documents used in relation to the repealed legislation may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.

(4) Notwithstanding section 28(3), in calculating the amount of tax payable by a taxable, registered person in respect of the first tax period after the tax becomes effective, the taxable person may claim as an amount creditable under section 28, an amount equal to the sales tax credit calculated in accordance with subsection (5) and creditable as provided under subsection (6).

(5) For the purposes of subsection (4), where a taxable person held, at the end of the last business day prior to the beginning of the first tax period after the tax becomes effective, qualifying goods being goods acquired not more than [four months] before the tax becomes effective, and the Commissioner is satisfied that sales tax has been paid on the acquisition or import of those goods, the amount of the sales tax credit shall be the amount of such taxes paid on such goods, but with respect to each item qualifying for the credit, the sales tax shall not exceed the amount of tax which would have been payable had the goods been subject to tax chargeable under this Act.

(6) If, in any tax period, a taxable person has sales tax creditable under subsection (4), the amount creditable is treated as input tax creditable under section 28.

(7) No credit shall be allowed under subsection (4) for any sales tax paid in respect of the acquisition of any goods if VAT imposed on a supply in acquisition of those goods after the effective date of this Act would not qualify for the section 28 input tax credit.

(8) Any person wishing to claim a credit under subsection (4) for sales tax paid on qualifying goods on hand on the date of the entry into operation of this Act shall register as of such date.

(9) A person claiming a credit under subsection (4) shall submit with the return

an inventory of all qualifying goods on hand at the beginning of the first day on which this Act comes into operation, supported by documentary evidence of the payment of sales tax.

(10) In this section,
"sales tax" means sales tax imposed under the [Sales Tax Act]; and
"qualifying goods" means any stock held for sale in the ordinary course
of business.

SCHEDULES

SCHEDULE I (section 2)

Public International Organisations

SCHEDULE II (section 19)

Exempt Supplies

1. To the extent provided in regulations issued by the Minister, the following supplies are specified as exempt supplies for the purposes of section 19 –

- (a) the supply of unprocessed foodstuffs, including agricultural livestock;
- (b) the supply of postage stamps;
- (c) the supply of financial services;
- (d) the supply of insurance services;
- (e) the supply of unimproved land;
- (f) a supply by way of lease or letting of immovable property, other than –
 - (i) a lease or letting of commercial premises; or
 - (ii) a lease or letting of hotel, holiday, or other short-term accommodation; or
 - (iii) a lease or letting for periods not exceeding two months; or
 - (iv) a lease or letting for parking or storing cars or other vehicles;
- (g) the supply of education services;
- (h) the supply of medical, dental, and nursing services;
- (i) the supply of social welfare services;
- (j) the supply of betting, lotteries, and games of chance;
- (k) the supply of goods as part of the transfer of a business or part of a business as a going concern by a taxable person to another taxable person;

- (l) the supply of burial and cremation services;
- (m) the supply of precious metals and other valuables to the Bank of Republica for the [State Treasury];
- (n) the supply of passenger transportation services.

2. In this Schedule –

"education services" means education provided by –

- (a) a pre-primary, primary, or secondary school; or
- (b) a technical college or university; or
- (c) an institution established for the promotion of adult education, vocational training, technical education, or the education or training of physically or mentally handicapped persons;

"financial services" means –

- (a) granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor; or
- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring; or
- (c) transactions relating to financial derivatives, forward contracts, options, and similar arrangements; or
- (d) transactions relating to shares, stocks, bonds, and other securities, other than custody services; or
- (e) management of investment funds;

"passenger transportation services" means the transportation of fare-paying passengers and their personal effects by road, rail, water, or air; and

"social welfare services" means –

- (a) care for the elderly, sick, and disabled, including care in a hospital, aged person's home, and similar establishments; or
- (b) care and welfare services provided for the benefit of minors.

**SCHEDULE III
(section 24(3))**

Zero-rated Supplies

1. The following supplies are specified for the purposes of section 24(3) –
 - (a) a supply of goods or services where the goods or services are exported from Republica as part of the supply; and
 - (b) the supply of goods or services in connection with the international transport of goods or passengers.
2. For the purposes of clause 1(a), goods or services are treated as exported from Republica if –
 - (a) in the case of goods, the goods are delivered to, or made available at, an address outside Republica as evidenced by documentary proof as is acceptable to the Commissioner; or
 - (b) in the case of services, the services were supplied for use or consumption outside Republica as evidenced by documentary proof as is acceptable to the Commissioner.
3. For the purposes of clause (1)(b), international transport of goods or passengers occurs where the goods or passengers are transported by road, rail, water, or air –
 - (a) from a place outside Republica to another place outside Republica where the transport or part of the transport is across the territory of Republica; or
 - (b) from a place outside Republica to a place in Republica; or
 - (c) from a place in Republica to a place outside Republica.

**SCHEDULE IV
(sections 29 and 30)**

Tax Invoices, Credit Notes, and Debit Notes

1. A tax invoice as required by section 29 shall, unless the Commissioner provides otherwise, contain the following particulars :
 - (a) the words "tax invoice" written in a prominent place; and
 - (b) the commercial name, address, place of business, and the taxpayer identification number of the taxable person making the supply; and

- (c) the commercial name, address, place of business and, for a supply to a registered recipient, the taxpayer identification number of the recipient of the taxable supply; and
- (d) the individualised serial number and the date on which the tax invoice is issued; and
- (e) a description of the goods or services supplied,; and
- (f) the quantity or volume of the goods or services supplied; and
- (g) the total amount of the tax charged, the consideration for the supply exclusive of tax and the consideration inclusive of tax.

2. A credit note as required by section 30(1) shall, unless the Commissioner provides otherwise, contain the following particulars :

- (a) the words "credit note" in a prominent place; and
- (b) the commercial name, address, place of business, and the taxpayer identification number of the taxable person making the supply; and
- (c) the commercial name, address, place of business, and the taxpayer identification number of the recipient of the taxable supply; and
- (d) the date on which the credit note was issued; and
- (e) the taxable value of the supply shown on the tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the tax charged that relates to that difference;
- (f) a brief explanation of the circumstances giving rise to the issuing of the credit note; and
- (g) information sufficient to identify the taxable supply to which the credit note relates.

3. A debit note as required by section 30(2) shall, unless the Commissioner provides otherwise, contain the following particulars :

- (a) the words "debit note" in a prominent place; and
- (b) the commercial name, address, place of business, and the taxpayer identification number of the taxable person making the supply; and
- (c) the commercial name, address, place of business, and the taxpayer identification number of the recipient of the taxable supply; and
- (d) the date on which the debit note was issued; and

- (e) the taxable value of the supply shown on the tax invoice, the correct amount of the taxable value of the supply, the difference between those two amounts, and the tax charged that relates to that difference;
- (f) a brief explanation of the circumstances giving rise to the issuing of the debit note; and
- (g) information sufficient to identify the taxable supply to which the debit note relates.

SCHEDULE V
(Section 88)

Repeal of Laws

[The Sales Tax Act]