

**SAMOA**

## Arrangement of Provisions

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**1998, No. 18**

**AN ACT to amend the Value Added Goods and Services Tax Act 1992/1993.** *(19 June 1998)*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:-

**1. Short title and commencement-**(1) This Act may be cited as the Value Added Goods and Services Tax Amendment Act 1998 and shall form part of and be read together with the Value Added Goods and Services Tax 1992/1993 (hereinafter called the principal Act).

(2) This Act shall come into force on the date that it is assented to by the Head of State.

**2. Interpretation** - Section 2 of the principal Act is amended by -

- (a) Deleting the definitions of “Domestic goods and services”, “Licence to occupy” and “Service occupancy agreement”; and
- (b) By inserting in the definition of “unconditional gift” after the words “means a payment”, the words “other than a government grant or subsidy”; and
- (c) By adding to the definition of “Associated person” the following:

“(g) Any two or more persons who are partners within the meaning of the Partnership Act 1975 or persons associated with a partnership”.

**3. Meaning of term “supply”** - Section 5(4) of the principal Act is amended by -

- (a) Deleting from paragraph (a) the words “section 6(3) (c) and section 6(3) (d)” and replacing them with the words “section 6(3) (d) and section 6(3) (e)”;
- (b) Adding to the proviso to the subsection, the words “or any stamp duty under the Stamp Duty Act, or any petroleum levy under the Petroleum Act, or any foreign exchange levy under the Foreign Exchange levy Act”.

**4. Time of Supply (Lotteries)** - Section 10 of the principal Act is amended by -

- (a) Adding subsection (6) as follows:

“(6) Notwithstanding anything in subsection (1), where the supply is deemed to be made pursuant to section 5(8) of this Act, the supply shall be deemed to take place on the date on which the first drawing or determination of a result of the game of chance or lottery commences”; and

(b) Adding subsection (7) as follows:

“(7) Where the supply is for a consideration in money received by the supplier by means of any machine, meter or other device operated by a coin or token, the supply shall be deemed to take place at the time any such coin or token is taken from that machine, meter or other device by or on behalf of the supplier.”

**5. Value of Supply** - Section 11 of the principal Act is amended by -

- (a) Deleting subsection (5); and
- (b) Adding subsection (9) as follows:

“(9) Where a supply of services is deemed to be made under section 5(8) of this Act, the consideration in money for the supply shall be deemed to be such portion of the amount in money a person pays to participate in a game of chance or lottery, as represents the total proceeds (after deducting the amount of all prizes paid and payable in money) in respect of that game of chance or lottery”.

**6. Zero Rating (Water)** - Section 12 of the principal Act is amended by adding to subsection (6) the following subparagraph -

- “(o) The supply of water by the Water Authority under the Water Authority Act 1993/1994 but not including the provision of services by the Water Authority under private contract such as the drilling of bores or the installation of pipes.”

**7. VAGST on Imports** - Section 13 of the principal Act is amended as follows -

- (a) By deleting from subsection (1) the words “Provided that nothing in subsection (1) of this section shall apply to goods or services imported under international aid”, and replacing them with the following:

“Provided that the provisions of this subsection shall not apply:

- (i) where goods or services are imported under an international aid project subject to a Memorandum of Understanding, where the terms of the Memorandum of Understanding are inconsistent with this subsection; and
- (ii) where the Minister makes a determination to exempt from tax, goods and services imported under any other international aid project or which are donated from overseas for the purposes of aid”; and
- (b) By deleting from subsection(2) (a) the semi-colon and the word “and” appearing at the end of that paragraph; and
- (c) By deleting from subsection (4) (a) (ii) the words “section 11” and replacing them with the words “section 12”.

**8. Exempt supplies** - Section 15 of the principal Act is amended as follows -

- (a) By deleting paragraph (f); and
- (b) By deleting the words of paragraph (d) and replacing them with the following:

“(d) The supply to passengers of transport services by buses and taxis, but excluding arrangements where buses or taxis are hired to the exclusive use

of a customer or customers for a determined period of time or for an agreed journey”; and

(c) By adding paragraph (i) as follows:

“(i) Where an agreement or memorandum of understanding relating to an overseas funded aid project for the benefit of the Government or a public authority expressly provides that goods and services used in relation to the project shall be exempt:

Provided that no exemption shall be given in relation to goods and services supplied to or by subcontractors or other suppliers to the contractor engaged in relation to any such project.”

**9. Accounting basis** - Section 20 of the principal Act is amended by deleting the words therefrom and replacing them with the following:

“Registered persons shall account for tax due under this Act on a payments basis, but the Commissioner may, in his absolute discretion, approve the use of an accruals or invoice basis by any registered person.”

**10. Calculation of Tax Payable** - Section 21 of the principal Act is amended as follows -

- (a) By adding to paragraph (a) of subsection (3) after the words “amount of input”, the word “tax”; and
- (b) By deleting from paragraph (a) of subsection (3) the word “taxably” and replacing it with the word “taxable”.

**11. Tax Invoices** - Section 25 of the principal Act is amended as follows -

- (a) By adding subsection (10) as follows:

“(10) Nothing in this section requires the provision of a tax invoice in respect of a transaction where the price is less than \$20, or such other sum as may be later prescribed”; and

(b) By adding subsection (11) as follows:

“(11) Where any amount of tax charged is required to be shown on any tax invoice and that amount consists of any number of tala and sene together with any fraction or part of a sene, that fraction of that sene -

- (a) If less than or equal to half that sene, may be disregarded for the purposes of this section; and
- (b) If in excess of half of that sene, shall be deemed for the purposes of this section to be an amount equal to one sene.”

**12. Objections** - Section 32 of the principal Act is amended as follows -

- (a) By deleting paragraph (a) from subsection (1); and
- (b) By deleting from paragraph (c) of subsection (1) the figures “25”, and replacing them with the figures “26”.

**13. Recovery of tax** - Section 40(5) of the principal Act is amended by adding the words “and to pay every sum so deducted to the Commissioner to the credit of the registered person within such time as may be specified in the notice”.

**14. Effect of Imposition or alteration of tax** - Section 73 of the principal Act is amended by adding subsection (4) as follows:

“(4) Where any alteration in the law takes place so as to operate retrospectively from any date, this section shall also apply retrospectively in the same manner and from the same date, and any money paid by a recipient of the taxable supply to the supplier in excess of the amount which by virtue of the

application of this section is properly payable, shall be recoverable by the recipient, notwithstanding that the over payment may have arisen due to a mistake of law”.

**15. Adjustments to tax payable following change in rate of tax** - Section 75 of the principal Act is amended by inserting subsection (4) as follows:

“For the purposes of this section, the Commissioner may issue guidelines either to apply generally or in relation to a specific registered person, for the purpose of assisting to determine whether a supply is a “qualifying supply” and any registered person who complies with the guide-lines issued shall not contravene this Act in that regard”.

**16. Adjustments to tax payable in relation to credit and debit notes following change in rate of tax** - The principal Act is amended by adding section 75A as follows:

“(75A) Adjustments to tax payable in relation to credit and debit notes following change in rate of tax-(1) Where -

- (a) There is a change in the rate of tax imposed by section 9 of this Act; and
- (b) Any registered person (being a supplier) has made an adjustment pursuant to section 75 of this Act in respect of any qualifying supply made by that person; and
- (c) That registered person subsequently issues a debit note or credit note (in accordance with section 26 of this Act) in respect of a qualifying supply made for which payment has not been received as at the time of the issue of that debit note or credit note,

that registered person shall, in the taxable period in which the debit note or credit note is issued, adjust the amount of the tax payable under section 21 of this Act by an amount calculated in accordance with this section.

(2) Where -

- (a) There is a change in the rate of tax imposed by section 9 of this Act; and
- (b) Any registered person (being a recipient) has made an adjustment pursuant to section 75 of this Act in respect of any qualifying supply received by that person; and
- (c) That registered person has subsequently, in respect of any qualifying supply -
  - (i) been issued with a debit note or credit note; or
  - (ii) received written or other notice, or otherwise knows that any tax invoice held in incorrect, for which payment has not been made as at the time of the receipt of that debit note or credit note, or other notice, or knowledge,

that registered person shall, in the taxable period in which the debit note or credit note or other notice or knowledge was received, adjust the amount of tax payable under section 21 of this Act by an amount calculated in accordance with this section.

(3) The adjustment required by this section shall be calculated as follows -

- (a) Subtract from the amount of consideration originally payable to, or, as the case may be, by that registered person the amount of consideration that is now payable to, or, as the case may be, by that registered person;
- (b) Multiply the resulting total by an amount equal to the old tax fraction subtracted from the new tax fraction (as respectively calculated in accordance with section 2 of this Act immediately before and immediately after the new rate of tax comes into force).

(4) For the purposes of subsection (1) of this section, the amount of the adjustment pursuant to this section shall be deemed to be -

- (a) Output tax where the amount of the adjustment is a positive amount; and



- (b) Input tax where the amount of the adjustment is a negative amount.
- (5) For the purposes of subsection (2) of this section, the amount of the adjustment pursuant to this section shall be deemed to be -
- (a) Output tax where the amount of the adjustment is a negative amount; and
  - (b) Input tax where the amount of the adjustment is a positive amount.

**17. Liability to register** - Section 47 of the principal Act is amended as follows -

- (a) By inserting subsection (2A) as follows:

“(2A) Notwithstanding subsections (1) and (2) of this section, every person who satisfies the Commissioner that, on or after the 1st day of January 1994 -

- (i) that person is carrying on any taxable activity; or
  - (ii) that person intends to carry on any taxable activity from a specified date;
  - (iii) that the goods and services made or provided, or to be made or provided, shall be more than 50 percent zero-rated under this Act,
- may apply to the Commissioner in a form approved by him for registration under this Act, and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person”; and

- (b) By inserting subsection (2AB) as follows:

“(2AB) Where any person has made application for registration under subsections (2) or (2A) and the Commissioner is satisfied that that person should in his discretion to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from such date as the Commissioner may determine”; and

(c) By adding subsection (5) as follows:

“(5) The provisions of this Act relating to the determination of the value of any supply of goods and services shall apply for the purposes of this section, with the modification that no regard shall be had to any tax charged in respect of any such supply”.

**18. De-registration if lower than threshold** - Section 48 of the principal Act is amended as follows -

(a) By adding subsection (5) as follows:

“(5) Subject to this Act, every registered person who carries on any taxable activity shall cease to be liable to be registered where at any time the Commissioner is satisfied that the value of that person’s taxable supplies in the period of 12 months then beginning will be not more than the amount specified by Order declared under section 47 (1)”;

(b) By adding subsection (6) as follows:

“(6) Every person who, by virtue of subsection (5) of this section, ceases to be liable to be registered may request the Commissioner in writing to cancel that person’s registration, and if the Commissioner is at any time satisfied, as mentioned in subsection (5) of this section, the Commissioner shall cancel that person’s registration with effect from the last day of the taxable period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify that person of the date on which the cancellation of the registration takes effect”;

(c) By adding subsection (7) as follows:

“(7) Notwithstanding any other provision of this section, where the Commissioner is satisfied as mentioned in subsection (5), he may cancel the person’s registration, such cancellation to be effective from a date as determined by the Commissioner”.