

REPUBLIC OF VANUATU

Assent **29 December 2000**

Commencement **29 January 2001**

VALUE ADDED TAX (AMENDMENT) ACT NO. 45 OF 2000

Arrangement of Sections

1. Amendment
2. Commencement.

REPUBLIC OF VANUATU

Assent **29 December 2000**
Commencement **29 January 2001**

VALUE ADDED TAX (AMENDMENT) ACT NO. 45 OF 2000

An Act to amend the Value Added Tax Act No. 12 of 1998

Be it enacted by the President and Parliament as follows-

1 Amendments

The Value Added Tax Act No. 12 of 1998 is amended as set out in the Schedule.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it is published in the Gazette.
- (2) Parts 1, 7, 9 and 14 of the Schedule are taken to have commenced on 1 August 1998.
- (3) Part 2 of the Schedule commences on 1 January 2001.

Schedule

Amendments of the Value Added Tax Act No. 12 of 1998

Part 1 – Amendments relating to certain services performed for non-residents

1 Clause 5 of the Third Schedule

Repeal the clause, substitute

“Any supply of services to a person who is not a resident of Vanuatu and who is outside Vanuatu at the time the services are performed.

However, this clause does not apply to services if:

- (a) the services are supplied directly in connection with tangible property situated in Vanuatu at the time the services are performed; or
- (b) another person who is not a registered person receives the performance of those services in Vanuatu.”.

Part 2 – Amendment relating to State exemption

1 Clause 8 of the First Schedule

Delete “31 December 2000”, substitute “31 December 2001”.

Part 3 – Amendments relating to going concerns

1 Section 2

Insert

““Going concern”, in relation to a supplier and a recipient, means the situation where:

- (a) there is a supply of a taxable activity, or part of a taxable activity where that part is capable of separate operation; and
- (b) all of the goods and services that are necessary for the continued operation of that taxable activity or that part of a taxable activity are supplied to the recipient; and
- (c) the supplier carries on, or is to carry on, that taxable activity or that part of a taxable activity up to the time of its transfer to the recipient.

“Recipient”, in relation to any supply of goods and services, means the person receiving the supply.

“Supplier”, in relation to any supply of goods and services, means the person making the supply.”.

2 At the end of the Third Schedule

Add

“9 The supply is:

- (a) a supply to a registered person of a taxable activity, or part of a taxable activity, that is, or is to be, transferred from the supplier to the recipient as a going concern; and
- (b) agreed by the supplier and the recipient, in writing, to be the supply of a going concern.”.

Part 4 – Amendments relating to employees

1 At the end of section 3

Add

“(11) Subject to subsection (12), if goods or services acquired or produced by a registered person in the course of carrying on a taxable activity are supplied to an employee of the registered person for a consideration that is less than the cost of those goods or services to the registered person, the goods or services are to be treated as if supplied by the registered person in the course of the registered person’s taxable activity.

(12) Subsection (11) does not apply in respect of any goods or services if:

- (a) the goods or services are consumed as part of and during the hours of the employee’s employment duties; or
- (b) the Director considers that the supply of those goods or services provides a direct benefit to the taxable activity carried on by the registered person.”

2 Subsection 6(4)

After “3(10)”, insert “ or 3(11)”.

Part 5 – Amendments relating to Director’s powers

1 At the end of subsection 57(1)

Add “, and may remove and retain any such records for this purpose”.

Part 6 – Amendments relating to international companies

1 After paragraph 4(3)(a)

Insert

“(ab) any activity carried on by a company registered under the International Companies Act No. 32 of 1992; or”.

Part 7 – Amendments relating to time of supply

1 Paragraph 5(1)(c)

Repeal the paragraph.

Part 8 – Amendments relating to invoices

1 Section 2

Insert

““Invoice” means a document notifying an obligation to make payment.”.

2 Section 2 (definition of “Records”)

After “tax invoices”, insert “invoices,”.

3 Paragraph 5(1)(a)

Delete “tax”.

4 Subsection 5(6)

Delete “tax”.

5 Subsection 5(8)

Delete “tax”.

Part 9 – Amendments relating to assessments

1 Subsection 24(6)

Repeal the subsection, substitute

“(6) If:

(a) an assessment is not made until, or increased, after the due date of payment of the tax; and

(b) the Director is satisfied that the person has not been negligent in making due and complete returns;

the Director must set a new due date for payment being one calendar month after the date of the assessment.”.

Part 10 – Amendments relating to educational institutions

1 Clause 6 of the Third Schedule

Repeal the clause, substitute

- “(6) Any supply of goods or services supplied directly to an approved educational institution if:
- (a) the goods or services are for use by that educational institution in the provision of:
 - (i) educational services; or
 - (ii) accommodation or meals to students and teaching staff where payment to the educational institution for those goods or services forms part of the fee paid for the educational services in the case of students and part of the remuneration for teaching services in the case of staff members; and
 - (b) the approved educational institution produces a valid approval certificate to the supplier of the goods or services at the time the supply is made.”.

2 Clause 10 of the Third Schedule

Insert

““Approved Educational Institution” means an educational institution that:

- (a) provides education that is exempt under clause 6 of the First Schedule; and
- (b) is the holder of a valid approval certificate.

“Approval Certificate” means a certificate issued by the Director that includes the following information:

- (a) the name of the educational institution;
- (b) the certificate number;
- (c) the period for which the certificate is valid.”.

Part 11 – Amendments relating to value of supply

1 Subsection 6(4)

Delete “on cessation of registration”.

Part 12 – Amendments relating to associated persons and relatives

1 Section 2

Insert:

““Associated person” means:

- (a) any 2 persons who are relatives; or
- (b) a partnership and any person where that person is a partner in the partnership; or
- (c) a partnership and any person, where that person and any partner in that partnership are associated persons; or
- (d) a company and any shareholder of that company; or
- (e) any 2 companies where any group of persons has voting interests in each of those companies totalling in aggregate 50% or more; or
- (f) a trustee of a trust and a trustee of another trust, if the same person is a settlor of both trusts; or
- (g) any 2 persons one of whom is the trustee of a trust under which the other has benefited or is eligible to benefit, except where, in relation to a supply of goods and services, -
 - (i) the trustee is a charitable or non-profit body with wholly or principally charitable, benevolent, philanthropic, or cultural purposes; and
 - (ii) the supply is made in the carrying out of those purposes”.

“Relative”, in relation to any person, means any other person connected with the first-mentioned person by blood relationship, marriage, or adoption; and includes a trustee for a relative; and for the purposes of this definition:

- (a) persons are connected by blood relationship if within the fourth degree of relationship; and
- (b) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other; and
- (c) persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other”.

- 2 Section 2 (definition of “Open market value”)**
Delete “related (by blood, marriage or ownership)”, substitute “associated persons”.
- 3 Subsection 6(2)**
Delete “related (by blood, marriage or ownership)”, substitute “associated persons”.
- 4 Subparagraph 19(7)(c)(i)**
Repeal the subparagraph, substitute:
“(i) The supplier of the secondhand goods and the registered person are associated persons; and”.
- 5 Paragraph 56(4)(a)**
Delete “persons related to that person(whether by blood, marriage or ownership)”, substitute “an associated person”.

Part 13 – Amendments relating to payment dates

- 1 Subsection 16(1)**
Repeal the subsection, substitute
“(1) Every registered person will furnish to the Director, in the prescribed form, a tax return for each taxable period showing the amount of tax payable in respect of the taxable period as calculated under section 19:
- (a) for any taxable period ending on 30 November, by the 5th day of January following the taxable period, unless that day is not a working day in which case the return must be furnished by the working day which immediately succeeds the 5th day; and
 - (b) for any other taxable period by the 27th day of the month following the taxable period, unless that day is not a working day in which case the return must be furnished by the working day which immediately succeeds the 27th day.”.

Part 14 – Amendments relation to company groups

- 1 After paragraph 45(8)(e)**
Insert
“(ea) all members of the group must ensure that they have the same taxable period pursuant to section 15 and the same accounting period pursuant to section 17; and “

Part 15 – Amendments to correct typographical errors

1 Subsection 3(10)

Delete “supplied” (first occurring), substitute “acquired”.

2 Subsection 6(6)

Delete “(5)”, substitute “(6)”.