

## VALUE-ADDED TAX ACT 89 OF 1991

[ASSENTED TO 5 JUNE 1991]

[DATE OF COMMENCEMENT: 30 SEPTEMBER 1991]

(Unless otherwise indicated)

*(English text signed by the State President)*

### **as amended by**

Taxation Laws Amendment Act 136 of 1991  
Government Notice 2695 of 8 November 1991  
Taxation Laws Amendment Act 136 of 1992  
Government Notice 2244 of 31 July 1992  
Value-Added Tax Amendment Act 61 of 1993  
Taxation Laws Amendment Act 97 of 1993  
Revenue Laws Amendment Act 140 of 1993  
Taxation Laws Amendment Act 20 of 1994  
Taxation Laws Amendment Act 37 van 1996  
Revenue Laws Amendment Act 46 of 1996  
Taxation Laws Amendment Act 27 of 1997  
South African Revenue Service Act 34 of 1997  
Taxation Laws Amendment Act 30 of 1998  
Government Notice 1505 of 20 November 1998  
Revenue Laws Amendment Act 53 of 1999  
Government Notice 184 of 25 February 2000  
Government Notice 541 of 22 April 1999  
Government Notice 1065 of 1 September 1999  
Taxation Laws Amendment Act 30 of 2000  
Revenue Laws Amendment Act 59 of 2000  
Taxation Laws Amendment Act 5 of 2001  
Revenue Laws Amendment Act 19 of 2001  
Second Revenue Laws Amendment Act 60 of 2001  
Taxation Laws Amendment Act 30 of 2002  
Revenue Laws Amendment Act 74 of 2002  
Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003  
Revenue Laws Amendment Act 45 of 2003  
Taxation Laws Amendment Act 16 of 2004  
Revenue Laws Amendment Act 32 of 2004  
Second Revenue Laws Amendment Act 34 of 2004  
Taxation Laws Amendment Act 9 of 2005  
Taxation Laws Second Amendment Act 10 of 2005  
Revenue Laws Amendment Act 31 of 2005  
Revenue Laws Second Amendment Act 32 of 2005  
National Credit Act 34 of 2005

### **Regulations under this Act**

DETERMINATION OF WELFARE ACTIVITIES FOR PURPOSES OF THE DEFINITION OF "WELFARE ORGANISATION" IN SECTION 1 OF THE VALUE ADDED TAX, ACT, 1991

PROCEDURES FOR SUBMITTING RETURNS IN ELECTRONIC FORMAT AND REQUIREMENTS FOR ELECTRONIC SIGNATURES

REGULATIONS TO CALCULATE THE TAX PAYABLE IN TERMS OF THE SMALL RETAILERS VAT PACKAGE

### **ACT**

**To provide for taxation in respect of the supply of goods and services and the importation of goods; to amend the Transfer Duty Act, 1949, so as to provide for an exemption; to amend the Stamp Duties Act, 1968, so as to provide for an exemption from stamp duty and to discontinue the levying of certain stamp duties; to repeal the Sales Tax Act, 1978; and to provide for matters connected therewith.**

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Cases

### **ARRANGEMENT OF SECTIONS**

*Section*

- 1 Definitions
- 2 Financial services
- 3 Determination of 'open market value'

PART I  
ADMINISTRATION

- 4 Act to be administered by Commissioner
- 5 Exercise of powers and performance of duties
- 6 Secrecy

PART II  
VALUE-ADDED TAX

- 7 Imposition of value-added tax
- 8 Certain supplies of goods or services deemed to be made or not made
- 9 Time of supply
- 10 Value of supply of goods or services
- 11 Zero rating
- 12 Exempt supplies
- 13 Collection of tax on importation of goods, determination of value thereof and exemptions from tax
- 14 Collection of value-added tax on imported services, determination of value thereof and exemptions from tax
- 15 Accounting basis
- 16 Calculation of tax payable
- 17 Permissible deductions in respect of input tax
- 18 Adjustments
- 18A Adjustments in consequence of acquisition of going concern wholly or partly for purposes other than making taxable supplies  
[S. 18A inserted by s. 24 of Act 136 of 1992.]
- 19 Goods or services acquired before incorporation
- 20 Tax invoices
- 21 Credit and debit notes
- 22 Irrecoverable debts

PART III  
REGISTRATION

- 23 Registration of persons making supplies in the course of enterprises
- 24 Cancellation of registration
- 25 Vendor to notify change of status
- 26 Liabilities not affected by person ceasing to be vendor

PART IV  
RETURNS, PAYMENTS AND ASSESSMENTS

- 27 Tax period
- 28 Returns and payments of tax
- 29 Special returns
- 30 Other returns
- 31 Assessments
- 31A Reduced assessments  
[S. 31A inserted by s. 181 of Act 45 of 2003.]
- 31B Withdrawal of assessments  
[S. 31B inserted by s. 181 of Act 45 of 2003.]

PART V  
OBJECTIONS AND APPEALS

- 32 Objections to certain decisions or assessments
- 33 Appeals to tax court  
[S. 33 amended by s. 160 (a) of Act 60 of 2001.]
- 33A Appeals to specially constituted board  
[S. 33A inserted by s. 36 (1) of Act 136 of 1991.]
- 34 Appeals against decisions of tax court  
[S. 34 amended by s. 162 (a) of Act 60 of 2001.]

- 35 Members of tax court not disqualified from adjudicating  
[S. 35 amended by s. 163 (a) of Act 60 of 2001.]  
36 Payment of tax pending appeal  
37 Burden of proof

## PART VI

## PAYMENT, RECOVERY AND REFUND OF TAX

- 38 Manner in which tax shall be paid  
39 Penalty and interest for failure to pay tax when due  
40 Recovery of tax  
40A Liability of public authorities and certain public entities for tax and limitation of refunds  
[S. 40A inserted by s. 23 of Act 9 of 2005.]  
41 Liability for tax in respect of certain past supplies or importations  
42 Evidence as to assessments  
43 Security for tax  
44 Refunds  
45 Interest on delayed refunds  
45A Calculation of interest payable under this Act  
[S. 45A inserted by s. 5 of Act 61 of 1993.]

## PART VII

## REPRESENTATIVE VENDORS

- 46 Persons acting in a representative capacity  
47 Power to appoint agent  
48 Liability of representative vendors  
49 Remedies of Commissioner against agent or trustee

## PART VIII

## SPECIAL PROVISIONS

- 50 Separate enterprises, branches and divisions  
50A Separate persons carrying on same enterprise under certain circumstances deemed to be single person  
[S. 50A inserted by s. 44 of Act 27 of 1997.]  
51 Bodies of persons, corporate or unincorporate (other than companies)  
52 Pooling arrangements  
53 Death or insolvency of vendor  
54 Agents and auctioneers

## PART IX

## COMPLIANCE

- 55 Records  
56 .....  
[S. 56 repealed by s. 23 of Act 46 of 1996.]  
57 General provisions with regard to information, documents or things  
[S. 57 substituted by s. 24 of Act 46 of 1996.]  
57A Furnishing of information, documents or things by any person  
[S. 57A inserted by s. 24 of Act 46 of 1996.]  
57B Obtaining of information, documents or things at certain premises  
[S. 57B inserted by s. 24 of Act 46 of 1996.]  
57C Inquiry  
[S. 57C inserted by s. 24 of Act 46 of 1996.]  
57D Search and Seizure  
[S. 57A inserted by s. 24 of Act 46 of 1996.]  
58 Offences  
59 Offences and penalties in regard to tax evasion  
60 Additional tax in case of evasion  
61 Recovery of tax from recipient  
62 Publication of names of tax offenders  
63 Reporting of unprofessional conduct

## PART X

## MISCELLANEOUS

- 64  
[S. 64 substituted by s. 36 of Act 136 of 1992.]

|     |   |
|-----|---|
| 65  | Prices advertised or quoted to include tax  |
| 66  | Rounding-off of the tax<br>[S. 66 substituted by s. 175 of Act 60 of 2001.]   |
| 67  | Contract price or consideration may be varied according to rate of value-added tax  |
| 67A | Application of increased or reduced tax rate<br>[S. 67A inserted by s. 6 of Act 61 of 1993.]  |
| 68  | Tax relief allowable to certain diplomats and diplomatic and consular missions  |
| 69  | .....<br>[S. 69 repealed by s. 27 of Act 20 of 1994.]   |
| 70  | Jurisdiction of courts  |
| 71  | Authentication and service of documents   |
| 72  | Arrangements and directions to overcome difficulties, anomalies or incongruities<br>[S. 72 substituted by s. 28 of Act 20 of 1994.] |
| 73  | Schemes for obtaining undue tax benefits  |
| 74  | Schedules and Regulations   |
| 75  | Tax agreements<br>[S. 75 substituted by s. 29 of Act 20 of 1994.]   |
| 76  | .....<br>[S. 76 repealed by s. 30 of Act 20 of 1994.]   |
| 77  | Notice of variation of rate of tax<br>[S. 77 substituted by s. 31 of Act 20 of 1994.]   |
| 78  | Transitional matters  |
| 79  | Amendment of section 9 of Act 40 of 1949  |
| 80  | Amendment of section 12 of Act 40 of 1949   |
| 81  | Amendment of section 23 of Act 77 of 1968   |
| 82  | Amendment of section 24 of Act 77 of 1968   |
| 83  | Amendment of Item 15 of Schedule 1 to Act 77 of 1968  |
| 84  | Amendment of Item 18 of Schedule 1 to Act 77 of 1968  |
| 85  | Repeal of laws  |
| 86  | Act binding on State, and effect of certain exemptions from taxes   |
| 86A | Provisions relating to industrial development zones<br>[S. 86A inserted by s. 176 of Act 60 of 2001.]                               |
| 87  | Short title   |

#### Schedule 1

EXEMPTION: CERTAIN GOODS IMPORTED INTO THE REPUBLIC

#### Schedule 2

ZERO RATE: SUPPLY OF GOODS USED OR CONSUMED FOR AGRICULTURAL, PASTORAL OR OTHER FARMING PURPOSES

#### Schedule 3

LAWS REPEALED

## 1 Definitions

### Cases

[NB: The definition of '**enterprise**' has been amended by s. 23 (1) (e) of the Taxation Laws Amendment Act 27 of 1997, a provision which will be put into operation by proclamation. See PENDLEX. A definition of '**customs secured area**' has been inserted by s. 148 (1) of the Second Revenue Laws Amendment Act 60 of 2001, a provision which will be put into operation by proclamation.]

In this Act, unless the context otherwise indicates-

'**adjusted cost**' means the cost of any goods or services where tax has been charged or would have been charged if section 7 of this Act had been applicable prior to the commencement date, in respect of the supply of goods and services or if the vendor was or would have been entitled to an input tax deduction in terms of paragraph (b) of the definition of 'input tax';

[Definition of 'adjusted cost' inserted by s. 164 (1) (a) of Act 45 of 2003.]

'**ancillary transport services**' means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services and storage of transported goods or goods to

be transported;

**'association not for gain'** means-

- (a) any religious institution of a public character; or
- (b) any other society, association or organization, whether incorporated or not (other than an educational institution in respect of which the provisions of paragraph (c) apply), which-
  - (i) is carried on otherwise than for the purposes of profit or gain to any proprietor, member or shareholder; and
  - (ii) is, in terms of its memorandum, articles of association, written rules or other document constituting or governing the activities of that society, association or organisation-
    - (aa) required to utilize any property or income solely in the furtherance of its aims and objects; and
    - (bb) prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by way of the payment in good faith of reasonable remuneration to any officer or employee of the society, association or organization for any services actually rendered to such society, association or organization; and
    - (cc) upon the winding-up or liquidation of such society, association or organization, obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other society, association or organization with objects similar to those of the said society, association or organization; or

[Para. (b) substituted by s. 23 (1) (a) of Act 27 of 1997.]

- (c) any educational institution of a public character, whether incorporated or not, which-
  - (i) is carried on otherwise than for the purposes of profit or gain to any proprietor, member or shareholder; and
  - (ii) is, in terms of its memorandum, articles of association, written rules or other document constituting or governing the activities of that educational institution-
    - (aa) required to utilize any property or income solely in the furtherance of its aims and objects; and
    - (bb) prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by way of the payment in good faith of reasonable remuneration to any officer or employee of the educational institution for any services actually rendered to such institution;

[Para. (c) added by s. 23 (1) (b) of Act 27 of 1997.]

**'business day'** means any day which is not a Saturday, Sunday or public holiday;

**'cash value'**, in relation to the supply of goods supplied under an instalment credit agreement, means-

- (a) where the seller or lessor is a banker or financier, an amount equal to or exceeding the sum of the cost to the banker or financier of the goods, including any cost of erection, construction, assembly or installation of the goods borne by the banker or financier and the tax leviable under section 7 (1) (a) in respect of such supply by the banker or financier; or
- (b) where the seller or lessor is a dealer, an amount equal to or exceeding the price (including tax) at which the goods are normally sold by him for cash or may normally be acquired from him for cash (including tax) and any charge (including tax) made by the seller or lessor in respect of the erection, construction, assembly or installation of the goods if such charge is financed by the seller or lessor under the instalment credit agreement;

**'Chief Executive Officer'** .....

[Definition of 'Chief Executive Officer' inserted by s. 18 (a) of Act 37 of 1996 and deleted by s. 34 (1) of Act 34 of 1997.]

**'close corporation'** means a close corporation within the meaning of the Close Corporations Act, 1984 (Act 69 of 1984);

**'commencement date'** means 30 September 1991;

[Definition of 'commencement date' substituted by s. 21 (a) of Act 136 of 1991.]

**'commercial accommodation'** means-

- (a) lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, motel, hotel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat or similar establishment, which is regularly or systematically supplied and where the total annual receipts from the supply thereof exceeds R60 000 per annum or is reasonably expected to exceed R60 000 per annum, but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;

[Para. (a) substituted by s. 47 of Act 12 of 2003.]

(b) lodging or board and lodging in a home for the aged, children, physically or mentally handicapped persons; and

(c) lodging or board and lodging in a hospice;

[Definition of 'commercial accommodation' inserted by s. 65 (1) (a) of Act 19 of 2001 and substituted by s. 148 (1) (a) of Act 60 of 2001.]

**'commercial rental establishment'** .....

[Definition of 'commercial rental establishment' substituted by s. 12 (1) (a) of Act 136 of 1992, amended by s. 81 (1) of Act 53 of 1999 and deleted by s. 65 (1) (b) of Act 19 of 2001.]

**'Commissioner'** means the Commissioner for the South African Revenue Service;

[Definition of 'Commissioner' substituted by s. 34 (1) of Act 34 of 1997.]

**'company'** means a company as defined in section 1 of the Income Tax Act;

**'connected persons'** means-

- (a) any natural person (including the estate of a natural person if such person is deceased or insolvent) and-
  - (i) any relative of that natural person (being a relative as defined in section 1 of the Income Tax Act) or the estate of any such relative if the relative is deceased or insolvent; or
  - (ii) any trust fund in respect of which any such relative or such estate of such relative is or may be a beneficiary; or

[Para. (a) substituted by s. 22 (a) of Act 97 of 1993.]

- (b) any trust fund and any person who is or may be a beneficiary in respect of that fund; or

- (c) any partnership or close corporation and-

- (i) any member thereof; or
  - (ii) any other person where that person and a member of such partnership or close corporation, as the case may be, are connected persons in terms of this definition; or

- (d) any company (other than a close corporation) and-

- (i) any person (other than a company) where that person, his spouse or minor child or any trust fund in respect of which that person, his spouse or minor child is or may be a beneficiary, is separately interested or two or more of them are in the aggregate interested in 10 per cent or more of the company's paid-up capital or 10 per cent or more of the company's equity share capital (as defined in section 1 of the Income Tax Act) or 10 per cent or more of the voting rights of the shareholders of the company, whether directly or indirectly; or
  - (ii) any other company the shareholders in which (being shareholders as contemplated in the definition of 'shareholder' in section 1 of the Income Tax Act) are substantially the same persons as the shareholders in the first-mentioned company, or which is controlled by the same persons who control the first-mentioned company; or
  - (iii) any person where that person and the person referred to in subparagraph (i) or his spouse or minor child or the trust fund referred to in that subparagraph or the other company referred to in subparagraph (ii) are connected persons in terms of this definition; or

- (e) any separate enterprise, branch or division of a vendor which is separately registered as a vendor under the provisions of section 50 and any other such enterprise, branch or division of the vendor; or

- (f) any branch, division or separate enterprise of an association not for gain which is deemed by subsection (5) of section 23 to be a separate person for the purposes of that section and any other branch, division or separate enterprise of that association, whether or not such other branch, division or separate enterprise is a vendor; or

- (g) any person and any superannuation scheme referred to in section 2 (2) (vii), the members of which are mainly the employees or office holders or former employees or office holders of that person;

[Para. (g) added by s. 23 (1) (d) of Act 27 of 1997.]

**'consideration'**, in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as a donation to any association not for gain: Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

[Definition of 'consideration' substituted by s. 92 (1) (a) of Act 32 of 2004 and amended by s. 8 (1) of Act 10 of 2005.]

**'consideration in money'** includes consideration expressed as an amount of money;

**'Controller'** has the meaning assigned thereto in section 1 of the Customs and Excise Act;

[Definition of 'Controller' inserted by s. 101 (a) of Act 31 of 2005.]

**'Customs and Excise Act'** means the Customs and Excise Act, 1964 (Act 91 of 1964);

**'customs controlled area'** has the meaning assigned thereto in section 21A of the Customs and Excise Act;

[Definition of 'customs controlled area' inserted by s. 164 (1) (c) of Act 45 of 2003.]

**'customs controlled area enterprise'** has the meaning assigned thereto in section 21A of the Customs and Excise Act, 1964;

[Definition of 'customs controlled area enterprise' inserted by s. 164 (1) (c) of Act 45 of 2003.]

**'designated entity'** means a vendor-

- (i) to the extent that its supplies of goods and services of an activity carried on by that vendor are in terms of (b) (i) of the definition of 'enterprise' treated as supplies made in the course or furtherance of an enterprise;
- (ii) which is a major public entity, national government business enterprise or provincial government business enterprise listed in Schedule 2 or Part B or D of Schedule 3 of the Public Finance Management Act, 1999 (Act 1 of 1999), respectively; or
- (iii) which is a 'Public Private Partnership' as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act 1 of 1999); or
- (iv) which is a welfare organisation;

[Definition of 'designated entity' inserted by s. 164 (1) (c) of Act 45 of 2003.]

**'domestic goods and services'** means goods and services provided in any enterprise supplying commercial accommodation, including-

- (a) cleaning and maintenance;
- (b) electricity, gas, air conditioning or heating;
- (c) a telephone, television set, radio or other similar article;
- (d) furniture and other fittings;
- (e) meals;
- (f) laundry; or

[Para. (f) added by s. 92 (1) (c) of Act 32 of 2004.]

- (g) nursing services;

[Para. (g) added by s. 92 (1) (c) of Act 32 of 2004.]

[Definition of 'domestic goods and services' substituted by s. 65 (1) (c) of Act 19 of 2001 and by s. 148 (1) (c) of Act 60 of 2001.]

**'donated goods or services'** means goods or services which are donated to an association not for gain and are intended for use in the carrying on or carrying out of the purposes of that association;

**'donation'** means a payment whether in money or otherwise voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment, but does not include any payment made by a public authority or a local authority;

[Definition of 'donation' inserted s. 92 (1) (d) of Act 32 of 2004.]

**'dwelling'** means, except where it is used in the supply of commercial accommodation, any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use predominantly as a place of residence or abode of any natural person, including fixtures and fittings belonging thereto and enjoyed therewith;

[Definition of 'dwelling' substituted by s. 12 (1) (b) of Act 136 of 1992, by s. 65 (1) (d) of Act 19 of 2001 and by s. 148 (1) (d) of Act 60 of 2001.]

**'employee organization'** means an organization in which a number of employees in any particular undertaking, industry, trade, occupation or profession are associated together for the purpose of regulating relations between themselves or some of them and their employers or some of their employers or mainly for that purpose, disregarding the provision of sickness, accident or unemployment benefits for the members of the organization or for the widows, children, dependants or nominees of deceased members;

[Definition of 'employee organization' inserted by Government Notice 2695 of 8 November 1991 and by s. 12 (1) (c) of Act 136 of 1992.]

**'enterprise'** means-

- (a) in the case of any vendor other than a local authority, any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit, including any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern or any other concern of a continuing nature or in the form of an association or club;

- (b) without limiting the applicability of paragraph (a) in respect of any activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern-
- (i) the making of supplies by any public authority of goods or services which the Minister, having regard to the circumstances of the case, is satisfied are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such public authority in the course or furtherance of any enterprise, if the Commissioner, in pursuance of a decision of the Minister under this subparagraph, has notified such public authority that its supplies of such goods or services are to be treated as supplies made in the course or furtherance of an enterprise;
  - (ii) the activities of any welfare organization as respects activities referred to in the definition of 'welfare organization' in this section;
  - (iii) the activities of any share block company (other than the services in respect of which section 12 (f) applies) where such company has applied for registration as a vendor under the provisions of section 23 (3) and has been registered as such;
- [Sub-para. (iii) added by s. 12 (1) (d) of Act 136 of 1992.]

[NB: A sub-para. (iv) has been inserted by s. 23 (1) (e) of the Taxation Laws Amendment Act 27 of 1997, a provision which will be put into operation by proclamation. See PENDLEX.]

- (v) the activities of a foreign donor funded project;
- [Sub-para. (v) added by s. 101 (b) of Act 31 of 2005.]
- (c) in the case of a vendor which is a local authority, any activity in the course or furtherance of which any of the following supplies of goods or services are made:
- (i) The supply of electricity, gas or water;
  - (ii) the supply of services consisting of the drainage, removal or disposal of sewage or garbage;
  - (iii) the supply of goods or services incidental to or necessary for the supply of goods or services in respect of which the provisions of subparagraph (i) or (ii) apply;
  - (iv) the making of supplies of goods or services in the course of any business carried on by such local authority, if-
    - (aa) such supplies are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such local authority in the course or furtherance of any enterprise; and
    - (bb) the revenue normally derived by such local authority for its own benefit from making such supplies, together with any grant or subsidy paid to that local authority by the State or any person for the purposes of such business, is, or may reasonably be expected to be, sufficient to fund the expenditure (excluding expenditure of a capital nature but including a reasonable provision for depreciation in the value of the assets of the business by reason of wear and tear and obsolescence) incurred by that local authority in the production of such revenue; and
- (cc) (A) such business falls within a category of businesses which the Minister, having regard to the provisions of items (aa) and (bb) as generally applicable, has by notice in the *Gazette* determined to be a category of businesses in respect of which the provisions of this subparagraph shall be deemed to apply; or
  - (B) such business (not being a business falling within a category referred to in subitem (A)) is determined by the Minister, having regard to the provisions of items (aa) and (bb) as applicable in the case of such business, to be a business in respect of which the provisions of this subparagraph shall be deemed to apply and the Commissioner, in pursuance of the Minister's determination under this subitem, has notified such local authority accordingly,
- and, in the case of a regional services council, a joint services board or a transitional metropolitan council, any other activities of that council or board to the extent that they are financed by levies referred to in section 8 (6) (b):

[Sub-para. (iv) amended by s. 9 (1) (a) of Act 20 of 1994.]

[Para. (c) amended by s. 22 (b) of Act 97 of 1993.]

Provided that-

- (i) anything done in connection with the commencement or termination of any such enterprise or activity shall be deemed to be done in the course or furtherance of that enterprise or activity;
- (ii) any branch or main business of an enterprise permanently situated at premises outside the Republic shall be deemed to be carried on by a person separate from the vendor, if-
  - (aa) the branch or main business can be separately identified; and



- (bb) an independent system of accounting is maintained by the concern in respect of the branch or main business;

[Para. (ii) substituted by s. 22 (c) of Act 97 of 1993, by s. 9 (1) (b) of Act 20 of 1994 and by s. 92 (1) (e) of Act 32 of 2004.]

- (iii) (aa) the rendering of services by an employee to his employer in the course of his employment or the rendering of services by the holder of any office in performing the duties of his office, shall not be deemed to be the carrying on of an enterprise to the extent that any amount constituting remuneration as contemplated in the definition of remuneration' in paragraph 1 of the Fourth Schedule to the Income Tax Act is paid or is payable to such employee or office holder, as the case may be;

[Item (aa) substituted by s. 164 (1) (f) of Act 45 of 2003.]

- (bb) subparagraph (aa) of this paragraph shall not apply in relation to any employment or office accepted by any person in carrying on any enterprise carried on by him independently of the employer or concern by whom the amount of remuneration is paid or payable;
- (iv) any activity carried on by a natural person essentially as a private or recreational pursuit or hobby or any activity carried on by a person other than a natural person which would, if it were carried on by a natural person, be carried on essentially as a private or recreational pursuit or hobby shall not be deemed to be the carrying on of an enterprise;
- (v) any activity shall to the extent to which it involves the making of exempt supplies not be deemed to be the carrying on of an enterprise;
- (vi) the activity of underwriting insurance business by Underwriting Members of Lloyd's of London, to the extent that contracts of insurance are concluded in the Republic, shall be deemed to be the carrying on of an enterprise;

[Para. (vi) added by Government Notice 2695 of 8 November 1991 and by s. 12 (1) (e) of Act 136 of 1992 and substituted by s. 81 (1) (e) of Act 53 of 1999.]

- (vii) the activities of the Road Accident Fund contemplated in the Road Accident Fund Act, 1996 (Act 56 of 1996), shall be deemed not to be the carrying on of an enterprise;

[Para. (vii) added by s. 9 (1) (c) of Act 20 of 1994 and substituted by s. 114 (1) (a) of Act 74 of 2002.]

- (viii) the making of supplies by a constitutional institution listed in Schedule 1 of the Public Finance Management Act, 1999 (Act 1 of 1999), shall be deemed not to be the carrying on of an enterprise;

[Para. (viii) inserted by s. 164 (1) (g) of Act 45 of 2003.]

- (ix) where a person carries on or intends carrying on an enterprise or activity supplying commercial accommodation as contemplated in paragraph (a) of the definition of 'commercial accommodation' in section 1, and the total value of taxable supplies made by that person in the preceding period of 12 months or which it can reasonably be expected that that person will make in a period of 12 months, as the case may be, will not exceed R60 000, shall be deemed not to be the carrying on of an enterprise;

[Para. (ix) added by s. 92 (1) (f) of Act 32 of 2004.]

[Definition of 'enterprise' amended by s. 21 (b) of Act 136 of 1991.]

**'entertainment'** means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him;

**'exempt supply'** means a supply that is exempt from tax under section 12;

**'export country'** means any country other than the Republic and includes any place which is not situated in the Republic: Provided that the President may by notice in the *Gazette* determine that a specific country or territory shall from a date and to the extent indicated in the notice, be deemed not to be an export country;

[Definition of 'export country' substituted by s. 12 (1) (f) of Act 136 of 1992 and by s. 9 (1) (d) of Act 20 of 1994.]

**'exported'**, in relation to any movable goods supplied by any vendor under a sale or an instalment credit agreement, means-

- (a) consigned or delivered by the vendor to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner; or
- (b) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (a) of the definition of 'foreign-going ship' or to a foreign-going aircraft when such ship or aircraft is going to a destination in an export country and such goods are for use or consumption in such ship or aircraft, as the case may be; or
- (c) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (b) of the definition of 'foreign-going ship' for use in such ship; or
- (d) removed from the Republic by the recipient for conveyance to an export country in accordance with the provisions of an export incentive scheme approved by the Minister;

[Para. (d) amended by s. 22 (d) of Act 97 of 1993 and substituted by s. 9 (1) (e) of Act 20 of 1994.]

**'financial services'** means the activities which are deemed by section 2 to be financial services;

**'fixed property'** means land (together with improvements affixed thereto), any unit as defined in section 1 of the Sectional Titles Act, 1986 (Act 95 of 1986), any share in a share block company which confers a right to or an interest in the use of immovable property, and, in relation to a property time-sharing scheme, any time-sharing interest as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act 75 of 1983), and any real right in any such land, unit, share or time-sharing interest;

[Definition of 'fixed property' substituted by Government Notice 2695 of 8 November 1991 and by s. 12 (1)(g) of Act 136 of 1992.]

**'foreign donor funded project'** means a project established as a result of an international donor funding agreement to which the Government of the Republic is a party, to supply goods or services to beneficiaries;

[Definition of 'foreign donor funded project' inserted by s. 101 (c) of Act 31 of 2005.]

**'foreign-going aircraft'** means any aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in the Republic and airports in export countries or between airports in export countries;

[Definition of 'foreign-going aircraft' substituted by s. 9 (1) (f) of Act 20 of 1994.]

**'foreign-going ship'** means-

- (a) any ship or other vessel engaged in the transportation for reward of passengers or goods wholly or mainly on voyages between ports in the Republic and ports in export countries or between ports in export countries; or
- (b) any ship or other vessel registered in an export country where such ship or vessel is utilized for the purposes of a commercial, fishing or other concern conducted outside the Republic by a person who is not a vendor and is not a resident of the Republic;

[Definition of 'foreign-going ship' substituted by s. 9 (1)(g) of Act 20 of 1994.]

**'goods'** means corporeal movable things, fixed property and any real right in any such thing or fixed property, but excluding-

- (a) money;
- (b) any right under a mortgage bond or pledge of any such thing or fixed property; and
- (c) any stamp, form or card which has a money value and has been sold or issued by the State for the payment of any tax or duty levied under any Act of Parliament, except when subsequent to its original sale or issue it is disposed of or imported as a collector's piece or investment article;

**'grant'** means any appropriation, grant in aid, subsidy or contribution transferred, granted or paid to a vendor by a public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act 1 of 1999), but does not include-

- (a) a payment made for the supply of any goods or services to that public authority or local authority, including all goods or services supplied to a public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act 1 of 1999) in accordance with a procurement process prescribed-
  - (i) in terms of the Regulations issued under section 76 (4)(c) of the Public Finance Management Act, 1999 (Act 1 of 1999); or
  - (ii) in terms of Chapter 11 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), or any other similar process; or
- (b) a payment contemplated in section 8 (23);

[Definition of 'grant' inserted by s. 92 (1) (g) of Act 32 of 2004.]

**'imported services'** means a supply of services that is made by a supplier who is resident or carries on business outside the Republic to a recipient who is a resident of the Republic to the extent that such services are utilized or consumed in the Republic otherwise than for the purpose of making taxable supplies;

**'Income Tax Act'** means the Income Tax Act, 1962 (Act 58 of 1962);

**'Industrial Development Zone (IDZ)'** has the meaning assigned thereto in section 21A of the Customs and Excise Act;

[Definition of 'Industrial Development Zone' inserted by s. 148 (1)(e) of Act 60 of 2001 and substituted by s. 164 (1) (i) of Act 45 of 2003.]

**'Industrial Development Zone (IDZ) operator'** has the meaning assigned thereto in terms of section 21A of the Customs and Excise Act;

[Definition of 'Industrial Development Zone (IDZ) operator' inserted by s. 164 (1) (j) of Act 45 of 2003.]

**'input tax'**, in relation to a vendor, means-

- (a) tax charged under section 7 and payable in terms of that section by-
  - (i) a supplier on the supply of goods or services made by that supplier to the vendor; or
  - (ii) the vendor on the importation of goods by him; or

- (iii) the vendor under the provisions of section 7 (3);
- (b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic of any second-hand goods situated in the Republic: Provided that where such second-hand goods consist of-
  - (i) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable or would have been payable had an exemption from transfer duty (whether in terms of the Transfer Duty Act or any other Act of Parliament) not been applicable; or
  - (ii) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable or would have been payable had an exemption from stamp duty (whether in terms of the Stamp Duties Act or any other Act of Parliament) not been applicable,

[Para. (b) amended by s. 23 (1) (f) of Act 27 of 1997.]

such amount shall not exceed the amount of transfer duty or stamp duty, as the case may be, which is or would have been payable in respect of such acquisition, original issue or registration of transfer, as the case may be; and

[Para. (b) substituted by Government Notice 2695 of 8 November 1991 and by s. 12 (1) (h) of Act 136 of 1992, amended by s. 22 (e) of Act 97 of 1993 and substituted by s. 9 (1) (h) of Act 20 of 1994.]

- (c) an amount equal to the tax fraction of the consideration in money deemed by section 10 (16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement: Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in section 9 (3) (c),

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose;

**'instalment credit agreement'** means any agreement entered into on or after the commencement date whereby any goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable-

- (a) are supplied under a sale under which-
  - (i) the goods are sold by the seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; and
  - (ii) such sum of money includes finance charges stipulated in the agreement of sale; and
  - (iii) the aggregate of the amounts payable by the purchaser to the seller under such agreement exceeds the cash value of the supply; and
  - (iv) (aa) the purchaser does not become the owner of those goods merely by virtue of the delivery to or the use, possession or enjoyment by him thereof; or  
(bb) the seller is entitled to the return of those goods if the purchaser fails to comply with any term of that agreement; or
- (b) are supplied under a lease under which-
  - (i) the rent consists of a stated or determinable sum of money payable at a stated or determinable future date or periodically in whole or in part in instalments over a period in the future; and
  - (ii) such sum of money includes finance charges stipulated in the lease; and
  - (iii) the aggregate of the amounts payable under such lease by the lessee to the lessor for the period of such lease (disregarding the right of any party thereto to terminate the lease before the end of such period) and any residual value of the leased goods on termination of the lease, as stipulated in the lease, exceeds the cash value of the supply; and
  - (iv) the lessee is entitled to the possession, use or enjoyment of those goods for a period of at least 12 months; and
  - (v) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, those goods and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of those goods while the agreement remains in force;

**'insurance'** means insurance or guarantee against loss, damage, injury or risk of any kind whatever, whether pursuant to any contract or law, and includes reinsurance; and 'contract of insurance' includes a policy of insurance, an insurance cover, and a renewal of a contract of insurance: Provided that nothing in this definition shall apply to any insurance specified in section 2;

**'invoice'** means a document notifying an obligation to make payment;

**'licensed customs and excise storage warehouse'** means a warehouse licensed by the Commissioner at any place appointed for that purpose under the provisions of the Customs and Excise Act, which has been approved by the Commissioner for the storage of goods as he may approve in respect of that warehouse;

[Definition of 'licensed customs and excise storage warehouse' inserted by s. 101 (d) of Act 31 of 2005.]

**'local authority'** means-

- (a) any divisional council, rural council, municipal council, regional services council, town board, local board, village management board or health committee or any joint services board established under the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990);
- (b) any other body, council, board, committee or institution established or deemed to be established by or under any law which has functions similar to those of the councils, boards and committees enumerated in paragraph (a) and which may levy rates on the value of immovable property within its area of jurisdiction or receive payments for services rendered or to be rendered; and
- (c) any water board or regional water services corporation or any other institution which has powers similar to those of any such boards or corporations:

Provided that where any local authority has been disestablished and superseded by a new local authority in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), such disestablished local authority and such new local authority shall for the purposes of this Act be deemed to be and to have been one and the same local authority;

[Definition of 'local authority' amended by s. 64 (a) of Act 59 of 2000.]

**'Minister'** means the Minister of Finance;

**'money'** means-

- (a) coins (other than coins made wholly or mainly from a precious metal other than silver) which the South African Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1989 (Act 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section, and any paper currency which under the said Act is a legal tender;
- (b) (i) any coin (other than a coin made wholly or mainly from a precious metal) or paper currency of any country other than the Republic which is used or circulated or is intended for use or circulation as currency;
- (ii) any bill of exchange, promissory note, bank draft, postal order or money order,

except when disposed of or imported as a collector's piece, investment article or item of numismatic interest;

**'month'** means any of the twelve portions into which any calendar year is divided;

[Definition of 'month' inserted by s. 164 (1) (k) of Act 45 of 2003.]

**'motor car'** includes a motor car, station wagon, minibus, double cab light delivery vehicle and any other motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or converted wholly or mainly for the carriage of passengers, but does not include-

- (a) vehicles capable of accommodating only one person or suitable for carrying more than 16 persons; or
- (b) vehicles of an unladen mass of 3 500 kilograms or more; or
- (c) caravans and ambulances;
- (d) vehicles constructed for a special purpose other than the carriage of persons and having no accommodation for carrying persons other than such as is incidental to that purpose;
- (e) game viewing vehicles (other than sedans, station wagons, minibuses or double cab light delivery vehicles) constructed or permanently converted for the carriage of seven or more passengers for game viewing in national parks, game reserves, sanctuaries or safari areas and used exclusively for that purpose, other than use which is merely incidental and subordinate to that use; or
- (f) vehicles, constructed as or permanently converted into hearses for the transport of deceased persons and used exclusively for that purpose;

[Para. (e) added by s. 92 (1) (j) of Act 32 of 2004.]

[Para. (f) added by s. 92 (1) (j) of Act 32 of 2004.]

[Definition of 'motor car' amended by s. 76 of Act 30 of 2000 and by s. 92 (1) (h) of Act 32 of 2004.]

**'open market value'** in relation to the supply of goods or services, means the open market value thereof determined in accordance with the provisions of section 3;

**'output tax'**, in relation to any vendor, means the tax charged under section 7 (1) (a) in respect of the supply of goods and services by that vendor;

**'person'** includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person, any trust fund and any foreign donor funded project;

[Definition of 'person' substituted by s. 101 (e) of Act 31 of 2005.]

**'precious metals'** means gold, silver, platinum, iridium and any other metals of the platinum group, and any other

metal which the State President has by proclamation in the *Gazette* declared to be a precious metal for the purpose of this Act;

**'prescribed rate'** in relation to any interest payable in terms of this Act means a rate equal to the rate fixed from time to time by the Minister by notice in the *Gazette* in terms of section 80 (1) (b) of the Public Finance Management Act, 1999 (Act 1 of 1999): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;

[Definition of 'prescribed rate' inserted by s. 1 of Act 61 of 1993, amended by s. 9 of Act 20 of 1994, by GN 1505 of 20 November 1998, by GN 541 of 22 April 1999, by GN 1065 of 1 September 1999, by GN 184 of 25 February 2000 and by GN 1160 of 13 September 2002 and substituted by s. 114 (1) (b) of Act 74 of 2002 and by s. 43 (a) of Act 16 of 2004.]

**'prescribed tax rate'** .....

[Definition of 'prescribed tax rate' deleted by s. 21 (c) of Act 136 of 1991.]

**'public authority'** means-

- (i) any department or division of the public service as listed in Schedules 1, 2 or 3 of the Public Service Act, 1994 (Act 103 of 1994); or
- (ii) any public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act 1 of 1999); or
- (iii) any other public entity designated by the Minister for the purposes of this Act to be a public authority;

[Definition of 'public authority' substituted by s. 148 (1) (f) of Act 60 of 2001 and by s. 92 (1) (k) of Act 32 of 2004.]

**'recipient'**, in relation to any supply of goods or services, means the person to whom the supply is made;

**'registration number'** .....

[Definition of 'registration number' deleted by s. 43 (b) of Act 16 of 2004.]

**'rental agreement'** means-

- (a) any agreement entered into before, on or after the commencement date for the letting of goods, other than a lease referred to in paragraph (b) of the definition of 'instalment credit agreement' in this section or a financial lease as defined in the Sales Tax Act, 1978 (Act 103 of 1978), prior to its repeal; and
- (b) any rental agreement, as defined in the said Act where such agreement is in force on or after the commencement date;

**'Republic'**, in the geographical sense, means the territory of the Republic of South Africa and includes the territorial waters, the contiguous zone and the continental shelf referred to respectively in sections 4, 5 and 8 of the Maritime Zones Act, 1994 (Act 15 of 1994);

[Definition of 'Republic' substituted by s. 18 (b) of Act 37 of 1996.]

**'residential rental establishment'** .....

[Definition of 'residential rental establishment' substituted by s. 12 (1) (i) of Act 136 of 1992 and deleted by s. 65 (1) (e) of Act 19 of 2001.]

**'resident of the Republic'** means a resident as defined in section 1 of the Income Tax Act: Provided that any other person or any other company shall be deemed to be a resident of the Republic to the extent that such person or company carries on in the Republic any enterprise or other activity and has a fixed or permanent place in the Republic relating to such enterprise or other activity;

[Definition of 'resident in the Republic' amended by s. 64 (b) of Act 59 of 2000.]

**'returnable container'** means any container belonging to a class of containers in relation to which, at the time of delivery of the contents thereof, ownership of that container is not transferred to the recipient of the contents and a specifically identified amount is usually charged as a deposit by the supplier of the contents upon the express undertaking of the supplier that upon the return of that container such deposit will be refunded or allowed as a credit to such recipient or any other person returning such container;

**'sale'** means an agreement of purchase and sale and includes any transaction or act whereby or in consequence of which ownership of goods passes or is to pass from one person to another;

**'second-hand goods'** means-

- (a) goods which were previously owned and used; or
- (b) in respect of the transfer of a unit in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act, such unit, but does not include-

- (i) animals;

[Sub-para. (i) amended by s. 164 (1) (l) of Act 45 of 2003.]

- (ii) gold coins contemplated in section 11 (1) (k); and

[Sub-para. (ii) amended by s. 164 (1) (l) of Act 45 of 2003.]

- (iii) any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), or any reconnaissance permission contemplated in section 14 of that Act granted or renewed in terms of that Act or received upon conversion

pursuant to Schedule II, except when that prospecting right, mining right, exploration right, production right or interest in that right is transferred, ceded, let, sublet, alienated, varied or otherwise disposed of as contemplated in section 11 of the Mineral and Petroleum Resources Development Act, 2002;

[Sub-para. (iii) added by s. 164 (1) (m) of Act 45 of 2003 and substituted by s. 43 (d) of Act 16 of 2004.]

[Definition of 'second-hand goods' substituted by Government Notice 2695 of 8 November 1991, by s. 12 (1) (j) of Act 136 of 1992 and by s. 9 (1) (j) of Act 20 of 1994.]

**'service enterprise'** has the meaning assigned thereto in terms of section 21A of the Customs and Excise Act;

[Definition of 'service enterprise' inserted by s. 164 (1) (n) of Act 45 of 2003.]

**'services'** means anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of 'goods';

[Definition of 'services' substituted by Government Notice 2695 of 8 November 1991 and by s. 12 (1) (k) of Act 136 of 1992.]

**'share block company'** means a share block company as defined in section 1 of the Share Blocks Control Act;

[Definition of 'share block company' inserted by s. 12 (1) (l) of Act 136 of 1992 and substituted by s. 9 (1) (k) of Act 20 of 1994.]

**'Share Blocks Control Act'** means the Share Blocks Control Act, 1980 (Act 59 of 1980);

[Definition of 'Share Blocks Control Act' inserted by s. 9 (1) (l) of Act 20 of 1994.]

**'South African Revenue Service'** means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;

[Definition of 'South African Revenue Service' inserted by s. 34 (1) of Act 34 of 1997.]

**'specified country'** .....

[Definition of 'specified country' deleted by s. 9 (1) (m) of Act 20 of 1994.]

**'Stamp Duties Act'** means the Stamp Duties Act, 1968 (Act 77 of 1968);

[Definition of 'Stamp Duties Act' inserted by s. 9 (1) (n) of Act 20 of 1994.]

**'supplier'**, in relation to any supply of goods or services, means the person supplying the goods or services;

**'supply'** includes performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and any derivative of 'supply' shall be construed accordingly;

[Definition of 'supply' substituted by s. 81 (1) (f) of Act 53 of 1999.]

**'tax'** means the tax chargeable under this Act;

[Definition of 'tax' substituted by Government Notice 2695 of 8 November 1991 and by s. 12 (1) (m) of Act 136 of 1992.]

**'taxable supply'** means any supply of goods or services which is chargeable with tax under the provisions of section 7 (1) (a), including tax chargeable at the rate of zero per cent under section 11;

**'tax fraction'** means the fraction calculated in accordance with the formula:

$$\frac{r}{100 + r}$$

in which formula 'r' is the rate of tax applicable under section 7 (1);

**'tax invoice'** means a document provided as required by section 20;

**'tax period'**, in relation to a vendor, means a tax period determined under section 27;

**'this Act'** includes the regulations;

**'Transfer Duty Act'** means the Transfer Duty Act, 1949 (Act 40 of 1949);

[Definition of 'Transfer Duty Act' inserted by s. 9 (1) (o) of Act 20 of 1994.]

**'transfer payment'** .....

[Definition of 'transfer payment' inserted by Government Notice 2695 of 8 November 1991 and by s. 12 (1) (n) of Act 136 of 1992, substituted by s. 23 (1) (g) of Act 27 of 1997 and by s. 148 (1) (g) of Act 60 of 2001 and deleted by s. 164 (1) (o) of Act 45 of 2003.]

**'transitional metropolitan council'** means a transitional metropolitan council as defined in section 1 of the Local Government Transition Act, 1993 (Act 209 of 1993);

[Definition of 'transitional metropolitan council' inserted by s. 9 (1) (p) of Act 20 of 1994.]

**'trust fund'** means any fund consisting of cash or other assets the administration and control of which is entrusted to any person acting in a fiduciary capacity by any person, whether under a deed of trust or by agreement, or by a deceased person under a will made by that person;

[Definition of 'trust fund' substituted by s. 21 (d) of Act 136 of 1991.]

**'unconditional gift'** .....

[Definition of 'unconditional gift' deleted by s. 92 (1) (l) of Act 32 of 2004.]

**'VAT registration number'**, in relation to any vendor, means the number allocated to that vendor by the Commissioner for the purposes of this Act;

[Definition of 'VAT registration number' inserted by s. 43 (e) of Act 16 of 2004.]

**'vendor'** means any person who is or is required to be registered under this Act: Provided that where the Commissioner has under section 23 or 50A determined the date from which a person is a vendor that person shall be deemed to be a vendor from that date;

[Definition of 'vendor' amended by s. 23 (1)(h) of Act 27 of 1997.]

**'welfare organisation'** means any public benefit organisation which is exempt from income tax in terms of section 10 (1) (cN) of the Income Tax Act, if it carries on or intends to carry on any welfare activity<sup>1</sup>\* determined by the Minister for purposes of this Act, relating to those activities that fall under the headings-

- (a) welfare and humanitarian;
- (b) health care;
- (c) land and housing;
- (d) education and development; or
- (e) conservation, environment and animal welfare.

[Definition of 'welfare organization' substituted by s. 21 (e) of Act 136 of 1991, by Government Notice 2695 of 8 November 1991, by s. 12 (1) (o) of Act 136 of 1992, by s. 81 (1) (g) of Act 53 of 1999 and by s. 148 (1)(h) of Act 60 of 2001, amended by s. 114 (1)(c) of Act 74 of 2002 and substituted by s. 92 (1)(m) of Act 32 of 2004.]

## 2 Financial services

(1) For the purposes of this Act, the following activities shall be deemed to be financial services:

- (a) The exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise);
- (b) the issue, payment, collection or transfer of ownership of a cheque or letter of credit;
- (c) the issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debt security;
- (d) the issue, allotment or transfer of ownership of an equity security or a participatory security;
- (e) .....

[Para. (e) deleted by s. 19 (1) (a) of Act 37 of 1996.]

- (f) the provision by any person of credit under an agreement by which money or money's worth is provided by that person to another person who agrees to pay in the future a sum or sums exceeding in the aggregate the amount of such money or money's worth;

[Para. (f) substituted by s. 19 (1) (b) of Act 37 of 1996.]

- (g) and (h) .....

[Para. (g) and (h) deleted by s. 19 (1) (c) of Act 37 of 1996.]

- (i) the provision, or transfer of ownership, of a long-term insurance policy or the provision of reinsurance in respect of any such policy: Provided that such an activity shall not be deemed to be a financial service to the extent that it includes the management of a superannuation scheme;

[Para. (i) substituted by s. 19 (1) (d) of Act 37 of 1996.]

- (j) the provision, or transfer of ownership, of an interest in a superannuation scheme;

[Para. (j) substituted by s. 19 (1) (e) of Act 37 of 1996.]

- (k) the buying or selling of any derivative: Provided further that the open market value of those goods or services shall not be deemed to be consideration for a financial service as contemplated in this paragraph; and

[Para. (k) substituted by Government Notice 2695 of 8 November 1991, by s. 13 (1) (a) of Act 136 of 1992 and by s. 82 (a) of Act 53 of 1999 and amended by s. 93 (a) of Act 32 of 2004.]

- (l) .....

[Para. (l) deleted by s. 44 of Act 16 of 2004.]

- (m) .....

[Para. (m) deleted by s. 10 (1) (a) of Act 20 of 1994.]

- (n) .....

[Para. (n) substituted by s. 10 (1) (b) of Act 20 of 1994 and deleted by s. 19 (1) (f) of Act 37 of 1996.]

Provided that the activities contemplated in paragraphs (a), (b), (c), (d) and (f) shall not be deemed to be financial services to the extent that the consideration payable in respect thereof is any fee, commission, merchant's discount or similar charge, excluding any discounting cost.

[Sub-s. (1) amended by s. 19 (1) (g) of Act 37 of 1996 and by s. 87 (1) (a) of Act 30 of 1998.]

(2) For the purposes of subsection (1)-

**'cheque'** means a bill drawn on a bank payable on demand, a postal order, a money order, a traveller's cheque, or any order or authorisation (whether in writing, by electronic means, or otherwise) to a financial institution to credit or debit any account;

[Definition of 'cheque' substituted by s. 10 (1) (c) of Act 20 of 1994 and by s. 93 (b) of Act 32 of 2004.]

'currency' means any banknote or other currency of any country, other than when used as a collector's piece, investment article, item of numismatic interest, or otherwise than as a medium of exchange;

'debt security' means-

(aa) an interest in or right to be paid money; or

(bb) an obligation or liability to pay money

that is, or is to be, owing by any person, but does not include a cheque;

[Definition of 'debt security' substituted by s. 149 of Act 60 of 2001.]

'derivative' means a derivative as defined for purposes of Statement AC 133 of generally accepted accounting practice;

[Definition of 'derivative' inserted by s. 93 (c) of Act 32 of 2004.]

'equity security' means any interest in or right to a share in the capital of a juristic person or the interest in a close corporation of a member thereof;

'long-term insurance policy' means any policy of insurance issued in the ordinary course of carrying on long-term insurance business as defined in section 1 (1) of the Long-term Insurance Act, 1998 (Act 52 of 1998);

[Definition of 'long-term insurance policy', formerly definition of 'life insurance policy', substituted by s. 22 (a) of Act 136 of 1991, by s. 19 (1) (h) of Act 37 of 1996 and by s. 82 (b) of Act 53 of 1999.]

'merchant's discount' means a charge made to merchants for accepting a credit or debit card as payment for the supply of goods or services, or a similar charge made by a buying organisation;

[Definition of 'merchant's discount' inserted by s. 87 (1) (b) of Act 30 of 1998.]

'participatory security' means a participatory interest as defined in section 1 of the Collective Investment Schemes Control Act, 2002, but does not include an equity security, a debt security, money or a cheque;

[Definition of 'participatory security' substituted by s. 115 of Act 74 of 2002.]

'superannuation scheme' means a scheme whereby provision is made for the payment or granting of benefits by a benefit fund, pension fund, provident fund or retirement annuity fund as defined in section 1 of the Income Tax Act.

[Definition of 'superannuation scheme' substituted by s. 10 (1) (d) of Act 20 of 1994.]

(3) Notwithstanding subsection (2), the terms 'debt security', 'equity security' and 'participatory security' do not include any of the following:

(a) A long-term insurance policy or any other policy of insurance;

[Para. (a) substituted by s. 19 (1) (i) of Act 37 of 1996.]

(b) any ownership or interest in land, other than an interest as mortgagee;

(c) a share in the share capital of a share block company;

[Para. (c) amended by s. 13 (1) (b) of Act 136 of 1992.]

(d) any interest of a member of a close corporation which confers on the member a time-sharing interest as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act 75 of 1983), on the terms and conditions contained in the association agreement of such close corporation;

(e) an interest in a superannuation scheme.

(4) Notwithstanding anything in this section, the term 'financial services' does not include-

(a) the cession, assignment, transfer or other supply of any right to receive payment in relation to any taxable supply where, as a result of any such cession, assignment, transfer or supply, output tax in relation to that taxable supply would not be or become attributable to any tax period for the purposes of section 16 (3); or

[Para. (a) substituted by s. 24 of Act 27 of 1997.]

(b) the transfer of any interest in or a right to be paid money that is, or is to be, owing by any person under a rental agreement; or

(c) the transfer of any interest in or right to be paid money that is, or is to be, owing by a share block company under its loan obligation, as defined in section 1 of the Share Blocks Control Act, to any person who is or will be a shareholder of such share block company.

[Para. (c) substituted by s. 10 (1) (e) of Act 20 of 1994.]

[Date of commencement of para. (c): 9 July 1993.]

[Sub-s. (4) deleted by s. 22 (b) of Act 136 of 1991 and added by s. 13 (1) (c) of Act 136 of 1992.]

### **3 Determination of 'open market value'**

(1) For the purposes of this section-

(a) 'similar supply', in relation to a supply of goods or services, means any other supply of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services;

(b) the open market value of a supply shall include any tax charged under section 7 (1) (a) on that supply.

(2) For the purposes of this Act, the open market value of any supply of goods or services at any date shall be the



consideration in money which the supply of those goods or services would generally fetch if supplied in similar circumstances at that date in the Republic, being a supply freely offered and made between persons who are not connected persons.

(3) Where the open market value of any supply of goods or services cannot be determined under subsection (2), the open market value shall be the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in the Republic, being a supply freely offered and made between persons who are not connected persons.

(4) Where the open market value of any supply of goods or services cannot be determined in terms of subsection (2) or (3), the open market value shall be determined in accordance with a method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply of those goods or services.

(5) For the purposes of this Act the open market value of any consideration, not being consideration in money, for a supply of goods or services shall be ascertained in the same manner, with any necessary modifications, as the open market value of any supply of goods or services is ascertained under the provisions of this section.

## PART I

### ADMINISTRATION (ss 4-6)

#### 4 Act to be administered by Commissioner

Cases

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

(2) .....

[Sub-s. (2) deleted by s. 34 (1) of Act 34 of 1997.]

#### 5 Exercise of powers and performance of duties

Cases

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

(2) Any decision made and any notice or communication issued or signed by any such officer 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.

#### 6 Secrecy

Cases

(1) A person employed in carrying out the provisions of this Act shall not-

(a) disclose to any person or his representative any matter in respect of any other person that may in the exercise of his powers or the performance of his duties under the said provisions come to his 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 his powers or the performance of his duties in terms of this Act or by order of a competent court: Provided that-

- (i) the Auditor-General in the performance of his duties in terms of section 3 of the Auditor-General Act, 1995 (Act 12 of 1995), shall have access to all records and documents in the possession or custody of the Commissioner for the purposes of this Act; and
- (ii) the Commissioner shall disclose information in respect of any class of persons to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation.

[Sub-s. (1) substituted by s. 20 (a) of Act 37 of 1996 and by s. 34 (1) of Act 34 of 1997 and amended by s. 150 (a) of Act 60 of 2001.]

(2) The provisions of subsection (1) shall not be construed as preventing the Commissioner from-

(a) using any information obtained by him in the exercise of his powers or the performance of his duties under this Act for the purposes of any other fiscal law administered by him;

(b) .....

[Para. (b) deleted by s. 34 (1) of Act 34 of 1997.]

(c) disclosing to the Chief of the Central Statistical Services such information in relation to any person as may be required by such Chief in connection with the collection of statistics in carrying out the provisions of the Statistics Act, 1976 (Act 66 of 1976), or any regulation thereunder;

[Para. (c) substituted by s. 88 of Act 30 of 1998.]

(d) .....

[Para. (d) added by s. 20 (b) of Act 37 of 1996, substituted by s. 88 of Act 30 of 1998 and deleted by s. 66 (a) of Act 19 of

2001.]

- (e) publishing and making known the name and VAT registration number of any vendor;  
[Para. (e) added by s. 66 (b) of Act 19 of 2001 and substituted by s. 45 of Act 16 of 2004.]
- (f) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations.

[Para. (f) added by s. 48 (b) of Act 12 of 2003.]

(2A) The Commissioner may apply *ex parte* to a judge in chambers for an order allowing him or her to disclose to the National Commissioner of the South African Police Service, contemplated in section 6 (1) of the South African Police Service Act, 1995 (Act 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5 (2) (a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), such information, which may reveal evidence-

- (a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence of imprisonment exceeding five years; or
- (b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the taxpayer concerned should such information be disclosed: Provided that any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 57A, 57B or 57C which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).

[Sub-s. (2A) inserted by s. 150 (b) of Act 60 of 2001 and amended by s. 116 (a) of Act 74 of 2002.]

(2B) For the purposes of subsection (2A), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

[Sub-s. (2B) inserted by s. 150 (b) of Act 60 of 2001.]

(2C) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (2A) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties for purposes of-

- (a) any investigation of, or prosecution for, an offence contemplated in subsection (2A); or
- (b) dealing with any such public safety or environmental risk as contemplated in subsection (2A).

[Sub-s. (2C) inserted by s. 150 (b) of Act 60 of 2001 and substituted by s. 116 (b) of Act 74 of 2002.]

(2D) The Director-General or any person acting under the direction and control of such Director-General shall not disclose any information supplied under proviso (ii) to subsection (1) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in proviso (ii) to subsection (1).

[Sub-s. (2D) inserted by s. 150 (b) of Act 60 of 2001 substituted by s. 116 (c) of Act 74 of 2002.]

(3) A person may not in any manner publish or make known to any other person (not being an officer performing his or her duties under the control, direction or supervision of the Commissioner or the Managing Director of the South African Post Office Limited) the contents or tenor of any instruction or communication given or made by the Commissioner or the Managing Director of the South African Post Office Limited or any such officer in the performance of his or her or their duties in terms of this Act for or concerning the examination or investigation of the affairs of any person or class of persons or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a person or class of persons: Provided that the provisions of this subsection shall not be construed-

- (a) as preventing any person or a representative of such person who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning that person's own tax matters; or
- (b) subject to the provisions of subsections (1) and (4), as in any way limiting the duties or powers of the Commissioner or the Managing Director of the South African Post Office Limited or any such officer; or
- (c) as preventing any person from publishing or making known anything which has been published or made known by that person or a representative of that person as contemplated in paragraph (a) or by the Commissioner or the Managing Director of the South African Post Office Limited or any such officer in the exercise of the officer's duties or powers.

[Sub-s. (3) amended by s. 34 (1) of Act 34 of 1997 and substituted by s. 150 (c) of Act 60 of 2001.]

(3A) The provisions of this section shall not apply in respect of any information relating to any person, where that

person has consented that such information may be published or made known to any other person.  
[Sub-s. (3A) inserted by s. 150 (d) of Act 60 of 2001.]

(4) .....

[Sub-s. (4) deleted by s. 34 (1) of Act 34 of 1997.]

(5) The Head: Central Statistical Services or any person acting under his direction and control shall not disclose any information supplied to that Head under subsection (2) (c) to any person or permit any person to have access thereto, except in the exercise of his powers or the performance of his duties to collect statistics or to publish statistics in any anonymous form.

(6) Any person who contravenes the provisions of subsection (1), (3), (4) or (5) shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

## PART II VALUE-ADDED TAX (ss 7-22)

### 7 Imposition of value-added tax

Cases

(1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax-

- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;
- (b) on the importation of any goods into the Republic by any person on or after the commencement date; and
- (c) on the supply of any imported services by any person on or after the commencement date,

calculated at the rate of 14 per cent on the value of the supply concerned or the importation, as the case may be.

[Sub-s. (1) amended by s. 23 (a) of Act 136 of 1991, by Government Notice 2695 of 8 November 1991, by s. 14 of Act 136 of 1992, by s. 23 (1) (a) of Act 97 of 1993 and by s. 33 of Act 37 of 1996.]

(2) Except as otherwise provided in this Act, the tax payable in terms of paragraph (a) of subsection (1) shall be paid by the vendor referred to in that paragraph, the tax payable in terms of paragraph (b) of that subsection shall be paid by the person referred to in that paragraph and the tax payable in terms of paragraph (c) of that subsection shall be paid by the recipient of the imported services.

(3) (a) Where any goods manufactured in the Republic, being of a class or kind subject to excise duty or environmental levy under Part 2 or 3 of Schedule 1 to the Customs and Excise Act, have been supplied at a price which does not include such excise duty or environmental levy and tax has become payable in respect of the supply in terms of subsection (1) (a), value-added tax shall be levied and paid at the rate of 14 per cent for the benefit of the National Revenue Fund on an amount equal to the amount of such excise duty or environmental levy which, subject to any rebate of such excise duty or environmental levy under the said Act, is paid.

[Para. (a) substituted by s. 23 (b) of Act 136 of 1991, amended by Government Notice 2695 of 8 November 1991, by s. 14 of Act 136 of 1992, by s. 23 (1) (b) of Act 97 of 1993 and by s. 33 of Act 37 of 1996 and substituted by s. 94 (a) of Act 32 of 2004.]

(b) The tax payable in terms of paragraph (a) shall be paid by the person liable in terms of the Customs and Excise Act for the payment of the said excise duty or environmental levy.

[Para. (b) substituted by s. 94 (a) of Act 32 of 2004.]

(c).....

[Para. (c) deleted by s. 34 (1) of Act 34 of 1997.]

(d) Subject to this Act, the provisions of the Customs and Excise Act relating to the clearance of goods subject to excise duty or environmental levy and the payment of that excise duty or environmental levy shall *mutatis mutandis* have effect as if enacted in this Act.

[Para. (d) substituted by s. 94 (b) of Act 32 of 2004.]

### 8 Certain supplies of goods or services deemed to be made or not made

Cases

(1) For the purposes of this Act, where -

- (a) goods acquired, manufactured, assembled, constructed or produced by a person are sold, under a power exercisable by another person, in or towards satisfaction of a debt owed by the person whose goods are sold; and
- (b) the person whose goods are sold has not furnished, to the person exercising the power of sale, a statement in writing that the supply of those goods would not be a taxable supply if those goods were sold by the person whose goods are sold, and stating fully the reasons why that supply would not be a taxable supply,

those goods shall be deemed to be supplied in the course of an enterprise.

(2) For the purposes of this Act, where a person ceases to be a vendor, any goods (other than any goods in respect

of the acquisition of which by the vendor a deduction of input tax under section 16 (3) was denied in terms of section 17 (2) or would have been denied if those sections had been applicable prior to the commencement date) or right capable of assignment, cession or surrender which in either case then forms part of the assets of his enterprise, shall be deemed to be supplied by him in the course of his enterprise immediately before he ceased to be a vendor, unless the enterprise is carried on by another person who in terms of section 53 is deemed to be a vendor: Provided that-

- (i) where such right is so deemed to be supplied that supply shall be deemed to be a supply of a service;
- (ii) this subsection shall not apply to any such goods or right to the extent that a deduction in terms of section 16 (3) has not been allowed or will not be allowed, in respect of the acquisition or use by such vendor, where such vendor on or before 30 June 2000-
  - (aa) ceases to be a vendor for the sole reason that the total value of taxable supplies made by that vendor in the preceding period of 12 months has not exceeded R20 000; or
  - (bb) ceases to be a vendor in respect of a commercial rental establishment or a residential rental establishment for the sole reason that the total receipts and accruals derived from that commercial rental establishment or residential rental establishment in the preceding period of 12 months have not exceeded R48 000;
- (iii) this subsection shall not apply to fixed property to the extent that a deduction in terms of section 16 (3) has not been allowed or will not be allowed in respect of that fixed property or any improvements thereto, where such vendor, on or before 30 June 2000, requests the Commissioner in writing, in the circumstances contemplated in section 24 (2), to cancel his registration;
- (iv) this subsection shall not apply to a vendor that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act 1 of 1999) or a public authority, respectively, where that vendor (other than a vendor who applied and was registered as a vendor during the period 22 December 2003 to 31 March 2005) ceases to be a vendor as a result of-
  - (aa) the substitution of the definition of 'public authority' in the Revenue Laws Amendment Act, 2004 or the insertion of paragraph (viii) to the proviso to the definition of 'enterprise' in the Revenue Laws Amendment Act, (Act 45 of 2003); or
  - (bb) the re-classification of that vendor or part of that vendor's activities within the Schedules to the Public Finance Management Act, 1999 (Act 1 of 1999) subsequent to the introduction of the Revenue Laws Amendment Act, 2004.

[Para. (iv) added by s. 95 (1) (a) of Act 32 of 2004.]

[Sub-s. (2) amended by Government Notice 2695 of 8 November 1991, by s. 15 (1) (a) and (b) of Act 136 of 1992 and by s. 83 (a) of Act 53 of 1999.]

(2A) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases to be a vendor solely as a consequence of the circumstances contemplated in paragraph (ii) of the proviso to subsection (2), the tax payable to the Commissioner in respect of that deemed supply shall, if the amount thereof is in excess of R3 000, be paid to the Commissioner in so many equal monthly instalments as the Commissioner may allow, the last of which shall not be paid later than 28 February 2001.

[Sub-s. (2A) inserted by s. 83 (b) of Act 53 of 1999.]

(2B) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases on or before 30 June 2005 to be a vendor solely as a consequence of the introduction of proviso (ix) to the definition of 'enterprise' in section 1, the tax payable to the Commissioner in respect of that deemed supply shall, if the amount thereof is in excess of R3 000, be paid to the Commissioner in so many equal monthly instalments as the Commissioner may allow.

[Sub-s. (2B) inserted by s. 95 (1) (b) of Act 32 of 2004.]

(3) For the purposes of this Act, a credit agreement to which section 121 of the National Credit Act, 2005 (Act 34 of 2005) applies, will be deemed not to be a supply of goods or services if the consumer has exercised the right to rescind that agreement in the manner and within the time permitted by that section.

[Sub-s. (3) substituted by s. 172 (2) of Act 34 of 2005.]

(4) (a) For the purposes of this Act, any lay-by agreement (as defined in Government Notice R1234 of 13 June 1980, as amended by Government Notice R1814 of 29 August 1980, issued in terms of section 9 of the Sale and Service Matters Act, 1964 (Act 25 of 1964)), whereby goods are sold for a consideration not exceeding R10 000 and are reserved by deposit for delivery when the purchase price or a determined portion thereof is paid shall not be deemed to be a supply of goods or services unless and until the goods are delivered to the purchaser.

[Para. (a) amended by Government Notice 2695 of 8 November 1991 and by s. 15 (1) (c) of Act 136 of 1992 and substituted by s. 83 (c) of Act 53 of 1999.]

(b) Where such agreement is cancelled or terminates for any other reason and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under such agreement, the seller shall for the purposes of this Act be deemed to have supplied a service in respect of such agreement.

(5) For the purposes of this Act a designated entity shall be deemed to supply services to any public authority or

local authority to the extent of any payment made by the authority concerned to or on behalf of that designated entity in respect of the taxable supply of goods or services by that designated entity.

[Sub-s. (5) substituted by s. 166 (1) (b) of Act 45 of 2003.]

(5A) For the purposes of section 11 (2) (t), a vendor (excluding a designated entity) shall be deemed to supply services to any public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act 1 of 1999) to the extent of any grant paid to or on behalf of that vendor in respect of the taxable supply of goods or services by that vendor.

[Sub-s. (5A) inserted by s. 95 (1) (c) of Act 32 of 2004.]

(5B) For the purposes of this Act, a vendor, being a foreign donor funded project, shall be deemed to supply services to the international donor to the extent of the international donor funding received from an international donor.

[Sub-s. (5B) inserted by s. 102 (1) (a) of Act 31 of 2005.]

(6) For the purposes of this Act-

- (a) where a local authority makes any supply to any person of goods or services contemplated in paragraph (c) (i), (ii) or (iii) of the definition of 'enterprise' in section 1 and no consideration relating specifically to such supply is payable to such local authority by such person, the local authority shall be deemed to make such supply to that person where any amount of rates on the value of fixed property is payable by that person to such local authority;
- (b) a regional services council, joint services board or transitional metropolitan council shall be deemed to supply services to a person in respect of the other activities of that council or board referred to in paragraph (c) of the said definition where any amount of any levy is payable by that person to such council or board in terms of the Regional Services Councils Act, 1985 (Act 109 of 1985), or the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990), as the case may be, or where any amount of such levy may in terms of the Local Government Transition Act, 1993, be levied and claimed by a transitional metropolitan council; and

[Para. (b) substituted by s. 11 (a) of Act 20 of 1994.]

- (c) the transfer of all its assets and liabilities by an administrative unit of a local authority that is separately registered under subsection (2) of section 50, to the vendor intended in subsection (1) of that section, shall be deemed not to be a supply.

[Para. (c) added by s. 67 (c) of Act 19 of 2001.]

[Sub-s. (6) substituted by s. 24 (a) of Act 136 of 1991.]

(7) The disposal of an enterprise as a going concern, or a part thereof which is capable of separate operation, shall for the purposes of this Act be deemed to be a supply of goods made in the course or furtherance of such enterprise.

(8) For the purposes of this Act, except section 16 (3), where a vendor receives any indemnity payment under a contract of insurance or is indemnified under a contract of insurance by the payment of an amount of money to another person, that payment or indemnification, as the case may be, shall, to the extent that it relates to a loss incurred in the course of carrying on an enterprise, be deemed to be consideration received for a supply of services performed on the day of receipt of that payment or on the date of payment to such other person, as the case may be, by that vendor in the course or furtherance of his enterprise: Provided that this subsection shall not apply in respect of any indemnity payment received or indemnification under a contract of insurance where the supply of services contemplated by that contract is not a supply subject to tax under section 7 (1) (a): Provided further that this subsection shall not apply in respect of any indemnity payment received by a vendor under a contract of insurance to the extent that such payment relates to the total reinstatement of goods, stolen or damaged beyond economic repair, in respect of the acquisition of which by the vendor a deduction of input tax under section 16 (3) was denied in terms of section 17 (2) or would have been denied if these sections had been applicable prior to the commencement date.

[Sub-s. (8) substituted by s. 15 (1) (e) of Act 136 of 1992 and amended by s. 11 (b) of Act 20 of 1994.]

(9) For the purposes of this Act, where any vendor in carrying on an enterprise in the Republic consigns or delivers goods to an address outside the Republic or provides any service to or for the purposes of his branch or main business outside the Republic in respect of which the provisions of paragraph (ii) of the proviso to the definition of 'enterprise' in section 1 are applicable, the vendor shall be deemed to supply such goods or service in the course or furtherance of his enterprise.

[Sub-s. (9) substituted by s. 24 (1) (a) of Act 97 of 1993 and by s. 166 (1) (c) of Act 45 of 2003.]

(10) For the purposes of this Act, where any goods are repossessed under an instalment credit agreement, a supply of such goods shall be deemed to be made by the debtor under such instalment credit agreement to the person exercising his right of repossession, and where such debtor is a vendor the supply shall be deemed to be made in the course or furtherance of his enterprise unless such goods did not form part of the assets held or used by him for the purposes of his enterprise.

(11) For the purposes of this Act, a supply of the use or right to use or the grant of permission to use any goods (whether with or without a driver, pilot, crew or operator) under any rental agreement, instalment credit agreement, charter party, agreement for chartering or any other agreement under which such use or permission to use is granted, shall be

deemed to be a supply of goods.

(12) .....

[Sub-s. (12) deleted by Government Notice 2695 of 8 November 1991 and by s. 15 (1) (f) of Act 136 of 1992.]

(13) For the purposes of this Act, where any person bets an amount on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed shall be deemed to supply a service to such first-mentioned person.

(13A) For the purposes of this Act, except section 16 (3), where any vendor who makes taxable supplies of services contemplated in subsection (13) of this section, receives any amount paid by any other vendor as a prize or winnings in consequence of a supply of such services made by the last-mentioned vendor to the first-mentioned vendor, the first-mentioned vendor shall be deemed to supply a service to the last-mentioned vendor.

[Sub-s. (13A) inserted by s. 20 of Act 46 of 1996.]

(14) For the purposes of this Act-

- (a) where any goods are supplied by a vendor to a person otherwise than in the circumstances contemplated in paragraph 2 (b) of the Seventh Schedule to the Income Tax Act, and a deduction under section 16 (3) in respect of the acquisition by the vendor of those goods was denied in terms of section 17 (2) or would have been denied if section 7 of this Act had been applicable prior to the commencement date, the vendor shall be deemed to have supplied the goods otherwise than in the course or furtherance of his enterprise;
- (b) where any input tax is allowed in terms of section 18 (9) in respect of a game viewing vehicle or a hearse as contemplated in paragraph (e) or (f) of the definition of 'motor car' in section 1, the subsequent supply of that game viewing vehicle or hearse shall be deemed to be supplied in the course of the vendor's enterprise.

[Sub-s. (14) substituted by s. 24 (b) of Act 136 of 1991, by s. 24 (1) (b) of Act 97 of 1993 and by s. 95 (1) (d) of Act 32 of 2004.]

(14A) For the purposes of this Act, where input tax has been allowed on the conversion of a game viewing vehicle or a hearse, as contemplated in paragraph (e) or (f) of the definition of 'motor car' in section 1 and that game viewing vehicle or hearse is subsequently applied for purposes other than those purposes as contemplated in paragraph (e) or (f) of the definition of 'motor car' in section 1, a supply of that game viewing vehicle or hearse shall be deemed to take place.

[Sub-s. (14A) substituted by s. 95 (1) (e) of Act 32 of 2004.]

(15) For the purposes of this Act, where a single supply of goods or services or of goods and services would, if separate considerations had been payable, have been charged with tax in part at the rate applicable under section 7 (1) (a) and in part at the rate applicable under section 11, each part of the supply concerned shall be deemed to be a separate supply.

(16) (a) The supply by a vendor-

- (i) of any goods (other than fixed property acquired prior to the commencement date by a vendor who is a natural person if such property was used by him mainly as his private residence and no deduction of any amount has been made by him under section 16 (3) in respect of such property); or
- (ii) of services,

where such goods or services were acquired or imported by him partly for the purpose of consumption, use or supply in the course of making taxable supplies (including supplies which would have been taxable supplies if section 7 of this Act had been applicable prior to the commencement date) and were held or utilized by him partly for the said purpose immediately prior to the supply by him of such goods or services, shall be deemed to be made wholly in the course or furtherance of his enterprise.

(b) The supply by any vendor of fixed property acquired prior to the commencement date by such vendor, being a natural person, shall be deemed to be made otherwise than in the course or furtherance of his enterprise provided-

- (i) such property was used by him prior to such supply mainly as his private residence; and
- (ii) no deduction of any amount has been made by him under section 16 (3) in respect of such property.

[Sub-s. (16) added by s. 24 (c) of Act 136 of 1991 and substituted by s. 15 (1) (g) of Act 136 of 1992.]

(17) (a) For the purposes of this Act, where, together with the supply of a share referred to in the definition of 'fixed property' in section 1, any amount of the loan obligation, as defined in section 1 of the Share Blocks Control Act, of the share block company is allocated as contemplated in section 14 of that Act, or any amount of the loan obligation thus allocated is delegated, or any interest in or right to be paid money that is, or is to be, owing by the share block company under its loan obligation is transferred to any person who is or will be a shareholder of such share block company, such allocation, delegation or transfer, as the case may be, shall be deemed to form part of the supply of such share.

[Para. (a) substituted by s. 11 (c) of Act 20 of 1994.]

(b) For the purposes of this Act, where any allocation, delegation or transfer as contemplated in paragraph (a) is made without the supply of a share referred to in the definition of 'fixed property' in section 1 and otherwise than in the circumstances contemplated in that paragraph, such allocation, delegation or transfer shall be deemed to constitute the supply of a share referred to in the said definition.

[Sub-s. (17) added by s. 15 (1) (h) of Act 136 of 1992.]

(18) For the purposes of the definition of 'input tax' in section 1 and section 18 (4) and (5), as applicable to any share block company, any taxable supply of a share referred to in subsection (17) made on or after a date fixed by the Minister by notice in the *Gazette* by a share block developer where such share is a share in a share block scheme in respect of which that developer is a share block developer as contemplated in section 1 of the Share Blocks Control Act, shall be deemed to have been made by the share block company in relation to which that developer is a share block developer, to the extent that-

- (a) the supply of such share to such developer was not a taxable supply by such company to such developer; or
- (b) such developer was not or will not in terms of section 16 (3) be entitled to make a deduction of input tax referred to in paragraph (b) of the definition of 'input tax' in section 1 in respect of the supply of such share to him.

[Sub-s. (18) added by s. 15 (1) (h) of Act 136 of 1992, substituted by s. 24 (1) (c) of Act 97 of 1993 and amended by s. 11 (d) of Act 20 of 1994.]

(19) For the purposes of this Act, where any supply of -

- (a) goods consisting of a unit is made by a share block company; or
- (b) services comprising the waiving of rights against a share block company is made to that share block company,

in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act, such supply shall be deemed to have been made otherwise than in the course or furtherance of an enterprise.

[Sub-s. (19) added by s. 11 (e) of Act 20 of 1994.]

(20) For the purposes of this Act, where an importation of goods is deemed to have been made by an agent in the circumstances contemplated in section 54 (2A) (b), such agent shall be deemed to make a supply of goods to the recipient of the supply by the principal, as contemplated in subparagraph (iii) of that section.

[Sub-s. (20) added by s. 25 of Act 27 of 1997.]

(21) For the purposes of this Act, compensation or any other payment, other than an amount contemplated in section 12 (a), received by a vendor in consequence of the expropriation of fixed property, is deemed to be received in respect of a supply of goods made in the course or furtherance of an enterprise unless that fixed property forms no part of the assets held or used by the vendor for the purposes of an enterprise.

[Sub-s. (21) added by s. 151 of Act 60 of 2001 and substituted by s. 95 (1) (f) of Act 32 of 2004.]

(22) For the purposes of this Act, where two or more public higher education institutions or one or more subdivisions of such institutions are merged with or incorporated into a single public higher education institution in terms of a direction by the Minister of Education in terms of section 23 or 24 of the Higher Education Act, 1997 (Act 101 of 1997), such institutions or such subdivisions thereof prior to the merger or incorporation and the newly merged or incorporated single institutions shall be deemed to be one and the same institution.

[Sub-s. (22) added by s. 166 (1) (d) of Act 45 of 2003.]

(23) For the purposes of this Act a vendor shall be deemed to supply services to any public authority or local authority to the extent of any payment in terms of the Housing Subsidy Scheme referred to in section 3 (5) (a) of the Housing Act, 1997 (Act 107 of 1997), made to or on behalf of that vendor in respect of the taxable supply of goods and services by that vendor.

[Sub-s. (23) added by s. 166 (1) (d) of Act 45 of 2003.]

(24) For the purposes of this Act, a vendor, being a customs controlled area enterprise, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal, or within a period approved in writing by the Controller.

[Sub-s. (24) added by s. 102 (1) (b) of Act 31 of 2005.]

(25) For the purposes of this Act, where any goods or services are supplied by a vendor to another vendor, those vendors must for purposes of that supply or subsequent supplies of those goods or services, be deemed to be one and the same person provided the provisions of section 42, 44, 45 or 47 of the Income Tax Act, 1962, are complied with.

[Sub-s. (25) added by s. 102 (1) (b) of Act 31 of 2005.]

(26) The supply of goods or services under any warranty agreement shall, for the purposes of section 11 (2) (v), be deemed to be a supply of services.

[Sub-s. (26) added by s. 102 (1) (b) of Act 31 of 2005.]

## 9 Time of supply

(1) For the purposes of this Act a supply of goods or services shall, except as otherwise provided in this Act, be deemed to take place at the time an invoice is issued by the supplier or the recipient in respect of that supply or the time any payment of consideration is received by the supplier in respect of that supply, whichever time is earlier.

(2) A supply of goods or services shall be deemed to take place-

- (a) where the supplier and the recipient are connected persons-
    - (i) in the case of a supply of goods which are to be removed, at the time of the removal; and
    - (ii) in the case of a supply of goods which are not to be removed, at the time when they are made available to the recipient; and
    - (iii) in the case of a supply of services, at the time the services are performed:

Provided that this paragraph shall not apply in any case where an invoice is issued in respect of that supply or any payment is made in respect of that supply on or before-

    - (aa) the day on which the return is furnished for the tax period during which that supply would, but for this proviso, have been made; or
    - (bb) the last day prescribed by this Act for furnishing the return for the tax period during which that supply would, but for this proviso, have been made;
  - (b) where that supply is a supply to which section 8 (3) refers, on the day after the last day of the period during which the recipient may exercise the right under section 121 of the National Credit Act, 2005 (Act 34 of 2005), to rescind the agreement;
 

[Para. (b) substituted by s. 172 (2) of Act 34 of 2005.]
  - (c) where that supply is a supply to which section 8 (4) refers, at the time at which the goods are delivered to the recipient: Provided that in any case in which a supply of services is deemed to take place under section 8 (4) (b), that supply of services shall be deemed to take place at the time that the agreement of sale is cancelled or terminates;
  - (d) 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-
    - (i) in the case of such supplier, at the time any such coin or token is taken from that machine, meter or other device by or on behalf of the supplier; and
    - (ii) in the case of the recipient of such supply at the time the coin or token is inserted into that machine, meter or other device by or on behalf of the recipient;
  - (e) where the provisions of section 8 (9) are applicable in respect of the consignment or delivery of goods at an address outside the Republic or the provision of any service by a vendor to his branch or main branch at the time the goods are consigned or delivered to such branch or the service is performed, as the case may be.
 

[Para. (e) substituted by s. 25 (a) of Act 136 of 1991 and by s. 167 of Act 45 of 2003.]
- (3) Notwithstanding anything in subsection (1) or (2) of this section-
- (a) where goods are supplied under any rental agreement or where services are supplied under any agreement or law which provides for periodic payments, they shall be deemed to be successively supplied for successive parts of the period of the agreement or as determined by such law, and each of the successive supplies shall be deemed to take place when a payment becomes due or is received, whichever is the earlier;
  - (b) where and to the extent that-
    - (i) goods are supplied progressively or periodically under any agreement or law which provides for the consideration for that supply to be paid in instalments or periodically and in relation to the progressive or periodic supply of those goods; or
    - (ii) goods or services supplied directly in the construction, repair, improvement, erection, manufacture, assembly or alteration of goods are supplied under any agreement or law which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of the work,

those goods or services shall be deemed to be successively supplied, and each such successive supply shall be deemed to take place whenever any payment in respect of any supply becomes due, is received, or any invoice relating only to that payment is issued, whichever is the earliest;
  - (c) where goods are supplied under an instalment credit agreement, that supply shall, subject to the provisions of subsection (2) (b), be deemed to take place at the time the goods are delivered or the time any payment of consideration is received by the supplier in respect of that supply, whichever time is earlier;
 

[Para. (c) substituted by s. 25 (b) of Act 136 of 1991.]
  - (d) where goods consisting of fixed property or any real right therein are supplied under a sale, that supply shall be deemed to take place-
    - (i) .....
 

[Sub-para. (i) deleted by s. 25 (a) of Act 97 of 1993.]
    - (ii) where registration of transfer of the goods is effected in a deeds registry, on the date of such registration; or



- (iii) on the date on which any payment is made in respect of the consideration for such supply, whichever date is earlier;

[Para. (d) amended by s. 25 (b) of Act 97 of 1993.]

- (e) where any supply of a service is deemed to be made as contemplated in section 8 (13), the service shall be deemed to be supplied to the extent that payment of any amount of the bet is made, and each such supply shall be deemed to take place whenever any payment in respect of such supply is received by the supplier;
- (f) where any supply of a service is deemed to be made as contemplated in section 8(13A), the supply shall be deemed to take place whenever any amount is paid out as a prize or winnings by the supplier of the services contemplated in section 8 (13).

[Para. (f) added by s. 21 of Act 46 of 1996.]

(4) Subject to the provisions of subsections (2) (a) and (6), where goods are supplied under an agreement, other than an instalment credit agreement or rental agreement, and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time they are appropriated, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest.

(5) Where any goods or any right capable of assignment, cession or surrender is deemed to be supplied by a vendor in the course of his enterprise as contemplated in section 8 (2) the time of supply shall be deemed to be the time contemplated in that section.

(6) Where any supply of goods or services is deemed to be made as contemplated in section 18 (1) the time of supply shall be deemed to be the time that the goods or services are applied as contemplated in the said subsection.

(7) The supply of goods or services which is deemed to be made by any vendor as contemplated in section 18 (3) shall be deemed to take place at the end of the month in respect of which the cash equivalent of the benefit or advantage concerned, as determined under the Seventh Schedule to the Income Tax Act, or a portion of such cash equivalent, is in terms of the Fourth Schedule to that Act required to be included in the remuneration of the employee or office holder to whom the benefit or advantage is granted or, where such cash equivalent is not required to be included in the remuneration of the employee or office holder in terms of the said Fourth Schedule, on the last day of the year of assessment in terms of the said Act, as applicable to that employee or office holder, during which the benefit or advantage was granted to him.

(8) Where a supply of repossessed goods is deemed by section 8 (10) to be made by a debtor under an instalment credit agreement, the time of that supply shall be deemed to be the day on which the goods are repossessed or, where the debtor may under any law be reinstated in his rights and obligations under such agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.

(9) Where any supply of goods is deemed to be made as contemplated in section 8 (20), that supply shall be deemed to take place at the time the tax payable on importation of the goods is paid by the agent.

[Sub-s. (9) added by s. 26 of Act 27 of 1997.]

(10) Where any supply of a game viewing vehicle or a hearse is deemed to be made as contemplated in section 8 (14) (b) or 8 (14A) the time of supply shall be deemed to be the time that the game viewing vehicle or hearse is supplied as contemplated in those sections.

[Sub-s. (10) added by s. 96 of Act 32 of 2004.]

(11) Where any supply of goods is deemed to be made as contemplated in section 8 (24), that supply shall be deemed to take place on the last day of the applicable period contemplated in section 8 (24).

[Sub-s. (11) added by s. 103 of Act 31 of 2005.]

## **10 Value of supply of goods or services**

(1) For the purposes of this Act the following provisions of this section shall apply for determining the value of any supply of goods or services.

(2) The value to be placed on any supply of goods or services shall, save as is otherwise provided in this section, be the value of the consideration for such supply, as determined in accordance with the provisions of subsection (3), less so much of such value as represents tax: Provided that-

- (i) there shall be excluded from such consideration the value of any postage stamp as defined in section 1 of the Post Office Act, 1958 (Act 44 of 1958), when used in the payment of consideration for any service supplied by the postal company as defined in section 1 of the Post Office Act, 1958;

[Para. (i) substituted by s. 84 of Act 53 of 1999.]

- (ii) where the portion of the value of the said consideration which represents tax is not accounted for separately by the vendor, the said portion shall be deemed to be an amount equal to the tax fraction of that consideration.

(3) For the purposes of this Act the value of any consideration referred to in this section shall be-

- (a) to the extent that such consideration is a consideration in money, the amount of the money; and
- (b) to the extent that such consideration is not a consideration in money, the open market value of that

consideration.

(4) Where-

- (a) a supply is made by a person for no consideration or for a consideration in money which is less than the open market value of the supply; and  
[Para. (a) substituted by s. 21 (1) (a) of Act 37 of 1996.]
- (b) the supplier and recipient are connected persons in relation to each other; and
- (c) if a consideration for the supply equal to the open market value of the supply had been paid by the recipient, he would not have been entitled under section 16 (3) to make a deduction of the full amount of tax in respect of that supply,

[Para. (c) substituted by s. 26 (a) of Act 97 of 1993.]

the consideration in money for the supply shall be deemed to be the open market value of the supply: Provided that this subsection shall not apply to the supply of a benefit or advantage of employment contemplated in section 18(3).

(4A) For the purposes of this Act, where any share in a share block company is supplied, the consideration in money for that supply shall include the amount of any allocation, delegation or transfer referred to in section 8(17).

[Sub-s. (4A) inserted by s. 16 (1) (a) of Act 136 of 1992.]

(5) Where goods or services are deemed to be supplied by a vendor in terms of section 8 (2) or (9), the supply shall be deemed to be made for a consideration in money equal to the lesser of-

- (a) the cost to the vendor of the acquisition, manufacture, assembly, construction or production of such goods or services, including-
  - (i) any tax charged in respect of the supply to the vendor of such goods or services or of any components, materials or services utilized by him in such manufacture, assembly, construction or production;
  - (ii) where such goods or any right referred to in section 8 (2), when held by the vendor, constituted trading stock as defined in section 1 of the Income Tax Act, any further costs (including tax) incurred by him in respect of such goods or right as contemplated in section 22 (3) (a) of that Act;
  - (iii) any costs (including tax) incurred by the vendor in respect of the transportation or delivery of such goods or the provision of such services in respect of such goods that are consigned or delivered or the provision of such services as contemplated in section 8 (9); and  
[Sub-para. (iii) substituted by s. 168 (a) of Act 45 of 2003.]
  - (iv) where such goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10 (4) deemed to be the open market value of the supply or would in terms of that section have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under section 16 (3) to make a deduction of the full amount of tax in respect of that supply, such open market value to the extent that it exceeds the consideration in money for that supply; or

[Sub-para. (iv) added by s. 26 (d) of Act 97 of 1993.]

- (b) the open market value of such supply.

(6) For the purposes of this Act, where goods are supplied under an instalment credit agreement, the consideration in money for the supply shall be deemed to be the cash value of that supply.

(7) Where goods or services are deemed by section 18 (1) to be supplied by a vendor, the supply shall, subject to the provisions of subsection (8), be deemed to be made for a consideration in money equal to the open market value of such supply.

(8) Where any repairs, maintenance or insurance in respect of a motor vehicle is deemed to be supplied by a vendor by section 18 (1), such supply shall be deemed to be made for a consideration in money equal to the cost (including tax) to such vendor of acquiring such repairs, maintenance or insurance: Provided that where such vendor does not maintain accurate data for the purposes of calculating such consideration in money, such supply shall be deemed to be made for a consideration in money equal to the amount determined in the manner<sup>ii\*</sup> prescribed by the Minister in the *Gazette* for the category of motor vehicle concerned.

[Sub-s. (8) amended by s. 26 (b) of Act 136 of 1991.]

(9) Where goods or services are deemed by section 18 (2) to be supplied by a vendor, the supply shall be deemed to be made for a consideration in money determined in accordance with the formula

$$A \times (B - C),$$

in which formula-

'A' represents the lesser of-

- (i) (aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10 (4) deemed to be the open market

value of the supply or would in terms of that section have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under section 16 (3) to make a deduction of the full amount of tax in respect of that supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or

[Item (aa) substituted by s. 26 (e) of Act 97 of 1993 and by s. 168 (b) of Act 45 of 2003.]

(bb) where the vendor was at some time after the acquisition of such goods or services deemed by section 18 (4) to have been supplied with such goods or services, the amount which was represented by 'B' in the formula contemplated in section 18 (4) when such goods or services were deemed to be supplied to the vendor; or

(cc) where the vendor was at some time after the acquisition of the goods or services required to make an adjustment contemplated in section 18 (2) or (5), the amounts then represented by 'A' in the said formula or by 'B' in the formula contemplated in section 18 (5) respectively, in the most recent adjustment made under section 18 (2) or (5) by the vendor prior to such deemed supply of goods or services; and

(ii) the open market value of the supply of those goods or services at the time any reduction in the extent of the consumption or use of the goods is deemed by section 18 (6) to take place;

'B' represents the percentage that the use or application of the goods or services for the purposes of making taxable supplies was of the total use or application of such goods or services determined under section 17 (1), section 18 (4) or (5) or this subsection, whichever was applicable in the period immediately preceding the 12 month period contemplated in 'C'; and

'C' represents the percentage that, during the 12 month period during which the decrease in use or application of the goods or services is deemed to take place, the use or application of the goods or services for the purposes of making taxable supplies (in respect of which, if such goods or services had been acquired at the time of such use or application, a deduction of input tax would not have been denied in terms of section 17 (2) (a)), was of the total use or application of the goods: Provided that where the percentage contemplated in 'B' does not exceed the said percentage by more than 10 per cent of the total use or application, the said percentage shall be deemed to be the percentage determined in 'B'.

[Sub-s. (9) amended by s. 26 (c) of Act 136 of 1991 and by s. 27 (a) of Act 27 of 1997.]

(10) Where domestic goods and services are supplied at an all-inclusive charge in any enterprise supplying commercial accommodation for an unbroken period exceeding 28 days, the consideration in money is deemed to be 60 per cent of the all-inclusive charge.

[Sub-s. (10) amended by s. 68 (1) of Act 19 of 2001 and substituted by s. 152 (1) (a) of Act 60 of 2001.]

(11) Where a service is under section 8 (4) (b) deemed to be supplied, the consideration in money for the supply shall be deemed to be an amount equal to the amount retained or recovered as contemplated in that section.

(12) Where any supply of goods is a supply which would, but for the proviso to section 11 (1), be charged with tax at the rate of zero per cent, the consideration in money for that supply shall be deemed to be an amount equal to the purchase price of those goods to the supplier: Provided that in any case where the deduction of input tax referred to in that proviso has been made by any other person (where that supplier and that other person are connected persons), the consideration in money for that supply shall be deemed to be an amount equal to the greater of the purchase price of those goods to that supplier and the purchase price of those goods to that other person: Provided further that for the purposes of this subsection, the purchase price of any goods shall not be reduced by any amount of input tax deducted under section 16 (3) by the supplier or, as the case may be, any other person where the supplier and that other person are connected persons.

(13) Where goods or services are deemed to be supplied by a vendor under section 18 (3), the consideration in money for the supply shall be deemed to be an amount equal to the cash equivalent of the benefit or advantage granted to the employee or office holder, as contemplated in section 9 (7): Provided that where such benefit or advantage consists of the right to use a motor vehicle as contemplated in paragraph 2 (b) of the Seventh Schedule to the Income Tax Act, the consideration in money for the supply shall be deemed to be the amount determined in the manner<sup>iii</sup>\* prescribed by the Minister in the *Gazette* for the category of motor vehicle used.

[Sub-s. (13) amended by s. 26 (d) of Act 136 of 1991, by Government Notice 2695 of 8 November 1991 and by s. 16 (1) (b) of Act 136 of 1992.]

(14) Where services are or are deemed by section 8 (5) to be supplied to any public authority or local authority by any vendor the consideration in money for such supply shall be deemed to be the amount of any payment made from time to time by the authority concerned to or on behalf of the vendor as contemplated in the said section.

(15) Where a supply of goods or services is deemed by section 8 (6) to be made to any person by any local authority the consideration in money for such supply shall be deemed to be the amount of any payment (together with tax) made from time to time by such person in respect of the rates referred to in section 8 (6) (a) or in respect of the levy referred to in section 8 (6) (b), as the case may be.

[Sub-s. (15) substituted by s. 26 (e) of Act 136 of 1991.]

(16) Where by reason of the repossession of goods from a debtor under an instalment credit agreement a supply of such goods is deemed by section 8(10) to be made by that debtor, the consideration in money for that supply shall be deemed to be an amount equal to the balance of the cash value of the goods (being the cash value thereof applied under subsection (6) in respect of the supply of the goods to the debtor under the said agreement) which has not been recovered on the date on which the supply of the goods by the debtor is deemed by section 9 (8) to be made: Provided that the said balance shall be deemed to be the amount remaining after deducting from the cash value so much of the sum of the payments made by the debtor under the said agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said instalment credit agreement, may properly be regarded as having been made in respect of the cash value.

(17) Where a service is deemed by section 8 (13) to be supplied to any person, the consideration in money for such supply shall be deemed to be the amount that is received in respect of the bet.

(17A) Where a service is deemed by section 8 (13A) to be supplied to any vendor, the consideration in money for such supply shall be deemed to be the amount that is received as a prize or winnings.

[Sub-s. (17A) inserted by s. 22 of Act 46 of 1996.]

(18) Where a right to receive goods or services to the extent of a monetary value stated on any token, voucher or stamp (other than a postage stamp as defined in section 1 of the Postal Services Act, 1998, and any token, voucher or stamp contemplated in subsection (19)) is granted for a consideration in money, the supply of such token, voucher or stamp is disregarded for the purposes of this Act, except to the extent (if any) that such consideration exceeds such monetary value.

[Sub-s. (18) substituted by s. 152 (1) (b) of Act 60 of 2001.]

(19) Where any token, voucher or stamp (other than a postage stamp as defined in section 1 of the Postal Services Act, 1998) is issued for a consideration in money and the holder thereof is entitled on the surrender thereof to receive goods or services specified on such token, voucher or stamp or which by usage or arrangement entitles the holder to specified goods or services, without any further charge, the value of the supply of the goods or services made upon the surrender of such token, voucher or stamp is regarded as nil.

[sub-s. (19) substituted by s. 152 (c) of Act 60 of 2001.]

(20) Where any token, voucher or stamp is issued by any vendor for no consideration and the holder thereof is entitled on surrender thereof to another person, being the supplier of goods or services, to a discount on the price of goods or services supplied to the holder, the consideration in money for the supply of such goods or services shall be deemed to include the monetary value stated on such token, voucher or stamp: Provided that such monetary value shall be deemed to include tax.

[Sub-s. (20) substituted by s. 12 (a) of Act 20 of 1994.]

(21) Where any supply of entertainment is made by a vendor and in terms of section 17 no deduction of input tax was made in terms of section 16 (3) in respect of the acquisition by the vendor of goods or services for the purpose of such entertainment, the value of such supply shall be deemed to be nil.

(21A) Where any supply of medical or dental services or other goods or services is made as contemplated in section 17 (2) (d) by a scheme referred to in that section, the value of such supply shall be deemed to be nil.

[Sub-s. (21A) inserted by Government Notice 2695 of 8 November 1991 and by s. 16 (1) (c) of Act 136 of 1992 and substituted by s. 12 (b) of Act 20 of 1994.]

(22) Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

(22A) Where any supply is made which comprises the management of a superannuation scheme as contemplated in section 2 (1) (i), the consideration in money for such supply shall be deemed to be the greater of the cost of making such supply or any consideration for such supply.

[Sub-s. (22A) inserted by s. 21 (1) (b) of Act 37 of 1996.]

(22B) Where any supply of goods is deemed to be made as contemplated in section 8 (20), the consideration in money for such supply shall be deemed to be the total amount of the value placed on the importation of the goods in terms of section 13 (2) and the amount of tax levied on the importation in terms of section 7 (1) (b).

[Sub-s. (22B) inserted by s. 27 (b) of Act 27 of 1997.]

(23) Save as otherwise provided in this section, where any supply is made for no consideration the value of that supply shall be deemed to be nil.

(24) Where a game viewing vehicle or a hearse is deemed to be supplied by a vendor in terms of section 8 (14) (b) or (14A) the supply shall be deemed to be made for a consideration in money equal to the open market value, of that game viewing vehicle or hearse.

[Sub-s. (24) added by s. 97 of Act 32 of 2004.]

(25) Where any goods are deemed by section 8 (24) to be supplied to any person, the consideration in money shall be deemed to be the open market value of those goods on the date contemplated in section 9 (11).

[Sub-s. (25) added by s. 104 of Act 31 of 2005.]

## 11 Zero rating

### Cases

(1) Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7 (1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where-

- (a) the supplier has supplied the goods (being movable goods) in terms of a sale or instalment credit agreement and-
  - (i) the supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of 'exported' in section (1); or
  - (ii) the goods have been exported by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in Part 2 of an export incentive scheme referred to in paragraph (d) of the definition of 'exported' in section 1: Provided that-
    - (aa) where a supplier has supplied the goods to the recipient in the Republic otherwise than in terms of this subparagraph, such supply shall not be charged with tax at the rate of zero per cent; and
    - (bb) where the goods have been removed from the Republic by the recipient in accordance with the provisions of an export incentive scheme referred to in paragraph (d) of the definition of 'exported' in section 1, such tax shall be refunded to the recipient in accordance with the provisions of section 44 (9); or

[Para. (a) substituted by s. 27 (a) of Act 136 of 1991 and by s. 85 (1) (a) of Act 53 of 1999.]

- (b) the goods have been supplied in the course of repairing, renovating, modifying or treating any goods to which subsection (2) (g) (ii) or (iv) refers and the goods supplied-
  - (i) are wrought into, affixed to, attached to or otherwise form part of those other goods; or
  - (ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification or treatment process; or

[Para. (b) amended by s. 27 (b) of Act 136 of 1991.]

- (c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or in a customs controlled area: Provided that this subsection shall not apply where a 'motor car' as defined in section 1 is supplied to a person located in a customs controlled area; or

[Para. (c) substituted by s. 98 (1) (a) of Act 32 of 2004.]

- (d) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if those goods are used by that lessee or other person exclusively in any commercial, financial, industrial, mining, farming, fishing or professional concern conducted in an export country and payment of rent or other consideration under that agreement is effected from such export country; or;

[Para. (d) substituted by s. 98 (1) (a) of Act 32 of 2004.]

- (e) the supply is to a registered vendor of an enterprise or of a part of an enterprise which is capable of separate operation, where the supplier and the recipient have agreed in writing that such enterprise or part, as the case may be, is disposed of as a going concern: Provided that-
  - (i) such enterprise or part, as the case may be, shall not be disposed of as a going concern unless-
    - (aa) such supplier and such recipient have, at the time of the conclusion of the agreement for the disposal of the enterprise or part, as the case may be, agreed in writing that such enterprise or part, as the case may be, will be an income-earning activity on the date of transfer thereof; and
    - (bb) the assets which are necessary for carrying on such enterprise or part, as the case may be, are disposed of by such supplier to such recipient; and
    - (cc) in respect of supplies on or after 1 January 2000, such supplier and such recipient have at the time of the conclusion of the agreement for the disposal of such enterprise or part, as the case may be, agreed in writing that the consideration agreed upon for that supply is inclusive of tax at the rate of zero per cent;

[Sub-para. (cc) added by s. 85 (1) (c) of Act 53 of 1999.]

- (ii) where the enterprise or part, as the case may be, disposed of as a going concern has been carried on in, on or in relation to goods or services applied mainly for purposes of such enterprise or part, as the case may be, and partly for other purposes, such goods or services shall, where disposed of to such recipient, for the purposes of this paragraph and section 18A be deemed to form part of such enterprise or part, as the case may be, notwithstanding the provisions of paragraph (v) of the

proviso to the definition of 'enterprise' in section 1; or

[Para. (e) substituted by s. 17 (a) of Act 136 of 1992 and by s. 13 (a) of Act 20 of 1994.]

- (f) the supply is to the South African Reserve Bank, the South African Mint Company (Proprietary) Limited or any bank registered under the Banks Act, 1990 (Act 94 of 1990), of gold in the form of bars, blank coins, ingots, buttons, wire, plate or granules or in solution, which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution; or

[Para. (f) substituted by Government Notice 2695 of 8 November 1991, by s. 17 (b) of Act 136 of 1992 and by s. 13 (b) of Act 20 of 1994.]

- (g) the supply is of such goods used or consumed for agricultural, pastoral or other farming purposes as are set forth in Part A of Schedule 2, provided such supply is made in compliance with such conditions as may be prescribed in the said Part; or

[Para. (g) substituted by Government Notice 2695 of 8 November 1991 and by s. 17 (d) of Act 136 of 1992.]

- (h) the goods consist of fuel levy goods referred to in Fuel Item Levy numbers 195.10.05, 195.10.06, 195.10.07 and 195.10.17 in Part 5 of Schedule No. 1 to the Customs and Excise Act; or

[Para. (h) substituted by s. 27 (c) of Act 136 of 1991 and by s. 105 (a) of Act 31 of 2005.]

- (hA) the goods consist of petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in Heading 27.09 in Chapter 27 of Part 1 of Schedule 1 to the Customs and Excise Act when supplied for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the Customs and Excise Act; or

[Para. (hA) inserted by s. 27 (d) of Act 136 of 1991 and substituted by s. 105 (b) of Act 31 of 2005.]

- (hB) the goods consist of anti-knock preparations referred to in Heading 3811.11 of paragraph 8 of Schedule 1;

[Para. (hB) inserted by s. 27 (1) (a) of Act 97 of 1993 and substituted by s. 85 (1) (a) of Act 53 of 1999 (date of commencement not proclaimed) and by s. 153 (a) of Act 60 of 2001.]

- (i) the goods are supplied as contemplated in section 8 (9);

[Para. (i) substituted by s. 27 (1) (b) of Act 97 of 1993 and by s. 169 (1) (c) of Act 45 of 2003.]

- (j) the goods consist of such foodstuffs as are set forth in Part B of Schedule 2, but subject to such conditions as may be prescribed in the said Part; or

[Para. (j) inserted by s. 27 (f) of Act 136 of 1991 and substituted by Government Notice 2695 of 8 November 1991 and by s. 17 (d) of Act 136 of 1992.]

- (k) the goods are gold coins supplied as such and which the Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1989 (Act 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section; or

[Para. (k) inserted by Government Notice 2695 of 8 November 1991 and by s. 17 (e) of Act 136 of 1992.]

- (l) the goods consist of illuminating kerosene intended for use as fuel for illuminating or heating, referred to in Fuel Item Levy number 195.10.13 in Part 5 of Schedule No. 1 to the Customs and Excise Act and are not mixed or blended with another substance;

[Para. (l) added by s. 43 (1) (b) of Act 5 of 2001 and substituted by s. 105 (c) of Act 31 of 2005.]

- (m) a vendor supplies movable goods, (excluding any 'motor car' as defined in section 1), in terms of a sale or instalment credit agreement to a registered vendor in a customs controlled area and those goods are either-

- (i) physically delivered by the supplier to the recipient; or

- (ii) physically delivered by a VAT registered cartage contractor, engaged by the supplier, whose main activity is that of transporting goods: Provided that this subsection shall not apply where the cartage contractor is not liable to the supplier for delivery of the goods and that supplier is not liable for the full cost relating to that delivery;

[Para. (m) substituted by s. 98 (1) (b) of Act 32 of 2004.]

- (n) the goods consist of-

- (i) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), wholly or partially continuing in force or wholly or partially converted into a new right pursuant to the same Schedule; or
- (ii) any prospecting right, mining right, exploration right, production right, mining permit or retention permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), wholly or partly renewed in terms of that Act:

[Sub-para. (ii) and substituted by s. 98 (1) (c) of Act 32 of 2004.]

[Para. (n) inserted by s. 169 (1) (b) of Act 45 of 2003.]

- (o) .....

[Para. (o) added by s. 169 (1) (d) of Act 45 of 2003 and deleted by s. 105 (d) of Act 31 of 2005.]

- (p) (i) the supply of an enterprise or part of an enterprise as a going concern, by a vendor to that vendor's branch or division, which branch or division is separately registered in terms of section 50 (2): Provided that that enterprise or part, as the case may be, shall not be disposed of as a going concern unless -
    - (aa) that enterprise or part is capable of separate operation; and
    - (bb) will be an income-earning activity on the date of transfer thereof; and
    - (cc) a tax invoice issued in accordance with section 20 in relation to that supply is inclusive of tax at the rate of zero per cent; or
  - (ii) the supply of an enterprise, branch or division, as contemplated in section 50 (2), as a going concern to a separately registered enterprise of that vendor: Provided that that enterprise or part, as the case may be, shall not be disposed of as a going concern unless -
    - (aa) that enterprise or part is capable of separate operation; and
    - (bb) will be an income-earning activity on the date of transfer thereof; and
    - (cc) a tax invoice issued in accordance with section 20 in relation to that supply is inclusive of tax at the rate of zero per cent;
- [Para. (p) inserted by s. 98 (1) (d) of Act 32 of 2004.]
- (q) the goods-
    - (i) are supplied by a vendor to a person who is not a resident of the Republic and not a vendor and who has contracted with that vendor to deliver goods to a recipient, who is a vendor in the Republic; and
    - (ii) form part of a supply by the person referred to in paragraph (i) to the recipient; and
    - (iii) are used by the recipient wholly for the purposes of consumption, use or supply in the course of making taxable supplies:

[Para. (q) added by s. 105 (e) of Act 31 of 2005.]

Provided that paragraphs (a), (b), (c), (d) and (i) of this subsection shall not apply in respect of any supply of goods by a vendor if in respect of such goods input tax contemplated in paragraph (b) of the definition of 'input tax' in section 1 has been deducted in terms of section 16 (3) by that vendor or any other person where that vendor and that other person are connected persons.

[Sub-s. (1) amended by s. 28 (a) of Act 27 of 1997.]

(2) Where, but for this section, a supply of services would be charged with tax at the rate referred to in section 7 (1), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where -

- (a) the services (not being ancillary transport services) comprise the transport of passengers or goods -
  - (i) from a place outside the Republic to another place outside the Republic; or  
[Sub-para. (i) substituted by s. 13 (c) of Act 20 of 1994.]
  - (ii) from a place in the Republic to a place in an export country; or  
[Sub-para. (ii) substituted by s. 13 (c) of Act 20 of 1994.]
  - (iii) from a place in an export country to a place in the Republic; or  
[Sub-para. (iii) substituted by s. 13 (c) of Act 20 of 1994.]
- (b) the services comprise the transport of passengers from a place in the Republic to another place in the Republic to the extent that that transport is by aircraft and constitutes 'international carriage' as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act 17 of 1946); or  
[Para. (b) substituted by s. 13 (d) of Act 20 of 1994.]
- (c) the services (including any ancillary transport services) comprise the transport of goods from a place in the Republic to another place in the Republic to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or  
[Para. (c) substituted by s. 13 (e) of Act 20 of 1994.]
- (d) the services comprise the insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which any provision of paragraph (a), (b) or (c) applies; or
- (e) the services comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from or the importation into the Republic of goods or the movement of goods through the Republic from one export country to another export country, where such services are supplied directly to a person who is not a resident of the Republic and is not a vendor, otherwise than through an agent or other person; or  
[Para. (e) substituted by s. 13 (f) of Act 20 of 1994.]
- (f) the services are supplied directly in connection with land, or any improvement thereto, situated in any export country; or
- (g) the services are supplied directly in respect of-

- (i) movable property situated in any export country at the time the services are rendered; or
- (ii) goods temporarily admitted into the Republic from an export country which are exempt from tax on importation under items 470 and 480 of paragraph 8 of Schedule 1; or

[Sub-para. (ii) amended by s. 27 (1) (c) of Act 97 of 1993 and substituted by s. 85 (1) (e) of Act 60 of 2001 (date of commencement not proclaimed) and by s. 153 (b) of Act 60 of 2001.]

- (iii) goods in respect of which the provisions of paragraph (b) or (c) of the definition of 'exported' in section 1 apply; or
- (iv) the repair, maintenance, cleaning or reconditioning of a foreign-going ship or foreign-going aircraft; or

(h) the services comprise-

- (i) the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while situated in the Republic; or

[Sub-para. (i) substituted by s. 13 (g) of Act 20 of 1994.]

- (ii) services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft; or
- (iii) the storage, repair, maintenance, cleaning, management or arranging the provision of a container referred to in paragraph (1) (i) of Schedule 1 or the arranging of those services,

[Sub-para. (iii) inserted by Government Notice 2695 of 8 November 1991 and by s. 17 (g) of Act 136 of 1992 and substituted by s. 98 (1) (e) of Act 32 of 2004.]

where the services are supplied directly to a person who is not a resident of the Republic and is not a vendor, otherwise than through an agent or other person; or

[Para. (h) amended by s. 13 (h) of Act 20 of 1994.]

(i) the services of arranging-

- (i) the supply of goods as contemplated in paragraph (b) or (c) of the definition of 'exported'; or
- (ii) the supply of services referred to in paragraph (g) (iv) or (h); or
- (iii) the transport of goods (including ancillary transport services) within the Republic,

[Sub-para. (iii) substituted by s. 13 (i) of Act 20 of 1994.]

for a person who is not a resident of the Republic and is not a vendor; or

[Para. (i) amended by s. 13 (i) of Act 20 of 1994.]

(j) the services comprise the repair, maintenance, cleaning or reconditioning of a railway train operated by a person who is not a resident of the Republic and is not a vendor; or

[Para. (j) substituted by s. 13 (j) of Act 20 of 1994.]

(k) the services are physically rendered elsewhere than in the Republic or to a registered vendor in a customs controlled area; or

[Para. (k) substituted by s. 13 (k) of Act 20 of 1994, by s. 28 (c) of Act 27 of 1997 and by s. 169 (1) (e) of Act 45 of 2003.]

(l) the services are supplied to a person who is not a resident of the Republic, not being services which are supplied directly-

- (i) in connection with land or any improvements thereto situated inside the Republic; or
- (ii) in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which-

(aa) is exported to the said person subsequent to the supply of such services; or

(bb) forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor; or

[Sub-para. (ii) amended by s. 85 (1) (f) of Act 53 of 1999.]

- (iii) to the said person or any other person, other than in circumstances contemplated in subparagraph (ii) (bb), if the said person or such other person is in the Republic at the time the services are rendered,

[Sub-para. (iii) substituted by s. 85 (1) (g) of Act 53 of 1999.]

and not being services which are the acceptance by any person of an obligation to refrain from carrying on any enterprise, to the extent that the carrying on of that enterprise would have occurred within the Republic; or

[Para. (l) substituted by s. 13 (l) of Act 20 of 1994, amended by s. 28 (d) of Act 27 of 1997 and substituted by s. 89 of Act 30 of 1998.]

(m) the services comprise-

- (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement, including the incidental supply by the supplier of such services of any other services which are necessary for the supply of such services, of intellectual property rights, including patents,



designs, trade marks, copyrights, know-how, confidential information, trade secrets or similar rights; or

[Sub-para. (i) substituted by s. 13 (*m*) of Act 20 of 1994.]

- (ii) the acceptance by any person of an obligation to refrain from pursuing or exercising in whole or in part any such rights,

where and to the extent that those rights are for use outside the Republic; or

[Para. (*m*) amended by s. 13 (*n*) of Act 20 of 1994.]

- (*n*) the services comprise the carrying on by a welfare organization of the activities referred to in the definition of 'welfare organization' in section 1 and to the extent that any payment in respect of those services is made in terms of section 8 (5) those services shall be deemed to be supplied by that organisation to a public authority or local authority; or

[Para. (*n*) substituted by s. 169 (1) (*f*) of Act 45 of 2003.]

- (*o*) the services are supplied as contemplated in section 8 (9) by a vendor, not being services which are supplied directly -

- (i) in connection with land or any improvements thereto situated inside the Republic; or
- (ii) in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which -

(*aa*) is consigned or delivered to the said person at an address in an export country subsequent to the supply of such services; or

(*bb*) forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor; or

- (iii) to the said person or any other person, other than in the circumstances contemplated in subparagraph (ii) (*bb*), if the said person or such other person is in the Republic at the time that the services are rendered;

[Para. (*o*) substituted by s. 27 (1) (*d*) of Act 97 of 1993 and by s. 169 (1) (*g*) of Act 45 of 2003.]

- (*p*) .....

[Para. (*p*) added by Government Notice 2695 of 8 November 1991 and by s. 17 (*i*) of Act 136 of 1992 and deleted by s. 169 (1) (*h*) of Act 45 of 2003.]

- (*q*) the services are deemed to be supplied in terms of section 8 (5B); or

[Para. (*q*) added by s. 85 (1) (*i*) of Act 53 of 1999 and substituted by s. 169 (1) (*i*) of Act 45 of 2003 and by s. 105 (*f*) of Act 31 of 2005.]

- (*r*) the services comprise of the vocational training of employees (other than educational services contemplated in section 12 (*h*)) for an employer who is not a resident of the Republic and who is not a vendor; or

[Para. (*r*) added by s. 77 (*b*) of Act 30 of 2000.]

- (*s*) the services are deemed to be supplied to a public authority or local authority in terms of section 8 (23);

[Para. (*s*) added by s. 169 (1) (*k*) of Act 45 of 2003.]

- (*t*) the services are deemed to be supplied in terms of section 8 (5A);

[Para. (*t*) added by s. 98 (1) (*f*) of Act 32 of 2004.]

- (*u*) the services are deemed to be supplied in terms of section 8 (5) by a designated entity in respect of any payment made in terms of section 10 (1) (*f*) of the Skills Development Act, 1998 (Act 97 of 1998), to that designated entity; or

[Para. (*u*) added by s. 21 (1) (*b*) of Act 9 of 2005.]

- (*v*) the services relate to goods under warranty to the extent that the services are -

- (i) provided in terms of that warranty;

- (ii) supplied to the warrantor for consideration under that warranty given by the warrantor who is -

(*aa*) not a resident of the Republic;

(*bb*) not a vendor; and

(*cc*) outside the Republic at the time the services are rendered; and

- (iii) in respect of goods that were subject to tax upon importation (in terms of section 7 (1) (*b*) of this Act).

[Para. (*v*) added by s. 105 (*h*) of Act 31 of 2005.]

[Sub-s. (2) amended by s. 28 (*b*) of Act 27 of 1997.]

(3) Where a rate of zero per cent has been applied by any vendor under the provisions of this section or section 13 (1) (ii), the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under those provisions as is acceptable to the Commissioner.

[Sub-s. (3) substituted by s. 169 (1) (*l*) of Act 45 of 2003.]

## 12 Exempt supplies

### Cases

The supply of any of the following goods or services shall be exempt from the tax imposed under section 7 (1) (a):

- (a) The supply of any financial services, but excluding the supply of financial services which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11;

[Para. (a) substituted by Government Notice 2695 of 8 November 1991, by s. 18 (a) of Act 136 of 1992, by s. 14 (a) of Act 20 of 1994 and by s. 22 (1) of Act 37 of 1996.]

- (b) the supply by any association not for gain of any donated goods or services or any other goods made or manufactured by such association if at least 80 per cent of the value of the materials used in making or manufacturing such other goods consists of donated goods;
- (c) the supply of-
  - (i) a dwelling under an agreement for the letting and hiring thereof, and any 'right of occupation' as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act 65 of 1988);  
[Sub-para. (i) substituted by s. 99 (a) of Act 32 of 2004.]
  - (ii) lodging or board and lodging-
    - (aa) by the employer of the recipient (including an employer as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act), where the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment and his or her right thereto is limited to the period of his or her employment or the term of his or her office or a period agreed upon by the supplier and the recipient;
    - (bb) by the employer of the recipient, where the employer operates a hostel or boarding establishment mainly for the benefit of the employees otherwise than for the purpose of making profit; or
    - (cc) by a local authority which operates a hostel or boarding establishment otherwise than for the purpose of making profit; and

[Para. (c) amended by s. 69 (1) of Act 19 of 2001 and substituted by s. 154 (1) (a) of Act 60 of 2001 and by s. 117 (a) of Act 74 of 2002.]

- (d) the supply of leasehold land by way of letting (not being a grant or sale of the lease of that land) to the extent that that land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land;
- (e) the supply of land (together with any improvements to such land existing on the date on which the supplier became contractually obliged to supply such land and such existing improvements to the recipient) where such land is situated outside the Republic and such supply is made by way of sale or by way of letting;
- (f) the supply of any services to any of its members in the course of the management of-
  - (i) a body corporate as defined in section 1 of the Sectional Titles Act, 1986 (Act 95 of 1986); or
  - (ii) a share block company; or  
[Sub-para. (ii) amended by s. 18 (b) of Act 136 of 1992.]
  - (iii) any housing development scheme as defined in the Housing Development Schemes for Retired Persons Act, 1988 (Act 65 of 1988),

[Sub-para. (iii) substituted by Government Notice 2695 of 8 November 1991 and by s. 18 (c) of Act 136 of 1992.]

where the cost of supplying such services is met out of contributions levied by such body corporate or share block company or under such housing development scheme, as the case may be: Provided that this paragraph shall not apply or shall apply to a limited extent where such body corporate or share block company applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs that the provisions of this paragraph shall not apply to that body corporate or share block company or that the provisions of this paragraph shall apply only to a limited extent specified by him: Provided further that this paragraph shall not apply to the services supplied by any body corporate or share block company which manages a property time-sharing scheme as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act 75 of 1983);

[Para. (f) amended by s. 28 of Act 97 of 1993.]

- (g) the supply by any person in the course of a transport business of any service comprising the transport by that person in a vehicle (other than a game viewing vehicle contemplated in paragraph (e) of the definition of 'motor car' in section 1) operated by him of fare-paying passengers and their personal effects by road or railway (excluding a funicular railway), not being a supply of any such service which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11 (2) (a);

[Para. (g) substituted by s. 28 of Act 136 of 1991, by s. 29 of Act 27 of 1997 and by s. 99 (b) of Act 32 of 2004.]

- (h) (i) the supply of educational services-
  - (aa) provided by the State or a school registered under the South African Schools Act, 1996 (Act 84 of 1996), or a further education and training institution established by the State or such institution registered under the Further Education and Training Act, 1998 (Act 98 of 1998);
  - (bb) by an institution that provides higher education on a full time, part-time or distance basis and which is established or deemed to be established as a public higher education institution under the Higher Education Act, 1997 (Act 101 of 1997), or is declared as a public higher education institution under that Act, or is registered or conditionally registered as a private higher education institution under that Act; or
  - (cc) by an institution in the Republic which is exempt from income tax in terms of section 30 of the Income Tax Act and which has been formed for the-
    - (A) promotion of adult basic education and training including literacy and numeracy education, registered under the Adult Basic Education and Training Act, 2000 (Act 52 of 2000), vocational training or technical education;
    - (B) promotion of the education and training of religious or social workers;
    - (C) training or education of persons with a permanent physical or mental impairment;
    - (D) .....
- (ii) the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or payment for board and lodging;
- (iii) the supply of services to learners or students or intended learners or students by the Joint Matriculation Board referred to in section 15 of the Universities Act, 1955 (Act 61 of 1955):

[Subitem (D) deleted by s. 99 (c) of Act 32 of 2004.]

Provided that vocational or technical training provided by an employer to his employees and employees of an employer who is a connected person in relation to that employer does not constitute the supply of an educational service for the purposes of this paragraph;

[Sub-para. (ii) amended by s. 117 (b) of Act 74 of 2002.]

[Para. (h) substituted by s. 154 (1) (b) of Act 60 of 2001.]

- (i) the supply of any goods or services by an employee organization to any of its members to the extent that the consideration for such supply consists of membership contributions;

[Para. (i) added by Government Notice 2695 of 8 November 1991 and by s. 18 (e) of Act 136 of 1992.]

- (j) the service of caring for children by a creche or an after-school care centre.

[Para. (j) added by s. 154 (1) (c) of Act 60 of 2001.]

### **13 Collection of tax on importation of goods, determination of value thereof and exemptions from tax**

(1) For the purposes of this Act goods shall be deemed to be imported into the Republic on the date on which the goods are in terms of the provisions of the Customs and Excise Act deemed to be imported: Provided that-

- (i) goods which are entered for home consumption in terms of the Customs and Excise Act, shall be deemed to have been imported on the date on which they are so entered;
- (ii) where any goods have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption, any supply of those goods before they are entered for home consumption shall be zero-rated for the purposes of this Act;

[Para. (ii) amended by s. 170 (1) (b) of Act 45 of 2003 and substituted by s. 170 (1) (b) of Act 45 of 2003, by s. 100 (1) (b) of Act 32 of 2004 and by s. 106 (a) of Act 31 of 2005.]

- (iii) goods imported from or via Botswana, Lesotho, Swaziland or Namibia shall be declared and tax paid on entry into the Republic as prescribed by the Commissioner in Chapter XIIA of the Rules under the Customs and Excise Act.

[Para. (iii) substituted by s. 86 (1) (a) of Act 53 of 1999.]

[Sub-s. (1) substituted by s. 30 (a) of Act 27 of 1997 and amended by s. 170 (1) (a) of Act 45 of 2003 and by s. 100 (1) (a) of Act 32 of 2004.]

(2) For the purposes of this Act the value to be placed on the importation of goods into the Republic shall be deemed to be-

- (a) where such goods are entered or are required to be entered for home consumption in terms of the Customs and Excise Act, the value thereof for customs duty purposes, plus any duty levied in terms of the said Act in respect of the importation of such goods, plus 10 per cent of the said value; or
- (b) where such goods have their origin in Botswana, Lesotho, Swaziland or Namibia and are imported from such a country, the amount of the value as contemplated in paragraph (a), except that such value shall not be increased by the factor of 10 per cent:

[Para. (b) substituted by s. 86 (1) (b) of Act 53 of 1999.]

Provided that where the Minister has made a regulation determining the value of such goods for the purposes of this section, the greater of such determined value or the value declared on importation shall be used instead of the value for customs purposes.

[Sub-s. (2) amended by s. 30 (b) of Act 27 of 1997.]

(3) The importation of the goods set forth in Schedule 1 to this Act is exempt from the tax imposed in terms of section 7 (1) (b).

[Sub-s. (3) amended by s. 15 (b) of Act 20 of 1994 and substituted by s. 86 (1) (c) of Act 53 of 1999 (date of commencement not proclaimed) and by s. 155 (a) of Act 60 of 2001.]

(4) .....

[Sub-s. (4) amended by s. 19 of Act 136 of 1992 and by s. 30 (c) and (d) of Act 27 of 1997, substituted by s. 86 (1) (c) of Act 53 of 1999 (date of commencement not proclaimed) and by s. 155 (b) of Act 60 of 2001 and deleted by s. 100 (1) (c) of Act 32 of 2004.]

(5) The Commissioner may make such arrangements as the Commissioner may deem necessary -

- (a) for the collection (in such manner as the Commissioner may determine) by-
  - (i) any officer performing his or her duties under the control, direction or supervision of the Commissioner; or
  - (ii) Managing Director of the South African Post Office Limited on behalf of the Commissioner,

[Sub-para. (ii) substituted by s. 155 (c) of Act 60 of 2001.]

of the tax payable in terms of this Act in respect of the importation of any goods into the Republic; and

[Para. (a) substituted by s. 34 (1) of Act 34 of 1997, by s. 86 (1) (d) of Act 53 of 1999 and by s. 70 of Act 19 of 2001.]

(b) for the exchange of such information as is necessary for the carrying out of such arrangements.

[Sub-s. (5) amended by s. 34 (1) of Act 34 of 1997, by s. 86 (1) (d) of Act 53 of 1999 and by s. 70 of Act 19 of 2001.]

(6) Subject to this Act, the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty shall *mutatis mutandis* apply as if enacted in this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs and Excise Act.

[Sub-s. (6) substituted by s. 29 of Act 136 of 1991, by s. 30 (e) of Act 27 of 1997 and by s. 106 (b) of Act 31 of 2005.]

#### **14 Collection of value-added tax on imported services, determination of value thereof and exemptions from tax**

(1) Where tax is payable in terms of section 7 (1) (c) in respect of the supply of imported services the recipient shall within 30 days of the date referred to in subsection (2) -

- (a) furnish the Commissioner with a declaration (in such form as the Commissioner may prescribe) containing such information as may be required; and
- (b) calculate the tax payable on the value of the imported services at the rate of tax in force on the date of supply of the imported services and pay such tax to the Commissioner.

(2) For the purposes of this Act, a supply of imported services shall be deemed to take place at the time an invoice is issued by the supplier or recipient in respect of that supply or the time any payment is made by the recipient in respect of that supply, whichever time is the earlier.

(3) For the purposes of this Act, the value to be placed on the supply of imported services shall, save as otherwise provided in this section, be the value of the consideration for the supply, as determined in terms of section 10 (3) or the open market value of the supply, whichever is the greater.

(4) Where a person carries on activities outside the Republic which do not form part of the activities of any enterprise carried on by him and in the course of such first-mentioned activities services are rendered for the purposes of such enterprise which, if rendered by anybody other than the said person, would be imported services, such services shall for the purposes of section 7 (1) (c) be deemed to be imported services supplied and received by that person in respect of such enterprise.

(5) The tax chargeable in terms of section 7 (1) (c) shall not be payable in respect of -

- (a) a supply which is chargeable with tax in terms of section 7 (1) (a) at the rate provided in section 7;
- (b) a supply which, if made in the Republic, would be charged with tax at the rate of zero per cent applicable in terms of section 11 or would be exempt from tax in terms of section 12;
- (c) a supply of an educational service by an educational institution established in an export country which is regulated by an educational authority in that export country; or

[Para. (c) added by s. 171 (1) of Act 45 of 2003.]

- (d) a supply by a person of services as contemplated in terms of proviso (iii) (aa) to the definition of 'enterprise' in section 1;

[Para. (d) added by s. 101 (c) of Act 32 of 2004.]

## 15 Accounting basis

(1) Except as hereinafter provided, every vendor shall account for tax payable on an invoice basis for the purposes of section 16.

(2) Subject to the provisions of subsections (2A) and (3), the Commissioner may, on application in writing by a vendor, direct that the vendor account for the tax payable on a payments basis for the purposes of section 16 with effect from the vendor's registration in terms of this Act or, where he has accounted for tax payable on an invoice basis prior to making an application under this subsection, from the commencement of the tax period immediately following the tax period during which that direction is made by the Commissioner (hereinafter referred to as the changeover period), if-

- (a) the vendor is a public authority, local authority or association not for gain; or
- (b) the vendor is a natural person (other than the trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons, and-
  - (i) the total value of the vendor's taxable supplies in the period of 12 months ending at the end of any tax period has not exceeded R2,5 million; or

[Sub-para. (i) substituted by Government Notice 2695 of 8 November 1991 and by s. 20 of Act 136 of 1992.]

- (ii) the total value of the vendor's taxable supplies in the period of 12 months beginning on the first day of any month is not likely to exceed the amount specified in subparagraph (i):

[Para. (b) amended by s. 90 (a) of Act 30 of 1998.]

Provided that the provisions of this Act relating to the determination of the value of any supply of goods or services, whether such supply is made before or on or after the commencement date, shall apply for the purposes of this subsection, but no regard shall be had to any tax charged in respect of such supply.

[Sub-s. (2) amended by s. 31 (a) of Act 27 of 1997.]

(2A) Any vendor (other than a public authority or local authority) who in terms of subsection (2) accounts for tax payable on a payments basis shall, in respect of any supply made on or after 5 June 1997 of goods (other than fixed property) or services in respect of which the consideration in money is R100 000 or more, account for the tax payable on an invoice basis.

[Sub-s. (2A) inserted by s. 31 (b) of Act 27 of 1997.]

(3) Where the Commissioner has under subsection (2) directed that a vendor account for tax payable on a payments basis, and-

- (a) the vendor has ceased to satisfy the conditions of subsection (2) under which any such direction may be given, and-
  - (i) the vendor notifies the Commissioner thereof as required by section 25 (c); or
  - (ii) the Commissioner is otherwise satisfied thereof; or
- (b) the vendor has made an application in writing to the Commissioner to account for tax payable on an invoice basis,

the Commissioner shall direct that the vendor account for the tax payable on an invoice basis with effect from the commencement of a future tax period or, where the vendor has failed to notify the Commissioner that he has ceased to satisfy the conditions of subsection (2), as required by the said section 25 (c), any tax period directed by the Commissioner: Provided that for the purposes of paragraph (a) any such vendor shall not cease to satisfy the requirements of subsection (2) where the total value of the vendor's taxable supplies has exceeded or, as the case may be, will exceed the amount specified for the purposes of subsection (2) (b) solely as a consequence of-

- (aa) any cessation of or any substantial and permanent reduction in the size or scale of any enterprise carried on by the vendor; or
- (bb) the replacement of any plant or other capital asset used in any enterprise carried on by the vendor; or
- (cc) abnormal circumstances of a temporary nature.

[Sub-s. (3) amended by s. 31 (c) of Act 27 of 1997.]

(4) Where a vendor changes from an invoice basis to a payments basis or from a payments basis to an invoice basis he shall furnish to the Commissioner particulars in the prescribed form calculating the tax payable or refundable in respect of the change in the basis of accounting.

(5) Any vendor to whom subsection (4) applies shall, within the time allowed under this Act for the payment of tax in respect of the tax period immediately preceding the changeover period, pay to the Commissioner the tax payable as calculated in accordance with this section: Provided that where a vendor changes from a payments basis to an invoice basis for the sole reason that such vendor is not a natural person (other than a trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons, the vendor shall pay to the Commissioner the tax payable as calculated in accordance with this section in equal instalments within the period allowed under this Act for the payment of tax in respect of so many tax periods as the Commissioner may allow, the last of which shall not end on a date later than 10

March 1999.

[Sub-s. (5) substituted by s. 31 (d) of Act 27 of 1997 and amended by s. 90 (b) of Act 30 of 1998.]

(6) Where a vendor changes from an invoice basis to a payments basis, the tax payable shall, for the purposes of subsection (5), be-

- (a) an amount equal to the aggregate of the input tax deducted under section 16 (3) in relation to the tax periods up to and including the tax period immediately preceding the changeover period, to the extent that that amount exceeds the aggregate amount of input tax that would have been deducted if the vendor had, for those tax periods, been accounting for tax payable on a payments basis,

reduced by-

- (b) an amount equal to the aggregate of the output tax accounted for under section 16 (3) in relation to the tax periods up to and including the tax period immediately preceding the changeover period, to the extent that that amount exceeds the aggregate amount of output tax that would have been accounted for if the vendor had, for those tax periods, been accounting for tax payable on a payments basis.

(7) Where a vendor changes from a payments basis to an invoice basis, the tax payable shall, for the purposes of subsection (5), be-

- (a) an amount equal to the aggregate amount of output tax that would have been accounted for under section 16 (3) if the vendor had, in relation to the tax periods up to and including the tax period immediately preceding the changeover period, been accounting for tax payable on an invoice basis, to the extent that that amount exceeds the aggregate of the output tax accounted for in those tax periods,

reduced by-

- (b) an amount equal to the aggregate amount of input tax that would have been deducted under section 16 (3) if the vendor had, in relation to the tax periods up to and including the tax period immediately preceding the changeover period, been accounting for tax payable on an invoice basis, to the extent that that amount of input tax exceeds the aggregate amount of input tax deducted in those tax periods

(8) If, in relation to any particulars required to be furnished under subsection (4), the amount referred to in subsection (6) (b) exceeds the amount referred to in subsection (6) (a) or the amount referred to in subsection (7) (b) exceeds the amount referred to in subsection (7) (a), the amount of the excess shall be refundable to the vendor by the Commissioner in respect of the changeover period as provided in section 44 (1), read with section 16 (5).

(9) Where a vendor's basis of accounting is changed as contemplated in subsection (2) or (3), the vendor shall prepare lists of debtors and creditors in relation to the vendor's enterprise showing the amounts owing by such debtors and the amounts owing to such creditors as at the end of the tax period immediately preceding the changeover period.

## **16 Calculation of tax payable**

### **Cases**

(1) The tax payable by a vendor shall be calculated by him in accordance with the provisions of this section in respect of each tax period during which he has carried on an enterprise in respect of which he is registered or is required to be registered in terms of section 23: Provided that the Commissioner may authorise a vendor to calculate the tax payable in accordance with a method which the Minister may prescribe by regulation.

[Sub-s. (1) amended by s. 91 (a) of Act 30 of 1998.]

(2) No deduction of input tax shall be made in terms of this Act in respect of a supply or the importation of any goods into the Republic, unless-

- (a) a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with section 20 or 21 and is held by the vendor making that deduction at the time that any return in respect of that supply is furnished;

[Para. (a) substituted by s. 156 (a) of Act 60 of 2001 and amended by s. 172 (a) of Act 45 of 2003.]

- (b) a tax invoice is in terms of section 20 (6) or (7) not required to be issued, or a debit note or credit note is in terms of section 21 not required to be issued; or
- (c) sufficient records are maintained as required by section 20 (8) where the supply is a supply of second-hand goods or a supply of goods as contemplated in section 8 (10) and in either case is a supply to which that section relates; or
- (d) a bill of entry or other document prescribed in terms of the Customs and Excise Act together with the receipt for the payment of the tax in relation to the said importation have been delivered in accordance with that Act and are held by the vendor making that deduction, or by his agent as contemplated in section 54 (3) (b), at the time that any return in respect of that importation is furnished; or

[Para. (d) inserted by s. 21 (c) of Act 136 of 1992, substituted by s. 87 (a) of Act 53 of 1999 and amended by s. 156 (b) of Act 60 of 2001.]

- (dA) an amount equal to the tax fraction of any amount paid by the supplier of the services as contemplated in section 8 (13) to the National Lottery Distribution Trust Fund, established by section 21 of the Lotteries



Act, 1997 (Act 57 of 1997); and

[Para. (dA) inserted by s. 87 (b) of Act 53 of 1999.]

- (e) a tax invoice or debit or credit note has been provided as contemplated in section 54 (2), and a statement as contemplated in section 54 (3) (a) is held by the vendor at the time a return in respect of the supply to the vendor is furnished:

[Para. (e) added by s. 156 (c) of Act 60 of 2001 and amended by s. 172 (a) of Act 45 of 2003.]

Provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, or a bill of entry or other document has been delivered in accordance with the Customs and Excise Act, as the case may be, the Commissioner may determine that no deduction for input tax in relation to that supply or importation shall be made unless that tax invoice or debit note or credit note or that bill of entry or other document is retained in accordance with the provisions of section 55 (3): Provided further that no deduction of input tax in relation to that supply or importation shall be made in respect of any tax period which ends more than five years after the end of the tax period during which the tax invoice for that supply should have been issued as contemplated in section 20 (1).

[Sub-s. (2) amended by s. 21 (a) and (d) of Act 136 of 1992, by s. 91 (b) of Act 30 of 1998 and by s. 107 (1) (a) of Act 31 of 2005.]

(3) Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7 (1) (b) and (c) and 7 (3) (a), the following amounts, namely -

- (a) in the case of a vendor who is in terms of section 15 required to account for tax payable on an invoice basis, the amounts of input tax-
  - (i) in respect of supplies of goods and services (not being supplies of second-hand goods to which paragraph (b) of the definition of 'input tax' in section 1 applies and supplies referred to in subparagraph (iiA)) made to the vendor during that tax period;  
[Sub-para. (i) substituted by s. 23 (1) (a) of Act 37 of 1996.]
  - (ii) (aa) in respect of supplies of second-hand goods to which paragraph (b) of the definition of 'input tax' in section 1 applies (other than supplies in respect of which the provisions of subparagraph (bb) apply), to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for those supplies has been made during that tax period;
  - (bb) in respect of supplies of second-hand goods to which paragraph (b) of the definition of 'input tax' in section 1 applies which consist of-
    - (A) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or
    - (B) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable, if the full or final amount of such transfer duty or stamp duty, as the case may be, has been paid during that tax period;

[Sub-para. (ii) substituted by s. 30 (a) of Act 97 of 1993 and by s. 16 (a) of Act 20 of 1994, amended by s. 23 (1) (b) of Act 37 of 1996 and substituted by s. 32 (a) of Act 27 of 1997.]

- (iiA) in respect of taxable supplies made to the vendor under sales concluded on or after 6 June 1996 in respect of which the provisions of section 9 (3) (d) apply (other than supplies in respect of which the provisions of section 10 (4) apply), to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for those supplies has been made during that tax period;

[Sub-para. (iiA) inserted by s. 23 (1) (c) of Act 37 of 1996 and substituted by s. 32 (a) of Act 27 of 1997.]

- (iii) charged in terms of section 7 (1) (b) in respect of goods imported into the Republic by the vendor and invoiced or paid, whichever is the earlier, during that tax period;
- (iv) charged in terms of section 7 (3) (a) in respect of goods subject to excise duty as contemplated in that section and invoiced or paid, whichever is the earlier, during that tax period;
- (v) calculated in accordance with section 21 (2) (b) or 21 (7) or section 22 (1), 22 (1A) or 22 (4), as applicable to the vendor:

[Sub-para. (v) substituted by s. 30 (a) of Act 136 of 1991, by s. 23 (1) (d) of Act 37 of 1996 and by s. 32 (b) of Act 27 of 1997.]

Provided that this paragraph does not apply where a vendor acquires goods or services that are to be

awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction in terms of paragraph (d).

[Para. (a) amended by s. 107 (1) (b) of Act 31 of 2005.]

- (b) in the case of a vendor who is in terms of section 15 required to account for tax payable on a payments basis, the amounts of input tax-
- (i) in respect of supplies of goods and services made to the vendor in respect of which the provisions of section 9 (1), (3) (a), (b) or (d) or (4) apply, to the extent that payments of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for those supplies have been made during that tax period: Provided that the amount referred to in paragraph (b) of the definition of 'input tax' in section 1 in respect of a supply of second-hand goods which consist of-
    - (aa) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or
    - (bb) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable,
 shall be deducted only after such transfer duty or stamp duty, as the case may be, has been paid;

[Sub-para. (i) substituted by s. 30 (b) of Act 97 of 1993 and by s. 16 (b) of Act 20 of 1994 and amended by s. 23 (1) (e) of Act 37 of 1996.]

- (ii) charged in terms of section 7 (1) (b) in respect of goods imported into the Republic by the vendor or in terms of section 7 (3) (a) in respect of goods subject to excise duty as contemplated in that section and paid by the vendor during the tax period;
- (iii) in respect of supplies of goods and services made to the vendor during the tax period, excluding supplies of goods and services to which subparagraph (i) of this paragraph applies;
- (iv) calculated in accordance with section 21 (2) (b) or 21 (7), as applicable to the vendor, to the extent that payments in respect of the tax so calculated have been made during the tax period;
- (v) calculated in accordance with section 22 (1), as applicable to the vendor:

[Sub-para. (v) substituted by s. 30 (b) of Act 136 of 1991.]

Provided that this paragraph does not apply where a vendor acquires goods or services that are to be awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction in terms of paragraph (d).

[Para. (b) amended by s. 107 (1) (b) of Act 31 of 2005.]

- (c) an amount equal to the tax fraction of any payment made during the tax period by the vendor to indemnify another person in terms of any contract of insurance: Provided that this paragraph-
- (i) shall only apply where the supply of that contract of insurance is a taxable supply or where the supply of that contract of insurance would have been a taxable supply if the time of performance of that supply had been on or after the commencement date;
  - (ii) shall not apply where that payment is in respect of the supply of goods or services to the vendor or the importation of any goods by the vendor;
  - (iii) shall not apply where the supply of that contract of insurance is a supply charged with tax at the rate of zero per cent under section 11 and that other person is, at the time that that payment is made, not a vendor and not a resident of the Republic;
  - (iv) shall not apply where that payment results from a supply of goods or services to that other person where those goods are situated outside the Republic or those services are physically performed elsewhere than in the Republic at the time of that supply;

[Sub-para. (iv) substituted by s. 16 (c) of Act 20 of 1994.]

- (d) an amount equal to the tax fraction of any amount paid during the tax period by the supplier of the services contemplated in section 8 (13) as a prize or winnings to the recipient of such services: Provided that where the prize awarded constitutes either goods or services, input tax must be limited to the tax incurred on the initial cost of acquiring those goods or services;

[Para. (d) substituted by s. 107 (1) (d) of Act 31 of 2005.]

- (dA) an amount equal to the tax fraction of any amount paid by the supplier of the services as contemplated in section 8 (13) to the National Lottery Distribution Trust Fund, established by section 21 of the Lotteries Act, 1997 (Act 57 of 1997);

[Para. (dA) inserted by s. 87 (b) of Act 53 of 1999.]

- (e) an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of any Provincial Revenue Fund by the supplier of the services contemplated in section 8 (13);
- (f) the amounts calculated in accordance with section 18 (4) or (5) in relation to any goods or services



applied during the tax period as contemplated in that section;

- (g) any amount of input tax in relation to any supply in respect of which paragraph (a) of, or the proviso to, subsection (2) of this section has operated to deny a deduction of input tax and the vendor has obtained, during the tax period, a tax invoice in relation to that supply;
- (h) in the case of a vendor who has supplied goods or services during that tax period, otherwise than in terms of section 18 (2), an amount determined in accordance with the formula

$$A \times B \times C,$$

in which formula-

'A' represents the tax fraction;

'B' represents the lesser of-

- (i) (aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10 (4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or

[Item (aa) substituted by s. 30 (c) of Act 97 of 1993 and by s. 172 (b) of Act 45 of 2003.]

- (bb) where the vendor was at some time after the acquisition of such goods or services deemed under section 18 (4) to have been supplied with such goods or services, the amount which was represented by 'B' in the formula contemplated in section 18 (4) when such goods or services were deemed to be supplied to the vendor; or

- (cc) where the vendor was at some time after the acquisition of such goods or services required to make an adjustment contemplated in section 18 (2) or (5), the amounts then represented by 'A' in the formula contemplated in section 10 (9) or 'B' in the formula contemplated in section 18 (5) respectively, in the most recent adjustment made in terms of section 18 (2) or (5) by the vendor prior to such supply of goods or services; and

- (ii) the open market value of the supply of those goods or services at the time those goods or services are deemed to be supplied; and

'C' represents the percentage that, immediately before the time of the supply, the use or application of the goods or services for the purpose other than that of making taxable supplies was of the total use or application of the goods or services: Provided that-

- (i) where such goods consist of second-hand goods contemplated in the proviso to paragraph (b) of the definition of 'input tax' in section 1, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which was or would have been payable, less any amount which has previously been deducted in terms of the provisions of subsection (3) (a) (ii) or (b) (i) of this section or section 18 (4) or (5), in respect of such acquisition, original issue or registration of transfer, as the case may be;
- (ii) this subsection does not apply where-

- (aa) such goods or services were acquired before 1 April 2005, or an input tax deduction in respect of that acquisition was denied under proviso (iv) to section 18 (4); and
- (bb) the vendor is a public authority which registered prior to 1 April 2005, notwithstanding paragraph (b) (i) of 'enterprise' in section 1 or a public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act 1 of 1999);

[Para. (h) amended by s. 21 (e) of Act 136 of 1992, by s. 16 (e) of Act 20 of 1994, by s. 91 (c) of Act 30 of 1998 and by s. 107 (1) (e) of Act 31 of 2005.]

- (i) an amount equal to the tax fraction of any payment made by the vendor during the tax period in respect of the redemption with him, or his agent, of the monetary value of any token, voucher or stamp contemplated in section 10 (20), to a supplier of goods or services who has granted a discount on the surrender to him of such token, voucher or stamp by a recipient of a supply of goods or services;

[Para. (i) added by s. 16 (g) of Act 20 of 1994.]

- (j) (i) in the case of a vendor who has, during the tax period, supplied a property in possession in the course or furtherance of his enterprise under a sale, an amount equal to the tax fraction of the lesser of-

- (aa) the amount (excluding any amount of tax) received in respect of the sale of such property in possession less any amount paid by the vendor in respect of the acquisition of such property in possession; and

- (bb) the amount of the unrecovered loan balance less any amount paid by the vendor in respect of the acquisition of such property in possession:  
Provided that no deduction shall be made in terms of this paragraph where the person in default is or will be held liable for payment of such lesser amount;
- (ii) for the purposes of this paragraph-
  - (aa) 'property in possession' means fixed property acquired by any vendor-
    - (A) at a sale in execution as a result of default by any person (other than a person who held or applied such fixed property for the purpose of making taxable supplies in the course or furtherance of his enterprise immediately before such sale in execution) in respect of an unrecovered loan balance due to that vendor in terms of a credit agreement; or
    - (B) as a result of an abandonment authorised by the Master of the High Court where such person has defaulted in respect of an unrecovered loan balance due to that vendor in terms of a credit agreement or gone insolvent;
  - (bb) 'unrecovered loan balance' means the amount of capital, interest and administrative holding costs outstanding in terms of a credit agreement at the date of sale in execution or the date of authorisation of abandonment by the Master of the High Court;  
[Para. (j) inserted by s. 32 (c) of Act 27 of 1997.]
- (k) an amount of input tax as determined by the Commissioner paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the Minister of Agriculture and Land Affairs to compensate that supplier for tax incurred in the production of such goods;  
[Para. (k) added by s. 71 (1) (a) of Act 19 of 2001.]
- (l) an amount as determined by the Commissioner in lieu of a refund in respect of the purchase and use of diesel paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the Minister of Agriculture and Land Affairs to compensate that supplier for an amount refundable in the production of such goods;  
[Para. (l) added by s. 156 (d) of Act 60 of 2001.]

Provided that where any vendor is entitled under the preceding provisions of this subsection to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to a later tax period which ends no later than five years after the end of the tax period during which the tax invoice for that supply should have been issued as contemplated in section 20 (1) and to the extent that it has not previously been deducted by the vendor under this subsection: Provided further that the amount of input tax which, in relation to any supply of goods or services to a vendor, the vendor may deduct in respect of any payment referred to in paragraph (a) (ii) or (b) (i) of this subsection, shall be an amount which bears to the full amount of the input tax relating to that supply the same ratio as the amount of the payment bears to the full value on which tax was payable in respect of the supply.

[Sub-s. (3) amended by s. 71 (1) (b) of Act 19 of 2001 and by s. 107 (1) (f) of Act 31 of 2005.]

(4) For the purposes of subsection (3), output tax in relation to a supply made by a vendor shall be attributable to a tax period-

- (a) in the case of a vendor who is in terms of section 15 required to account for tax payable on an invoice basis -
  - (i) subject to the provisions of subparagraph (ii), where a supply is made or is deemed to be made by him during that tax period;
  - (ii) where a supply is made under a sale concluded on or after 6 June 1996 in respect of which the provisions of section 9 (3) (d) apply (other than a supply in respect of which the provisions of section 10 (4) apply), to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for that supply has been made during that tax period; or  
[Sub-para. (ii) substituted by s. 32 (d) of Act 27 of 1997.]  
[Para. (a) substituted by s. 23 (1) (f) of Act 37 of 1996.]
- (b) in the case of a vendor who is in terms of section 15 required to account for tax payable on a payments basis -
  - (i) to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price has been received by the vendor during that tax period for any supply of

goods or services in respect of which the provisions of section 9 (1), (3) (a), (b) or (d) or (4) or 21 (2) (a) or (6) apply (other than a supply in respect of which the provisions of section 10 (4) apply);

[Sub-para. (i) substituted by s. 30 (d) of Act 97 of 1993, by s. 16 (h) of Act 20 of 1994, by s. 23 (1) (g) of Act 37 of 1996 and by s. 87 (c) of Act 53 of 1999.]

- (ii) where a supply of goods or services is made or deemed to be made during the tax period by that vendor, not being a supply of goods or services to which subparagraph (i) of this paragraph applies.

(5) If, in relation to any tax period of any vendor, the aggregate of the amounts that may be deducted under subsection (3) from the sum referred to in that subsection, the amount (if any) refundable to the vendor under section 15 (8), the amount (if any) brought forward from the tax period preceding the first-mentioned tax period as provided in paragraph (ii) of the proviso to section 44 (1) and the amount (if any) credited under section 44 (4) to the vendor's account during the first-mentioned tax period, exceeds the said sum, the amount of the excess shall, subject to the provisions of this Act, be refundable to the vendor by the Commissioner as provided in section 44 (1).

#### **17 Permissible deductions in respect of input tax**

(1) Where goods or services are acquired or imported by a vendor partly for consumption, use or supply (hereinafter referred to as the intended use) in the course of making taxable supplies and partly for another intended use, the extent to which any tax which has become payable in respect of the supply to him or the importation by him, as the case may be, of such goods or services or in respect of such goods under section 7 (3) or any amount determined in accordance with paragraph (b) or (c) of the definition of 'input tax' in section 1, is input tax, shall be an amount which bears to the full amount of such tax or amount, as the case may be, the same ratio (as determined in accordance with a general written ruling by the Commissioner or a written ruling given by the Commissioner to such vendor) as the intended use of such goods or services in the course of making taxable supplies bears to the total intended use of such goods or services: Provided that-

- (i) where the intended use of goods or services in the course of making taxable supplies is equal to not less than 95 per cent of the total intended use of such goods or services, the goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of making taxable supplies;

[Para. (i) substituted by s. 31 (a) of Act 97 of 1993 and amended by s. 88 of Act 53 of 1999.]

- (ii) where goods or services are deemed by section 9 (3) (b) to be successively supplied, the extent to which the tax relating to any payment referred to in that section is input tax may be estimated where the calculation cannot be made accurately until the completion of the supply of the goods or services, and in such case such estimate shall be adjusted on completion of the supply, any amount of input tax which has been overestimated being accounted for as output tax in the tax period during which the completion occurs and any amount of input tax which has been underestimated being accounted for as input tax in that period; and
- (iii) where a method for determining the ratio referred to in this subsection has been approved by the Commissioner, by way of a general written ruling or a written ruling given to such vendor, that method may only be changed with effect from a future tax period, or from such other date as the Commissioner may consider equitable.

[Para. (iii) added by s. 92 (c) of Act 30 of 1998.]

[Sub-s. (1) amended by s. 22 (a) of Act 136 of 1992 and by s. 92 (a) of Act 30 of 1998.]

(2) Notwithstanding anything in this Act to the contrary, a vendor, other than a foreign donor funded project, shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16 (3), any amount of input tax-

- (a) in respect of goods or services acquired by such vendor to the extent that such goods or services are acquired for the purposes of entertainment: Provided that this paragraph shall not apply where-
  - (i) such goods or services are acquired by the vendor for making taxable supplies of entertainment in the ordinary course of an enterprise which-
    - (aa) continuously or regularly supplies entertainment to clients or customers (other than in the circumstances contemplated in subparagraph (bb)) for a consideration to the extent that such taxable supplies of entertainment are made for a charge which-
      - (A) covers all direct and indirect costs of such entertainment; or
      - (B) is equal to the open market value of such supply of entertainment,
 unless-
    - (i) such costs or open market value is for *bona fide* promotion purposes not charged by the vendor in respect of the supply to recipients who are clients or customers in the ordinary course of the enterprise, of entertainment which is in all respects similar to the entertainment continuously or regularly supplied to clients or

- customers for consideration; or
- (ii) the goods or services were acquired by the vendor for purposes of making taxable supplies to such clients or customers of entertainment which consists of the provision of any food and a supply of any portion of such food is subsequently made to any employee of the vendor or to any welfare organization as all such food was not consumed in the course of making such taxable supplies;
- (bb) supplies entertainment to any employee or office holder of the vendor or any connected person in relation to the vendor, to the extent that such taxable supplies of entertainment are made for a charge which covers all direct and indirect costs of such entertainment;
- [Sub-para. (i) substituted by s. 31 (b) of Act 136 of 1991 and by s. 33 (a) of Act 27 of 1997.]
- (ii) such goods or services are acquired by the vendor for the consumption or enjoyment by that vendor (including, where the vendor is a partnership, a member of such partnership) or an employee or office holder of such vendor in respect of personal subsistence in respect of any night that such vendor or member is by reason of the vendor's enterprise or, in the case of such employee or office holder, he is by reason of the duties of his employment or office, obliged to spend away from his usual place of residence and, in respect of an absence on or after 15 July 1992, from his usual working-place;
- [Sub-para. (ii) substituted by Government Notice 2695 of 8 November 1991, by s. 22 (b) of Act 136 of 1992 and by s. 33 (a) of Act 27 of 1997.]
- (iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger or crew member, in such conveyance during a journey, where such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;
- [Sub-para. (iii) substituted by s. 173 (1) (a) of Act 45 of 2003 and by s. 102 (a) of Act 32 of 2004.]
- (iv) such goods or services consist of a meal or refreshment supplied by the vendor as organizer of a seminar or similar event to a participant in such seminar or similar event, the supply of such meal or refreshment is made during the course of or immediately before or after such seminar or similar event and a charge which covers the cost of such meal or refreshment is made by the vendor to the recipient;
- [Sub-para. (iv) substituted by Government Notice 2695 of 8 November 1991 and by s. 22 (c) of Act 136 of 1992.]
- (v) such goods or services are acquired by a local authority for the purpose of providing sporting or recreational facilities or public amenities to the public in the circumstances referred to in section 8 (6) (a) or for the purposes of the provision of the goods or services referred to in paragraph (c) (iv) of the definition of 'enterprise' in section 1;
- [Sub-para. (v) substituted by s. 31 (c) of Act 97 of 1993.]
- (vi) such goods or services are acquired by a welfare organization, for the purpose of making supplies in the furtherance of its aims and objects; or
- [Sub-para. (vi) added by s. 31 (d) of Act 136 of 1991.]
- (vii) such goods or services are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility;
- [Sub-para. (vii) added by s. 173 (1) (b) of Act 45 of 2003 and substituted by s. 102 (b) of Act 32 of 2004.]
- (viii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any ship or vessel (otherwise than in the circumstances contemplated in subparagraph (iii)) in such ship or vessel to a crew member of such ship or vessel, where such meal or refreshment is supplied in the course of making a taxable supply by that vendor; or
- [Sub-para. (viii) added by s. 102 (c) of Act 32 of 2004.]
- (ix) that entertainment is acquired by the vendor for the purpose of awarding that entertainment as a prize contemplated in section 16 (3) (d) in consequence of a supply contemplated in section 8 (13);
- [Sub-para. (ix) added by s. 108 (c) of Act 31 of 2005.]
- [Para. (a) amended by s. 31 (b) of Act 97 of 1993.]
- (b) in respect of any fees or subscriptions paid by the vendor in respect of membership of any club, association or society of a sporting, social or recreational nature; or
- (c) in respect of any motor car supplied to or imported by the vendor:
- Provided that-
- (i) this paragraph shall not apply where that motor car is acquired by the vendor exclusively for the purpose of making a taxable supply of that motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether that supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration;

- (ii) for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply; and
  - (iii) this paragraph shall not apply where-
    - (aa) that motor car is acquired by the vendor for the purposes of awarding that motor car as a prize contemplated in section 16 (3) (d) in consequence of a supply contemplated in section 8 (13); or
    - (bb) the supply of that motor car is in the ordinary course of an enterprise which continuously or regularly supplies motor cars as prizes to clients or customers (other than to any employee or office holder of the vendor or any connected person in relation to that employee, office holder or vendor) to the extent that it is in consequence of a taxable supply made in the course or furtherance of an enterprise; or
- [Para. (c) amended by s. 108 (d) of Act 31 of 2005.]
- (d) in respect of any goods or services acquired by a superannuation scheme referred to in section 2, for the purposes of the supply by such scheme of any medical or dental services or services directly connected with such medical or dental services or of any goods necessary for or subordinate or incidental to the supply of any such services.

[Para. (d) added by Government Notice 2695 of 8 November 1991 and by s. 22 (e) of Act 136 of 1992 and substituted by s. 17 of Act 20 of 1994.]

[Sub-s. (2) amended by s. 108 (a) of Act 31 of 2005.]

(3) Notwithstanding anything in section 16 (4), where a vendor has made a supply of goods as contemplated in section 8 (10) and in respect of the acquisition thereof by the vendor a deduction of input tax under section 16 (3) was denied in terms of subsection (2) of this section, the vendor shall not be required to account for output tax in relation to such supply.

(4) Where, but for the provisions of this subsection, an amount qualifies or has qualified for a deduction under more than one provision of this Act, a deduction of such amount, or any portion thereof, shall not be made more than once in the calculation of the amount of tax payable by any person.

[Sub-s. (4) added by s. 33 (b) of Act 27 of 1997.]

## 18 Change in use adjustments

(1) Subject to the provisions of section 8 (2), where-

- (a) goods or services have been supplied to or imported by a vendor; or
- (b) goods have been manufactured, assembled, constructed or produced by him; or
- (c) goods or services were deemed by subsection (4) to have been supplied to him,

(excluding goods or services to the extent that, in respect of the acquisition of which by the vendor, a deduction of input tax was denied by section 17 (2) or would have been denied if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such vendor wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose, such goods or services shall-

- (i) if they are subsequently applied by him (otherwise than in the circumstances contemplated in section 8 (9)) wholly for a purpose other than the said purpose; or
- (ii) if they are subsequently applied by him wholly for a purpose in respect of which, if such goods or services had been acquired by him at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2) (a) or (c),

be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise.

[Sub-s. (1) amended by s. 32 (a) of Act 136 of 1991 and by s. 34 (a) of Act 27 of 1997.]

(2) Where-

- (a) capital goods or services have been supplied to or imported by a vendor; or  
[Para. (a) substituted by s. 23 (a) of Act 136 of 1992.]
- (b) capital goods have been manufactured, assembled, constructed or produced by him; or  
[Para. (b) substituted by s. 23 (a) of Act 136 of 1992.]
- (c) capital goods or services were deemed by subsection (4) to have been supplied to him,  
[Para. (c) substituted by s. 23 (a) of Act 136 of 1992.]

(excluding goods or services to the extent that, in respect of the acquisition of which by the vendor, a deduction of input tax was denied by section 17 (2) or would have been denied if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such vendor wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose, such goods or services shall, if the extent of the application or use of such goods or services in the course of making taxable supplies (in respect of which, if such goods or services had been acquired at the time of such

application or use, a deduction of input tax would not have been denied in terms of section 17 (2) (a)) is subsequently reduced in relation to their total application or use, be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise at the time at which such reduction is deemed by subsection (6) to take place: Provided that this subsection does not apply to-

- (i) capital goods or services which have an adjusted cost of less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the vendor by subsection (4) if the amount which was represented by 'B' in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such vendor; or
- (ii) capital goods or services acquired by a public authority or public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act 1 of 1999), if the goods or services were acquired prior to 1 April 2005 or if an input tax deduction in respect thereof was denied under proviso (iv) to section 18 (4).

[Sub-s. (2) amended by s. 32 (b) of Act 136 of 1991, by s. 34 (b) of Act 27 of 1997, by s. 174 (a) of Act 45 of 2003 and by s. 109 (1) (a) of Act 31 of 2005.]

(3) Notwithstanding anything in this section, to the extent that any vendor has or is deemed to have granted a benefit or advantage to an employee or the holder of any office as contemplated in paragraph (i) of the definition of 'gross income' in section 1 of the Income Tax Act, read with the Seventh Schedule to that Act, and such benefit or advantage consists of a supply of goods or services, the granting of that benefit or advantage shall be deemed to be a supply of goods or services made by the vendor in the course of an enterprise carried on by the vendor: Provided that this subsection shall not apply to any such benefit or advantage to the extent that it has arisen by virtue of any supply of goods or services which is an exempt supply in terms of section 12 of this Act or is a supply which is charged with tax at the rate of zero per cent in terms of section 11 of this Act or is a supply of entertainment: Provided further that this subsection shall not apply to any such benefit or advantage to the extent that it is granted by the vendor in the course of making exempt supplies.

[Sub-s. (3) substituted by s. 32 (c) of Act 136 of 1991.]

(4) Where-

- (a) (i) goods or services have been supplied to or imported by a person prior to the commencement date; or
- (ii) goods have been manufactured, assembled, constructed or produced by him prior to the commencement date, and such goods or services were acquired, manufactured, assembled, constructed or produced or applied by such person wholly for purposes other than that of consumption, use or supply in the course of making supplies in the course of an activity which was an enterprise or would have been an enterprise if section 1 had been applicable prior to the date of promulgation of this Act or for a purpose in respect of which a deduction of input tax in respect of such goods or services would have been denied in terms of section 17 (2) if that section had been applicable prior to the commencement date; or

[Para. (a) amended by s. 34 (c) of Act 27 of 1997.]

- (b) (i) goods or services have been supplied to or imported by a person on or after the commencement date and tax has been charged in respect of such supply or importation; or
- (ii) goods have been manufactured, assembled, constructed or produced by him on or after the commencement date and tax has been charged in respect of the supply of goods or services acquired by him for the purpose of such manufacturing, assembling, construction or production; or
- (iii) goods or services are deemed by subsection (1) or section 8 (2) to have been supplied by him, and no deduction has been made in terms of section 16 (3) in respect of or in relation to such goods or services; or

[Para. (b) amended by s. 34 (d) of Act 27 of 1997.]

- (c) second-hand goods situated in the Republic have been supplied (otherwise than under a taxable supply) to a person under a sale on or after the commencement date by a resident of the Republic and no deduction has been made in terms of section 16 (3) in respect of such second-hand goods; and

[Para. (c) inserted by s. 18 (c) of Act 20 of 1994.]

such goods or services are subsequent to the commencement date applied in any tax period by that person or, where he is a member of a partnership, by the partnership, wholly or partly for consumption, use or supply in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2)), those goods or services shall be deemed to be supplied in that tax period to that person or the partnership, as the case may be, and the Commissioner shall allow that person or the partnership, as the case may be, to make a deduction in terms of section 16 (3) of an amount

determined in accordance with the formula

$$A \times B \times C \times D,$$

in which formula-

- 'A' represents the tax fraction;
- 'B' represents the lesser of-
- (i) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10 (4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or  
[Sub-para. (i) substituted by s. 32 (a) of Act 97 of 1993 and by s. 174 (b) of Act 45 of 2003.]
  - (ii) the open market value of the supply of those goods or services at the time when the supply is deemed to be made;
- 'C' represents the ratio that, immediately after the supply so deemed to be made, the intended use of the goods or services (as contemplated in section 17 (1)) in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2)) bears to the total intended use of those goods or services, expressed as a percentage: Provided that where the intended use of goods or services in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2)) is equal to not less than 95 per cent of the total intended use of such goods or services, such percentage shall be deemed to be 100 per cent; and  
[Definition of symbol 'C' amended by s. 89 of Act 53 of 1999.]
- 'D', where paragraph (c) applies, other than in respect of second-hand goods to which the proviso to paragraph (b) of the definition of 'input tax' in section 1 applies, represents the ratio that the amount paid, which payment reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the consideration in money for the supply of second-hand goods, bears to the total consideration in money, expressed as a percentage:  
[Definition of symbol 'D' substituted by s. 93 of Act 30 of 1998.]

Provided that-

- (i) paragraph (b) of this subsection shall not apply where a vendor has, only as a result of not complying with the provisions of section 16 (2), not been entitled to make a deduction of input tax in terms of section 16 (3);
- (ii) where the second-hand goods referred to in paragraph (c) of this subsection consist of -
  - (aa) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable or would have been payable had an exemption from transfer duty (whether in terms of the Transfer Duty Act or any other Act of Parliament) not been applicable; or
  - (bb) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable or would have been payable had an exemption from stamp duty (whether in terms of the Stamp Duties Act or any other Act of Parliament) not been applicable,
 the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which is or would have been payable in respect of such acquisition, original issue or registration of transfer, as the case may be;
- (iii) where the second-hand goods referred to in paragraph (c) of this subsection consist of-
  - (aa) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or
  - (bb) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable,
 the deduction in terms of section 16 (3) shall be made only after such transfer duty or stamp duty, as the case may be, has been paid; or
- (iv) this subsection shall not apply where a constitutional institution listed in Schedule 1 or a public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act 1 of 1999), is re-classified within the Schedules to the Public Finance Management Act, 1999 (Act 1 of 1999) and applies those goods or services for the purposes of consumption, use or supply in the course of making taxable supplies.

[Sub-para. (iv) added by s. 103 (1) (c) of Act 32 of 2004.]

[Sub-s. (4) amended by s. 32 (d) of Act 136 of 1991, by Government Notice 2695 of 8 November 1991, by s. 23 (b) of Act 136 of 1992, by s. 18 (d), (e), (f) and (g) of Act 20 of 1994 and by s. 34 (e) and (f) of Act 27 of 1997.]

(5) Where-

- (a) capital goods or services have been supplied to or imported by a vendor; or
- (b) capital goods have been manufactured, assembled, constructed or produced by him; or
- (c) capital goods or services are deemed by subsection (4) to have been supplied to him,

and such goods or services were acquired, manufactured, assembled, constructed or produced or applied by such vendor partly for the purpose of consumption, use or supply in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2)) or of making supplies in the course of an activity which was an enterprise or would have been an enterprise if section 1 had been applicable prior to the date of promulgation of this Act (other than supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2) if that section had been applicable prior to the commencement date) such goods or services shall, if the extent of the application or the use of such goods or services in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2)) is subsequent to the commencement date increased in relation to their total application or use, be deemed to be supplied to him, and the Commissioner shall allow the vendor to make a deduction in terms of section 16 (3), in the tax period during which such increase is deemed by subsection (6) to take place, of an amount determined in accordance with the formula

$$A \times B \times (C - D),$$

in which formula-

'A' represents the tax fraction;

'B' represents the lesser of-

- (i) (aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10 (4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or

[Item (aa) substituted by s. 32 (f) of Act 136 of 1991, by s. 32 (b) of Act 97 of 1993 and by s. 174 (c) of Act 45 of 2003.]

- (bb) where goods or services were deemed by subsection (4) to have been supplied to the vendor, the amount which was represented by 'B' in the formula contemplated in that subsection when such goods or services were deemed to be supplied to the vendor; or
- (cc) where the vendor was at some time after the acquisition of the goods or services required to make an adjustment contemplated in subsection (2) or this subsection the amounts represented by 'A' in the formula contemplated in section 10 (9) or by 'B' in the formula contemplated in this subsection respectively, in the most recent adjustment made under subsection (2) or this subsection by the vendor prior to such supply of goods or services so deemed to be made; and

- (ii) the open market value of the supply of those goods or services at the time any increase in the extent of the use or application of the goods or services is deemed by subsection (6) to take place;

'C' represents the percentage that, during the 12 month period during which the increase in use or application of the goods or services is deemed to take place, the use or application of the goods or services for the purposes of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2)) was of the total use or application of the goods: Provided that where the said percentage does not exceed the percentage contemplated in 'D' by more than 10 per cent of the total use or application, the said percentage shall be deemed to be the percentage determined in 'D';

'D' represents the percentage that the use or application of the goods or services for the purposes of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17 (2)) was of the total use or application of such goods or services determined in terms of section 17 (1), section 10 (9) or subsection (4) of this section or this subsection, whichever was applicable in the period immediately preceding the 12 month period contemplated in 'C':

Provided that-

- (i) this subsection does not apply to-



- (aa) capital goods or services which cost less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the person by subsection (4) if the amount which was represented by 'B' in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such person; or
- (bb) capital goods or services acquired by a public authority or public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act 1 of 1999), prior to 1 April 2005, or if an input tax deduction in respect thereof was denied under proviso (iv) to section 18 (4);
- (ii) where the capital goods or services consist of second-hand goods contemplated in the proviso to paragraph (b) of the definition of 'input tax' in section 1, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which is or would have been payable, less any amount which has previously been deducted in terms of the provisions of section 16 (3) (a) (ii) or (b) (i), or subsection (4) of this section, in respect of that acquisition, original issue or registration of transfer, as the case may be.

[Sub-s. (5) amended by s. 32 (e), (g) and (h) of Act 136 of 1991, by Government Notice 2695 of 8 November 1991, by s. 23 (b) of Act 136 of 1992, by s. 34 (g), (h), (i), and (j) of Act 27 of 1997 and by s. 109 (1) (b) of Act 31 of 2005.]

(6) For the purposes of subsections (2) and (5), any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on the last day of the vendor's year of assessment as defined in section 1 of the Income Tax Act or, if the vendor is not an income tax payer, on the last day of February: Provided that where a vendor who is not an income tax payer draws up annual financial statements in respect of a year or other period ending on a date other than the last day of February any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on such first-mentioned date.

(7) For the purposes of subsections (2) and (5) of this section, the extent of the application or use of any goods or services for the purpose of making taxable supplies shall be determined with reference to the application or use of such goods or services during the 12 month period ending on the day any reduction or increase in the extent of the application or use of such goods or services is deemed by subsection (6) to have taken place: Provided that where any goods or services are acquired, manufactured, assembled, constructed or produced by a vendor or are deemed under subsection (4) to have been supplied to that vendor during such 12 month period, the extent of the application or use of such goods or services shall be determined with reference to the period ending on the day contemplated in subsection (6) and commencing on the date such goods or services are acquired, manufactured, assembled, constructed or produced by the vendor or are deemed to be supplied to the vendor under subsection (4): Provided further that where the period between the commencement date and the date contemplated in subsection (6) is less than a 12 month period it shall for the purposes of this section be deemed to be a 12 month period.

(8) Where a deduction of an amount contemplated in paragraph (b) of the definition of 'input tax' in section 1 has been made by any vendor in respect of the sale to him of any second-hand goods and subsequently -

- (a) that sale is cancelled; or
- (b) the nature of that sale is fundamentally varied or altered; or
- (c) the previously agreed consideration for that sale is reduced; or
- (d) the second-hand goods or part of the second-hand goods sold are returned to the supplier,

and, as a result of the occurrence of one or more of the abovementioned events, the input tax actually deducted in relation to such sale exceeds the input tax properly deductible by the vendor, either the amount of that excess shall be deemed to be tax charged in relation to a taxable supply made by that vendor in the tax period during which the said event has occurred, at the rate of tax which applied when the said deduction was made, or the amount of input tax deducted in terms of section 16 (3) in the said tax period shall be reduced by the amount of the said excess.

[Sub-s. (8) added by s. 18 (h) of Act 20 of 1994.]

(9) Where a vendor has acquired or imported a motor car (in respect of which input tax has been denied in terms of section 17 (2) (c)) and has subsequently converted that motor car into a game viewing vehicle or a hearse, as contemplated in paragraph (e) or (f) of the definition of 'motor car' in section 1, that motor car is deemed to be supplied in that tax period to that vendor, and the Commissioner shall allow that vendor to make a deduction in terms of section 16 (3) of an amount equal to the tax fraction of the lesser of-

- (a) the adjusted cost; or
- (b) the open market value,

of that motor car on the day before that conversion: Provided that this deduction excludes any amount of input tax which qualifies or has qualified for a deduction under another provision of this Act.

[Sub-s. (9) added by s. 103 (1) (d) of Act 32 of 2004.]

(10) Where-

- (a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11 (1) (c), 11 (1) (m) or 11 (2) (k) to a registered vendor who is a customs controlled area enterprise; or
- (b) goods have been imported into the Republic by a registered vendor who is a customs controlled area

enterprise for use, consumption or supply in that area and those goods are exempt from tax in terms of section 13 (3),

and where a deduction of input tax would have been denied in terms of section 17 (2), those goods or services shall be deemed to be supplied by the vendor concerned in the same tax period in which they were so acquired, in accordance with the formula:

$$A \times B$$

in which formula-

'A' represents the rate of tax levied in terms of section 7 (1); and 'B' represents-

- (a) the cost to the vendor of the acquisition of those goods or services which were supplied to him in terms of sections 11 (1)(c), 11 (1)(m) or 11 (2) (k); or
- (b) the value to be placed on the importation of goods into the Republic as determined in terms of section 13 (2).

[Sub-s. (10) added by s. 103 (1) (d) of Act 32 of 2004 and amended by s. 109 (1) (c) of Act 31 of 2005.]

[S. 18 amended by s. 103 (1) (a) of Act 32 of 2004.]

#### **18A Adjustments in consequence of acquisition of going concern wholly or partly for purposes other than making taxable supplies**

(1) Where-

- (a) an enterprise or part of an enterprise has been supplied to any vendor; and
- (b) the supply of such enterprise or part was charged with tax at the rate of zero per cent in terms of section 11 (1)(e); and
- (c) such enterprise or part, as the case may be, or any goods or services which formed part of such enterprise or part are acquired by such vendor wholly or partly for a purpose other than for consumption, use or supply in the course of making taxable supplies,

such enterprise, part, goods or services, as the case may be, shall be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise: Provided that where the intended use of such enterprise, part, goods or services, as the case may be, in the course of making taxable supplies is equal to not less than 95 per cent of the total intended use of such enterprise, part, goods or services, as the case may be, the enterprise, part, goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of consumption, use or supply in the course of making taxable supplies.

[Sub-s. (1) amended by s. 19 of Act 20 of 1994 and by s. 90 of Act 53 of 1999.]

(2) Notwithstanding anything in this Act, the value of the supply deemed by subsection (1) to have been made by the vendor, shall be the full cost to such vendor of acquiring such enterprise, part, goods or services, as the case may be, reduced by an amount which bears to the amount of such full cost the same ratio as the intended use or application of the enterprise, part, goods or services in the course of making taxable supplies bears to the total intended use or application of the enterprise, part, goods or services: Provided that-

- (i) the cost to such vendor of acquiring such enterprise, part, goods or services may be reduced by any amount which represents an appropriate allocation of such full cost to the acquisition of any goods or services which form part of such enterprise or part of an enterprise and in respect of the acquisition of which by the vendor a deduction of input tax would be denied in terms of section 17 (2); or
- (ii) where such enterprise, part, goods or services were acquired-
  - (aa) by means of a supply made by a vendor for no consideration or for a consideration in money which is less than the open market value of the supply; and
  - (bb) in circumstances where the supplier and the recipient are connected persons, the cost of such enterprise, part, goods or services shall be deemed to be the open market value of the supply of such enterprise, part, goods or services.

[Sub-s. (2) amended by s. 24 of Act 37 of 1996.]

(3) Notwithstanding anything in this Act, the supply deemed by subsection (1) to have been made by the vendor shall be deemed to be made in the tax period in which the supply of the enterprise or part of an enterprise is made.

(4) For the purposes of this section and sections 10 (9), 18 (4) and (5), the cost to the vendor of any goods or services acquired by a vendor in the circumstances contemplated in subsection (1) shall be deemed to be an amount equal to the aggregate of an amount which represents an appropriate allocation of the full cost to the vendor of the enterprise or part of an enterprise to those specific goods or services and an amount determined by applying the rate of tax applicable at the time of supply contemplated in subsection (3) to the amount of such appropriate allocation.

[S. 18A inserted by s. 24 of Act 136 of 1992.]

#### **19 Goods or services acquired before incorporation**

Any company, being a vendor, shall, where any amount of tax has been charged in terms of section 7 in relation to the acquisition of goods or services for or on behalf of that company or in connection with the incorporation of that company, and those goods or services were acquired prior to incorporation by a person who-

- (a) was reimbursed by the company for the whole amount of the consideration paid for the goods or services; and
- (b) acquired those goods or services for the purpose of an enterprise to be carried on by the company and has not used those goods or services for any purpose other than carrying on such enterprise,

be deemed to be the recipient of the goods or services and to have paid the tax so charged as if the supply or the payment of the tax had been made during the tax period in which the reimbursement referred to in paragraph (a) is made: Provided that this section shall not apply in relation to any goods or services where-

- (i) the supply of those goods or services by that person to the company is a taxable supply, or is a supply of second-hand goods not being a taxable supply; or
- (ii) those goods or services were so acquired more than six months prior to the date of incorporation of the company; or
- (iii) the company does not hold sufficient records to establish the particulars relating to the deduction to be made.

## 20 Tax invoices

(1) Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8 (10)) to a recipient, must within 21 days of the date of that supply issue a tax invoice containing such particulars as are specified in this section: Provided that-

- (i) it shall not be lawful to issue more than one tax invoice for each taxable supply;
- (ii) if a vendor claims to have lost the original tax invoice, the supplier or the recipient, as the case may be, may provide a copy clearly marked 'copy'.

[Sub-s. (1) amended by s. 91 (a) of Act 53 of 1999 and by s. 104 (1) (a) of Act 32 of 2004.]

(1A) .....

[Sub-s. (1A) inserted by s. 157 (a) of Act 60 of 2001 and deleted by s. 104 (1) (b) of Act 32 of 2004.]

(2) Where a recipient, being a registered vendor, creates a document containing the particulars specified in this section and purporting to be a tax invoice in respect of a taxable supply of goods or services made to the recipient by a supplier, being a registered vendor, that document shall be deemed to be a tax invoice provided by the supplier under subsection (1) of this section where-

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the taxable supplies or taxable supplies of a specified category to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any taxable supply to which this subsection applies; and
- (c) such document is provided to the supplier and a copy thereof is retained by the recipient:

Provided that where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this Act.

(3) Where a supply of goods is deemed by section 8 (10) to be made and both the recipient and the supplier in relation to that supply are registered vendors, the recipient shall, within 21 days after the day on which such supply is deemed by section 9 (8) to be made, create and furnish to the supplier a document which contains the particulars specified in this section, and such document shall for the purposes of this Act be deemed to be a tax invoice provided by the supplier under subsection (1) of this section.

(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:

- (a) The words 'tax invoice' in a prominent place;
- (b) the name, address and VAT registration number of the supplier;  
[Para. (b) substituted by s. 47 (1) (a) of Act 16 of 2004.]
- (c) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient;  
[Para. (c) substituted by s. 175 (1) of Act 45 of 2003 and by s. 47 (1) (b) of Act 16 of 2004.]
- (d) an individual serialized number and the date upon which the tax invoice is issued;
- (e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;  
[Para. (e) substituted by s. 157 (c) of Act 60 of 2001 and by s. 104 (1) (c) of Act 32 of 2004.]
- (f) the quantity or volume of the goods or services supplied;
- (g) either-
  - (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
  - (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

[Para. (g) substituted by Government Notice 2695 of 8 November 1991 and by s. 25 (1) (a) of Act 136 of 1992.]  
 Provided that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.

[Sub-s. (4) amended by s. 94 (a) and (b) of Act 30 of 1998 and by s. 157 (b) of Act 60 of 2001.]

(5) Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed R3 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:

- (a) The words 'tax invoice' in a prominent place;
- (b) the name, address and VAT registration number of the supplier;  
 [Para. (b) substituted by s. 47 (1) (c) of Act 16 of 2004.]
- (c) an individual serialized number and the date upon which the tax invoice is issued;
- (d) a description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;  
 [Para. (d) substituted by s. 104 (1) (e) of Act 32 of 2004.]
- (e) either-
  - (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
  - (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

[Para. (e) substituted by Government Notice 2695 of 8 November 1991 and by s. 25 (1) (b) of Act 136 of 1992.]  
 Provided that this subsection shall not apply to a supply that is charged with tax under section 11: Provided further that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.

[Sub-s. (5) amended by s. 33 of Act 97 of 1993, by s. 94 (c) and (d) of Act 30 of 1998, by s. 157 (d) of Act 60 of 2001 and by s. 104 (1) (d) of Act 32 of 2004.]

(6) Notwithstanding any other provision of this Act, a supplier shall not be required to provide a tax invoice if the total consideration for a supply is in money and does not exceed R50.

[Sub-s. (6) amended by s. 157 (e) of Act 60 of 2001.]

(7) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies, and that it would be impractical to require that a full tax invoice be issued in terms of this section, the Commissioner may, subject to such conditions as the Commissioner may consider necessary, direct-

- (a) that any one or more of the particulars specified in subsection (4) or (5) shall not be contained in a tax invoice; or
- (b) that a tax invoice is not required to be issued; or
- (c) that the particulars specified in subsection (4) or (5) be furnished in any other manner.

[Para. (c) added by s. 91 (b) of Act 53 of 1999.]

(8) Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods or of goods as contemplated in section 8 (10) to a recipient, being a registered vendor, the recipient shall in the form as the Commissioner may prescribe, where the value of the supply is R1 000 or more, obtain and maintain a declaration by the supplier stating whether the supply is a taxable supply or not and shall further maintain sufficient records to enable the following particulars to be ascertained:

- (a) (i) The name of the supplier and-
  - (aa) where the supplier is a natural person, his identity number; or
  - (bb) where the supplier is not a natural person, the name and identity number of the natural person representing the supplier in respect of the supply and any legally allocated registration number of the supplier:
 Provided that the recipient-
  - (A) shall verify such name and identity number of any such natural person with reference to his identity document, as contemplated in section 1 of the Identification Act, 1997 (Act 68 of 1997), and, where the value of the supply is R1 000 or more, retain a photocopy of such name and identity number appearing in such identity document; or  
 [Para. (A) substituted by s. 91 (c) of Act 53 of 1999.]
  - (B) shall verify such name and registration number of any supplier other than a natural person with reference to its business letterhead or other similar document and, where the value of the supply is R1 000 or more, retain a photocopy of such name and registration number appearing on such letterhead or document; and
- (ii) the address of the supplier;

[Para. (a) substituted by s. 35 of Act 27 of 1997.]

- (b) the date upon which the second-hand goods were acquired or the goods were repossessed, as the case may be;
- (c) a description of the goods;
- (d) the quantity or volume of the goods;
- (e) the consideration for the supply:

Provided that this subsection shall not require that recipient to keep such records where the total consideration for that supply is in money and does not exceed R20.

[Sub-s. (8) amended by s. 94 (e) of Act 30 of 1998 and by s. 104 (1) (f) of Act 32 of 2004.]

## 21 Credit and debit notes

(1) This section shall apply where, in relation to the supply of goods or services by any registered vendor-

- (a) that supply has been cancelled; or
- (b) the nature of that supply has been fundamentally varied or altered; or
- (c) the previously agreed consideration for that supply has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
- (d) the goods or services or part of the goods or services supplied have been returned to the supplier, including the return to a vendor of a returnable container, the vendor in such case being deemed for the purposes of this Act to have made the supply of the container in respect of which the deposit was charged, whether the supply was made by him or any other person,

[Para. (d) substituted by Government Notice 2695 of 8 November 1991 and by s. 26 (1) (a) of Act 136 of 1992.]

and the supplier has-

- (i) provided a tax invoice in relation to that supply and the amount shown therein as tax charged on that supply is incorrect in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the above-mentioned events; or
- (ii) furnished a return in relation to the tax period in respect of which output tax on that supply is attributable, and has accounted for an incorrect amount of output tax on that supply in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the above-mentioned events.

(2) Where a supplier has accounted for an incorrect amount of output tax as contemplated in subsection (1), that supplier shall make an adjustment in calculating the tax payable by that supplier in the return for the tax period during which it has become apparent that the output tax is incorrect, and if-

- (a) the output tax properly chargeable in relation to that supply exceeds the output tax actually accounted for by the supplier, the amount of that excess shall be deemed to be tax charged by that supplier in relation to a taxable supply attributable to the tax period in which the adjustment is to be made, and shall not be attributable to any prior tax period; or
- (b) the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, that supplier shall either make a deduction in terms of section 16 (3) in respect of the amount of that excess (such amount being deemed for the purposes of that section to be input tax), or reduce the amount of output tax attributable to the said tax period in terms of section 16 (4) by the amount of that excess: Provided that the said deduction shall not be made where the excess tax has been borne by a recipient of goods or services supplied by the supplier and the recipient is not a vendor, unless the amount of the excess tax has been repaid by the supplier to the recipient, whether in cash or by way of a credit against any amount owing to the supplier by the recipient.

[Para. (b) amended by s. 34 (a) of Act 97 of 1993.]

(3) Subject to this section, where a tax invoice has been provided as contemplated in subsection (1) (i), and-

- (a) the amount shown as tax charged in that tax invoice exceeds the actual tax charged in respect of the supply concerned, the supplier shall provide the recipient with a credit note, containing the following particulars:

- (i) The words 'credit note' in a prominent place;
- (ii) the name, address and VAT registration number of the vendor;

[Sub-para. (ii) substituted by s. 48 (1) (a) of Act 16 of 2004.]

- (iii) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the credit note relates to a supply in respect of which a tax invoice contemplated in section 20 (5) was issued;

[Sub-para. (iii) amended by Government Notice 2695 of 8 November 1991 and by s. 26 (1) (b) of Act 136 of 1992 and substituted by s. 176 (1) (a) of Act 45 of 2003 and by s. 48 (1) (b) of Act 16 of 2004.]

- (iv) the date on which the credit note was issued;
- (v) either-

- (aa) the amount by which the value of the said supply shown on the tax invoice has been

- reduced and the amount of the excess tax; or
- (bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been reduced and either the amount of the excess tax or a statement that the reduction includes an amount of tax and the rate of the tax included;

[Sub-para. (v) substituted by Government Notice 2695 of 8 November 1991 and by s. 26 (1) (c) of Act 136 of 1992.]

- (vi) a brief explanation of the circumstances giving rise to the issuing of the credit note;
- (vii) information sufficient to identify the transaction to which the credit note refers;
- (b) the actual tax charged in respect of the supply concerned exceeds the tax shown in the tax invoice as charged, the supplier shall provide the recipient with a debit note, containing the following particulars:
  - (i) The words 'debit note' in a prominent place;
  - (ii) the name, address and VAT registration number of the vendor;
 

[Sub-para. (ii) substituted by s. 48 (1) (c) of Act 16 of 2004.]
  - (iii) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the debit note relates to a supply in respect of which a tax invoice contemplated in section 20 (5) was issued;

[Sub-para. (iii) amended by Government Notice 2695 of 8 November 1991 and substituted by s. 26 (1) (d) of Act 136 of 1992, by s. 176 (1) (b) of Act 45 of 2003 and by s. 48 (1) (d) of Act 16 of 2004.]

- (iv) the date on which the debit note was issued;
- (v) either-
  - (aa) the amount by which the value of the said supply shown on the tax invoice has been increased and the amount of the additional tax; or
  - (bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been increased and either the amount of the additional tax or a statement that the increase includes an amount of tax and the rate of the tax included;

[Sub-para. (v) substituted by Government Notice 2695 of 8 November 1991 and by s. 26 (1) (e) of Act 136 of 1992.]

- (vi) a brief explanation of the circumstances giving rise to the issuing of the debit note;
  - (vii) information sufficient to identify the transaction to which the debit note refers:
- Provided that-
- (A) it shall not be lawful to issue more than one credit note or debit note for the amount of the excess;
  - (B) if any registered vendor claims to have lost the original credit note or debit note, the supplier or recipient, as the case may be, may provide a copy clearly marked 'copy';
  - (C) a supplier shall not be required to provide a recipient with a credit note contemplated in paragraph (a) of this subsection in any case where and to the extent that the amount of the excess referred to in that paragraph arises as a result of the recipient taking up a prompt payment discount offered by the supplier, if the terms of the prompt payment discount offer are clearly stated on the face of the tax invoice.

(4) Where a recipient, being a registered vendor, creates a document containing the particulars specified in this section and purporting to be a credit note or a debit note in respect of a supply of goods or services made to the recipient by a supplier, being a registered vendor, that document shall be deemed to be a credit note or, as the case may be, a debit note provided by the supplier under subsection (3) where -

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the supplies or supplies of a specified category to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a credit note or, as the case may be, a debit note in respect of any supply to which this subsection applies; and
- (c) a copy of any such document is provided to the supplier and another copy is retained by the recipient:

Provided that-

- (i) where a credit note is issued in accordance with this subsection, any credit note issued by the supplier in respect of that supply shall be deemed not to be a credit note for the purposes of this Act;
- (ii) where a debit note is issued in accordance with this subsection, any debit note issued by the supplier in respect of that supply shall be deemed not to be a debit note for the purposes of this Act.

(5) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies and that it would be impractical to require that a full credit note or debit note be issued in terms of this section, the Commissioner may, subject to any conditions that the Commissioner may consider necessary, direct-

- (a) that any one or more of the particulars specified in paragraph (a) or, as the case may be, paragraph (b) of

subsection (3) shall not be contained in a credit note or, as the case may be, a debit note; or

(b) that a credit note or, as the case may be, a debit note is not required to be issued.

(6) Where any recipient, being a registered vendor, has been issued with a credit note in terms of subsection (3) (a), or has written or other notice or otherwise knows that any tax invoice which the vendor holds is incorrect as a result of any one or more of the events specified in any of paragraphs (a), (b), (c) or (d) of subsection (1) and has made a deduction of any amount of input tax in any tax period in respect of the supply of goods or services to which the credit note or that notice or other knowledge, as the case may be, relates, either the amount of the excess referred to in subsection (3) (a) shall be deemed to be tax charged in relation to a taxable supply made by the recipient attributable to the tax period in which the credit note was issued, or that notice or, as the case may be, other knowledge was received, or the amount of input tax deducted in terms of section 16 (3) in the last-mentioned tax period shall be reduced by the amount of the said excess, to the extent that the input tax deducted in the first-mentioned tax period exceeds the output tax properly charged.

[Sub-s. (6) substituted by s. 34 (b) of Act 97 of 1993.]

(7) Where any recipient, being a registered vendor, has been issued with a debit note in terms of subsection (3) (b) and has made a deduction of any amount of input tax in any tax period in respect of the supply of goods or services to which that debit note relates, the recipient may, subject to the provisions of section 17, make a deduction of input tax in terms of section 16 (3) in respect of the amount of the excess referred to in subsection (3) (b) in the tax period in which the debit note is issued, to the extent that the output tax properly charged exceeds the input tax deducted.

## 22 Irrecoverable debts

(1) Where a vendor-

- (a) has made a taxable supply for consideration in money; and
- (b) has furnished a return in respect of the tax period for which the output tax on the supply was payable and has properly accounted for the output tax on that supply as required under this Act; and
- (c) has written off so much of the said consideration as has become irrecoverable,

the vendor may make a deduction in terms of section 16 (3) of that portion of the amount of tax charged in relation to that supply as bears to the full amount of such tax the same ratio as the amount of consideration so written off as irrecoverable bears to the total consideration for the supply, the deduction so made being deemed for the purposes of the said section to be input tax: Provided that-

- (i) where tax charged in respect of a supply of goods under an instalment credit agreement has become irrecoverable, any deduction in terms of section 16 (3) as provided for in this section, shall be restricted to the tax content of the amount which has become irrecoverable in respect of the cash value of such supply, as applicable in respect of that agreement in terms of section 10 (6);
- (ii) the amount which has become irrecoverable in respect of such cash value shall be deemed to be an amount equal to the balance of the cash value remaining after deducting therefrom so much of the sum of the payments made by the debtor in terms of the said agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said instalment credit agreement, may properly be regarded as having been made in respect of the cash value;
- (iii) the said tax content shall be an amount calculated by applying the tax fraction, as applicable at the time the supply under the said instalment credit agreement was in terms of section 9 (3) (c) deemed to have taken place, to the amount deemed as aforesaid to be irrecoverable in respect of such cash value;

[Para. (iii) substituted by Government Notice 2695 of 8 November 1991 and by s. 27 (a) of Act 136 of 1992.]

- (iv) a vendor who has transferred an account receivable at face value on a-
  - (aa) non-recourse basis to any other person, shall not make any deduction in respect of such transfer in terms of this subsection; or
  - (bb) recourse basis to any other person, may make a deduction in terms of this subsection only when such account receivable is transferred back to him and he has written off so much of the consideration as has become irrecoverable:

[Para. (iv) added by s. 36 (a) of Act 27 of 1997.]

Provided further that the deduction provided for in this subsection shall not be made in terms of section 16 (3)-

- (i) in respect of any amount which has become irrecoverable in respect of an instalment credit agreement if the vendor has repossessed the goods supplied in terms of that agreement; or
- (ii) in the case of any vendor who is required to account for tax payable on a payments basis in terms of section 15, except in relation to any supply made by him to which section 9 (2) (b) or section 9 (3) (c) applies.

[Sub-s. (1) amended by s. 33 of Act 136 of 1991.]

(1A) Where a vendor-

- (a) has made a taxable supply for consideration in money; and
- (b) has furnished a return in respect of the tax period for which the output tax on the supply was payable (at the rate of tax referred to in section 7 (1)) and has properly accounted for the output tax on that supply as



- required in terms of this Act; and
- (c) has transferred the account receivable relating to such taxable supply at face value to another vendor (hereinafter referred to as the recipient) on a non-recourse basis on or after the date of promulgation of the Taxation Laws Amendment Act, 1997,

and any amount of the face value (excluding any amount of finance charges or collection costs) of such account receivable has been written off as irrecoverable by such recipient, such recipient may make a deduction in terms of section 16 (3) of an amount equal to the tax fraction (being the tax fraction applicable at the time such taxable supply is deemed to have been made) of such face value (limited to the amount paid by the recipient in respect of such face value) written off by him, the deduction so made being deemed for the purposes of the said section to be input tax.

[Sub-s. (1A) inserted by s. 36 (b) of Act 27 of 1997.]

(2) Where any amount in respect of which a deduction has been made in accordance with subsection (1) is at any time wholly or partly recovered by the vendor, or becomes recoverable by him by virtue of the reassignment to him of the underlying debt, that portion of the amount of such deduction as bears to the full amount of such deduction the same ratio as the amount of the irrecoverable debt recovered or reassigned bears to the debt written off shall be deemed to be tax charged in relation to a taxable supply made during the tax period in which the debt is wholly or partly recovered or reassigned to such vendor.

[Sub-s. (2) substituted by s. 27 (b) of Act 136 of 1992.]

- (3) Where a vendor who is required to account for tax payable on an invoice basis in terms of section 15-

- (a) has made a deduction of input tax in terms of section 16 (3) in respect of a taxable supply of goods or services made to him; and
- (b) has, within a period of 12 months after the expiry of the tax period within which such deduction was made, not paid the full consideration in respect of such supply,

[Para. (b) substituted by s. 95 of Act 30 of 1998.]

an amount equal to the tax fraction, as applicable at the time of such deduction, of that portion of the consideration which has not been paid shall be deemed to be tax charged in respect of a taxable supply made in the next following tax period after the expiry of the period of 12 months: Provided that-

- (i) the period of 12 months shall, if any contract in writing in terms of which such supply was made provides for the payment of consideration or any portion thereof to take place after the expiry of the tax period within which such deduction was made, in respect of such consideration or portion be calculated as from the end of the month within which such consideration or portion was payable in terms of that contract; or
- (ii) where-
- (aa) the estate of a vendor is sequestered, whether voluntarily or compulsorily;
- (bb) the vendor is declared insolvent; or
- (cc) has entered into a compromise or an arrangement in terms of section 311 of the Companies Act, 1973 (Act 61 of 1973), or a similar arrangement with creditors, within 12 months after the expiry of the tax period within which that deduction was made, not paid the full consideration, the vendor must account for output tax in terms of this section equal to that portion of the consideration which has not been paid at the time of sequestration, declaration of insolvency or the date on which the compromise or the arrangement or similar arrangement was entered into.

[Sub-s. (3) added by s. 25 of Act 37 of 1996 and amended by s. 36 (c) of Act 27 of 1997 and by s. 110 (a) of Act 31 of 2005.]

(4) If a vendor who has accounted for tax payable in accordance with subsection (3) at any time thereafter pays any portion of the consideration in respect of the supply in question, he may in terms of section 16 (3) make a deduction of input tax of an amount equal to the tax fraction, as applicable at the time of the deduction contemplated in paragraph (a) of the said subsection (3), of that portion of the consideration so paid.

[Sub-s. (4) added by s. 25 of Act 37 of 1996.]

- (5) .....

[Sub-s. (5) added by s. 25 of Act 37 of 1996 and deleted by s. 177 of Act 45 of 2003.]

### PART III

#### REGISTRATION (ss 23-26)

#### 23 Registration of persons making supplies in the course of enterprises

##### Cases

(1) Every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered-

- (a) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R300 000;



[Para. (a) amended by s. 92 (a) of Act 53 of 1999.]

- (b) at the commencement of any month where there are reasonable grounds for believing that the total value of the taxable supplies to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed the abovementioned amount:

Provided that the total value of the taxable supplies of the vendor within the period of 12 months referred to in subparagraph (a) or the period of 12 months referred to in subparagraph (b) shall not be deemed to have exceeded or be likely to exceed the amount of R300 000, where the Commissioner is satisfied that the said total value will exceed or is likely to exceed such amount solely as a consequence of-

- (i) any cessation of, or any substantial and permanent reduction in the size or scale of, any enterprise carried on by that person; or
- (ii) the replacement of any plant or other capital asset used in any enterprise carried on by that person; or
- (iii) abnormal circumstances of a temporary nature.

[Sub-s. (1) amended by s. 92 (b) of Act 53 of 1999.]

(2) Every person who, in terms of subsection (1) or section 50A, becomes liable to be registered shall not later than 21 days after becoming so liable apply to the Commissioner for registration in such application form as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such application form for the purpose of registering that person: Provided that where-

- (i) a person who applies for registration under this subsection has not provided all particulars and documentation as required by the Commissioner, that person shall be deemed not to have applied for registration until he has provided all such particulars and documentation to the Commissioner;
- (ii) such person is not a resident of the Republic, such person shall be deemed not to have applied for registration until he has-
  - (aa) appointed a representative vendor as contemplated in section 48 (1) in the Republic and furnished the Commissioner with the particulars of such representative vendor;
  - (bb) opened a banking account with any bank, mutual bank or other similar institution for the purposes of his enterprise carried on in the Republic and furnished the Commissioner with the particulars of such banking account.

[Sub-s. (2) substituted by s. 37 of Act 27 of 1997.]

(3) Notwithstanding the provisions of subsections (1) and (2), every person who satisfies the Commissioner that, on or after the commencement date-

- (a) that person is carrying on any enterprise as contemplated in paragraph (b) (ii), (iii) or (v) or (c) of the definition of 'enterprise' in section 1; or

[Para. (a) substituted by s. 36 of Act 32 of 2005.]

- (b) that person is carrying on any enterprise other than as contemplated in paragraph (b) (ii) or (iii) or (c) of the definition of 'enterprise' in section 1 and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R20 000; or
- (c) that person intends to carry on any enterprise from a specified date, where that enterprise will be supplied to him as a going concern and the total value of taxable supplies made by the supplier of the going concern from carrying on that enterprise or part of the enterprise which will be supplied has exceeded R20 000 in the preceding period of 12 months; or
- (d) that person is continuously and regularly carrying on an activity which, in consequence of the nature of that activity, can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time and where the total value of taxable supplies to be made can reasonably be expected to exceed R20 000 in a period of 12 months,

may apply to the Commissioner in the approved form 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.

[Sub-s. (3) substituted by s. 92 (c) of Act 53 of 1999.]

(4) Where any person has -

- (a) applied for registration in accordance with subsection (2) or (3) and the Commissioner is satisfied that that person is eligible to be registered in terms of this Act, that person shall be a vendor for the purposes of this Act with effect from such date as the Commissioner may determine; or
- (b) not applied for registration in terms of subsection (2) and the Commissioner is satisfied that that person is liable to be registered in terms of this Act, that person shall be a vendor for the purposes of this Act with effect from the date on which that person first became liable to be registered in terms of this Act:

Provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a vendor from such later date as the Commissioner may consider equitable: Provided that where that person is a public entity listed in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act 1 of 1999), which was liable to be registered as a vendor for any supplies made on or before 31 March 2005, but did not register before 1 April 2005, the

Commissioner must not register that person in respect of those supplies.

[Sub-s. (4) amended by s. 9 of Act 10 of 2005.]

(5) Notwithstanding anything in this Act to the contrary, where any enterprise is carried on by any association not for gain in branches or divisions, or separate enterprises are carried on by that association, that association may apply in writing to the Commissioner for any such branch, division or separate enterprise to be deemed to be a separate person for the purposes of this section, and if every such branch, division or separate enterprise maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of that branch, division or separate enterprise, every such branch, division or separate enterprise shall be deemed to be a separate person, and not a part of the association, and, where any such branch, division or separate enterprise is deemed to be a separate person under this subsection, any enterprise carried on by that branch or division or any separate enterprise carried on by the association shall, to that extent, be deemed not to be carried on by the association concerned.

(6) The provisions of this Act relating to the determination of the value of any supply of goods or services, whether such supply is made before or on or after the commencement date, shall apply for the purposes of this section, but no regard shall be had to any tax charged in respect of any such supply: Provided that any supply of services contemplated in section 11 (2) (n) shall for the purposes of this section be deemed not to be a taxable supply.

(7) Where the Commissioner is satisfied that any person who has applied for registration in terms of subsection (3) is not eligible to be registered in terms of this Act or should not be registered by reason of the fact that such person -

- (a) has no fixed place of abode or business; or
- (b) does not keep proper accounting records relating to any enterprise carried on by him; or
- (c) has not opened a banking account with any bank, mutual bank or other similar institution for the purposes of any enterprise carried on by him; or

[Para. (c) substituted by s. 20 of Act 20 of 1994.]

- (d) has previously been registered as a vendor in respect of any enterprise, whether in terms of this Act or in terms of the Sales Tax Act, 1978 (Act 103 of 1978), but failed to perform his duties under either of the said Acts in relation to such enterprise,

the Commissioner may refuse to register the said person as a vendor in terms of this Act and shall give written notice to that person of such refusal.

(8) .....

[Sub-s. (8) deleted by s. 178 of Act 45 of 2003.]

## **24 Cancellation of registration**

(1) Subject to the provisions of subsection (2), every vendor shall cease to be liable to be registered where the Commissioner is satisfied that the total value of the vendor's taxable supplies in the period of 12 months commencing at the beginning of any tax period of the vendor will be not more than the amount referred to in section 23 (1).

(2) Every vendor who wishes to have his registration cancelled in the circumstances contemplated in subsection (1), may request the Commissioner in writing to cancel his registration, and if the Commissioner is satisfied as contemplated in subsection (1), the Commissioner shall cancel the vendor's registration with effect from the last day of the tax period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify the vendor of the date on which the cancellation of the registration takes effect.

(3) Every vendor who ceases to carry on all enterprises shall notify the Commissioner of that fact within 21 days of the date of such cessation and the Commissioner shall cancel the registration of such vendor with effect from the last day of the tax period during which all such enterprises ceased, or from such other date as may be determined by the Commissioner.

[Sub-s. (3) amended by s. 93 (a) of Act 53 of 1999.]

(4) Any notification by a vendor in terms of subsection (3) shall be made in writing to the Commissioner and shall state the date upon which that vendor ceased to carry on all enterprises and whether or not that vendor intends to carry on any enterprise within 12 months from that date.

(5) Where the Commissioner is satisfied that a vendor no longer complies with the requirements for registration as contemplated in section 23 (3) the Commissioner may cancel such vendor's registration with effect from the last day of the tax period during which the Commissioner is so satisfied, or from such other date as may be determined by the Commissioner.

[Sub-s. (5) substituted by s. 21 of Act 20 of 1994 and by s. 93 (b) of Act 53 of 1999.]

(6) Where any person has been registered as a vendor in consequence of an application made by him under section 23 (3) and subsequent to the registration of that person as a vendor it appears to the Commissioner that such person's registration should be cancelled by reason of any of the circumstances referred to in section 23 (7), the Commissioner may cancel such person's registration with effect from a date determined by the Commissioner: Provided that where such person lodges an objection against the Commissioner's decision under this subsection the cancellation of that person's registration shall not take effect until such time as the Commissioner's decision becomes final and conclusive.

(7) The Commissioner shall give written notice to the person concerned of his decision to cancel such person's

registration in terms of this section or of his refusal to cancel such registration.

## **25 Vendor to notify change of status**

Subject to this Act, every vendor shall within 21 days and in such form as the Commissioner may prescribe notify the Commissioner in writing of-

- (a) any change in the name, address, constitution or nature of the principal enterprise or enterprises of that vendor;
- (b) any change of address at or from which, or the name in which, any enterprise is carried on by that vendor;
- (c) any change whereby that vendor ceases to satisfy the conditions provided in section 15 (2), where the Commissioner has given a direction in respect of that vendor in terms of that section;
- (d) any change whereby the provisions of section 27 (3) (a) become applicable in the case of that vendor;
- (dA) any change whereby the provisions of section 27 (4B) (a) cease to apply in respect of that vendor;  
[Para. (dA) inserted by s. 10 (1) of Act 10 of 2005.]
- (e) any change in the composition of the members of a partnership or joint venture;  
[Para. (e) inserted by s. 96 of Act 30 of 1998.]
- (f) the appointment or resignation of a representative vendor as contemplated in section 48 (1);  
[Para. (f) inserted by s. 94 of Act 53 of 1999.]
- (g) any change whereby the provisions of section 27 (4) (c) are no longer applicable in the case of that vendor;

[Para. (g) inserted by s. 40 of Act 34 of 2004.]

Provided that this section shall not apply to the notification of any changes in the ownership of any company.

## **26 Liabilities not affected by person ceasing to be vendor**

The obligations and liabilities under this Act of any person in respect of anything done, or omitted to be done, by that person while that person is a vendor shall not be affected by the fact that that person ceases to be a vendor, or by the fact that, being registered as a vendor, the Commissioner cancels that person's registration as a vendor.

### **PART IV**

### **RETURNS, PAYMENTS AND ASSESSMENTS (ss 27-31B)**

## **27 Tax period**

(1) For the purposes of this section-

'Category A' means the category of vendors whose tax periods are periods of two months ending on the last day of the months of January, March, May, July, September and November of the calendar year;

'Category B' means the category of vendors whose tax periods are periods of two months ending on the last day of the months of February, April, June, August, October and December of the calendar year;

'Category C' means the category of vendors whose tax periods are periods of one month ending on the last day of each of the 12 months of the calendar year;

'Category D' means the category of vendors whose tax periods are periods of six months ending on the last day of February and August of the calendar year or, where any vendor falling within this category makes written application therefor, on the last day of such other months as the Commissioner may approve;

'Category E' means the category of vendors whose tax periods are periods of twelve months ending on the last day of their 'year of assessment' as defined in section 1 of the Income Tax Act or where any vendor falling within this category makes written application therefor, on the last day of such other month as the Commissioner may approve;

[Definition of 'Category E' added by s. 78 (1) (a) of Act 30 of 2000.]

'Category F' means the category of vendors whose tax periods are periods of four months ending on the last day of June, October and February of the calendar year.

[Definition of 'Category F' added by s. 11 (1) (a) of Act 10 of 2005.]

(2) (a) Every vendor, not being a vendor who falls within category C, D, E or F as contemplated in subsection (3), (4), (4A) or (4B), shall fall within Category A or Category B.

[Para. (a) substituted by s. 78 (1) (b) of Act 30 of 2000 and by s. 11 (1) (b) of Act 10 of 2005.]

(b) The Commissioner shall determine whether such vendor falls within Category A or Category B and notify the vendor accordingly.

(c) The determinations made by the Commissioner under paragraph (b) shall be made so as to ensure that approximately equal numbers of vendors fall within Category A and Category B.

(d) The Commissioner may from time to time direct that any vendor falling within Category A shall, with effect from the commencement of a future period, fall within Category B, or *vice versa*.

(3) A vendor shall fall within Category C if-

- (a) the total value of the taxable supplies of the vendor (including the taxable supplies of any branches, divisions or separate enterprises of the vendor registered as separate vendors under section 50 (2))-
  - (i) has in the period of 12 months ending on the last day of any month of the calendar year exceeded R30 million; or

- (ii) is likely to exceed that amount in the period of 12 months beginning on the first day of any such month; or

[Para. (a) amended by s. 34 (a) of Act 136 of 1991.]

- (b) the vendor has applied in writing for the tax periods in his case to be on a monthly basis; or

- (c) the vendor has repeatedly made default in performing any of his obligations in terms of this Act,

and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category C: Provided that a vendor falling within Category C shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if the vendor has applied in writing to be placed within Category A, B, D, E or F and the Commissioner is satisfied that by reason of a change in the vendor's circumstances he satisfies the requirements of this section for placing within Category A, B, D, E or F.

[Sub-s. (3) amended by s. 78 (1) (c) of Act 30 of 2000 and by s. 11 (1) (c) of Act 10 of 2005.]

- (4) A vendor shall fall within Category D if-

- (a) the vendor's enterprise consists solely of agricultural, pastoral or other farming activities or the vendor is a branch, division or separate enterprise which is deemed by subsection (5) of section 23 to be a separate person for the purposes of that section and is as such registered under that section or the vendor is a branch, division or separate enterprise registered as a separate vendor under section 50 (2);

[Para. (a) amended by s. 34 (c) of Act 136 of 1991.]

- (b) the activities of any such branch, division or separate enterprise consist solely of agricultural, pastoral or other farming activities and activities of that kind are not carried on in any other branch, division or separate enterprise of the vendor or the association not for gain, as the case may be, by whom a written application referred to in paragraph (e) is made;

- (c) the total value of the taxable supplies of the vendor from agricultural, pastoral or other farming activities-

- (i) has in the period of 12 months ending on the last day of any month of the calendar year not exceeded R1 million; and

- (ii) is not likely to exceed that amount in the period of 12 months commencing at the end of the period referred to in subparagraph (i);

- (d) the vendor does not fall within Category C; and

- (e) the vendor whose enterprise consists solely of agricultural, pastoral or other farming activities or the vendor referred to in section 50 (2) or the association not for gain referred to in section 23 (5), as the case may be, has made a written application to the Commissioner, in such form as the Commissioner may prescribe, for such first-mentioned vendor or the branch, division or separate enterprise in question, as the case may be, to be placed within Category D,

[Para. (e) amended by s. 34 (d) of Act 136 of 1991.]

and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category D: Provided that a vendor falling within Category D shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in paragraph (e) for the vendor to be placed within Category A, B, C, E or F or the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C, E or F.

[Sub-s. (4) amended by s. 78 (1) (d) of Act 30 of 2000 and by s. 11 (1) (d) of Act 10 of 2005.]

- (4A) A vendor shall fall within Category E if-

- (a) the vendor is a company or a trust fund;

- (b) the vendor's enterprise consists solely of one or more of the activities of-

- (i) letting of fixed property or the renting of movable goods to; or

- (ii) the administration or management of, companies which are connected persons in relation to the vendor;

- (c) the recipients of those supplies are all registered vendors and are entitled to deductions of the full amount of tax in respect of those supplies;

- (d) tax invoices are issued once a year and payments of consideration for these supplies, by agreement between the parties, only become due once a year at the end of the 'year of assessment' as defined in section 1 of the Income Tax Act of the vendor making the supplies; and

- (e) the vendor has made written application to the Commissioner in such form as the Commissioner may prescribe, to be placed in Category E,

and the Commissioner has directed that, with effect from a date which he considers appropriate, the vendor shall fall within Category E: Provided that a vendor falling within Category E shall cease to fall within that Category with effect from a date notified by the Commissioner if-

- (i) written application is made by the person who made the application referred to in paragraph (e) for the vendor to be placed in a different Category; or

- (ii) the Commissioner is satisfied that by reason of a change in circumstances, that vendor should be placed in Category A, B, C, D or F; or  
[Para. (ii) substituted by s. 11 (1)(e) of Act 10 of 2005.]
- (iii) the vendor's placing in Category E results in any financial loss (including any loss of interest) to the State.  
[Sub-s. (4A) inserted by s. 78 (1)(e) of Act 30 of 2000.]
- (4B) A vendor (other than a vendor registered under section 50), shall fall within Category F if-
  - (a) the total value of the taxable supplies of the vendor-
    - (i) has in the period of 12 months ending on the last day of any month not exceeded R1 million; and
    - (ii) is not likely to exceed that amount in the period of 12 months commencing at the end of the period referred to in subparagraph (i); and
  - (b) the vendor has made written application to the Commissioner in such form as the Commissioner may prescribe, to be placed in Category F:

Provided that a vendor falling within Category F shall cease to fall within that Category with effect from a date notified by the Commissioner if-

- (i) written application is made by the vendor to be placed in a different Category;
- (ii) the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C, D or E; or
- (iii) the vendor has repeatedly made default in performing any of his obligations in terms of this Act.  
[Sub-s. (4B) inserted by s. 11 (1) (f) of Act 10 of 2005.]
- (5) For the purposes of subsection (3) (a) and subsection (4) (c)-
  - (a) the provisions of this Act relating to the determination of the value of any supply of goods or services, whether such supply is made before or on or after the commencement date, shall apply for the purposes of this paragraph, but no regard shall be had to any tax charged in respect of such supply; and
  - (b) the total value of the taxable supplies of a vendor within any period of 12 months referred to in subsection (3) (a) or (4) (c) shall not be deemed to have exceeded or be likely to exceed the amount of R30 million referred to in subsection (3) (a) or the amount of R1 million referred to in subsection (4) (c), as the case may be, where that total value exceeds or is likely to exceed that amount, as the case may be, solely as a consequence of-
    - (i) any cessation of, or any substantial or permanent reduction in the size or scale of, any enterprise carried on by the vendor; or
    - (ii) the replacement of any plant or other capital asset used in any enterprise carried on by the vendor; or
    - (iii) abnormal circumstances of a temporary nature.

(6) The tax periods applicable under this Act to any vendor shall be the tax periods applicable to the Category within which the vendor falls as contemplated in this section: Provided that-

- (i) the first such period shall commence on the commencement date or, where any person becomes a vendor on a later date, such later date;
- (ii) any tax period ending on the last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last day, end on a fixed day approved by the Commissioner, which day shall fall within 10 days before or after such last day;

[Para. (ii) substituted by Government Notice 2695 of 8 November 1991, by s. 28 of Act 136 of 1992 and by s. 78 (1) (f) of Act 30 of 2000.]

- (iii) the first day of any tax period of the vendor subsequent to the vendor's first tax period shall be the first day following the last day of the vendor's preceding tax period.

## **28 Returns and payments of tax**

(1) Every vendor shall, within the period ending on the twenty-fifth day of the first month commencing after the end of a tax period relating to such vendor or, where such tax period ends on or after the first day and before the twenty-fifth day of a month, within the period ending on such twenty-fifth day-

- (a) furnish the Commissioner with a return reflecting such information as may be required for the purpose of the calculation of tax in terms of section 16; and  
[Para. (a) substituted by s. 37 (a) of Act 32 of 2005.]
- (b) calculate the amounts of such tax in accordance with the said section and pay the tax payable to the Commissioner or calculate the amount of any refund due to the vendor:

Provided that-

- (i) where the last day of any period within which a return shall be furnished and payment shall be made falls on a Saturday, Sunday or a public holiday, such return shall be furnished and such payment shall be made not later than the last business day falling prior to such Saturday, Sunday or public holiday;
- (ii) where payment of the full amount of the tax is effected by means of an electronic transfer and the

requirements for the transfer of the tax have been met by the vendor, such electronic transfer shall not be effected prior to the last business day of the month during which the said twenty-fifth day falls and the period within which the tax is required to be paid shall be deemed to end on the last business day of such month;

- (iii) a vendor registered with the Commissioner to submit returns and payments electronically, must furnish the return within the period ending on the last business day of the month during which that twenty-fifth day falls;

[Para. (iii) added by s. 158 of Act 60 of 2001.]

- (iv) the Commissioner may prescribe the time by which any payment made on any business day must be received by the Commissioner and any payment received after that time shall be deemed to have been made on the first business day following that day;

[Para. (iv) added by s. 179 (a) of Act 45 of 2003.]

- (v) the Commissioner may prescribe the form and manner (including electronically) in which returns must be submitted and payments must be made by a vendor.

[Para. (v) added by s. 37 (b) of Act 32 of 2005.]

[Sub-s. (1) amended by Government Notice 2695 of 8 November 1991, by s. 29 of Act 136 of 1992 and by s. 79 of Act 30 of 2000.]

(2) Every vendor who is registered in terms of the provisions of Part III shall within the period allowed by subsection (1) of this section furnish the return referred to in that subsection in respect of each tax period relating to such vendor, whether or not tax is payable or a refund is due in respect of such period.

(3) The Commissioner may, having regard to the circumstances of any case but subject to the provisions of section 39, extend the period within which such return is to be furnished or such tax is to be paid.

(4) .....

[Sub-s. (4) added by s. 44 of Act 5 of 2001 and deleted by s. 179 (b) of Act 45 of 2003.]

(5) A return furnished as contemplated-

- (a) in this section, must be signed by the vendor or by the vendor's authorised representative;
- (b) in section 29, must be signed by the person selling the goods or that person's authorised representative; and
- (c) in section 30, must be signed by the person furnishing the return,

and a person signing a return is deemed for all purposes in connection with this Act to know and understand the meaning of all statements made in that return.

[Sub-s. (5) added by s. 44 of Act 5 of 2001.]

(6) The Commissioner may, in the case of any return furnished by a person or a person's authorised representative in electronic format, accept electronic or digital signatures as valid signatures for the purposes of subsection (5).

[Sub-s. (6) added by s. 44 of Act 5 of 2001.]

(7) The Minister may make rules and regulations prescribing the procedures for submitting any return in electronic format and the requirements for an electronic or digital signature contemplated in subsection (6).

[Sub-s. (7) added by s. 44 of Act 5 of 2001.]

(8) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a person affixed to any return as contemplated in subsection (6), was used with or without the consent and authority of that person, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was so used with the consent and authority of that person.

[Sub-s. (8) inserted by s. 118 of Act 74 of 2002.]

(9) (a) Notwithstanding anything contained to the contrary in this Act or in any other law, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of any agreement (entered into in accordance with any regulations made by the Minister in terms of subsection (7)) establish the basis upon which any court of competent jurisdiction shall determine such issues.

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence-

- (i) on the sole grounds that it is an electronic data message; or
- (ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(c) (i) Information in the form of a data message shall be given due evidential weight.

(ii) In assessing the evidential weight of a data message a court shall have regard to-

- (aa) the reliability of the manner in which the data message was generated, stored and communicated;
- (bb) the reliability of the manner in which the integrity of the information was maintained;
- (cc) the manner in which its originator was identified;
- (dd) whether these functions were in compliance with the agreement contemplated in paragraph (a); and
- (ee) the requirements of this section, and any other relevant factor.

[Sub-s. (9) added by s. 118 of Act 74 of 2002.]

## 29 Special returns

Where goods are deemed by section 8 (1) to be supplied in the course of an enterprise the person selling the goods (hereinafter referred to as the seller), whether or not the seller is a vendor, shall, within the period of 30 days after the date on which the sale was made-

- (a) furnish the Commissioner with a return (in such form as the Commissioner may prescribe) reflecting-
  - (i) the name and address of the seller and, if registered as a vendor, his or her VAT registration number;  
[Sub-para. (i) substituted by s. 49 of Act 16 of 2004.]
  - (ii) the name and address of the person whose goods are sold (hereinafter referred to as the owner) and, if the owner is registered under this Act, the VAT registration number of the owner;  
[Sub-para. (ii) substituted by s. 49 of Act 16 of 2004.]
  - (iii) the date of the sale;
  - (iv) the description and quantity of the goods sold;
  - (v) the selling price of the goods and the amount of tax charged in respect of the supply of goods under the sale, being the tax leviable in respect of such supply under section 7 (1) (a); and
  - (vi) such other particulars as may be required;
- (b) pay to the Commissioner the amount of tax so charged; and
- (c) send or deliver to the owner a copy of the return referred to in paragraph (a),

and the seller and the owner shall exclude from any return which the seller or owner is required to furnish under section 28 the tax charged on the supply of goods under the sale in respect of which the return is furnished under this section.

## 30 Other returns

In addition to any return required under any other provision of this Act, the Commissioner may require any person, whether or not that person is a vendor, to furnish on his own behalf or as an agent or trustee, to the Commissioner such further or other return, in a form prescribed by the Commissioner, as and when required by the Commissioner for the purposes of this Act.

## 31 Assessments

Cases

(1) Where-

- (a) any person fails to furnish any return as required by section 28, 29 or 30 or fails to furnish any declaration as required by section 14; or  
[Para. (a) substituted by s. 38 of Act 32 of 2005.]
- (b) the Commissioner is not satisfied with any return or declaration which any person is required to furnish under a section referred to in paragraph (a); or
- (c) the Commissioner has reason to believe that any person has become liable for the payment of any amount of tax but has not paid such amount; or
- (d) any person, not being a vendor, supplies goods or services and represents that tax is charged on that supply; or
- (e) any vendor supplies goods or services and such supply is not a taxable supply or such supply is a taxable supply in respect of which tax is chargeable at a rate of zero per cent, and in either case that vendor represents that tax is charged on such supply at a rate in excess of zero per cent;
- (f) any person who holds himself out as a person entitled to a refund or who produces, furnishes, authorises, or makes use of any tax invoice or document or debit note and has obtained any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph (d) of the definition of 'exported' in section 1, to which such person is not entitled,  
[Para. (f) added by s. 180 of Act 45 of 2003 and substituted by s. 41 of Act 34 of 2004.]

the Commissioner may make an assessment of the amount of tax payable by the person liable for the payment of such amount of tax, and the amount of tax so assessed shall be paid by the person concerned to the Commissioner.

(2) For the purposes of subsection (1), the person liable for the payment of any amount of tax assessable by the Commissioner shall be-

- (a) the person liable for the payment of such tax in terms of the provisions of section 7; or
- (b) where the provisions of section 29 are applicable -



- (i) the seller referred to in that section, unless the provisions of subparagraph (ii) are applicable; or
  - (ii) the owner referred to in that section, if the said seller holds a written statement contemplated in section 8 (1) (b) furnished by the said owner and that written statement is incorrect; or
  - (c) where subsection (1) (d) is applicable, the person referred to in that provision; or
  - (d) where subsection (1) (e) is applicable, the vendor referred to in that provision.
- (3) In making such assessment the Commissioner may estimate the amount upon which the tax is payable.
- (4) The Commissioner shall give the person concerned a written notice of such assessment, stating the amount upon which tax is payable, the amount of tax payable, the amount of any additional tax payable in terms of section 60 and the tax period (if any) in relation to which the assessment is made, and-
- (a) where the assessment is made on a seller referred to in subsection (2) (b) (i), send a copy of that notice of assessment to the owner referred to in that subsection; or
  - (b) where the assessment is made on an owner referred to in subsection (2) (b) (ii), send a copy of that notice of assessment to the seller referred to in that subsection.
- (5) The Commissioner shall, in the notice of assessment referred to in subsection (4), give notice to the person upon whom it has been made that any objection to such assessment shall be lodged or be sent so as to reach the Commissioner within 30 days after the date of such notice.
- (5A) If it appears to the Commissioner that any person is for any reason unable to furnish an accurate return as contemplated in section 28, 29 or 30, the Commissioner may agree in writing with such person as to the amount upon which tax shall be payable, and to the extent that an assessment is issued upon an amount so agreed to, such assessment shall not be subject to objection.

[Sub-s. (5A) inserted by s. 80 of Act 30 of 2000.]

- (6) For the purposes of this section, Part II, Part VI and sections 58, 59, 60 and 61-
  - (a) the person referred to in subsection (1) (d) shall be deemed to be a vendor; and
  - (b) any tax represented to be charged on any supply referred to in subsection (1) (d) or (1) (e) shall be deemed to be tax payable by the vendor concerned and the amount thereof as assessed under this section shall be paid within the period allowed by the Commissioner.

### **31A Reduced assessments**

- (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal noted in terms of the provisions of Part V of this Act, reduce an assessment-
- (a) to rectify any processing error made in issuing that assessment; or
  - (b) where it is proved to the satisfaction of the Commissioner that in issuing that assessment any amount which-
    - (i) was taken into account by the Commissioner in determining the liability for tax, should not have been taken into account; or
    - (ii) should have been taken into account in determining the liability for tax, was not taken into account by the Commissioner:

Provided that such assessment, wherein the amount was so taken into account or not taken into account, as contemplated in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the vendor's return for the current or any previous tax period.

- (2) The Commissioner shall not reduce an assessment under subsection (1)-
  - (a) after the expiration of three years from the date of that assessment; or
  - (b) if the amount was assessed in terms of an assessment accepted by the taxpayer and which was made in accordance with the practice generally prevailing at the date of that assessment.

[S. 31A inserted by s. 181 of Act 45 of 2003.]

### **31B Withdrawal of assessments**

- (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part V, withdraw an assessment, which-
- (a) was issued to the incorrect person; or
  - (b) was issued in respect of the incorrect tax period.
- (2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.

[S. 31B inserted by s. 181 of Act 45 of 2003.]

## **PART V**

## **OBJECTIONS AND APPEALS (ss 32-37)**

### **32 Objections to certain decisions or assessments**

Cases



- (1) Any person who is dissatisfied with-
- (a) any decision given in writing by the Commissioner-
    - (i) in terms of section 23 (7) notifying that person of the Commissioner's refusal to register that person in terms of this Act; or
    - (ii) in terms of section 24 (6) or (7) notifying that person of the Commissioner's decision to cancel any registration of that person in terms of this Act or of the Commissioner's refusal to cancel such registration; or
    - (iii) in terms of section 44 (8) of the Commissioner's refusal to make a refund; or
    - (iv) refusing to approve a method for determining the ratio contemplated in section 17 (1); or  
[Sub-para. (iv) added by s. 97 of Act 30 of 1998.]
    - (v) in terms of section 43 (5) and (6) notifying a member, shareholder or trustee of a vendor that he is required to provide surety in respect of the vendor's liability for tax from time to time; or  
[Sub-para. (v) added by s. 95 of Act 53 of 1999.]
  - (b) any assessment made upon him under the provisions of section 31, 60 or 61; or
  - (c) any direction or supplementary direction made by the Commissioner and served on that person in terms of section 50A (3) or (4),

[Para. (c) inserted by s. 38 (b) of Act 27 of 1997.]

may lodge an objection thereto with the Commissioner.

(2) The provisions of sections 107A and Part IIIA of Chapter III of the Income Tax Act, 1962 (Act 58 of 1962), and any rules under that Act relating to any objection or to the settlements of disputes shall *mutatis mutandis* apply with reference to any objection under this section.

[Sub-s. (2) substituted by s. 182 of Act 45 of 2003.]

(2A) The period prescribed in the rules issued in terms of section 107A of the Income Tax Act within which objections must be made may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in lodging the objection.

[Sub-s. (2A) inserted by s. 159 (a) of Act 60 of 2001.]

(3) A decision by the Commissioner in the exercise of his or her discretion under subsection (2A) is subject to objection and appeal.

[Sub-s. (3) substituted by s. 159 (b) of Act 60 of 2001.]

(4) The Commissioner may on receipt of a notice of objection to an assessment alter the assessment or may disallow the objection and must send the taxpayer notice of such alteration or disallowance, and record any alteration or disallowance made in the assessment.

[Sub-s. (4) substituted by s. 159 (b) of Act 60 of 2001.]

(5) Where no objection is lodged against any decision or assessment by the Commissioner as contemplated in subsection (1), or where any objection has been disallowed or withdrawn or any decision has been altered or any assessment has been altered, as the case may be, such decision or altered decision or such assessment or altered assessment, as the case may be, is final and conclusive.

[Sub-s. (5) substituted by s. 159 (b) of Act 60 of 2001.]

### **33 Appeal to tax court**

#### **Cases**

(1) Subject to the provisions of section 33A, an appeal against any decision or assessment of the Commissioner, as notified in terms of section 32 (4), shall lie to the tax court constituted under the provisions of section 83 of the Income Tax Act within the period prescribed and the rules issued in terms of section 107A of the Income Tax Act for the area in which the appellant resides or carries on business or, if the appellant and the Commissioner agree for any other area.

[Sub-s. (1) substituted by s. 35 (1) (a) of Act 136 of 1991 and by s. 160 (1) (b) of Act 60 of 2001.]

(1A) The period prescribed in the rules promulgated in terms of section 107A of the Income Tax Act within which appeal must be noted may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in noting the appeal: Provided that any decision by the Commissioner in the exercise of his or her discretion under this is subject to objection and appeal.

[Sub-s. (1A) inserted by s. 160 (1) (c) of Act 60 of 2001.]

(1B) A notice of appeal is of no force or effect whatsoever which is not delivered at the Commissioner's office or posted in sufficient time to reach the Commissioner within the period prescribed for noting appeal or within such extended period as contemplated in subsection (1A).

[Sub-s. (1B) inserted by s. 160 (1) (c) of Act 60 of 2001.]

(2) .....

[Sub-s. (2) deleted by s. 160 (1) (d) of Act 60 of 2001.]

(3) At the hearing by the tax court of any appeal to that court, the tax court may inquire into and consider the

matter before it and may confirm, cancel or vary any decision of the Commissioner under appeal or make any other decision which the Commissioner was empowered to make at the time the Commissioner made the decision under appeal or, in the case of any assessment order that assessment to be altered or confirm the assessment or, if it thinks fit, refer such matter back to the Commissioner for further investigation and reconsideration in the light of principles laid down by the court.

[Sub-s. (3) amended by s. 35 (1) (b) of Act 136 of 1991 and substituted by s. 160 (1) (e) of Act 60 of 2001.]

(4) The provisions of sections 83 (8), (11), (12), (14), (17), (18), (19), 84, 85, 107A and Part IIIA of Chapter III of the Income Tax Act and any rules under that Act relating to any appeal to the tax court or to the settlement of disputes shall *mutatis mutandis* apply with reference to any appeal under this section which is or is to be heard by that court or to any settlement of a dispute in terms of this Act.

[Sub-s. (4) substituted by s. 160 (1) (f) of Act 60 of 2001, by s. 78 (1) of Act 30 of 2002 and by s. 183 of Act 45 of 2003.]

[S. 33 amended by s. 160 (1) (a) of Act 60 of 2001.]

### **33A Appeals to specially constituted board**

#### **Cases**

(1) Any appeal referred to in section 33 (1) of this Act shall in the first instance be heard by the Board established by section 83A (2) of the Income Tax Act, where-

- (a) the appeal is lodged against an assessment of the Commissioner, and the amount of the tax in dispute does not exceed such amount which the Minister may from time to time fix by notice in the *Gazette*; or [Para. (a) amended by s. 96 of Act 53 of 1999 and substituted by s. 65 of Act 59 of 2000.]
- (b) the appeal is lodged against the Commissioner's disallowance of an objection against a decision of the Commissioner referred to in section 32 (1) (a) of this Act; or
- (c) the Commissioner and the appellant agree to the hearing of the appeal by the Board; or
- (d) no objection to the jurisdiction of the Board to hear the appeal is made at or before the commencement of the hearing of the appeal:

Provided that where the Commissioner at any time prior to the hearing of such appeal, or the Chairperson of the Board at any time prior to or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the tax court referred to in section 33, such appeal must be set down for hearing *de novo* before the tax court.

[Sub-s. (1) amended by s. 161 of Act 60 of 2001.]

(2) The provisions of section 83A (3) to (14) of the Income Tax Act shall *mutatis mutandis* apply for the purposes of this section: Provided that-

- (a) the references in section 83A (7) (b) (iii) and section 83A (9) (b) (iii) to a return of income shall be construed as references to a relevant return furnished under this Act;
- (b) the reference in section 83A (10) (e) to an assessment in respect of which an appeal has been lodged shall be construed as including a reference to a decision of the Commissioner in respect of which an appeal has been lodged under this Act.

[S. 33A inserted by s. 36 (1) of Act 136 of 1991.]

### **34 Appeals against decisions of tax court**

#### **Cases**

(1) The appellant in proceedings before the tax court referred to in section 33 or the Commissioner may in the manner provided in section 86A of the Income Tax Act appeal against any decision of that court.

[Sub-s. (1) substituted by s. 162 (b) of Act 60 of 2001.]

(2) The provisions of section 86A of the Income Tax Act and any regulations made under that Act relating to any appeal in terms of that section shall *mutatis mutandis* apply with reference to any appeal under this section.

[S. 34 amended by s. 162 (a) of Act 60 of 2001.]

### **35 Members of tax court not disqualified from adjudicating**

A member of a tax court referred to in section 33 will not solely on account of any liability imposed upon him under this Act be regarded as interested in any matter upon which he may be called upon to adjudicate thereunder.

[S. 35 substituted by s. 163 of Act 60 of 2001.]

### **36 Payment of tax pending appeal**

#### **Cases**

(1) The obligation to pay and the right to receive and recover any tax, additional tax, penalty or interest chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment must be made, amounts paid in excess being refunded with interest at the prescribed rate (but subject to the provisions of sections 45 (1)

and 45A)) and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39 (1).

[Sub-s. (1) substituted by s. 22 of Act 20 of 1994, by s. 39 of Act 27 of 1997 and by s. 164 of Act 60 of 2001.]

(2) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.

[Sub-s. (2) added by s. 18 (1) of Act 140 of 1993 and amended by s. 33 of Act 37 of 1996.]

[S. 36 substituted by s. 2 of Act 61 of 1993.]

### **37 Burden of proof**

The burden of proof that any supply or importation is exempt from or not liable to any tax chargeable under this Act or is subject to tax at the rate of zero per cent or that any value upon which tax is chargeable under this Act or any amount of tax chargeable under this Act is subject to any deduction or set-off or that any amount should be deducted as input tax, shall be upon the person claiming such exemption, non-liability, rate of zero per cent, deduction or set-off, and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

## **PART VI**

### **PAYMENT, RECOVERY AND REFUND OF TAX (ss 38-45A)**

### **38 Manner in which tax shall be paid**

(1) Subject to the provisions of section 7 (3) (d) and section 13 (5) and (6), the tax payable under this Act must be paid in full within the time allowed by section 14 or section 28 or section 29, whichever is applicable.

[Sub-s. (1) substituted by s. 165 of Act 60 of 2001 and by s. 39 (1) of Act 32 of 2005.]

(2) Where the Commissioner is satisfied that due to circumstances beyond the control of the person liable for the payment of the tax the amount of tax due cannot be accurately calculated within the time allowed by section 14 or section 28 or section 29, whichever is applicable, the Commissioner may in his or her discretion and subject to such conditions as he or she may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such tax.

[Sub-s. (2) substituted by s. 39 (1) of Act 32 of 2005.]

(3) Such payment shall be deemed to be a provisional payment in respect of the liability of the said person for such tax, as finally determined, and when such liability is so determined any amount paid in excess shall be refundable to such person and any amount short-paid shall be recoverable from him.

### **39 Penalty and interest for failure to pay tax when due**

#### **Cases**

(1) (a) If any person who is liable for the payment of tax and is required to make such payment in the manner prescribed in section 28 (1), fails to pay any amount of such tax within the period for the payment of such tax specified in the said provision, he shall, in addition to such amount of tax, pay-

- (i) a penalty equal to 10 per cent of the said amount of tax; and
- (ii) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.

[Sub-para. (ii) substituted by s. 3 (a) of Act 61 of 1993.]

(b) Where any amount of tax has in relation to any tax period of any vendor been refunded to the vendor in terms of the provisions of section 44 (1), read with section 16 (5), or has in relation to that period been set off against unpaid tax in terms of the provisions of section 44 (6), and such amount was in whole or in part not properly refundable to the vendor under section 16 (5), so much of such amount as was not properly so refundable shall for the purposes of paragraph (a) (i) be deemed to be an amount of tax required to be paid by the vendor within the said period and for the purposes of paragraph (a) (ii), an amount of tax required to be paid by the vendor during the period in which the refund was made.

[Para. (b) amended by GN 2695 of 8 November 1991 and by s. 30 of Act 136 of 1992 and substituted by s. 3 (b) of Act 61 of 1993.]

(2) If any person who is liable for the payment of tax in accordance with the provisions of section 29 fails to pay any amount of such tax within the period allowed for the payment of such tax in terms of that section, he shall, in addition to such amount of tax, pay-

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.

[Para. (b) substituted by s. 3 (c) of Act 61 of 1993.]

(3) .....

[Sub-s. (3) amended by s. 3 (d) of Act 61 of 1993 and deleted by s. 105 (a) of Act 32 of 2004.]

(4) Where any importer of goods which are required to be entered under the Customs and Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, that importer shall, in addition to such amount of tax pay-

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.

[Sub-s. (4) substituted by s. 37 of Act 136 of 1991, amended by s. 3 (e) of Act 61 of 1993, deleted by s. 40 (a) of Act 27 of 1997 and inserted by s. 184 (1) (a) of Act 45 of 2003.]

(5) Where any person who is liable for the payment of tax fails to pay any amount of such tax on the date on which in terms of the Customs and Excise Act, liability arises for the payment of the excise duty or environmental levy referred to in section 7 (3) (a), that person shall, in addition to such amount of tax, pay-

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on that amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.

[Sub-s. (5) substituted by s. 37 of Act 136 of 1991, amended by s. 3 (f) of Act 61 of 1993, deleted by s. 166 of Act 60 of 2001, inserted by s. 50 (1) (a) of Act 16 of 2004 and substituted by s. 22 of Act 9 of 2005.]

(6) If any person who is liable for the payment of tax and is required to make such payment in the manner prescribed in section 14, fails to pay any amount of such tax within the period allowed for payment of such tax in terms of the said section, he shall in addition to such amount of tax, pay-

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.

[Para. (b) substituted by s. 3 (g) of Act 61 of 1993.]

(6A) If any person who is liable for the payment of additional tax in accordance with the provisions of section 60 fails to pay any amount of such tax on or before the last business day of the month in which the last day of the period allowed for the payment of such tax in terms of that section falls, he shall, in addition to such amount of tax, pay interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month during which the said tax is not paid.

[Sub-s. (6A) inserted by s. 23 (a) of Act 20 of 1994.]

(7) To the extent that the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1) (a), (2), (4), (6) or (6A) or on the date referred to in subsection (5), as the case may be-

- (a) (i) did, having regard to the output tax and input tax relating to the supply in respect of which interest is payable, not result in any financial loss (including any loss of interest) to the State; or
  - (ii) such person did not benefit financially (taking interest into account) by not making such payment within the said period or on the said date,
- he may remit, in whole or in part, the interest payable in terms of this section; or

[Para. (a) amended by s. 105 (c) of Act 32 of 2004.]

- (b) was not due to an intent not to make payment or to postpone liability for the payment of the tax, he may remit, in whole or in part, any penalty payable in terms of this section.

[Para. (b) substituted by s. 105 (d) of Act 32 of 2004.]

[Sub-s. (7) substituted by s. 23 (b) of Act 20 of 1994, by s. 40 (b) of Act 27 of 1997 and by s. 50 (1) (b) of Act 16 of 2004 and amended by s. 105 (b) of Act 32 of 2004.]

(8) .....

[Sub-s. (8) deleted by s. 184 (1) (b) of Act 45 of 2003.]

(1) Any amount of any tax, additional tax, penalty or interest payable in terms of this Act shall, when it becomes due or is payable, be a debt due to the State and shall be recoverable by the Commissioner in the manner hereinafter provided.

(2) (a) If any person fails to pay any tax, additional tax, penalty or interest payable in terms of this Act, when it becomes due or is payable by him, the Commissioner may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount thereof so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(b) The Commissioner may by notice in writing addressed to the aforesaid clerk or registrar, withdraw the statement referred to in paragraph (a), and such statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under that paragraph in respect of any tax, additional tax, penalty or interest referred to in the withdrawn statement.

(c) The Commissioner may institute proceedings for the sequestration of the estate of any person and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax, additional tax, penalty or interest payable by such person under the provisions of this Act

(3) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2) (a) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(4) Where, in addition to any amount of tax or additional tax which is due or is payable by any person in terms of this Act, any amount of interest or penalty is payable by him in terms of section 39, any payment made by that person in respect of such tax, additional tax, interest or penalty which is less than the total amount due by him in respect of such tax, additional tax, interest and penalty shall for the purposes of this Act be deemed to be made-

(a) in respect of such penalty; and

[Para. (a) substituted by Government Notice 2695 of 8 November 1991 and by s. 31 of Act 136 of 1992.]

(b) to the extent that such payment exceeds the amount of such penalty, in respect of such interest; and

[Para. (b) substituted by Government Notice 2695 of 8 November 1991 and by s. 31 of Act 136 of 1992.]

(c) to the extent that such payment exceeds the sum of the amounts of such penalty and interest, in respect of such tax or additional tax.

[Para. (c) substituted by Government Notice 2695 of 8 November 1991 and by s. 31 of Act 136 of 1992.]

(5) It shall not be competent for any person in proceedings in connection with any statement filed in terms of subsection (2) (a) to question the correctness of any assessment upon which such statement is based, notwithstanding that objection and appeal may have been lodged against such assessment.

#### **40A Liability of public authorities and certain public entities for tax and limitation of refunds**

(1) This section applies in respect of the supply of goods or services on or before 31 March 2005 by any public authority or public entity listed in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act 1 of 1999).

(2) Where the Commissioner on or before 31 March 2005 issued an assessment for an amount of tax or additional tax in respect of any supply of goods or services contemplated in subsection (1), to correct a prior incorrect application of the zero per cent rate of tax in terms of section 11 (2) (p) in respect of that supply, the Commissioner must, on written application, reduce that assessment to the extent that the amount of tax, additional tax, penalty or interest arose as a result of that correction and was not yet paid on that date: Provided that the reduced assessment will not result in a refund to that public authority or public entity.

(3) The Commissioner may not after 31 March 2005 make any assessment to correct a prior incorrect application of the zero per cent rate of tax in terms of section 11 (2) (p) in respect of any supply of goods or services contemplated in subsection (1).

(4) If a public authority or public entity incorrectly charged tax at the rate referred to in section 7 (1) instead of the zero per cent rate of tax in terms of section 11 (2) (p) in respect of any supply contemplated in subsection (1), the Commissioner may not refund any such tax or any penalty or interest that arose as a result of the late payment of such tax, paid by that public authority or public entity to the Commissioner.

[S. 40A inserted by s. 23 of Act 9 of 2005.]

#### **41 Liability for tax in respect of certain past supplies or importations**

Notwithstanding anything to the contrary in this Act-

(a) no amount of tax otherwise properly chargeable and payable by any person or not deductible by him under this Act, shall be recoverable by the Commissioner in respect of any past supply of goods or services or any past importation of goods if, in terms of a general written ruling by the Commissioner or a general oral ruling given by him prior to 9 July 1993 which had not been withdrawn by him at the time at which the said person became contractually obliged to supply or receive such goods or services, as the case may be, no tax was payable or a deduction was allowed in respect of such supply or importation;

[Para. (a) substituted by s. 36 (a) of Act 97 of 1993 and by s. 98 of Act 30 of 1998.]

- (b) no further amount of tax shall be recoverable by the Commissioner in respect of or in relation to any past supply of goods or services or any past importation of goods if, in terms of a general written ruling by the Commissioner or a general oral ruling given by him prior to 9 July 1993 which had not been withdrawn by him at the time of such supply or importation, the tax payable or deductible in respect of such supply or importation had been calculated and paid or had been deducted in accordance with such ruling, as the case may be;

[Para. (b) substituted by s. 36 (b) of Act 97 of 1993 and by s. 98 of Act 30 of 1998.]

- (c) where any written decision or, prior to 9 July 1993 an oral decision has been given by the Commissioner-
- (i) to the effect that any person is required or not required to be registered as a vendor in terms of the provisions of this Act; or
  - (ii) as to the taxable or non-taxable nature of any supply of goods or services by any person or of the importation of goods by any person (including any decision as to the applicability of any exemption or rate of zero per cent) or as to the deductibility or non-deductibility in terms of section 16 (3) of tax in respect of the supply to any person of goods or services or the importation by any person of goods,

and such decision is subsequently withdrawn, such withdrawal shall, as respects any contractual obligation incurred in accordance with the decision given by the Commissioner by the person concerned before such withdrawal to supply or receive the goods or services concerned, not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or his entitlement or otherwise to a deduction of tax, as determined in accordance with such decision, as the case may be, provided such decision was accepted by the said person and all the material facts were known to the Commissioner when the decision was given;

[Para. (c) amended by s. 36 (c) of Act 97 of 1993 and substituted by s. 98 of Act 30 of 1998.]

- (d) where-
- (i) any amount of tax chargeable under this Act in respect of a supply of goods or services has not been returned in any return required to be furnished under section 28 or 29 and in which the said amount is required to be returned; or
  - (ii) any amount of tax chargeable under this Act in respect of the importation of goods was not paid; or

[Sub-para. (ii) substituted by Government Notice 2695 of 8 November 1991 and by s. 32 (a) of Act 136 of 1992, amended by s. 41 (a) of Act 27 of 1997 and substituted by s. 40 of Act 32 of 2005.]

- (iiA) any amount of tax chargeable under section 7 (3) (a) was not paid on the date on which liability arose for the payment of the excise duty referred to in that section; or

[Sub-para. (iiA) inserted by Government Notice 2695 of 8 November 1991 and by s. 32 (b) of Act 136 of 1992.]

- (iii) any amount of tax chargeable under this Act in respect of a supply of imported services has not been accounted for and paid as required by section 14 (1); or
- (iv) any amount of tax has been incorrectly deducted in terms of section 16 (3) in any return required to be furnished under section 28,

and in consequence thereof an amount of tax which should have been paid to the Commissioner or the Managing Director of the South African Post Office Limited in terms of this Act has not been paid, that amount shall not be recoverable by the Commissioner after the expiration of a period of five years reckoned from the date on which that amount became payable in terms of this Act, if it is shown-

- (aa) that the failure to pay the amount which should have been paid was not due to an intent of the person concerned or any other person under the control or acting on behalf of that person not to make payment of tax; and

[Sub-para. (aa) substituted by s. 41 (b) of Act 27 of 1997.]

- (bb) that the person responsible for the payment of the amount which should have been paid acted in good faith and on an assumption that an exemption or a rate of zero per cent was in fact applicable in respect of the supply referred to in subparagraph (i) or the importation referred to in subparagraph (ii) or the supply referred to in subparagraph (iii) or that any such supply was not subject to tax under this Act, or that the amount of tax referred to in subparagraph (iiA) was not payable, or that a deduction in respect of the amount referred to in subparagraph (iv) was in fact applicable, as the case may be; and

[Para. (bb) substituted by Government Notice 2695 of 8 November 1991 and by s. 32 (d) of Act 136 of 1992.]

- (cc) that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person:

Provided that this paragraph shall not apply if the Commissioner has not later than the end of the said



period issued an assessment in respect of the unpaid tax.

[Para. (d) amended by Government Notice 2695 of 8 November 1991, by s. 32 (c) of Act 136 of 1992 and by s. 167 of Act 60 of 2001.]

## 42 Evidence as to assessments

### Cases

The production of any document issued by the Commissioner purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of such assessment and shall, except in the case of proceedings on appeal against the assessment, be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

## 43 Security for tax

(1) The Commissioner may, in the case of any vendor-

- (a) who has been convicted of any offence under this Act, or any other Act administered by the Commissioner, or who has repeatedly failed to pay amounts of tax due by him or to carry out other obligations imposed upon him by this Act, or any other Act administered by the Commissioner; or  
[Para. (a) substituted by s. 81 of Act 30 of 2000.]
- (b) who is under the management or control of a person who is or was a vendor contemplated in paragraph (a); or
- (c) who is under the management or control of a person, where that person is or was managing or controlling another person who is or was a vendor contemplated in paragraph (a),

by written notice to such vendor require him, within such period as the Commissioner may allow, to furnish to or deposit with the Commissioner security for the payment of any tax, additional tax, penalty or interest which has or may become payable by such vendor in terms of this Act.

[Sub-s. (1) substituted by s. 99 of Act 30 of 1998.]

(2) Such security shall be of such nature, for such amount and in such form as the Commissioner may direct.

(3) Where the Commissioner has directed that such security shall be in the form of a cash deposit and the vendor fails to make such deposit within the period allowed by the Commissioner, the amount of such deposit shall be recoverable from the vendor in terms of the provisions of section 40 as though such amount were an amount of tax due by the vendor.

(4) Where such security is in the form of a cash deposit, the amount deposited may be set off in whole or in part by the Commissioner against any liability of the vendor for any tax, additional tax, penalty or interest in terms of this Act or such amount (or the balance thereof remaining after deducting any portion thereof which has been so set off) may be repaid by the Commissioner to the vendor when the Commissioner is satisfied that the security is no longer required.

(5) Notwithstanding the provisions of subsection (1), the Commissioner may, having regard to the circumstances of any vendor which is not a natural person, require of any or all of the members, shareholders or trustees involved in the management of such vendor to enter into a contract of suretyship in respect of the vendor's liability for tax which may arise from time to time.

[Sub-s. (5) added by s. 97 of Act 53 of 1999.]

(6) Such suretyship shall be for such amount and for such period as the Commissioner may direct and for the duration thereof, the said members, shareholders or trustees may jointly and severally with the vendor be held liable for paying the tax imposed on the vendor.

[Sub-s. (6) added by s. 97 of Act 53 of 1999.]

## 44 Refunds

### Cases

(1) Any amount of tax which is refundable to any vendor in terms of section 16 (5) in respect of any tax period shall, to the extent that such amount has not been set off against unpaid tax in terms of subsection (6) of this section, be refunded to the vendor by the Commissioner: Provided that-

- (i) the Commissioner shall not make a refund under this subsection unless the claim for the refund is received by the Commissioner within five years after the end of the said tax period; or  
[Para. (i) substituted by s. 100 (a) of Act 30 of 1998.]
- (ii) where the amount that would be so refunded to the vendor is determined to be R25 or less, the amount so determined shall not be refunded in respect of the said tax period but shall be carried forward to the next succeeding tax period of the vendor and be accounted for as provided in section 16 (5).  
[Para. (ii) amended by s. 37 (a) of Act 97 of 1993 and by s. 98 (a) of Act 53 of 1999.]

(2) Subject to the provisions of subsection (3), where-

- (a) any amount of tax, additional tax, penalty or interest paid by any person in terms of this Act to the Commissioner was in excess of the amount of tax, additional tax, penalty or interest, as the case may be, that should properly have been charged under this Act; or
- (b) any amount refunded to a vendor in terms of subsection (1) was less than the amount properly refundable

under that subsection,

the Commissioner shall, on application by the person concerned, refund the amount of tax, additional tax, penalty or interest paid in excess or the amount by which the amount refunded was less than the amount properly refundable, as the case may be.

(3) The Commissioner shall not make a refund under subsection (2), unless -

- (a) the claim for the refund of such excess amount of tax, additional tax, penalty or interest is received by the Commissioner within five years after the date upon which payment of the amount claimed to be refundable was made: Provided that if the Commissioner is satisfied that such payment was made in accordance with the practice generally prevailing at the said date, no refund shall be made unless the claim for any refund is received by the Commissioner within six months after that date; or  
[Para. (a) substituted by s. 42 (a) of Act 27 of 1997.]
- (b) the amount to be refunded is R25 or more; or  
[Para. (b) amended by s. 98 (b) of Act 53 of 1999.]
- (c) the Commissioner is satisfied that any amount of output tax claimed to be refundable to a vendor will, if such amount has been borne by any other person, in turn be refunded by the vendor to such other person; or
- (d) the vendor has furnished the Commissioner in writing with particulars of the enterprise's banking account or account with a similar institution to enable the Commissioner to transfer a refund or other amount due to the vendor to such account: Provided that should the vendor request that a refund or other amount be transferred to a bank account or an account with a similar institution other than that of the vendor, the vendor must notify the Commissioner in writing and must indemnify the Commissioner against any loss by the vendor or the State as a result of such instruction.

[Para. (d) added by s. 168 (b) of Act 60 of 2001.]

(4) Where the amount that would be refunded under subsection (2) is determined to be R25 or less, the amount so determined shall not be refunded but shall be credited to the vendor's account and be accounted for as provided in section 16 (5).

[Sub-s. (4) amended by s. 37 (b) of Act 97 of 1993 and by s. 98 (c) of Act 53 of 1999.]

(5) Notwithstanding the provisions of paragraph (ii) of the proviso to subsection (1) and the provisions of subsection (4) any amount determined to be refundable to a vendor in respect of his final tax period on the cancellation of his registration as a vendor shall be refundable to him in full.

(6) Where any refund contemplated in this section is due to any vendor who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed in terms of this Act or any other law administered by the Commissioner within the period prescribed for payment of such amount, the Commissioner may set off against such amount which such vendor has failed to pay, the amount which has become refundable under this section or any interest which has become payable to the vendor in terms of section 45.

[Sub-s. (6) substituted by s. 100 (b) of Act 30 of 1998.]

(7) Where the vendor has failed to furnish a return for any tax period as required by this Act, the Commissioner may withhold payment of any amount refundable to the vendor under subsection (1) or any amount of interest payable to the vendor in terms of section 45 until the vendor has furnished such return as so required.

(8) If the Commissioner refuses to make or authorize a refund in terms of this section he shall give written notice of such refusal.

[Sub-s. (8) substituted by s. 42 (b) of Act 27 of 1997.]

(9) The Commissioner may make or authorise a refund of any amount of tax which has become refundable to any person under the provisions of an export incentive scheme referred to in paragraph (d) of the definition of 'exported' in section 1.

[Sub-s. (9) added by s. 27 (1) of Act 37 of 1996.]

#### **45 Interest on delayed refunds**

(1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor's return in respect of a tax period is received by an office of the South African Revenue Service refund any amount refundable in terms of section 44 (1), interest shall be paid on such amount at the prescribed rate (but subject to the provisions of section 45A) and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable: Provided that-

- (i) where such return made by the vendor is incomplete or defective in any material respect the said period of 21 business days shall be reckoned from the date on which-
  - (aa) the vendor rectifies the return and satisfies the Commissioner in writing that the incompleteness or defectiveness of the return does not affect the amount refundable; or  
[Sub-para. (aa) substituted by s. 101 (a) of Act 30 of 1998.]
  - (bb) information is received by the Commissioner to enable him to make an assessment upon the



vendor reflecting the amount properly refundable to the vendor;

[Sub-para. (bb) substituted by s. 101 (a) of Act 30 of 1998.]

[Para. (i) substituted by s. 43 (a) of Act 27 of 1997 and amended by s. 101 (a) of Act 30 of 1998.]

- (iA) where the vendor is in default in respect of any of his obligations under this Act or any other Act administered by the Commissioner, to furnish a return as required by such Act, the said period of 21 business days shall be reckoned from the date on which any such outstanding return or returns furnished by the vendor as required by such Act are received by an office of the South African Revenue Service;

[Para. (iA) inserted by s. 43 (a) of Act 27 of 1997 and substituted by s. 101 (b) of Act 30 of 1998 and by s. 169 (b) of Act 60 of 2001.]

- (ii) where the Commissioner is prevented from satisfying himself as to the amount refundable in terms of section 44 (1) by reason of not being able to gain access to the books and records of the vendor concerned after having, within a reasonable time, made a request by registered post, facsimile transmission, electronic means or personal delivery, to the vendor for access to such books and records during the period of 21 business days contemplated in this subsection, the said period of 21 business days shall be suspended from the date of despatch of such request by registered post, facsimile transmission, electronic means or the date of delivery of the personal delivery, until the date on which such access is granted;

[Para. (ii) substituted by s. 33 of Act 136 of 1992 and by s. 101 (b) of Act 30 of 1998.]

- (iii) where the vendor is not a resident of the Republic and-
- (aa) has not appointed a representative vendor as contemplated in section 48 (1) in the Republic or has not furnished the Commissioner with the particulars of such representative vendor; or
- (bb) has not opened a banking account in the Republic as required by paragraph (ii) (bb) of the proviso to section 23 (2) or has not furnished the Commissioner with the particulars of such banking account,

the said period of 21 business days shall be reckoned from the date the vendor furnishes the Commissioner with the particulars of such representative vendor or banking account, as the case may be.

[Para. (iii) added by s. 43 (b) of Act 27 of 1997.]

[Sub-s. (1) amended by s. 4 of Act 61 of 1993, substituted by s. 24 of Act 20 of 1994 and amended by s. 169 (a) of Act 60 of 2001.]

(2) Where the amount of any interest paid to a person in terms of subsection (1) is in excess of the correct amount, the Commissioner may recover the amount of the excess under section 40 (2) (a) as if it were tax payable by such person.

(3) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.

[Sub-s. (3) added by s. 19 (1) of Act 140 of 1993 and amended by s. 33 of Act 37 of 1996.]

#### **45A Calculation of interest payable under this Act**

Where-

- (a) any interest is payable under the provisions of section 36, 39 or 45;
- (b) the rate at which such interest is payable has with effect from any date been altered; and
- (c) such interest is payable in respect of any period or any number of months or any part of a month which commenced before the said date,

the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such months or part of a month which commenced before the said date shall be calculated as if the said rate had not been so altered.

[S. 45A inserted by s. 5 of Act 61 of 1993.]

### **PART VII**

#### **REPRESENTATIVE VENDORS (ss 46-49)**

#### **46 Persons acting in a representative capacity**

The natural person who is a resident of the Republic responsible for the duties imposed by this Act-

- (a) on any company shall be the public officer thereof contemplated in section 101 of the Income Tax Act or, in the case of any company which is placed in liquidation, the liquidator thereof;
- (b) on any public authority shall be any person responsible for accounting for the receipt and payment of moneys under the provisions of any law or for the receipt and payment of moneys or funds on behalf of such public authority;
- (c) on a local authority shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such local authority;
- (d) on any corporate or unincorporate body (other than a company) shall be any person who is the treasurer of that body or whose functions are similar to those of a treasurer of that body;
- (e) on a person under legal disability shall be his guardian, curator or administrator or the other person having the management or control of his affairs;

- (f) on any person who is not a resident of the Republic or any person (other than a company) who is for the time being out of the Republic, shall be any agent of such person controlling such person's affairs in the Republic or any manager of any enterprise of such person in the Republic;
- (g) on a deceased person or his estate shall be the executor or administrator of such estate;
- (h) on an insolvent person or his estate shall be the trustee or administrator of such estate;
- (i) on any trust fund shall be the person administering the fund in a fiduciary capacity;
- (j) on a foreign donor funded project shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such foreign donor funded project:

[Para. (j) added by s. 41 of Act 32 of 2005.]

Provided that nothing herein contained shall be construed as relieving any such company, public authority, local authority, body or person or any member of a partnership referred to in section 51 (3) from having to perform any duties imposed by this Act upon such company, public authority, local authority, body or person which the first-mentioned person has failed to perform.

[S. 46 amended by s. 185 of Act 45 of 2003.]

#### **47 Power to appoint agent**

##### **Cases**

The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of tax, additional tax, penalty or interest payable by such other person under this Act and may be required to make payment of such amount from any moneys which may be held by him for or be due by him to the person whose agent he has been declared to be: Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

[S. 47 amended by s. 170 of Act 60 of 2001.]

#### **48 Liability of representative vendors**

(1) For the purposes of this section 'representative vendor' means-

- (a) in relation to any company, public authority, local authority, body, trust fund or person referred to in section 46, the person who is in terms of that section responsible for performing the duties imposed under this Act on such company, public authority, local authority, body, trust fund or person; and
- (b) in relation to the other person referred to in section 47, any person declared by the Commissioner under that section to be the agent of that other person.

(2) Every representative vendor shall as respects moneys controlled or transactions concluded or anything done by him in his representative capacity be liable for the payment of any tax, additional tax, penalty or interest chargeable under this Act in relation to such moneys or transactions as though such liability had been incurred by him personally, but such liability shall be deemed to have been incurred by him in his representative capacity only.

(3) For purposes of subsection (2), any tax, additional tax, penalty or interest payable by any representative vendor in his representative capacity shall be recoverable from him, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control: Provided that any tax, additional tax, penalty or interest payable by a company shall not be recoverable from the public officer of the company but shall be recoverable from the company.

[Sub-s. (3) substituted by s. 186 (a) of Act 45 of 2003.]

(4) Every representative vendor or other person who is personally liable, who, as such, pays any tax, additional tax, penalty or interest due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.

[Sub-s. (4) substituted by s. 186 (a) of Act 45 of 2003.]

(5) Every representative vendor referred to in section 46 (g) who, as such, pays any tax, additional tax, penalty or interest due under this Act by any deceased person shall be entitled to recover the amount so paid from the estate of such deceased person or to retain out of any moneys of the estate of such deceased person that may be in his possession or that may come to him as executor or administrator of such estate, an amount equal to the amounts so paid.

(6) Every representative vendor shall be personally liable for the payment of any tax, additional tax, penalty or interest payable by him in his representative capacity, to the extent that it remains unpaid-

- (a) he alienates, charges or disposes of any money received or accrued in respect of which the tax is chargeable; or
- (b) he disposes of or parts with any fund or money belonging to the person whom he represents which is in his possession or comes to him after the tax, additional tax, penalty or interest has become payable, if such tax, additional tax, penalty or interest could legally have been paid from or out of such fund or

money.

[Sub-s. (6) amended by s. 186 (b) of Act 45 of 2003.]

(6A) The additional tax, penalty or interest payable by any representative vendor in terms of subsection (6) shall be recoverable by the Commissioner from that representative vendor.

[Sub-s. (6A) inserted by s. 186 (c) of Act 45 of 2003.]

(7) Every person who becomes a representative vendor (other than a person representing a company, public authority or local authority as contemplated in section 46 (a), (b) or (c) or a person appointed as an agent under the provisions of section 47) shall within 21 days after becoming responsible for performing duties under this Act on behalf of any other person notify the Commissioner in such form as the Commissioner may prescribe, of the fact that he has become a representative vendor of that other person.

(8) Every representative vendor contemplated in section 48 (1) shall remain responsible for performing the duties imposed on him by this Act until such time as he notifies the Commissioner in writing that he no longer acts as representative vendor, or until the Commissioner has been notified of the name and address of another person who shall act as representative vendor.

[Sub-s. (8) added by s. 99 of Act 53 of 1999.]

(9) Where a vendor is a company, every member, shareholder or director who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the tax, additional tax, penalty or interest for which the company is liable.

[Sub-s. (9) added by s. 186 (d) of Act 45 of 2003 and substituted by s. 106 of Act 32 of 2004.]

#### **49 Remedies of Commissioner against agent or trustee**

The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as he would have against the property of any person liable to pay any tax, additional tax, penalty or interest chargeable under this Act and in as full and ample a manner.

### **PART VIII**

#### **SPECIAL PROVISIONS (ss 50-54)**

#### **50 Separate enterprises, branches and divisions**

(1) Where separate enterprises are carried on by any vendor or an enterprise is carried on by any vendor in branches or divisions, the vendor may apply in writing to the Commissioner for any such separate enterprise, branch or division to be registered separately for the purposes of this Act.

(2) The Commissioner shall, upon application made under subsection (1), register any separate enterprise, branch or division as a separate vendor if each such separate enterprise, branch or division maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of the separate enterprise, branch or division, and where any such separate enterprise, branch or division is so separately registered, the activities carried on by that separate enterprise, branch or division shall be deemed to be carried on by a person separate from the vendor referred to in subsection (1).

(3) The Commissioner may, with effect from a date determined by him, cancel any registration in terms of subsection (2) of any separate enterprise, branch or division, if-

- (a) the vendor referred to in subsection (1) has applied to the Commissioner in writing for such registration to be cancelled; or
- (b) it appears to the Commissioner that the duties or obligations of such separate enterprise, branch or division have not been satisfactorily performed or carried out,

and any activity carried on by that separate enterprise, branch or division shall as from the said date be deemed to be carried on by the said vendor.

(4) The Commissioner shall cancel the separate registration of any separate enterprise, branch or division on the cancellation of the registration of the vendor referred to in subsection (1).

(5) Where any separate enterprise, branch or division separately registered under this section fails to do anything required to be done under this Act, the liability for the doing of that thing shall revert to the vendor referred to in subsection (1).

(6) Notwithstanding the preceding provisions of this section, any direction or determination of the Commissioner made under section 15 or 27 in respect of the vendor referred to in subsection (1) of this section shall, for the purposes of this Act, apply equally to each separate enterprise, branch or division of the vendor which is separately registered under this section: Provided that where a direction or determination is made by the Commissioner under subsection (2) of section 27 which applies in respect of any such separate enterprise, branch or division, this subsection shall not be construed as preventing the Commissioner from making a separate direction or determination under subsection (4) of the said section in the circumstances contemplated in that subsection in respect of any other separate enterprise, branch or division of the said vendor.

[Sub-s. (6) substituted by s. 38 of Act 136 of 1991.]

#### **50A Separate persons carrying on same enterprise under certain circumstances deemed to be single person**

(1) Notwithstanding the provisions of section 23, if the Commissioner makes a direction under this section, the persons named in the direction shall be deemed to be a single person carrying on the activities of an enterprise described in the direction and that person shall be liable to be registered in terms of section 23 with effect from the date of the direction or, if the direction so provides, from such date as may be specified therein.

(2) The Commissioner shall not make a direction under this section naming any person unless he is satisfied-

- (a) that such person is making or has made taxable supplies; and
- (b) that the activities in the course of which he makes or made those taxable supplies form only part of certain activities which should properly be regarded as those of the enterprise described in the direction, the other activities of that enterprise being carried on at that time or previously by one or more other persons; and
- (c) that, if all the taxable supplies of that enterprise were taken into account, a person carrying on that enterprise should at that time be liable to be registered in terms of subsection (1); and
- (d) that the main reason or one of the main reasons for the person concerned carrying on the activities first referred to in subparagraph (b) in the way he does is the avoidance of a liability to be so registered (whether that liability would be his, another person's or that of two or more persons jointly).

(3) A direction made under this section shall be served on each of the persons named in it.

(4) Where, after a direction has been given under this section specifying a description of the enterprise, it appears to the Commissioner that a person who was not named in that direction is making taxable supplies in the course or furtherance of activities which should properly be regarded as part of the activities of that enterprise, the Commissioner may make and serve on him a supplementary direction referring to the earlier direction and the description of the enterprise specified in it and adding that person's name to those of the persons named in the earlier direction with effect from-

- (a) the date on which he began to make those taxable supplies; or
- (b) if it was later, the date with effect from which the single person referred to in the earlier direction became liable to be registered in terms of this section.

(5) If, immediately before a direction (including a supplementary direction) is made under this section, any person named in the direction is registered in respect of the taxable supplies made by him as contemplated in subsection (2) or (4), he shall cease to be liable to be so registered with effect from-

- (a) the date with effect from which the single person concerned became liable to be registered; or
- (b) the date of the direction,

whichever date is the later.

(6) In relation to an enterprise specified in a direction (including a supplementary direction) under this section, the persons named in such direction, who together are deemed to be the liable person, are in subsections (7) and (8) referred to as the members.

(7) For the purposes of this Act, where a direction is made under this section-

- (a) the person carrying on the enterprise specified in the direction shall be registrable in such name as the members may jointly nominate upon compliance with the provisions of section 23 (2);
- (b) any supply of goods or services by or to one of the members in the course of the activities of such single person shall be deemed to be a supply by or to such single person;
- (c) each of the members shall be jointly and severally liable for any tax due by such single person;
- (d) notwithstanding the provisions of paragraph (c), any failure by such single person to comply with any requirement imposed upon him by or under this Act shall be deemed to be a failure by each of the members severally; and
- (e) subject to paragraphs (a) to (d) of this subsection, the members shall be deemed to be a body of persons carrying on the enterprise of such single person and any question as to the scope of the activities of that enterprise at any time shall be determined accordingly.

(8) If the Commissioner is of the opinion that any person who is one of the members should no longer be regarded as such for the purposes of subsection (7) (c) and (d) and the Commissioner gives notice to that effect, that person shall no longer be liable in terms of that subsection for anything done after the date specified in that notice and shall be deemed to have ceased to be a member of the body of persons referred to in subsection (7) (e).

[S. 50A inserted by s. 44 of Act 27 of 1997.]

## **51 Bodies of persons, corporate or unincorporate (other than companies)**

(1) Subject to the provisions of section 46, where any body of persons, whether corporate or unincorporate (other than a company), carries on or is to carry on any enterprise-

- (a) such body shall be deemed to carry on such enterprise as a person separate from the members of such body;
- (b) registration of that body as a vendor shall be effected separately from any registration of any of its members in respect of any other enterprise;
- (c) liability for tax in respect of supplies by that body shall be determined and calculated in respect of the

enterprise carried on by it as an enterprise carried on independently of any enterprise carried on by any of its members, and any refund relating to that body's enterprise which is payable in terms of section 44 shall be made to that body; and

- (d) the duties and obligations imposed by this Act on any vendor or other person shall, as respects the enterprise carried on by that body, be performed by it separately from the duties and obligations imposed on any of its members.

(2) Where any such body is a partnership or other unincorporated body and is dissolved in consequence of the retirement or withdrawal of one or more (but not all) of its members or the admission of a new member and a new partnership or unincorporated body comes into being consisting of the remaining members of the dissolved partnership or body, as the case may be, or such remaining members and one or more new members and the new partnership or body continues to carry on the enterprise of the dissolved partnership or body as a going concern, the dissolved partnership or body and the new partnership or body, as the case may be, shall (unless the Commissioner, having regard to the circumstances of the case, otherwise directs) for the purposes of this Act be deemed to be one and the same partnership or body, as the case may be.

(3) Subject to the provisions of section 46, every member of a partnership shall be liable jointly and severally with other members of the partnership for performing the duties of the partnership in terms of this Act and paying the tax imposed by this Act on the partnership in respect of supplies made by the partnership while such member was a member of the partnership: Provided that this subsection shall not apply to any such member of a partnership who in relation to that partnership is a partner *en commandite* or a special partner as defined in the Special Partnerships' Limited Liability Act, 1861 (Act 24 of 1861), of the Cape of Good Hope or in Law 1 of 1865 of Natal, who has not held himself out as an ordinary or general partner of the partnership concerned.

## 52 Pooling arrangements

(1) Any pool managed by any body for the sale of agricultural, pastoral or other farming products, being a pool contemplated in section 17 of the Marketing of Agricultural Products Act, 1996 (Act 47 of 1996) may on written application by such body, for the purposes of this Act be deemed to be an enterprise or part of an enterprise carried on by that body separately from the members of such body: Provided that such body may-

- (i) elect in writing that the pool be treated as a separate enterprise for the purposes of this Act and may apply for such pool to be registered separately in terms of section 50; and
- (ii) notwithstanding the provisions of section 54 (1) and (2), if it makes an election in writing, be treated for the purposes of this Act as a principal and not as an agent of its members.

[Sub-s. (1) amended by s. 45 of Act 27 of 1997 and substituted by s. 171 (a) of Act 60 of 2001.]

(2) Notwithstanding the provisions of section 54, any rental pool scheme operated and managed by any person for the benefit of some or all of-

- (a) the owners of time-sharing interests in a property time-sharing scheme as defined in section 1 of the Property Timesharing Control Act, 1983 (Act 75 of 1983);
- (b) the owners of sectional title interests in a sectional title scheme as defined in section 1 of the Sectional Title Act, 1986 (Act 95 of 1986); or
- (c) the shareholders in a Shareblock Company as defined in section 1 of the Shareblocks Control Act, 1980 (Act 59 of 1980), is regarded for the purposes of this Act as a separate enterprise carried on by such person separately from the owners and shall be registered separately under section 50: Provided that-
  - (i) the owners or shareholders must elect in writing that the rental pool be treated separately; and
  - (ii) such a rental pool scheme is, notwithstanding the provisions of section 54 (1) and (2), treated for the purposes of this Act as a principal and not as an agent of the owners or shareholders.

[Sub-s. (2) substituted by s. 171 (b) of Act 60 of 2001.]

[S. 52 substituted by s. 39 of Act 136 of 1991.]

## 53 Death or insolvency of vendor

### Cases

(1) (a) Where, after the death of any vendor or the sequestration of his estate, any enterprise previously carried on by the vendor continues to be carried on by or on behalf of the executor or trustee of his estate or anything is done in connection with the termination of the enterprise, the estate of the vendor, as represented by the executor or trustee, as the case may be, shall for the purposes of this Act be deemed to be a vendor in respect of the enterprise.

(b) Where the provisions of paragraph (a) are applicable, the deceased vendor and his estate or the vendor whose estate is sequestrated and his estate, as the case may be, shall, as respects the enterprise in question, be deemed for the purposes of this Act to be one and the same person.

(2) Where a mortgagee is in possession of any land or other property previously mortgaged by the mortgagor, being a vendor, and the mortgagee carries on any enterprise of the mortgagor in relation to such land or other property, the mortgagee shall, from the date on which the mortgagee took possession of that land or other property, until such time as the



mortgagee ceases to be in possession of that land or other property, be deemed, to the extent that the mortgagee carries on such enterprise, to be a vendor.

#### **54 Agents and auctioneers**

(1) For the purposes of this Act, where an agent makes a supply of goods or services for and on behalf of any other person who is the principal of that agent, that supply shall be deemed to be made by that principal and not by that agent: Provided that, where that supply is a taxable supply and that agent is a vendor, the agent may, notwithstanding anything to the contrary in this Act, issue a tax invoice or a credit note or a debit note in relation to such supply as if the agent had made a taxable supply, and to the extent that that tax invoice or credit note or debit note relates to that supply, the principal shall not also issue a tax invoice or a credit note or a debit note, as the case may be.

(2) For the purposes of this Act, where any vendor makes a taxable supply of goods or services to an agent who is acting on behalf of another person who is the principal for the purposes of that supply, that supply shall be deemed to be made to that principal and not to such agent: Provided that such agent may nevertheless request that he be provided with a tax invoice and the vendor may issue a tax invoice or a credit note or debit note as if the supply were made to such agent.

(2A) (a) For the purposes of this Act, where any goods are imported into the Republic by an agent who is acting on behalf of another person who is the principal for the purposes of that importation, that importation shall be deemed to be made by that principal and not by such agent: Provided that a bill of entry or other document prescribed in terms of the Customs and Excise Act in relation to that importation may nevertheless be held by such agent.

(b) Notwithstanding the provisions of paragraph (a), where any goods are imported into the Republic by an agent who is acting on behalf of another person who is the principal for the purposes of that importation, and-

- (i) the agent is a registered vendor; and
- (ii) the principal is not a resident of the Republic and is not a registered vendor; and
- (iii) the goods are imported by the principal for the purposes of a supply made or to be made by him to a person in the Republic; and
- (iv) the agent obtains and retains documentary proof, as is acceptable to the Commissioner, that-
  - (aa) he paid the tax on importation on behalf of that principal; and
  - (bb) such agent and that principal agree in writing that the said tax has not and will not be reimbursed to such agent by that principal,

that importation shall for the purposes of this Act be deemed to be made by such agent and not by that principal.

[Para. (b) added by s. 46 of Act 27 of 1997.]

[Sub-s. (2A) inserted by s. 34 (a) of Act 136 of 1992.]

(3) Where-

- (a) a tax invoice or a credit note or debit note in relation to a supply has been issued-
  - (i) by an agent as contemplated in subsection (1); or
  - (ii) to an agent as contemplated in subsection (2); or
- (b) a bill of entry or other document prescribed in terms of the Customs and Excise Act in relation to the importation of goods is held by an agent as contemplated in subsection (2A),

the agent shall maintain sufficient records to enable the name and address and VAT registration number of the principal to be ascertained and in respect of all supplies made on or after 1 January 2000 by or to the agent on behalf of the principal, the agent shall notify the principal in writing within 21 days of the end of the calendar month during which the supply was made or received, of the particulars contemplated in paragraphs (e), (f) and (g) of section 20 (4) in relation to such supplies.

[Sub-s. (3) substituted by s. 34 (b) of Act 136 of 1992 and amended by s. 100 (a) of Act 53 of 1999 and by s. 51 of Act 16 of 2004.]

(4) For the purposes of subsection (5), the expression 'auctioneer' means a vendor carrying on an enterprise which comprises or includes the supply by him by auction, of goods as an auctioneer or agent for or on behalf of another person (hereinafter in this section referred to as a principal) and includes an agent, fresh produce agent and livestock agent as defined in section 1 of the Agricultural Produce Agents Act, 1992 (Act 12 of 1992); and

[Sub-s. (4) substituted by s. 40 of Act 136 of 1991 and by s. 100 (b) of Act 53 of 1999.]

(5) Notwithstanding anything in the preceding provisions of this section, where the principal and the auctioneer agree to have a supply by auction of any goods, other than a taxable supply, treated as if that supply were made by the auctioneer and not by the principal, the supply shall be charged with tax as if it were made by the auctioneer in the course or furtherance of the auctioneer's enterprise and the auctioneer may-

- (a) recover the amount of tax charged on that supply from that principal as a debt together with the costs of recovery in any court of competent jurisdiction; or
- (b) retain or deduct such amount and costs out of any money in the auctioneer's hands belonging or payable to the principal:

Provided that the auctioneer or agent shall maintain the records contemplated in section 20 (8) as if the principal made a supply of second-hand goods to him, not being a taxable supply.

[Sub-s. (5) amended by s. 100 (c) of Act 53 of 1999.]

(6) Notwithstanding anything in subsection (2), where any vendor makes a taxable supply (other than a supply that is charged with tax at the rate of zero per cent under section 11) of goods or services to an agent who is a vendor and is acting for or on behalf of another person who is the principal for the purposes of that supply, and-

- (a) the principal is not a resident of the Republic and is not a vendor; and
- (b) (i) the supply is directly in connection with either the exportation, or the arranging of the exportation, of goods from the Republic to any country or place outside the Republic, or the importation, or the arranging of the importation, of goods to the Republic from any country or place outside the Republic, including, in either case, the transportation of those goods within the Republic as part of such exportation or importation, as the case may be; or  
[Sub-para. (i) substituted by s. 25 of Act 20 of 1994.]
- (ii) the supply is of services which comprise the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while present in the Republic or is of services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft,  
[Sub-para. (ii) substituted by s. 25 of Act 20 of 1994.]

this Act shall, where such agent and such principal agree, apply as if the supply were made to that agent and not to the principal.

[NB: A s. 54A has been inserted by s. 42 (1) of the Second Revenue Laws Amendment Act 34 of 2004, a provision which will come into operation on the date of coming into operation of Part IA of Chapter III of the Income Tax Act 58 of 1963. See PENDLEX.]

## PART IX COMPLIANCE (ss 55-63)

### 55 Records

(1) Every vendor shall keep such books of account (which books of account, where generated by means of a computer, shall be retained in the form of a computer print-out) or other records as may enable him to observe the requirements of this Act and enable the Commissioner to satisfy himself that the vendor has observed such requirements, and every vendor shall, in particular, keep the following records and documents-

- (a) a record of all goods and services supplied by or to the vendor showing the goods and services, the rate of tax applicable to the supply and the suppliers or their agents, in sufficient detail to enable the goods and services, the rate of tax, the suppliers or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, debit notes, bank statements, deposit slips, stock lists and paid cheques relating thereto: Provided that a vendor's records do not have to show the rate of tax where the vendor has been authorised by the Commissioner to calculate the tax payable by him in accordance with a method prescribed by regulation, as contemplated in section 16 (1);  
[Para. (a) substituted by s. 38 (b) of Act 97 of 1993 and by s. 102 of Act 30 of 1998.]
- (aA) a record of all importations of goods and documents relating thereto as contemplated in section 16 (2) (d);  
[Para. (aA) inserted by s. 35 of Act 136 of 1992.]
- (b) the charts and codes of account, the accounting instruction manuals and the system and programme documentation which describe the accounting system used in each tax period in the supply of goods and services;
- (c) any list required to be prepared in accordance with section 15 (9); and
- (d) any documentary proof required to be obtained and retained in accordance with section 11 (3).  
[Sub-s. (1) amended by s. 38 (a) of Act 97 of 1993.]

(2) Such books of account, records and documents referred to in subsection (1), whether in their original form or in a form authorized by the Commissioner in terms of subsection (4), shall at all reasonable times during the relevant period referred to in subsection (3) be open for inspection by any person acting under the authority of the Commissioner.

[Sub-s. (2) substituted by s. 38 (c) of Act 97 of 1993.]

(3) All such books of account, records and documents, whether in their original form or in a form authorized by the Commissioner in terms of subsection (4)-

- (a) required to be kept in terms of subsection (1) and section 75 (1) (f) of the Income Tax Act, shall be retained and carefully preserved by the vendor for the period referred to in the said section 75 (1) (f); and
- (b) required to be kept in terms of subsection (1), but in respect of which a return referred to in the said section 75 (1) (f) need not be submitted, shall-
  - (i) where kept in book form, be retained and carefully preserved by the vendor for a period of five years from the date of the last entry in any book; or
  - (ii) where not kept in book form, be retained and carefully preserved by the vendor for a period of five years after the completion of the transactions, acts or operations to which they relate.

[Sub-s. (3) substituted by s. 38 (d) of Act 97 of 1993.]

(4) (a) The Commissioner may, subject to such conditions as he may determine, authorize the retention of the

information contained in any records or documents referred to in subsection (3) (other than ledgers, cash books, journals and paid cheques) in a form acceptable to him, in lieu of the retention of the originals of such records or documents.

(b) The originals of any records or documents in respect of which the information therein contained is retained as contemplated in paragraph (a), shall be retained and carefully preserved for a period of one year from the beginning of the period for which the said records or documents should, but for the said paragraph (a), have been retained in terms of subsection (3).

[Sub-s. (4) substituted by s. 38 (e) of Act 97 of 1993.]

**56** .....

[S. 56 repealed by s. 23 of Act 46 of 1996.]

**57 General provisions with regard to information, documents or things**

(1) For the purposes of this section and sections 57A, 57B, 57C, 57D and 58-  
'administration of this Act' means the-

- (a) obtaining of full information in relation to the-
  - (i) supply by any vendor of goods and services supplied by him in the course or furtherance of any enterprise carried on by him;
  - (ii) importation of any goods into the Republic by any person; and
  - (iii) supply of any imported services by any person;
- (b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation;
- (c) determination of the liability of any person for any tax and any interest or penalty in relation thereto leviable under this Act;
- (d) collecting of any such liability;
- (e) ascertaining whether an offence in terms of this Act has been committed;
- (f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act;
- (g) enforcement of any of the Commissioner's remedies under this Act to ensure that any obligation imposed upon any person by or under this Act, is complied with; and
- (h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act;

'authorisation letter' means a written authorisation granted by the Commissioner, or any General Manager, South African Revenue Service under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 57B, any information, documents or things;

[Definition of 'authorisation letter' substituted by s. 172 of Act 60 of 2001.]

'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any printout of information generated, sent, received, stored, displayed or processed by electronic means;

[Definition of 'documents' substituted by s. 187 of Act 45 of 2003.]

'information' includes any electronic representations of information in any form;

[Definition of 'information' substituted by s. 187 of Act 45 of 2003.]

'judge' means a judge of the High Court and includes a judge in chambers;

[Definition of 'judge' substituted by s. 47 of Act 27 of 1997.]

'officer' means an officer contemplated in section 5 (1);

'premises' include any building, premises, aircraft, vehicle, vessel or place;

'things' include any corporeal or incorporeal thing and any document relating thereto;

'warrant' means a written authorisation issued by a judge to search for and seize any information, documents or things under section 57D.

(2) For the purposes of sections 57A, 57B, 57C and 57D, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the vendor or, on the vendor's default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer.

(3) Any translation referred to in subsection (2) shall be-

- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
- (b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer.

(4) For the purposes of sections 57C and 57D, the Commissioner may delegate the powers vested in him by those sections, to any other officer.

[S. 57 substituted by s. 24 of Act 46 of 1996.]

**57A Furnishing of information, documents or things by any person**



The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any vendor, require such vendor or any other person to furnish such information (whether orally or in writing), documents or things as the Commissioner or such officer may require.

[S. 57A substituted by s. 24 of Act 46 of 1996.]

### **57B Obtaining of information, documents or things at certain premises**

(1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to any vendor, require such vendor or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person-

- (a) at any premises; and
- (b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant.

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

[S. 57B inserted by s. 24 of Act 46 of 1996.]

### **57C Inquiry**

(1) The Commissioner or an officer contemplated in section 57 (4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 57 (4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on application by the Commissioner or any officer contemplated in section 57 (4), grant an order in terms of which a person contemplated in subsection (7) is designated to act as presiding officer at the inquiry contemplated in this section.

[Sub-s. (3) substituted by s. 48 of Act 27 of 1997.]

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that-

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
- (ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be revealed which may afford proof of-
  - (i) such non-compliance; or
  - (ii) the committing of such offence; and
- (c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*-

- (a) name the presiding officer;
- (b) refer to the alleged non-compliance or offence to be inquired into;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
- (d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister in terms of section 83A (4) of the Income Tax Act, 1962 (Act 58 of 1962).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall-

- (a) determine the proceedings as he may think fit;
  - (b) have the same powers-
    - (i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and
    - (ii) relating to contempt committed during the proceedings, as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, and for those purposes section 84 and 85 of that Act shall apply *mutatis mutandis*; and
- [Para. (b) substituted by s. 82 (a) of Act 30 of 2000.]
- (c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the-

- (a) place where such inquiry will be conducted;
- (b) date and time of such inquiry; and
- (c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

[Sub-s. (11) substituted by s. 82 (b) of Act 30 of 2000.]

(12) Any person contemplated in subsection (9) has the right to have a legal representative present during the time that he appears before the presiding officer.

[Sub-s. (12) substituted by s. 82 (b) of Act 30 of 2000.]

(13) An inquiry contemplated in this section shall be private and confidential and the presiding officer shall at any time on application by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

[Sub-s. (13) substituted by s. 82 (b) of Act 30 of 2000.]

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51 of the Magistrates' Courts Act, 1944 (Act 32 of 1944).

(15) The provisions with regard to the preservation of secrecy contained in section 6 shall *mutatis mutandis* apply to any person present at the questioning of any person contemplated in subsection (9), including the person being questioned.

[Sub-s. (15) substituted by s. 82 (c) of Act 30 of 2000.]

(16) Subject to subsection (17), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party.

[Sub-s. (16) added by s. 82 (d) of Act 30 of 2000.]

(17) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him.

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers or a failure to answer questions lawfully put to him, fully and satisfactorily.

[Sub-s. (17) added by s. 82 (d) of Act 30 of 2000.]

(18) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person identified in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of that inquiry.

[Sub-s. (18) added by s. 82 (d) of Act 30 of 2000.]

[S. 57C inserted by s. 24 of Act 46 of 1996.]

## **57D Search and seizure**

### **Cases**

(1) For the purposes of the administration of this Act, a judge may, on application by the Commissioner or any officer contemplated in section 57 (4), issue a warrant, authorising the officer named therein to, without prior notice and at any time -

- (a) (i) enter and search any premises; and
- (ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched, for any information, documents or things, that may afford evidence as to the non-compliance by any person with his obligations in terms of this Act;
- (b) seize any such information, documents or things; and
- (c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

[Sub-s. (1) amended by s. 49 of Act 27 of 1997.]

(2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that-

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
- (ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be found which may afford evidence of-
  - (i) such non-compliance; or
  - (ii) the committing of such offence; and
- (c) the premises specified in the application are likely to contain such information, documents or things.

(4) A warrant issued under subsection (1) shall-

- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
- (b) identify the premises to be searched;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
- (d) be reasonably specific as to any information, documents or things to be searched for and seized.

(5) Where the officer named in the warrant has reasonable grounds to believe that-

- (a) such information, documents or things are-
  - (i) at any premises not identified in such warrant; and
  - (ii) about to be removed or destroyed; and
- (b) a warrant cannot be obtained timeously to prevent such removal or destruction,

such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.

(6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act.

(7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).

(8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.

(9)(a) Any person may apply to the relevant division of the High Court for the return of any information, documents or things seized under this section.

[Para. (a) substituted by s. 101 of Act 53 of 1999.]

(b) The court hearing such application may, on good cause shown, make such order as it deems fit.

(10) The person to whose affairs any information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine.

[S. 57D inserted by s. 24 of Act 46 of 1996.]

## 58 Offences

Any person who-

- (a) holds himself out as an officer engaged in carrying out the provisions of this Act; or
- (b) holds himself out as an officer authorised by the Commissioner or a judge for the purposes of the obtaining of information, documents or things, an inquiry or entry and search as contemplated in section 57B, 57C or 57D, as the case may be; or

[Para. (b) substituted by s. 25 (a) of Act 46 of 1996.]

- (c) fails to apply for registration as required by section 23; or
- (d) fails to comply with the provisions of section 14 or section 28 (1) or (2), section 29 or section 30; or

[Para. (d) substituted by s. 42 of Act 32 of 2005.]

- (e) contravenes the provisions of section 65; or

[Para. (e) substituted by s. 41 of Act 136 of 1991.]

- (f) fails to comply with any of the requirements of the provisions of section 55; or

[Para. (f) substituted by s. 39 of Act 97 of 1993.]

- (g) without just cause shown by him, refuses or neglects to-
  - (i) furnish, produce or make available any information, documents or things;
  - (ii) reply to or answer truly and fully, any questions put to him; or
  - (iii) attend and give evidence,
 as and when required in terms of this Act; or

[Para. (g) substituted by s. 25 (b) of Act 46 of 1996.]

- (h) hinders or obstructs or assaults any officer engaged in carrying out his duties under section 57B or 57D; or

[Para. (h) substituted by s. 25 (b) of Act 46 of 1996.]

- (i) fails to notify the Commissioner of anything of which he is required by section 24 (3), 25 or 48 (7) to notify the Commissioner; or

[Para. (i) substituted by s. 43 of Act 34 of 2004.]

- (j) being an auctioneer or a supplier of goods or services-

- (i) declares to any person to whom goods or services are supplied by such auctioneer or supplier that tax has been included in or will be added to the price or amount chargeable in respect of such supply, where in fact no tax is payable in terms of this Act; or

- (ii) knowingly and without lawful excuse (the burden of proof of which shall be upon him) includes in or adds to the price or amount charged to the recipient in relation to such supply any tax, where in fact no tax is payable in terms of this Act; or

- (iii) knowingly and without lawful excuse (the burden of proof of which shall be upon him) includes in or adds to the price or amount charged to the recipient in relation to such supply any tax in excess of the tax properly leviable under this Act in respect of the value of such supply; or

- (k) knowingly and without lawful excuse (the burden of proof of which shall be upon him) fails to comply with the provisions of paragraph (i) of the proviso to section 20 (1) or paragraph (A) of the proviso to section 21 (3); or

- (l) being a registered vendor, fails to provide a recipient with a tax invoice, credit note or debit note as required by this Act:

[Para. (l) substituted by s. 72 of Act 19 of 2001.]

- (m) being an agent or an auctioneer as contemplated in section 54, fails to comply with any of the requirements of section 54 (3) or the proviso to section 54 (5);

[Para. (m) added by s. 102 (a) of Act 53 of 1999.]

- (n) issues a document purporting to be a tax invoice, or bearing the words 'tax invoice', if that document does not meet the requirements of section 20 (4), (5) or (7), as the case may be; or

[Para. (n) added by s. 173 of Act 60 of 2001.]

- (o) without lawful cause fails to comply with a notice of appointment as agent in terms of section 47 within the period specified in such notice;

[Para. (o) added by s. 173 of Act 60 of 2001.]

- (p) uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person,

[Para. (p) added by s. 119 of Act 74 of 2002.]

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

[S. 58 amended by s. 102 (b) of Act 53 of 1999.]

## **59 Offences and penalties in regard to tax evasion**

(1) Any person who with intent to evade the payment of tax levied under this Act or to obtain any refund of tax under this Act to which such person is not entitled or with intent to assist any other person to evade the payment of tax payable by such other person under this Act or to obtain any refund of tax under this Act to which such other person is not entitled-

- (a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this Act, or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or
- (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Commissioner or any person duly authorized by the Commissioner or any officer referred to in section 5 (1); or
- (c) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or authorizes the falsifications of any books of account or other records; or
- (d) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of such fraud, art or contrivance; or
- (e) makes any false statement for the purposes of obtaining any refund of or exemption from tax; or
- (f) receives, acquires possession of or deals with any goods or accepts the supply of any service, knowing or having reason to believe that the tax on the supply of the goods or service has been or will be evaded; or
- (g) knowingly issues any tax invoice, credit note or debit note required under this Act which is in any material respect erroneous or incomplete; or
- (h) knowingly issues any tax invoice showing an amount charged as tax where the supply in respect of which

the tax is charged will not take place; or

[Para. (h) substituted by s. 40 (a) of Act 97 of 1993.]

- (i) for the purposes of section 16 (2), fabricates, produces, furnishes or makes use of any tax invoice, debit note, credit note, bill of entry or other document contemplated in that section knowing the same to be false,

[Para. (i) inserted by s. 40 (b) of Act 97 of 1993.]

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 60 months.

[Sub-s. (1) amended by s. 103 of Act 53 of 1999.]

(2) Whenever in any proceedings under this section it is proved that any false statement or entry has been made in any return rendered under this Act by or on behalf of any person or in any books of account or other records of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused that false statement or entry to be made or to have allowed it to be made with intent to evade the payment of tax or to obtain a refund of tax to which that person is not entitled, as the case may be, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the first-mentioned person to evade the payment of tax or to obtain a refund of tax to which he is not entitled.

(3) A conviction for an offence in terms of this Act shall not exempt the person convicted from the payment of any tax, additional tax, penalty or interest payable in accordance with the provisions of this Act.

## **60 Additional tax in case of evasion**

### **Cases**

(1) Where any vendor or any person under the control or acting on behalf of the vendor fails to perform any duty imposed upon him by this Act or does or omits to do anything, with intent-

- (a) to evade the payment of any amount of tax payable by him; or
- (b) to cause a refund to him by the Commissioner of any amount of tax (such amount being referred to hereunder as the excess) which is in excess of the amount properly refundable to him before applying section 44 (6),

[Para. (b) amended by s. 42 of Act 136 of 1991 and substituted by s. 104 of Act 53 of 1999.]

such vendor shall be chargeable with additional tax not exceeding an amount equal to double the amount of tax referred to in paragraph (a) or the excess referred to in paragraph (b), as the case may be.

[Sub-s. (1) amended by s. 50 of Act 27 of 1997.]

(2) The amount of the said additional tax shall be assessed by the Commissioner and shall be paid by the vendor within such period as the Commissioner may allow.

(3) The power conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Act to institute or take other proceedings under this Act.

## **61 Recovery of tax from recipient**

(1) Where in respect of any supply made by a vendor, the vendor has, in consequence of any fraudulent action or any misrepresentation by the recipient of the supply, incorrectly applied a rate of zero per cent or treated such supply as being exempt from tax, the Commissioner may, notwithstanding anything to the contrary contained in this Act, raise an assessment upon the recipient for the amount of tax payable, together with any penalty or interest that has become payable in terms of section 39 in respect of such amount, and, in raising such assessment, the Commissioner may estimate the amount on which the tax is payable.

[Sub-s. (1) substituted by s. 28 of Act 37 of 1996.]

(2) The amounts payable under such assessment shall be paid by the recipient within such period as the Commissioner may allow and shall be recoverable from the recipient in the manner provided in section 40.

(3) This section shall not be construed as preventing the Commissioner from recovering the amounts of unpaid tax, penalty and interest from the vendor, but in the event of such amounts being recovered from the recipient the vendor shall be absolved from liability for the payment of the amounts due.

## **62 Publication of names of tax offenders**

(1) Notwithstanding the provisions of section 6, the Commissioner may from time to time publish for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of such offence in terms of-

- (a) section 58 or 59(1);
- (b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a),

after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.

[Sub-s. (1) substituted by s. 103 (a) of Act 30 of 1998 and amended by s. 105 (a) of Act 53 of 1999.]

(2) Every publication in terms of this section may specify-

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

[Para. (e) substituted by s. 103 (b) of Act 30 of 1998.]

[Sub-s. (2) amended by s. 105 (b) of Act 53 of 1999.]

(3) A copy of every notice published under this section shall be laid upon the Table in Parliament.

### **63 Reporting of unprofessional conduct**

(1) For the purposes of this section 'controlling body' means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by such association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any other person (hereinafter referred to as a client), done or omitted to do anything which in the opinion of the Commissioner-

- (a) was intended to enable or assist the client to avoid or unduly postpone the performance of any duty or obligation imposed on such client by or under this Act or to obtain any refund of tax under this Act to which such client is not entitled, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation or the obtaining of any such refund; and

[Para. (a) substituted by s. 29 of Act 37 of 1996.]

- (b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by that body,

the Commissioner may lodge a complaint with the said controlling body.

(3) (a) Notwithstanding the provisions of section 6 of this Act the Commissioner may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Commissioner it is necessary to lay before the controlling body to which the complaint is made.

(b) Before lodging any such complaint or disclosing such information the Commissioner shall deliver or send to the client and the person against whom the complaint is to be made a written notification of his intended action setting forth particulars of the said information.

(c) The client or the said person may within 30 days after the date of such written notification lodge in writing with the Commissioner any objection he may have to the lodging of the said complaint.

(d) If on the expiry of the said period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon lodge the complaint as contemplated in subsection (2).

(4) The complaint shall be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit: Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

(5) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the client as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint and shall not communicate such information to any person whatsoever other than the client concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.

## **PART X**

### **MISCELLANEOUS (ss 64-87)**

### **64**

#### **Cases**

(1) Any price charged by any vendor in respect of any taxable supply of goods or services shall for the purposes of this Act be deemed to include any tax payable in terms of section 7 (1) (a) in respect of such supply, whether or not the vendor has included tax in such price.

(2) The amount of any deposit payable to or refundable by a vendor in respect of a returnable container shall be deemed to include tax.

[S. 64 substituted by Government Notice 2695 of 8 November 1991 and by s. 36 of Act 136 of 1992.]

### **65 Prices advertised or quoted to include tax**



Any price advertised or quoted by any vendor in respect of any taxable supply of goods or services shall include tax and the vendor shall in his advertisement or quotation state that the price includes tax, unless the total amount of the tax chargeable under section 7 (1) (a), the price excluding tax and the price inclusive of tax for the supply are advertised or quoted by the vendor: Provided that-

- (i) where the price inclusive of tax and the price excluding tax for a supply are advertised or quoted, both prices shall be advertised or quoted with equal prominence and impact;
- (ii) price tickets on goods need not state that the prices include tax if this is stated by way of a notice prominently displayed at all entrances to the premises in which the enterprise is carried on and at all points in such premises where payments are effected;
- (iii) the Commissioner may in the case of any vendor or class of vendors approve any other method of displaying prices of goods or services by such vendor or class of vendors during a period approved by the Commissioner which commences before and ends after the commencement date or, where the rate of tax is increased or reduced, the date on which the increased or reduced rate of tax takes effect;
- (iv) a vendor may not state or imply that any form of trade, cash or any other form of discount or refund is in lieu of the tax chargeable in terms of section 7 (1) (a).

[Para. (iv) added by s. 174 of Act 60 of 2001.]

[S. 65 amended by Government Notice 2695 of 8 November 1991 and by s. 37 of Act 136 of 1992.]

#### **66 Rounding-off of the tax**

An amount of tax determinable under this Act must be calculated by-

- (a) where the tax fraction is expressed as -
  - (i) a proportion, rounding it off to the fifth decimal place namely 0,12280; or
  - (ii) a percentage, rounding it off to the third decimal place, namely 12,280; and
- (b) rounding fractions of-
  - (i) less than half a cent, down to the last cent; or
  - (ii) half a cent or more, up to the next cent.

[S. 66 substituted by s. 175 of Act 60 of 2001.]

#### **67 Contract price or consideration may be varied according to rate of value-added tax**

Cases

(1) Whenever the value-added tax is imposed or increased in respect of any supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was imposed or increased, as the case may be, the vendor may, unless agreed to the contrary in any agreement in writing and notwithstanding anything to the contrary contained in any law, recover from the recipient, as an addition to the amounts payable by the recipient to the vendor, a sum equal to any amount payable by the vendor by way of the said tax or increase, as the case may be, and any amount so recoverable by the vendor shall, whether it is recovered or not, be accounted for by the vendor under the provisions of this Act as part of the consideration in respect of the said supply.

[Sub-s. (1) substituted by Government Notice 2695 of 8 November 1991, by s. 38 (a) of Act 136 of 1992 and by s. 30 (a) of Act 37 of 1996.]

(2) Whenever the value-added tax is withdrawn or decreased in respect of any supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was withdrawn or decreased, as the case may be, the vendor shall, unless agreed to the contrary in any agreement in writing and notwithstanding anything to the contrary contained in any law, reduce the amount payable to him by the recipient by way of any consideration in which the amount of such tax was included, by a sum equal to the amount of the tax withdrawn or the amount by which the tax was decreased, as the case may be.

[Sub-s. (2) substituted by s. 30 (b) of Act 37 of 1996.]

(3) Whenever the value-added tax is imposed or increased, or withdrawn or decreased, as the case may be, in respect of any supply of goods or services subject to any fee, charge or other amount (whether it is a fixed, maximum or minimum fee, charge or other amount) prescribed by, or determined pursuant to, any Act or by any regulation or measure having the force of law, that fee, charge or other amount may be increased or shall be decreased, as the case may be, by the amount of tax or additional tax charged or chargeable or the amount of tax no longer charged or chargeable, as the case may be: Provided that this subsection shall not apply to any fee, charge or other amount if such fee, charge or other amount has been altered in any Act, regulation or measure prescribing or determining such fee, charge or other amount to take account of any imposition, increase, decrease or withdrawal of such tax: Provided further that this subsection shall not be construed so as to permit any further increase or require a further decrease, as the case may be, in a fee, charge or other amount referred to in this subsection, where such fee, charge or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money for a taxable supply of goods or services, other than a taxable supply charged with tax at the rate of zero per cent or a supply which is an exempt supply.

[Sub-s. (3) added by s. 43 of Act 136 of 1991 and amended by s. 38 (b) of Act 136 of 1992.]

**67A Application of increased or reduced tax rate**

(1) Subject to the provisions of subsection (3), where -

- (a) goods are provided before the date on which an increase or decrease in the rate of tax leviable under section 7 (1) (a) becomes effective in respect of the supply of such goods or the date on which the tax is imposed or withdrawn in respect of the supply of such goods; or  
[Para. (a) substituted by s. 31 (a) of Act 37 of 1996.]
- (b) goods are provided in respect of a supply contemplated in section 9 (3) (a) or (b) during a period beginning before and ending before, on or after the said date; or
- (c) services are performed during a period beginning before and ending before, on or after the date on which an increase or decrease in the rate of tax leviable under section 7 (1) (a) becomes effective in respect of the supply of such services or the date on which the tax is imposed or withdrawn in respect of the supply of such services,

[Para. (c) substituted by s. 31 (b) of Act 37 of 1996.]

and the supply of such goods or services, as the case may be, is in terms of section 9 deemed to be made on or after the said date, then-

- (i) in the case of the increase or decrease in the rate of the tax on the said date, the tax payable in respect of the supply of the goods referred to in paragraph (a) or the supply of the goods referred to in paragraph (b) which are provided during a period referred to in that paragraph which expires before the said date or the supply of services referred to in paragraph (c) which are performed during a period referred to in that paragraph which expires before the said date, shall be determined at the rate applicable on the day before the said date or, in the case of the imposition of the tax on the said date, any such supply of goods or services, as the case may be, shall be deemed not to be subject to such tax or, in the case of the withdrawal of the tax on the said date, any such supply of goods or services, as the case may be, shall be deemed to be subject to such tax as if such tax had not been withdrawn; and  
[Para. (i) substituted by s. 31 (c) of Act 37 of 1996.]
- (ii) where the period referred to in paragraph (b) or the period referred to in paragraph (c) expires on or after the said date, the value of the supply in respect of the period in question shall, on the basis of a fair and reasonable apportionment, be deemed to consist of a part (hereinafter referred to as the first part) relating to the provision of the goods or the performance of the services, as the case may be, before the said date and a part (hereinafter referred to as the second part) relating to the provision of the goods or the performance of the services, as the case may be, on or after the said date, and, in the case of the increase or decrease in the rate of the tax on the said date, the tax payable in respect of each part shall be separately determined, the tax in respect of the first part being determined at the rate applicable on the day before the said date and the tax in respect of the second part at the rate applicable on the said date or, in the case of the imposition of the tax on the said date, the first part shall be deemed not to be subject to such tax or, in the case of the withdrawal of the tax on the said date, the first part shall be deemed to be subject to such tax as if such tax had not been withdrawn:

[Para. (ii) substituted by s. 31 (d) of Act 37 of 1996.]

Provided that this subsection shall not apply in respect of any sale of fixed property.

(2) Subject to the provisions of subsection (3), where goods or services would in terms of section 9 be deemed to be supplied at a time within the period commencing on the date of the announcement of an increase in the rate of tax leviable in terms of section 7 (1) (a) and ending on the day before the date on which the increase in the rate of tax becomes effective, that supply shall, to the extent to which it consists of the provision of goods on or after the day following the last day of the period of 21 days after the date on which the increase of the rate becomes effective, or the performance of services on or after the date on which the increase of the rate becomes effective, be deemed not to take place at the said time, but on the date on which the increase in the rate becomes effective: Provided that this subsection shall not apply where the supply takes place-

- (i) in consequence of any payments customarily made or becoming due or invoices customarily issued, when made, becoming due or issued at regular intervals for the provision of goods or the performance of services still to be provided or performed; or
- (ii) under any written agreement referred to in subsection (4).

[Sub-s. (2) amended by s. 41 (1) (a) of Act 97 of 1993.]

(3) For the purposes of subsections (1) and (2) goods shall be deemed to be provided by the supplier thereof when such goods are delivered to the recipient and goods supplied under a rental agreement shall be deemed to be provided to the recipient when he takes possession or occupation thereof: Provided that where goods consist of fixed property supplied by way of a sale and transfer thereof is effected by registration in a deeds registry, that property shall for the purposes of this subsection be deemed to be delivered to the recipient when such registration is effected.

(4) Subject to the provisions of section 78 (9), where, before the date on which an increase in the rate of tax



leviable in terms of section 7 (1) (a) becomes effective, a written agreement is concluded for-

- (a) the sale of fixed property consisting of any dwelling together with land on which it is erected, or of any real right conferring a right of occupation of a dwelling or of any unit as defined in section 1 of the Sectional Titles Act, 1986 (Act 95 of 1986), such unit being a dwelling, or of any share in a share block company which confers a right to or an interest in the use of a dwelling; or
- (b) the sale of fixed property consisting of land, or of any real right conferring a right of occupation of land for the sole or principal purpose of the erection by or for the purchaser of a dwelling or dwellings on the land, as confirmed by the purchaser in writing; or
- (c) the construction by any vendor carrying on a construction enterprise of any new dwelling,

and-

- (i) the price in respect of the sale or construction in question was determined and stated in the said agreement, as in force before the said date, and that agreement was signed by the parties thereto before the said date; and
- (ii) the supply of such fixed property or services under the said agreement is in terms of section 9 deemed to take place on or after the said date,

the rate at which tax is in terms of the said section 7 (1) (a) leviable in respect of that supply, shall be the rate at which tax would have been levied had the supply taken place on the date on which such agreement was concluded.

(5) Where-

- (a) goods are sold in terms of a lay-by agreement as contemplated in section 8 (4) (a); or
- (b) a service is supplied in relation to the said agreement as contemplated in section 8 (4) (b),

and such agreement is concluded before the date on which an increase of the rate of tax leviable in terms of section 7 (1) (a) becomes effective and the deposit referred to in the said section 8 (4) (a) was paid before that date, the rate at which tax is in terms of the said section 7 (1) (a) leviable in respect of that supply, shall be the rate at which tax would have been levied had the supply taken place on the date on which such agreement was concluded.

[Sub-s. (5) added by s. 41 (1) (b) of Act 97 of 1993.]

[S. 67A inserted by s. 6 of Act 61 of 1993.]

[NB: A section 67B has been inserted by s. 51 (1) of the Taxation Laws Amendment Act 27 of 1997, a provision which will come into operation on a date to be fixed by the President. See PENDLEX.]

## **68 Tax relief allowable to certain diplomats and diplomatic and consular missions**

(1) The Minister may, with the concurrence of the Minister of Foreign Affairs, authorize the granting of relief, by way of a refund, in respect of value-added tax paid or borne-

- (a) by any person enjoying full or limited immunity, rights or privileges under sections 3, 4, 5 and 6 of the Diplomatic Immunities and Privileges Act, 2001 (Act 37 of 2001), or under an agreement or otherwise as contemplated in section 7 of that Act or under the recognized principles of international law; or

[Para. (a) substituted by s. 39 of Act 136 of 1992, by s. 26 of Act 20 of 1994 and by s. 107 of Act 32 of 2004.]

- (b) by any diplomatic or consular mission of a foreign country established in the Republic, relating to transactions concluded for the official purposes of such mission.

[Para. (b) substituted by s. 26 of Act 20 of 1994.]

(2) The relief contemplated in subsection (1) (a) shall not be granted to any South African citizen or permanent resident of the Republic.

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

(4) Any claim for a refund of tax under this section shall be made in such form and at such time as the Commissioner may prescribe and shall be accompanied by such proof of payment of tax or certification as the Commissioner may require.

## **69 .....**

[S. 69 amended by s. 44 of Act 136 of 1991, by s. 40 of Act 136 of 1992 and by s. 42 of Act 97 of 1993 and repealed by s. 27 of Act 20 of 1994.]

## **70 Jurisdiction of courts**

A person charged with an offence under this Act may be tried in respect of that offence by any court having jurisdiction within any area in which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.

[S. 70 substituted by s. 120 of Act 74 of 2002.]

## **71 Authentication and service of documents**

(1) Any form, notice, demand or other document issued or given or made by or on behalf of the Commissioner or any other officer in terms of this Act shall be sufficiently authenticated if the name or official designation of the Commissioner or officer by whom the same is issued or given or made is stamped or printed thereon.

(2) Any form, notice, demand, document or other communication required or authorized under this Act to be

issued, given or sent to or served upon any person by the Commissioner or any other officer in terms of this Act shall, except where otherwise provided in this Act, be deemed to have been effectually issued, given, sent or served-

- (a) if delivered to him; or
- (b) if left with some adult person apparently residing at or occupying or employed at his last known abode or office or place of business in the Republic; or
- (c) if despatched by registered or any other kind of post addressed to him at his last known address, which may be any such place or office as is referred to in paragraph (b) or his last known post office box number or that of his employer; and
- (d) in the case of a company-
  - (i) if delivered to the public officer of the company contemplated in section 101 of the Income Tax Act; or
  - (ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company as its registered office in the Republic or where no such place has been appointed by the company, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company in the Republic; or
  - (iii) if despatched by registered or any other kind of post addressed to the company or its public officer at its or his last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his last known post office box number or that of his employer.

(3) Any form, notice, demand, document or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contemplated in paragraph (c) or (d) (iii) of that subsection shall be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed, unless the Commissioner is satisfied that it was not so received or was received at some other time or, where the time at which it was received or the fact that it was received is in dispute in proceedings under this Act in any court having jurisdiction to decide the matter, the court is so satisfied: Provided that the preceding provisions of this subsection shall not apply where any person is in criminal proceedings charged with the commission of an offence under this Act by reason of his failure, refusal or neglect to do anything which he is required to do in terms of the said form, notice, demand, document or other communication, unless it was despatched to such person by registered or certified post.

(4) If the Commissioner is satisfied that any form, notice, demand, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner contemplated in subsection (2) (b), (c) or (d) (ii) or (iii), has not been received by the person to whom it was addressed or has been received by such person considerably later than it should have been received by him and that such person has in consequence been placed at a disadvantage, the Commissioner may, if he is satisfied that the circumstances warrant such action, direct that such form, notice, demand, document or other communication be withdrawn and be issued, given, sent or served anew.

## **72 Arrangements and directions to overcome difficulties, anomalies or incongruities**

If in any case the Commissioner is satisfied that in consequence of the manner in which any vendor or class of vendors conducts his or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of any of the provisions of this Act, the Commissioner may make an arrangement or give a direction as to-

- (a) the manner in which such provisions shall be applied; or
- (b) the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided in this Act,

in the case of such vendor or class of vendors or any person transacting with such vendor or class of vendors as appears to overcome such difficulties, anomalies or incongruities: Provided that such direction or arrangement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this Act.

[S. 72 substituted by s. 28 of Act 20 of 1994.]

## **73 Schemes for obtaining undue tax benefits**

Cases

(1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any scheme (whether entered into or carried out before or after the commencement of this Act, and including a scheme involving the alienation of property)-

- (a) has been entered into or carried out which has the effect of granting a tax benefit to any person; and
- (b) having regard to the substance of the scheme-
  - (i) was entered into or carried out by means or in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a tax benefit; or
  - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit, the Commissioner shall determine the liability for any tax imposed by this Act, and the amount thereof, as if the scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purposes of this section-

'scheme' includes any transaction, operation, scheme or understanding (whether enforceable or not), including all steps and transactions by which it is carried into effect;

'tax benefit' includes-

- (a) any reduction in the liability of any person to pay tax; or
- (b) any increase in the entitlement of any vendor to a refund of tax; or
- (c) any reduction in the consideration payable by any person in respect of any supply of goods or services; or
- (d) any other avoidance or postponement of liability for the payment of any tax, duty or levy imposed by this Act or by any other law administered by the Commissioner.

(3) Any decision of the Commissioner under this section shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the scheme concerned does or would result in a tax benefit, it shall be presumed, until the contrary is proved that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

#### **74 Schedules and Regulations**

(1) The Minister may make regulations in regard to any matter which is permitted or required by this Act and generally for the better carrying out of the objects and purposes of this Act.

(2) Notwithstanding anything to the contrary in this Act, where the Minister is satisfied that in consequence of the manner in which any business, trade or occupation is carried on malpractices or difficulties have arisen or may arise in regard to the collection of tax levied under this Act, the Minister may, in order to counter such malpractices or to overcome such difficulties, make regulations in regard to the application of any rate of zero per cent or any exemption or to the payment or collection of any tax in a manner other than that provided in this Act.

(3) (a) Whenever the Minister amends any Schedule under any provision of the Customs and Excise Act, 1964 (Act 91 of 1964), by notice in the *Gazette* and it is necessary to amend in consequence thereof Schedule 1 of this Act, the Minister may by like notice amend the said Schedule 1.

(b) The provisions of section 48 (6) of the Customs and Excise Act, 1964, shall apply *mutatis mutandis* in respect of any amendment by the Minister under this subsection.

[Sub-s. (3) added by s. 188 (b) of Act 45 of 2003.]

[S. 74 amended by s. 188 (a) of Act 45 of 2003.]

#### **75 Tax agreements**

(1) The National Executive may enter into an agreement with the government of any other country whereby arrangements are made with that government with a view to-

- (a) the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and such other country, of value-added tax or any similar tax where the supply of goods or services is subject to such tax in either the Republic or such other country and such supply or the importation of such goods or services is also subject to such tax in the other country which is a party to the agreement;
- (b) the refunding of value-added tax or any similar tax, or any portion of such value-added tax or similar tax, levied under the laws of the Republic and such other country in respect of the supply of goods or services in the Republic or such other country, as the case may be, where such goods or services are imported into such other country or the Republic, as the case may be;
- (c) regulating or co-ordinating any matter with regard to the levying and collection, under the laws of the Republic and such other country, of value-added tax or any similar tax; or
- (d) the rendering of reciprocal assistance in the administration of and the collection of value-added tax or any similar tax under the laws of the Republic and such other country, or in respect of the execution of the arrangements provided for in any agreement entered into in terms of this section.

[Sub-s. (1) substituted by s. 52 (a) of Act 27 of 1997.]

(2) As soon as may be possible after the approval by Parliament of any such agreement, as contemplated in section 231 of the Constitution, the arrangements thereby made shall be notified by publication in the *Gazette* and thereupon the arrangements so notified shall have effect as if enacted by this Act.

[Sub-s. (2) substituted by s. 52 (a) of Act 27 of 1997.]

(3) and (4).....

[Sub-ss. (3) and (4) deleted by s. 52 (b) and (c) of Act 27 of 1997.]

(5) The duty imposed by this Act to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorized officer of the country contemplated in subsection (1) of any information necessary for the proper execution of the agreement notified in terms of subsection (2).

[Sub-s. (5) substituted by s. 52 (d) of Act 27 of 1997.]

[S. 75 amended by s. 45 of Act 136 of 1991, by Government Notice 2695 of 8 November 1991 and by s. 41 of Act 136 of 1992 and substituted by s. 29 of Act 20 of 1994.]

76 .....

[S. 76 amended by s. 46 of Act 136 of 1991 and by s. 43 of Act 97 of 1993 and repealed by s. 30 of Act 20 of 1994.]

**77 Notice of variation of rate of tax**

(1) The Minister may by notice in the *Gazette* make known for general information -

- (a) that in terms of a taxation proposal tabled by him in Parliament, the rate of tax specified in section 7 is to be increased to a rate set forth in that proposal and in that notice; or
- (b) that it is proposed to decrease the rate of tax so mentioned to a rate set forth in that notice,

and the increased or decreased rate of tax so set forth shall, until an Act of Parliament is promulgated within six calendar months after the publication of the notice in the *Gazette*, by which effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of tax in respect of supplies of goods and services made by vendors on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased rate of tax, as the case may be, or in respect of importations of goods made on such date.

(2) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (1), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of Parliament and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein.

[S. 77 substituted by s. 31 of Act 20 of 1994.]

**78 Transitional matters**

(1) For the purposes of this section-

'sales tax' means the sales tax levied under the Sales Tax Act;

'Sales Tax Act' means the Sales Tax Act, 1978 (Act 103 of 1978), as in force immediately prior to its repeal by this Act.

[Definition of 'Sales Tax Act' substituted by s. 47 (a) of Act 136 of 1991.]

(2) (a) Where in the course of an enterprise carried on by a person registered as a vendor in terms of the Sales Tax Act that person has before the commencement date entered into an agreement for the sale of movable goods and sales tax would have been payable by him in respect of the taxable value of such sale if the said Act had not been repealed but the said tax is not payable by reason of the fact that the consideration payable by the purchaser in respect of such sale has not been paid in full before the commencement date and delivery of the said goods has not been effected before that date, the said person shall, if on the commencement date he is a vendor as defined in section 1 of this Act, be deemed for the purposes of this Act to have supplied the said goods at the time of delivery of the said goods or the time at which any payment in respect of the said consideration is made on or after the commencement date or the time at which an invoice in respect of such sale is issued on or after that date, whichever time is earliest.

(b) Where any leased property has been leased by a vendor under the Sales Tax Act who is on the commencement date a vendor under this Act, to a lessee under a financial lease, as defined in section 1 of the Sales Tax Act, and such property is delivered to the lessee on or after that date, such property shall, notwithstanding the provisions of section 9 of this Act, be deemed for the purposes of this Act to have been supplied to the lessee under an instalment credit agreement at the time of delivery of such property.

[Para. (b) substituted by s. 47 (b) of Act 136 of 1991.]

(3) Where, on or after the commencement date, any amount accrues to a vendor who was a vendor for the purposes of the Sales Tax Act and the amount so accruing, or a portion thereof, would, but for the repeal of that Act, have been taken into account in the determination of a taxable value chargeable with sales tax-

- (a) in terms of section 5 (1) (c) of that Act in respect of a rental consideration for a period which ended before the said date; or
- (b) in terms of section 5 (1) (d) of that Act in respect of a taxable service completed before that date; or
- (c) in terms of section 5 (1) (e) of that Act in respect of board and lodging supplied for a period which ended before that date; or
- (d) in terms of section 5 (1) (f) of that Act in respect of accommodation let for a period which ended before that date,

value-added tax shall, notwithstanding anything in this Act to the contrary, be chargeable under this Act in respect of that amount as though such amount were consideration for a supply of goods or services supplied by the vendor on the date on which that amount accrued.

(3A) This Act shall not be construed as imposing value-added tax under section 7 (1) (a) in respect of-

- (a) a provision of goods under a rental agreement entered into before the commencement date for a period which ended before that date where such goods did not constitute goods as defined in section 1 of the Sales Tax Act; or

- (b) a performance of services under an agreement entered into before that date where the performance of such services is completed before that date or such services were performed during and in respect of a period which ended before that date, if in either case such services were not taxable services as contemplated in the definition of 'taxable service' in section 1 of the Sales Tax Act.

[Sub-s. (3A) inserted by s. 47 (c) of Act 136 of 1991.]

(4) Where the value of any supply of goods or services, as determined under section 10, includes any amount which has been taken into account by a vendor in the determination of a taxable value under the Sales Tax Act, and sales tax was chargeable in respect of such taxable value under section 5 of that Act or would have been so chargeable but for the provisions of section 6 of that Act, the value in respect of such supply shall for the purposes of the value-added tax be reduced by the said amount (but excluding so much of that amount as represents sales tax).

[Sub-s. (4) substituted by s. 47 (d) of Act 136 of 1991.]

(5) For the purposes of this Act, where-

- (a) goods are provided under a rental agreement for a period which commences before and ends on or after the commencement date; or

[Para. (a) substituted by s. 47 (e) of Act 136 of 1991.]

- (b) the performance of any services is commenced before and is completed on or after that date; or

[Para. (b) substituted by s. 47 (e) of Act 136 of 1991.]

- (c) domestic goods and services are provided for a period which commences before and ends on or after that date,

[Para. (c) substituted by s. 47 (e) of Act 136 of 1991.]

the value of the supply, as determined under this Act, shall not be reduced to take account of any portion thereof made before the said date: Provided that-

- (i) where the goods referred to in paragraph (a) consist of fixed property, there shall be excluded from the rental consideration for the supply so much of such consideration as is attributable to the portion of the period referred to in that paragraph which ends before the said date;
- (ii) where the services referred to in paragraph (b) were not taxable services for the purposes of the Sales Tax Act-
- (aa) any progress payment in respect of that portion of the services performed before the said date shall for the purposes of this Act be ignored; and
- (bb) where any payment becomes due or is received in respect of services which were not taxable services for the purposes of the Sales Tax Act and which are commenced before and completed on or after the said date, that portion of the payment which, on the basis of a fair and reasonable apportionment, is attributable to the portion of the services performed before the said date shall be excluded from the consideration for the supply.

(6) Where any payment is made or an invoice is issued on or after the date of promulgation of this Act and before the commencement date in respect of consideration for the supply of any goods or services (not being a transaction in respect of which a taxable value is subject to sales tax), a supply of such goods or services shall be deemed to have been made on the commencement date to the extent to which such payment or invoice relates to the provision of goods or the performance of services on or after the commencement date: Provided that this subsection shall not apply in respect of any payments customarily made or invoices customarily issued, when made or issued at regular intervals for the provision of goods or performance of services still to be provided or performed.

[Sub-s. (6) substituted by s. 47 (f) of Act 136 of 1991.]

(7) (a) In the case of a vendor who was on the day before the commencement date a vendor for the purposes of the Sales Tax Act an adjustment shall be made in the manner provided in paragraphs (c) and (d) in respect of sales tax attributable to any amount which would, but for the repeal of that Act, have been accounted for under paragraph (d), (i), (iv) or (vi) of subsection (2) of section 11 of that Act.

(b) The sales tax attributable to such amount shall be determined by applying the formula

$$\frac{r}{100 + r} \times t,$$

in which formula 'r' is the rate of sales tax, expressed as a percentage, which was in force on the day before the commencement date and 't' is the said amount.

(c) The adjustment shall be made in the tax period of the vendor under this Act which, as nearly as possible, corresponds with the tax period of the vendor which would, but for the repeal of the Sales Tax Act, have applied under that Act.

(d) The adjustment shall be made by including in the amounts of output tax accounted for under section 16 (3) of this Act in respect of the relevant tax period under this Act the amount of sales tax attributable to the amount that would

have been accounted for under paragraph (d) of subsection (2) of section 11 of the Sales Tax Act and by including in the amounts of input tax accounted for under the said section 16 (3) such amount as would have been accounted for under paragraph (i), (iv) or (vi) of the said subsection (2).

(8) Where, in the case of a vendor who was for the purposes of the Sales Tax Act a liquor trader as defined in paragraph 1 of the Schedule to Government Notice 339 published in *Government Gazette* 10615 on 20 February 1987, an amount of an excess referred to in paragraph 4 (2) of that Schedule could, but for the repeal of the Sales Tax Act, have been carried forward from the tax period under that Act ending on the day before the commencement date, that amount shall, if on that date he continued to carry on the trade of selling liquor, for the purposes of section 16 (3) of this Act be deemed to be input tax paid by him in respect of a supply of liquor made to him on that date.

(9) (a) Notwithstanding the provisions of subsection (6), where fixed property has been disposed of under an agreement for the sale of such property concluded before the commencement date, the disposal of such property under such sale shall be deemed not to be a supply of goods for the purposes of this Act: Provided that where an agreement for the construction of improvements on such property has been concluded before the said date and the consideration payable under such agreement is in terms of section 6 (1) (c) of the Transfer Duty Act, 1949 (Act 40 of 1949), required for the purpose of the payment of transfer duty to be added to the consideration payable in respect of the acquisition of such property, such agreement and the agreement for the sale of the property shall for the purposes of this paragraph be deemed to be one agreement for the sale of the property.

[Para. (a) substituted by s. 47 (h) of Act 136 of 1991 and amended by Government Notice 2695 of 8 November 1991 and by s. 42 (a) of Act 136 of 1992.]

(aA) Where an agreement for the sale of fixed property consisting of any dwelling together with land on which it is erected, or of any real right conferring a right of occupation of a dwelling or of any unit as defined in section 1 of the Sectional Titles Act, 1986 (Act 95 of 1986), such unit being a dwelling, or of any share in a share block company which confers a right to or an interest in the use of a dwelling, was concluded on or before 31 March 1992 by a vendor who at the time of such sale holds such fixed property as trading stock, such sale shall, if the dwelling concerned was completed within 12 months before the commencement date, be deemed not to be a supply of goods for the purposes of this Act.

[Para. (aA) inserted by Government Notice 2695 of 8 November 1991 and by s. 42 (b) of Act 136 of 1992.]

(aB) Where an agreement (other than an agreement referred to in paragraph (aC)) for the sale of fixed property consisting of land, or of any real right conferring a right of occupation of land, was concluded on or after the commencement date and on or before 31 March 1992 for the sole or principal purpose of the erection by or for the purchaser of a dwelling or dwellings on the land, as confirmed by the purchaser in writing, the tax chargeable under section 7 (1) (a) in respect of the supply of the land or real right under such sale shall be reduced to an amount equal to 6 per cent of the value of the supply.

[Para. (aB) inserted by Government Notice 2695 of 8 November 1991 and by s. 42 (b) of Act 136 of 1992.]

(aC) Where fixed property includes a dwelling, and-

- (i) the erection of the dwelling was completed on or after 30 September 1991 and on or before 31 December 1991 and an agreement for the sale of such fixed property was concluded on or after 22 August 1991 and on or before 31 December 1991, the tax chargeable under section 7 (1) (a) in respect of the supply of the fixed property under such sale shall be reduced to an amount equal to 3 per cent of the value of the supply; or
- (ii) the erection of the dwelling was completed on or after 30 September 1991 and on or before 31 March 1992 and an agreement for the sale of such fixed property was concluded on or after 22 August 1991 and on or before 31 March 1992, the tax chargeable under section 7 (1) (a) in respect of the supply of the fixed property under such sale shall, subject to the provisions of subparagraph (i), be reduced to an amount equal to 6 per cent of the value of the supply:

Provided that-

- (i) where an agreement has been concluded for the erection of a dwelling on land supplied under a sale and the consideration payable under such agreement would in terms of section 6 (1) (c) of the Transfer Duty Act, 1949, if that Act were applicable, be required for the purpose of the payment of transfer duty to be added to the consideration payable in respect of the acquisition of the property, such agreement and the sale shall, subject to the provisions of paragraph (ii) of this proviso, for the purposes of this paragraph be deemed to be one agreement for the sale of the property;
- (ii) the tax payable in respect of the supply of the land and the supply of the construction services in respect of the erection of a dwelling as contemplated in paragraph (i), shall be separately payable in respect of each supply in accordance with the provisions of this Act;
- (iii) where the agreement for the sale of such fixed property was concluded before the commencement date, the provisions of paragraph (a) of this subsection shall apply unless the seller and the purchaser under the sale agree in writing that that paragraph shall not apply and that this paragraph shall apply.

[Para. (aC) inserted by Government Notice 2695 of 8 November 1991 and by s. 42 (b) of Act 136 of 1992.]

(aD) Where any agreement (other than an agreement referred to in paragraph (i) of the proviso to paragraph (aC)) for the construction by any vendor carrying on a construction enterprise of any new dwelling was concluded on or before 31 March 1992 and the dwelling was to be erected in the course of such enterprise, the tax chargeable under section 7 (1) (a) in respect of the supply of the construction service, including any construction service supplied to the vendor by a subcontractor, shall to the extent that such services were performed on or before 31 March 1992 be reduced to 6 per cent of the value of the supply.

[Para. (aD) inserted by Government Notice 2695 of 8 November 1991 and by s. 42 (b) of Act 136 of 1992.]

(b) For the purposes of this subsection where an option to purchase fixed property or a right of pre-emption in respect of fixed property is granted, the agreement for the sale of the property shall be deemed to be concluded when the option or right of pre-emption is exercised.

(10) Where any vendor who is on or with effect from the commencement date registered under section 23 and on that date-

- (a) carries on a construction, civil engineering or similar enterprise and has on hand a stock of materials acquired by him prior to that date in order to be used by him for the purpose of incorporation in any building or other structure or work of a permanent nature to be erected, constructed, assembled, installed, extended or embellished by him in the course of such enterprise, and sales tax has been borne by him in respect of such materials; or
- (b) has on hand a stock of consumable goods or maintenance spares acquired under sales concluded by him or the importation by him prior to that date for the purpose of consumption or use in the course of his enterprise, and sales tax has been borne by him in respect of such sales or importation,

[Para. (b) substituted by Government Notice 2695 of 8 November 1991 and by s. 42 (c) of Act 136 of 1992.]  
and on or after that date any item of such stock is withdrawn by him for the purpose referred to in paragraph (a) or the purpose referred to in paragraph (b), as the case may be, the vendor may, provided he has taken stock of such materials, consumable goods or maintenance spares, as the case may be, and he retains properly prepared stock lists in respect of such stocktaking, include in the amounts of input tax deducted by him under section 16 (3) in respect of the tax period during which such item is withdrawn, the amount of sales tax borne by him in respect of that item: Provided that where the vendor does not maintain records which are adequate enough to determine when items are withdrawn from such stocks or the sales tax so borne thereon in respect of sales to him of such items, the Commissioner may, on application by the vendor, authorize him to deduct the actual sales tax borne by him in respect of such sales or an amount of sales tax which on the basis of a reasonable calculation represents the amount of sales tax so borne by him on the stocks in equal instalments by way of inclusions in the input tax deducted by the vendor in his tax returns over a period of two years or such shorter period as the Commissioner may allow.

[Sub-s. (10) substituted by s. 47 (j) of Act 136 of 1991.]

(10A) Where sales tax has been borne by any vendor (being a person who is on or with effect from the commencement date registered under section 23) in respect of the acquisition of goods (other than fixed property or goods incorporated therein) under a sale or the importation of goods and such goods are held by him on the commencement date as trading stock as defined in section 1 of the Income Tax Act, whether or not the vendor is liable for normal tax under that Act, the vendor may, provided he has taken stock of such goods and he retains properly prepared stock lists in respect of such stocktaking, include the amount of that tax in the amounts of input tax deducted by him under section 16 (3) in respect of the tax period during which such goods are supplied by him in the course or furtherance of his enterprise: Provided that where it appears to the Commissioner that the keeping of records for the purposes of the preceding provisions of this subsection can be dispensed with without prejudice to revenue collections, the Commissioner may, on application by the vendor, authorize him to deduct the sales tax on stocks of such goods so held by the vendor in equal instalments by way of inclusions in the input tax deducted by the vendor in his tax returns over a period of two years or such shorter period as the Commissioner may allow.

[Sub-s. (10A) inserted by s. 47 (k) of Act 136 of 1991.]

(11) (a) Where any person-

- (i) is on the day before the commencement date registered as a vendor under the Sales Tax Act;
- (ii) at the end of that day has in his possession goods (as defined in that Act) which he has not disposed of or which he has disposed of under a sale but for which he has not received full payment and in either case sales tax was not borne by him on acquisition; and
- (iii) on the commencement date is not a vendor for the purposes of this Act,

he shall for the purposes of the Sales Tax Act be deemed to have applied such goods on the day referred to in subparagraph (i) to a use or consumption contemplated in section 5 (1) (h) of that Act.

[Para. (a) amended by s. 47 (l) of Act 136 of 1991.]

(b) Any sales tax payable under the Sales Tax Act in respect of the taxable value of such goods shall be payable at the rate of 10 per cent applicable under this Act and may be paid to the Commissioner within the period of three months reckoned from the day after the commencement date, without penalty.



[Para. (b) amended by s. 47 (m) of Act 136 of 1991, by Government Notice 2695 of 8 November 1991 and by s. 42 (e) of Act 136 of 1992.]

**79** Amends section 9 of the Transfer Duty Act 40 of 1949 by adding subsection (15).

**80** Amends section 12 of the Transfer Duty Act 40 of 1949 by substituting subsection (2).

**81** Amends section 23 of the Stamp Duties Act 77 of 1968 by adding subsection (4) (b) (viii).

**82** (1) Amends section 24 of the Stamp Duties Act 77 of 1968, as follows: paragraph (a) deletes subsection (1); paragraph (b) substitutes subsection (2) (a); and paragraph (c) deletes subsections (2A), (3), (4), (5), (6), (7), (8) and (8A).

(2) Subsection (1) shall come into operation on the commencement date: Provided that any stamp duty or other amount which but for such amendments would have been capable of being levied or recovered under subsection (4) of the said section 24 in respect of policies, certificates of insurance and endorsements thereon executed before that date and renewals thereof falling due before that date shall be levied, paid and recovered as if the said amendments had not been effected.

**83** Amends item 15 of Schedule 1 to the Stamp Duties Act 77 of 1968 by adding subparagraph (v) under the heading '*Exemptions from the duty under paragraph (3)*'.

**84** (1) Amends item 18 of Schedule 1 to the Stamp Duties Act 77 of 1968, as follows: paragraph (a) deletes paragraphs (4) and (6); and paragraph (b) substitutes in paragraph (7) the words 'any above-mentioned policy' for the words 'any policy'.

(2) Subsection (1) shall come into operation on the commencement date in respect of insurance policies, certificates of insurance and endorsements thereon executed on or after that date and renewals thereof falling due on or after that date.

## **85 Repeal of laws**

(1) Subject to the provisions of subsection (2), the laws specified in Schedule 3 are with effect from the commencement date hereby repealed to the extent set out in the third column of that Schedule.

(2) The provisions of the Sales Tax Act, 1978 (Act 103 of 1978), shall remain in force for the purposes of the levying, payment, assessment and recovery of sales tax levied under that Act which is in terms of section 8 of that Act deemed to have become payable on a date falling before the commencement date and matters connected therewith.

## **86 Act binding on State, and effect of certain exemptions from taxes**

This Act shall bind the State, and no provision contained in any other law providing for an exemption from any tax or duty shall be construed as applying or referring, as the case may be, to the tax leviable under this Act unless such tax is specifically mentioned in such provision.

## **86A Provisions relating to industrial development zones**

Where a provision of the Customs and Excise Act, or the Manufacturing Development Act, 1993 (Act 187 of 1993), or a regulation made thereunder governing the administration of industrial development zones including a matter relating to the liability for or levying of value-added tax or a refund thereof or a supply of goods or services subject to tax at the zero-rate is inconsistent or in conflict with this Act, the provision of this Act will prevail.

[S. 86A inserted by s. 176 of Act 60 of 2001.]

## **87 Short title**

This Act shall be called the Value-Added Tax Act, 1991.

## **Schedule 1**

### **EXEMPTION: CERTAIN GOODS IMPORTED INTO THE REPUBLIC**

(Section 13 (3) of this Act)

[Schedule 1 amended by s. 48 of Act 136 of 1991, by Government Notice 2695 of 8 November 1991, by s. 43 (1) of Act 136 of 1992, by Government Notice 2244 of 31 July 1992, by s. 44 (1) of Act 97 of 1993, by Government Notice 1955 of 7 October 1993, by s. 32 of Act 20 of 1994, by s. 32 (1) of Act 37 of 1996 and by s. 53 of Act 27 of 1997, substituted by s. 106 (1) of Act 53 of 1999 (date of commencement not proclaimed), by s. 177 of Act 60 of 2001, by s. 58 of Act 30 of 2002, by s. 121 of Act 74 of 2002, by Government Notice R111 of 17 January 2003, by s. 189 of Act 45 of 2003, by ss. 52, 53, 54 and 55 of Act 16 of 2004, by s. 108 of Act 32 of 2004 and by ss. 111 to 123 of Act 31 of 2005.]

Goods imported, as contemplated in section 13 (1), including imports from or via Botswana, Lesotho, Namibia or Swaziland, into the Republic and in respect of which the exemption under the provisions of section 13 (3) applies, are set forth below.

1. Any of the following items imported into the Republic in respect of which the Controller has, in terms of the proviso to section 38 (1) (a) of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland, granted permission that entry need not be made:

(i) Containers temporarily imported;



- (ii) human remains;
  - (iii) goods which in the opinion of the Commissioner are of no commercial value;
  - (iv) goods imported under an international carnet; and
  - (v) goods of a value for customs duty purposes not exceeding R500, and on which no such duty is payable in terms of Schedule No. 1 to the said Act.
2. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value not exceeding R100 per parcel.
  3. Goods, being gold coins imported as such and which the Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1989 (Act 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section.
  4. Goods temporarily exported from the Republic which are, at the time of export, registered as such with the Controller, in such form as the Commissioner may prescribe, and thereafter returned to the exporter, no change of ownership having taken place, and which can be identified on re-importation.
  5. Goods permitted under conditions prescribed by the International Trade Administration Commission which are forwarded unsolicited and free of charge by a non-resident to-
    - (a) a public authority or a local authority; or
    - (b) any association not for gain, which satisfies the Commissioner that such goods will be used by that association exclusively-
      - (i) for educational, religious or welfare purposes; or
      - (ii) in the furtherance of that association's objectives directed to the provision of educational, medical or welfare services or medical or scientific research; or
      - (iii) for issue to, or treatment of, indigent persons:

Provided that the recipient of the goods responsible for the distribution has furnished an undertaking that-

    - (a) such goods are for the exclusive use by the organisation or for free distribution;
    - (b) such goods will not be sold, leased, hired or otherwise disposed of for gain; and
    - (c) no consideration or other counter-performance may be accepted by any person in respect of such goods.
  6. Goods which are shipped or conveyed to the Republic for trans-shipment or conveyance to any export country: Provided that the Controller ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act. If proof is not furnished to the Commissioner that the goods have been duly taken out of the Republic within a period of 30 days or within such further period as the Commissioner may in exceptional circumstances allow, this exemption shall be withdrawn and tax, penalty and interest must be paid.
  7. Goods consisting of-
    - (a) foodstuffs set forth in Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part; or
    - (b) goods referred to in section 11 (1) (f), but provided that such goods are supplied to and imported by the South African Reserve Bank, the South African Mint Company (Proprietary) Limited or any bank registered under the Banks Act, 1990 (Act 94 of 1990); or
    - (c) (i) fuel levy goods referred to in fuel levy item no.-
      - (aa) 195.10.05: Petrol, unleaded, as defined in Additional Note 1 (b) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, put up as 93 octane;
      - (bb) 195.10.06: Petrol, unleaded, as defined in Additional Note 1 (b) to Chapter 27 in Part 1 of Schedule No.1 to the Customs and Excise Act, excluding that put up as 93 octane;
      - (cc) 195.10.07: Petrol, leaded, as defined in Additional Note 1 (c) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act; and
      - (dd) 195.10.17: Distillate fuel, as defined in Additional Note 1 (g) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, in Part 5 of Schedule 1 to the Customs and Excise Act; or
    - (ii) petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in tariff heading 27.09 in Part 1 of Schedule No. 1 to the Customs and Excise Act, when supplied and imported for the purposes of being refined for the production of fuel levy goods as defined in section 1 of the Customs and Excise Act; or
    - (iii) anti-knock preparations referred to in tariff heading 3811.11 in Part 1 of Schedule 1 to the Customs and Excise Act; or
    - (iv) illuminating kerosene as defined in Additional Note 1 (f) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, referred to in fuel levy item 195.10.13 in Part 5 of Schedule No. 1 to the Customs and Excise Act and which are not mixed or blended with another substance.

8. In this paragraph, goods exempt from the levying of tax, are identified by heading numbers or rebate items and the descriptions as contemplated in Schedule 1 and Schedule 4 to the Customs and Excise Act, respectively. In some instances the exemptions below contain additional requirements or limitations or relaxations which differ from the Customs and Excise Act. Where any provisions of the Customs and Excise Act and the Schedules thereto provide otherwise, the provisions of this Schedule shall prevail.

In order to qualify for an exemption-

- (i) the goods must fall under one of the descriptions below;
- (ii) any requirements or limitations contained in that particular description must be complied with; and
- (iii) the Notes below must be complied with,

regardless of whether or not the goods are required to be entered, customs duty is payable or a rebate of customs duty is granted in terms of the Customs and Excise Act.

#### **SUBHEADING**

#### **DESCRIPTION**

##### **NOTES:**

1. The following exemptions, identified by Subheadings, shall be subject to the Notes as contemplated in Schedule No. 1 to the Customs and Excise Act.

4907.00.30

Travellers' cheques and bills of exchange, denominated in a foreign currency

4911.10.20

Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries

#### **ITEM NO**

**406.00**

#### **DESCRIPTION**

#### **GOODS IMPORTED FOR DIPLOMATIC AND OTHER FOREIGN REPRESENTATIVES:**

##### **NOTES:**

1. This exemption (excluding item no. 406.03) is conditional upon reciprocal treatment accorded by the government of the mission or person requiring this exemption.
2. This exemption (excluding item no. 406.03) is allowed only if the Director-General: Foreign Affairs or an official acting under his or her authority has certified that a person requiring this exemption is listed in the register maintained by the Department of Foreign Affairs in accordance with the Diplomatic Immunities and Privileges Act, 2001.
3. For the purposes of item no. 406.03, 'an organisation or institution' means an organisation which the Director-General: Foreign Affairs or an official acting under his or her authority has certified as an organisation or institution with which the Republic has concluded a formal agreement, which provides, *inter alia*, for the granting of such exemption.
4. This exemption is not allowed to South African citizens or permanent residents of the Republic, unless the Government of the Republic has, by agreement with an organisation or institution contemplated in Note no. 3, undertaken to grant an exemption to a South African citizen who is a representative, member, agent or officer, but excluding a delegate, with or to such organisation or institution.
5. A motor vehicle exempted in terms of item no.'s 406.02, 406.03, 406.05 or 406.07, may not be offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of two years from the date of importation: Provided that any one of the foregoing acts with this vehicle within a period of two years from the date of importation renders the importer of the vehicle liable to pay tax as determined by the Commissioner in consultation with the Director-General: Foreign Affairs.
6. For the purposes of item no.'s 406.02, 406.03 and 406.05 'members of their families' means the spouse, any unmarried child under the age of 21 years, any unmarried child between the ages of 21 and 23 years

who is undertaking full-time studies at an educational institution, and any unmarried child who is due to physical or mental disability incapable of self-support, and any other relative specially approved by the Minister of Foreign Affairs, who forms part of the household of any such member or person, as the case may be, or who joins any such household during visits to the Republic.

7. For the purposes of Note no. 6 'spouse' means the partner of that person-

(a) in a marriage or customary union recognised in terms of the laws of the Republic;

(b) in a union recognised as a marriage in accordance with the tenets of any religion; or

(c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.

406.02/00.00/01.00

Goods for the official use by a diplomatic mission and goods for the personal or official use by diplomatic representatives accredited to a diplomatic mission and members of their families

406.03/00.00/01.00

Goods for the personal or official use by members, agents, officers, delegates or permanent representatives of, to, or with an organisation or institution, and members of their families

406.05/00.00/01.00

Goods for the official use by a consular mission and goods for the personal or official use by consular representatives accredited to a consular mission and foreign representatives (excluding those referred to in item no.'s 406.02 and 406.03), and members of their families

406.06/00.00/01.00

Stationery, uniforms, furniture and equipment for the official use by a consular post headed by an honorary consular officer

406.07/00.00/01.00

Goods (excluding food, drink and tobacco in any form) imported by administrative and technical representatives accredited to diplomatic or consular missions, on their first entry on appointment by their governments, for their personal or official use, provided the said goods are imported with the approval of the Director-General: Foreign Affairs

**407.00**

**GOODS IMPORTED BY IMMIGRANTS, TOURISTS, RETURNING RESIDENTS AND OTHER PASSENGERS, FOR THEIR PERSONAL USE:**

**NOTES:**

1. The exemption in terms of item no. 407.01/00.00/01.02 is allowed only if the goods can be identified as being the same goods which were taken from the Republic.

2. The exemption in terms of item no. 407.02 is not allowed for firearms acquired abroad or at any duty-free shop and imported by residents of the Republic returning after an absence of less than 6 months.

3. (a) The exemption in terms of item no. 407.02 is allowed only once per person during a period of 30 days and is not allowed for goods imported by persons returning after an absence of less than 48 hours.

(b) The exemption in terms of item no. 407.02, with the exception of the exemption in respect of tobacco and alcoholic products, is allowed to children under 18 years of age, whether or not they are accompanied by their parents or guardians, provided the goods are for use by the children themselves.

4. A member of the crew of a ship or aircraft (including the master or pilot) is, subject to the conditions laid down by the Commissioner-

(a) .....

(b) only entitled to the exemption in terms of item no.

407.02/00.00/01.00 provided the total value of the goods declared under this item does not exceed R500 (or such other amount as the Minister may fix by notice in the *Gazette*); and

(c) only entitled to the exemption in terms of Item no.

407.02/00.00/02.00 provided the total value of goods declared under this item does not exceed R2 000 (or such other amount as the Minister may fix by notice in the *Gazette*).

4A. The exemption in item no. 407.02/00.00/02.00 is only applicable if the total value of the goods declared under item no. 407.00

(excluding goods provided for in item no. 407.01) does not exceed R15 000 (or such other amount as the Minister may fix by way of a notice in the *Gazette*).

4B. If the person concerned so desires and indicates accordingly before the goods are cleared, the goods in respect of which the exemption in item no. 407.02/00.00/02.00 is applicable, may be cleared at the rates of duty specified in Schedule No. 1 to the Customs and Excise Act and with payment of VAT at the standard rate.

4C. If a person contravenes any provision of this Act, the Customs and Excise Act or any other law relating to the importation of goods, the Commissioner may refuse to grant any exemption provided for in item no. 407.02.

5. For the purposes of item no. 407.04/87.00/01.00 (i) the vehicle in question shall not be deemed to be personally owned and used personally by the importer unless such importer was, at all reasonable times, personally present at the place where the vehicle was used by him or her, and the importer shall be deemed to have used that vehicle from the date on which he or she took physical delivery of the vehicle until the date on which the vehicle was delivered by him or her to the shippers or other agent for the purpose of shipment or dispatch.

6. For the purposes of item no. 407.04, the importer shall, if he or she is absent for a continuous period of longer than 3 months from the place where the vehicle is usually used in the Republic, not be deemed to have imported the vehicle for his or her personal or own use, and tax as determined by the Commissioner is payable as from the date of such absence.

7. The exemption in terms of item no. 407.04 is allowed only once per family during a period of 3 years.

#### 407.01

**Personal effects, sporting and recreational equipment, new or used:**

#### 407.02

**Goods imported as accompanied passengers' baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic:**

**Personal effects and sporting and recreational equipment, new or used:**

407.01/00.00/01.01

Imported either as accompanied or unaccompanied passengers' baggage by non-residents of the Republic for their own use during their stay in the Republic

407.01/00.00/01.02

Exported by residents of the Republic for their own use while abroad and subsequently re-imported either as accompanied or unaccompanied passengers' baggage by such residents

**Goods imported as accompanied passengers' baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic:**

407.02/00.00/01.00

<sup>iv</sup>\*New or used goods, of a total value not exceeding R3 000 per person (or such other amount as the Minister may fix by notice in the *Gazette*)

407.02/00.00/02.00

<sup>v</sup>\*Additional goods, new or used, of a total value not exceeding R12 000 per person (or such other amount as the Minister may fix by way of a notice in the *Gazette*), excluding goods of a class or kind specified in item no.'s 407.02/22.00, 407.02/ 24.02, 407.02/24.03 and

|  |  |
|--|--|
| 407.02/22.00/01.00   | 407.02/33.03   |
| 407.02/22.00/02.00   | Wine not exceeding 2 litres per person   |
| 407.02/24.02/01.00   | Spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre per person  |
| 407.02/24.03/01.00   | Cigarettes not exceeding 200 and cigars not exceeding 20 per person  |
| 407.02/33.03/01.00   | 250g Cigarette or pipe tobacco per person  |
|  | Perfumery not exceeding 50 ml and toilet water not exceeding 250 ml per person   |
| <b>Motor vehicles imported by natural persons on change of permanent residence:</b>          |  |
| <b>407.04</b>  | <b>Motor vehicles imported by natural persons for own use on change of permanent residence to the Republic:</b>  |
| 407.04/87.00/01.00   | One motor vehicle per family, imported by a natural person for his or her personal or own use, who permanently changes his or her residence to the Republic and- <ul style="list-style-type: none"> <li>(i) provided the vehicle so imported is the personal property of the importer and has personally been owned and used by him or her for a period of not less than 12 months prior to his or her departure to the Republic; and</li> <li>(ii) provided the vehicle is not offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of 20 months from the date of importation</li> </ul>   |
| <b>Goods imported by natural persons for own use on change of residence to the Republic:</b> |  |
| <b>407.06</b>  | <b>Goods imported by natural persons for own use on change of residence to the Republic:</b>   |
| 407.06/00.00/01.00   | <b>Household furniture, other household effects and other removable articles, including equipment necessary for the exercise of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the <i>bona fide</i> property of a natural person (including a returning resident of the Republic after an absence of six months or more) and members of his or her family, imported for own use on change of his or her residence to the Republic: Provided that these goods are not disposed of within a period of six months from the date of importation</b>  |
| <b>409.00</b>  | <b>RE-IMPORTED GOODS:</b>  |
|  | <b>NOTES:</b>  |
|  | 1. The importer must, at the time of entry of the goods upon re-importation, attach a statement to the bill of entry or other document prescribed in terms of the Customs and Excise Act, which indicates- <ul style="list-style-type: none"> <li>(a) the reasons for the goods being returned;</li> <li>(b) whether any change in the ownership of the goods took place after their exportation from the Republic;</li> <li>(c) whether the goods have been subjected to any process of manufacture or manipulation after their exportation from the Republic and if so, to what extent;</li> <li>(d) the number and date of the bill of entry or other document prescribed in terms of the Customs and Excise Act, relating to the export of the goods and the place where such entry was made or the document on which the goods were registered prior to export of such goods for the purposes of the subsequent re-importation thereof; and</li> <li>(e) the place where and the number and date of the bill of entry or other document prescribed in terms of the Customs and Excise Act, on which tax was paid on the goods upon their first importation into the Republic or other documents, if applicable, to prove that the goods were previously imported and tax due was paid thereon.</li> </ul> |
|  | 2. This exemption (excluding item no. 409.07) is allowed only if the goods can be identified as being the same goods which were exported.  |
|  | 3. For the purposes of item no. 409.07-  |

|                    |  |
|--------------------|--|
|                    | <p>(a) 'compensating products' means the products obtained abroad during or as a result of the manufacturing, processing or repair of the goods temporarily exported for outward processing; and</p> <p>(b) 'temporarily exported for outward processing' means the customs procedure whereby goods which may be disposed of without customs restriction, are temporarily exported for manufacturing, processing or repair abroad and then re-imported.</p>  |
| 409.01/00.00/01.00 | <p>Imported goods (including packing containers) re-exported and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation, no change of ownership having taken place subsequent to their exportation from the Republic, and which can be identified on re-importation as being the same goods: Provided that this exemption shall not apply if-</p> <p>(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11 (1)(a); or</p> <p>(ii) a refund in terms of section 44 (9) is granted.</p>   |
| 409.02/00.00/01.00 | <p>Goods (including packing containers) produced or manufactured in the Republic, exported therefrom and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation (excluding excisable goods exported ex a customs and excise warehouse), no change of ownership having taken place subsequent to their exportation from the Republic, and which can be identified on re-importation as being the same goods: Provided that this exemption shall not apply if-</p> <p>(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11 (1)(a); or</p> <p>(ii) a refund in terms of section 44 (9) is granted.</p>                                  |
| 409.04/00.00/01.00 | <p>Imported or locally manufactured articles sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place subsequent to their exportation from the Republic, and can be identified on re-importation: Provided that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic</p>   |
| 409.06/00.00/01.00 | <p>Excisable goods exported ex a customs and excise warehouse and thereafter returned to or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and no change of ownership having taken place subsequent to their exportation from the Republic: Provided that this exemption shall not apply if-</p> <p>(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11 (1)(a); or</p> <p>(ii) a refund in terms of section 44 (9) is granted.</p>   |
| 409.07/00.00/01.00 | <p>Compensating products (excluding goods liable to the duties specified in Part 2 of Schedule No. 1 to the Customs and Excise Act) obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit is sued by the International Trade Administration Commission, provided-</p> <p>(i) the specific permit is obtained before the temporary exportation of the goods;</p> <p>(ii) if the ownership of the compensating products is transferred prior to entry for customs purposes, such goods are entered in the name of the person who exported the goods;</p> <p>(iii) any additional conditions which may be stipulated in the said permit, are complied with; and</p> <p>(iv) that this exemption shall apply only to the extent of the</p> |

value of the goods sent from the Republic on the day such goods left the Republic

**412.00****GENERAL:****NOTES:**

1. For the purposes of item no.'s 412.03 and 412.04, the bill of entry or other document prescribed in terms of the Customs and Excise Act must be supported by an inventory of the goods and documentary proof that the goods qualify for exemption under these items.

2. For the purposes of item no.'s 412.26 and 412.27, such exemptions are subject to compliance with sections 39 and 40 of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland.

412.03/00.00/01.00

Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in the Republic

412.04/00.00/01.00

Used property of a person normally resident in the Republic who died while temporarily outside the Republic

412.10/00.00/01.00

*Bona fide* unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed R400 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars) consigned by natural persons abroad to natural persons in the Republic

412.11/00.00/01.00

Goods imported-

(a) for the relief of distress of persons in cases of famine or other national disaster;

(b) under any technical assistance agreement; or

(c) in terms of an obligation under any multilateral international agreement to which the Republic is a party:

Provided that-

(i) the importation of any goods under this item shall be subject to a certificate issued by the International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and

(ii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the International Trade Administration Commission.

412.12/00.00/01.00

Goods imported for any purpose agreed upon between the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland: Provided that-

(i) the provisions of this item shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Governments of Botswana, Lesotho, Namibia and Swaziland has been obtained for the application of such provisions in respect of every such consignment or quantity or class of goods;

(ii) the importation of any goods under this item shall be subject to a certificate issued by the International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and

(iii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Commissioner

412.26/00.00/01.00

Goods (excluding goods for upgrading) supplied free of charge to replace defective goods which are covered by a warranty agreement: Provided that-



|                    |   |
|--------------------|---|
|                    | <p>(a) a copy of the bill of entry or other document prescribed in terms of the Customs and Excise Act and the documents submitted in support of such document under which the goods were originally entered for home consumption are submitted;</p> <p>(b) the goods are supplied by the original supplier; and</p> <p>(c) proof that the replaced goods have been exported to the original supplier is submitted or the replaced goods are disposed of as directed by the Commissioner</p>  |
| 412.27/00.00/01.00 | <p>Goods for upgrading supplied free of charge to replace parts which are covered by a warranty agreement: Provided that-</p> <p>(a) a specific permit issued by the International Trade Administration Commission, is submitted;</p> <p>(b) a copy of the bill of entry or other document prescribed in terms of the Customs and Excise Act and the documents submitted in support of such document under which the goods were originally entered for home consumption are submitted;</p> <p>(c) the goods are supplied by the original supplier; and</p> <p>(d) proof that the replaced goods have been exported to the original supplier is submitted or the replaced goods are disposed of as directed by the Commissioner</p>  |
| 470.00             | <p><b>GOODS TEMPORARILY ADMITTED FOR PROCESSING, REPAIR, CLEANING, RECONDITIONING OR FOR THE MANUFACTURE OF GOODS EXCLUSIVELY FOR EXPORT:</b></p> <p><b>NOTES:</b></p> <p>1. The Commissioner may require the importer to register a rate of yield of the processed or manufactured goods that will be obtained per unit of the imported goods.</p> <p>2. (a) The exemption in terms of item no.'s 470.01 or 470.03 is allowed only for goods to be used for the processing or manufacture of goods for export and the processed or manufactured goods must be exported within 12 months from the date of importation thereof.</p> <p>(b) The exemption in terms of item no. 470.02 is allowed only for parts to be used and the goods submitted for repair, cleaning or reconditioning must be exported within 6 months from the date of importation thereof:</p> <p>Provided that-</p> <p>(i) the Commissioner may, in exceptional circumstances, extend the period specified in each case for a further period as deemed reasonable; and</p> <p>(ii) the application for such extension is made prior to the expiry of the period of 12 months or 6 months, as the case may be.</p> <p>3. This exemption is allowed only if the Controller ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.</p> <p>4. If proof is not furnished to the Commissioner that the goods imported have been repaired, cleaned, reconditioned, processed or used in repairing, cleaning, reconditioning or processing and have been duly exported within the time period prescribed in note number 2, this exemption shall be withdrawn and tax, penalty and interest must be paid.</p> |
| 470.01/00.00/01.00 | Goods for processing, provided such goods do not become the property of the importer  |
| 470.02/00.00/01.00 | Goods (including parts therefore) for repair, cleaning or reconditioning  |
| 470.02/00.00/02.00 | Parts for goods temporarily imported for repair, cleaning or  |

|                    |  |
|--------------------|--|
| 470.03/00.00/01.00 | reconditioning<br>Goods for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export  |
| <b>480.00</b>      | <b>GOODS TEMPORARILY ADMITTED FOR SPECIFIC PURPOSES:</b><br><b>NOTES:</b><br>1. The exemption in terms of item no. 480.35 is allowed-<br>(a) only if the samples are imported by-<br>(i) commercial travellers and other representatives of firms abroad who visit the Republic temporarily with their samples for the purpose of securing orders;<br>(ii) persons or firms established in the Republic, including agents for foreign firms, to whom samples may be sent by firms abroad, free of charge, for the same purpose; or<br>(iii) a prospective customer in the Republic to whom a sample is sent on free loans for inspection and demonstration with a view to obtaining an order for similar goods;<br>(b) except with the permission of the Commissioner, for only one sample of each description, range, type or colour of an article; and<br>(c) only if each sample is an article representative of a particular category of goods already produced or to be produced abroad, imported solely for the purpose of being shown or demonstrated free of charge to prospective customers.<br>2. All goods shall be re-exported-<br>(a) in the case of goods under an international carnet within the period of validity of such carnet; and<br>(b) in the case of other goods within 6 months from the date of importation, thereof or within such further period as the Commissioner may in exceptional circumstances, allow.<br>3. This exemption is allowed only if the Controller ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.<br>4. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in note no. 2, this exemption shall be withdrawn and tax, penalty and interest must be paid.<br>5. Notwithstanding this exemption, the importer shall remain liable for tax, until he proves that the goods have been duly re-exported or that the goods have been exported under the supervision of an officer, as defined in section 1 of the Customs and Excise Act.<br>6. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption or by abandonment or destruction of the goods whereupon tax must be paid. |
| 480.05/00.00/01.00 | Containers and other articles used as packing, whether or not filled at the time of importation: Provided that such articles do not become the property of the importer  |
| 480.10/00.00/01.00 | Goods for display or use at exhibitions, fairs, meetings or similar events   |
| 480.15/00.00/01.00 | Professional equipment (including ancillary apparatus and accessories) owned by persons resident abroad, for use solely by or under the supervision of a visiting person   |
| 480.20/00.00/01.00 | Welfare material for seafarers for cultural, educational, recreational, religious or sporting activities   |
| 480.25/00.00/01.00 | Instruments, apparatus and machines (including accessories therefore),   |

|                    |   |
|--------------------|---|
|                    | for use by institutions approved by the Commissioner, for scientific research or education  |
| 480.30/00.00/01.00 | Models, instruments, apparatus, machines and other pedagogic material (including accessories therefore) imported by institutions approved by the Commissioner, for educational or vocational training   |
| 480.35/00.00/01.00 | Commercial samples owned abroad and imported for the purpose of being shown or demonstrated in the Republic for the soliciting of orders for goods to be supplied from abroad   |
| <b>490.00</b>      | <b>GOODS TEMPORARILY ADMITTED SUBJECT TO EXPORTATION IN THE SAME STATE:</b>   |
|                    | <b>NOTES:</b>   |
|                    | 1. Goods shall be re-exported-  |
|                    | (a) in the case of goods under an international carnet within the period of validity of such carnet; and  |
|                    | (b) in the case of other goods within 6 months from the date of importation thereof or within such further period as the Commissioner may in exceptional circumstances, allow.  |
|                    | 2. This exemption is allowed only if the Controller ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in: the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act. |
|                    | 3. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in note no. 1, this exemption shall be withdrawn and tax, penalty and interest must be paid.   |
|                    | 4. Notwithstanding this exemption, the importer shall remain liable for tax, until he proves that the goods have been duly re-exported or that the goods have been exported under the supervision of an officer, as defined in section 1 of the Customs and Excise Act.   |
|                    | 5. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption or by abandonment or destruction of the goods whereupon tax must be paid.  |
| 490.03/87.00/01.00 | Private motor vehicles belonging to a person taking up temporary residence in the Republic  |
| 490.05/00.00/01.00 | Postcards and other mail matter, imported in bulk, for despatch to addresses beyond the borders of the Republic   |
| 490.10/00.00/01.00 | Models or prototypes, to be used in the manufacture of goods  |
| 490.11/00.00/01.00 | Matrices, blocks, plates, and similar articles, on loan or hire, for printing illustrations in periodicals or books   |
| 490.12/00.00/01.00 | Matrices, blocks, plates, moulds and similar articles, on loan or hire, to be used in the manufacture of articles that are to be delivered abroad   |
| 490.13/00.00/01.00 | Instruments, apparatus, machines and other articles to be tested by the South African Bureau of Standards   |
| 490.14/00.00/01.00 | Instruments, apparatus and machines, made available free of charge to a customer by or through a supplier, pending delivery or repair of similar goods  |
| 490.15/00.00/01.00 | Costumes, scenery and other theatrical equipment on loan or hire to dramatic societies or theatres  |
| 490.20/00.00/01.00 | Animals and sport requisites (including yachts and motor vehicles) belonging to a person resident abroad, for use by that person or under his supervision in sports contests (including motor car rallies and transcontinental excursions)  |
| 490.25/00.00/01.00 | Photographs and transparencies to be shown in a public exhibition or competition for photographers  |

|                    |   |
|--------------------|---|
| 490.30/00.00/01.00 | Specialised equipment arriving by ship and used on shore at ports of call for the loading, unloading or handling of containers of tariff heading 86.09 of Schedule I to the Customs and Excise Act  |
| 490.35/00.00/01.00 | Pallets, whether or not laden with cargo at importation   |
| 490.40/00.00/01.00 | Machinery or plant (excluding tower cranes) for use on contract in civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of the International Trade Administration Commission, may allow by specific permit.                         |
| 490.50/00.00/01.00 | Motor vehicles, yachts and other removable articles (including spare parts and normal accessories and equipment therefore) imported by foreign tourists and travellers resident in foreign countries for their own use  |
| 490.60/00.00/01.00 | Commercial road vehicles used in the conveyance of imported merchandise   |
| 490.90/00.00/01.00 | Machinery or plant (excluding tower cranes) for use on contract other than for purposes of civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of the International Trade Administration Commission, may allow by specific permit. |
| 490.90/00.00/02.00 | Goods not specified in item no.'s 470.00, 480.00 or 490.00, temporarily admitted for purposes approved by the Commissioner  |

## Schedule 2

(Section 11 (1) (g) of this Act)

[Schedule 2 amended by Act 136 of 1991, Government Notice 2695 of 8 November 1991, by s. 44 (1) of Act 136 of 1992, by s. 45 (1) of Act 97 of 1993, by s. 33 of Act 20 of 1994 and by s. 73 of Act 19 of 2001.]

### PART A

## ZERO RATE: SUPPLY OF GOODS USED OR CONSUMED FOR AGRICULTURAL, PASTORAL OR OTHER FARMING PURPOSES

[Heading inserted by Government Notice 2695 of 8 November 1991.]

1. The goods in respect of the supply of which the rate of zero per cent shall apply under the provisions of section 11 (1) (g) of this Act shall, subject to the provisions of paragraph 2, be as hereinafter set forth:

- Item 1 *Animal feed*, i.e. goods consisting of-
- (a) (i) any substance obtained by a process of crushing, gristing or grinding, or by addition to any substance or the removal therefrom of any ingredient; or
  - (ii) any condimental food, vitamin or mineral substance or other substance which possesses or is alleged to possess nutritive properties; or
  - (iii) any bone product; or
  - (iv) any maize product, intended or sold for the feeding of livestock, poultry, fish or wild animals (including wild birds); or
  - (b) any stock lick or substance which is of a kind which can be and is in fact used as a stock lick, whether or not such stock lick or substance possesses medicinal properties
- Item 2 *Animal remedy*, i.e. goods consisting of a substance intended or offered for use in respect of livestock, poultry, fish or wild animals (including wild birds), for the diagnosis, prevention, treatment or cure of any disease, infection or other unhealthy condition, or for the maintenance or improvement of health, growth, production or working capacity
- Item 3 *Fertilizer*, i.e. goods consisting of a substance in its final form which is intended or offered for use in order to improve or maintain the growth of plants or the productivity of the soil
- Item 4 *Pesticide*, i.e. goods consisting of any chemical substance or biological remedy, or any mixture or combination of any such substance or remedy, intended or offered for use-
- (a) in the destruction, control, repelling, attraction, disturbance or prevention of any undesired microbe, alga, bacterium, nematode, fungus, insect, plant, vertebrate or invertebrate; or
  - (b) as a plant growth regulator, defoliant, desiccant, adjuvant or legume inoculant, and anything else which the Minister of Agriculture has by notice in the *Gazette* declared to be a pesticide
- Item 5 *Plants*, i.e. goods consisting of living trees and other plants, bulbs, roots, cuttings and similar plant products in a form used for cultivation

Item 6 *Seed* in a form used for cultivation

[Para. 1 amended by s. 49 of Act 136 of 1991 and substituted by s. 44 (1) (b) of Act 136 of 1992.]

2. The provisions of paragraph 1 shall apply only if-

- (a) the Commissioner, in respect of a vendor registered under this Act, is satisfied that that vendor, being the recipient of any such goods, carries on agricultural, pastoral or other farming operations and has issued to him a notice of registration in which authorization is granted whereby the goods concerned may be supplied to him at the rate of zero per cent: Provided that where a vendor to whom such notice of registration has been issued is in default in respect of his obligation under this Act to furnish any return or to pay tax or he has ceased to carry on the said operations or he has utilized such notice of registration for purposes other than the carrying on of such operations, the Commissioner may, by notice in writing to the vendor, cancel such authorization with immediate effect or with effect from a date determined by the Commissioner and require the vendor to surrender such notice of registration in order that an amended notice of registration, excluding the said authorization, may if necessary be issued to the vendor;

[Sub-para. (a) substituted by s. 33 of Act 20 of 1994.]

- (b) the goods concerned are supplied to a vendor who is in possession of a valid notice of registration as a vendor and an authorization contemplated in paragraph (a);

- (c) a tax invoice in respect of the relevant supply is issued containing such particulars as required by section 20 (4) of this Act;

[Sub-para. (c) substituted by s. 56 (1) of Act 16 of 2004.]

- (d) the acquisition, disposal, sale or use of the said goods is not prohibited in terms of section 7 of the Fertilizers, Farm Feed, Agricultural Remedies and Stock Remedies Act, 1947 (Act 36 of 1947).

[Para. 2 amended by Government Notice 2695 of 8 November 1991 and substituted by s. 44 (1) (b) of Act 136 of 1992.]

#### **PART B**

#### **ZERO RATE: SUPPLY OF GOODS CONSISTING OF CERTAIN FOODSTUFFS**

(Section 11 (1) (j) of this Act)

[Part B added by Government Notice 2695 of 8 November 1991 and by s. 44 (1) (c) of Act 136 of 1992 and amended by s. 45 (1) of Act 97 of 1993, by s. 104 of Act 30 of 1998 and by s. 73 of Act 19 of 2001.]

1. The goods in respect of the supply of which the rate of zero per cent shall apply under the provisions of section 11 (1) (j) of this Act shall, subject to the provisions of paragraph 2, be as hereunder set forth:

Item 1 Brown bread as defined in Regulation 1 of the Regulations in terms of Government Notice R577 published in *Government Gazette* 13074 of 15 March 1991

Item 2 Maize meal graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal, not further processed other than by the addition of minerals and vitamins not exceeding one per cent by mass of the final product, solely for the purpose of increasing the nutritional value

[Item 2 substituted by s. 73 of Act 19 of 2001.]

Item 3 samp, not further prepared or processed

Item 4 mealie rice, not further prepared or processed

Item 5 dried silo screened mealies or dried mealies for human consumption not further prepared or processed or packaged as seed, but excluding pop corn (*zea mays everta*)

Item 6 dried beans, whole, split, crushed or in powder form but not further prepared or processed or where packaged as seed

Item 7 lentils, dried, whole, skinned or split

Item 8 pilchards or sardinella supplied in tins or cans consisting mainly of such products regardless of whether flavoured, seasoned or preserved in oil, but excluding such products as are supplied as pet food or sardines supplied in tins or cans

Item 9 milk powder: unflavoured, being the powder obtained by the removal of water from milk and which falls under the following classifications determined by the Minister of Agriculture under the Agricultural Product Standards Act, 1990 (Act 119 of 1990), or any regulation under that Act:

High-fat milk powder

Full-fat milk powder

Medium-fat milk powder

Low-fat milk powder

Fat-free milk powder,

provided the fat or protein content of such milk powder consists solely of milk fat or milk protein

[Item 9 substituted by s. 104 (a) of Act 30 of 1998.]

Item 10 dairy powder blend, being any dairy powder blend which falls under the following classifications determined by the Minister of Agriculture under the Agricultural Product Standards Act, 1990 (Act 119

of 1990), or any regulation under that Act:

High-fat dairy powder blend  
Full-fat dairy powder blend  
Medium-fat dairy powder blend  
Low-fat dairy powder blend  
Fat-free dairy powder blend.

[Item 10 substituted by s. 104 (a) of Act 30 of 1998.]

- Item 11 Rice, whether husked, milled, polished, glazed, parboiled or broken.
- Item 12 Vegetables, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding dehydrated, dried, canned or bottled vegetables or such vegetables as are described under separate Items in this PART.
- Item 13 Fruit, not cooked or treated in any manner except for the purposes of preserving such fruit in its natural state, but excluding dehydrated, dried, canned or bottled fruit and nuts.
- Item 14 Vegetable oil, marketed and supplied for use in the process of cooking food, but excluding olive oil.
- Item 15 Milk, including high-fat, full-fat, low-fat or fat-free milk, being the milk of cattle, sheep or goats that has not been concentrated, condensed, evaporated, sweetened, flavoured, cultured or subjected to any other process other than homogenization or preservation by pasteurization, ultra-high temperature treatment, sterilization, chilling or freezing or the addition of minerals, vitamins, enzymes and other similar additives not exceeding one per cent by volume of the final product, solely for the purpose of increasing the nutritional value.
- [Item 15 substituted by s. 73 of Act 19 of 2001.]
- Item 16 Cultured milk, being cultured milk as classified under the Agricultural Product Standards Act, 1990 (Act 119 of 1990), with the following class designation:  
Cultured high-fat milk  
Cultured full-fat milk  
Cultured low-fat milk  
Cultured fat-free milk.
- [Item 16 substituted by s. 104 (b) of Act 30 of 1998.]
- Item 17 Brown wheaten meal, being pure, sound wheaten meal, but excluding separated wheaten bran, wheaten germ and wheaten semolina.
- Item 18 Eggs, being raw eggs laid by hens of the species *gallus domesticus*, whether supplied in their shells or in the form of egg pulp being raw pulp consisting of the yolk and white which is obtained from such eggs after the shells have been removed.
- Item 19 Edible legumes and pulse of leguminous plants, dried, whole, split, crushed, skinned or in powder form, but not further prepared or processed or where packaged as seed or such pulse as are described under separate Items in this PART.

[Para. 1 amended by s. 45 (1) (a) and (b) of Act 97 of 1993.]

2. The provisions of paragraph 1 shall not apply where any goods mentioned in that paragraph are supplied in the course of carrying out any agreement for the furnishing or serving of any meal, refreshment, cooked or prepared food or any drink, as the case may be, so as to be ready for immediate consumption when so supplied.

3. ....

[Para. 3 deleted by s. 45 (1) (c) of Act 97 of 1993.]

### Schedule 3

### LAWS REPEALED

(Section 85 of this Act)

| Number and year | Short title                          | Extent of repeal of law |
|-----------------|--------------------------------------|-------------------------|
| Act 103 of 1978 | Sales Tax Act, 1978                  | The whole               |
| Act 111 of 1979 | Sales Tax Amendment Act, 1979        | The whole               |
| Act 105 of 1980 | Sales Tax Amendment Act, 1980        | The whole               |
| Act 97 of 1981  | Sales Tax Amendment Act, 1981        | The whole               |
| Act 40 of 1982  | Sales Tax Amendment Act, 1982        | The whole               |
| Act 90 of 1982  | Second Sales Tax Amendment Act, 1982 | The whole               |
| Act 95 of 1983  | Sales Tax Amendment Act, 1983        | The whole               |
| Act 99 of 1984  | Sales Tax Amendment Act, 1984        | The whole               |
| Act 102 of 1985 | Sales Tax Amendment Act, 1985        | The whole               |
| Act 70 of 1986  | Sales Tax Amendment Act, 1986        | The whole               |
| Act 108 of 1986 | Taxation Laws Amendment Act, 1986    | Sections 14, 15 and 16  |

|                |                                   |                   |
|----------------|-----------------------------------|-------------------|
| Act 31 of 1987 | Sales Tax Amendment Act, 1987     | The whole         |
| Act 86 of 1987 | Taxation Laws Amendment Act, 1987 | Sections 12 to 25 |
| Act 87 of 1988 | Taxation Laws Amendment Act, 1988 | Sections 37 to 47 |
| Act 69 of 1989 | Taxation Laws Amendment Act, 1989 | Sections 17 to 25 |
| Act 89 of 1990 | Taxation Laws Amendment Act, 1990 | Sections 1 to 7   |

**PENDLEX: Value-Added Tax Act 89 of 1991 after amendment by the Taxation Laws Amendment Act 27 of 1997**

**Section 1, definition of 'enterprise' - para. (b) (iv)**

the activities of any person who continuously or regularly supplies telecommunication services to any person who utilizes such services in the Republic;

**Section 67B - Registration of motor vehicles prohibited in certain circumstances**

Any motor vehicle registering authority in the Republic shall not register any imported motor vehicle unless the person applying for registration produces to such registering authority-

- (a) in the case of a motor vehicle which is imported into the Republic and is not required to be entered in terms of the Customs and Excise Act, a document, receipt or certificate showing that any tax which may be payable in terms of this Act has been paid in respect of such importation into the Republic; or
- (b) in the case of a motor vehicle which is imported into the Republic and is required to be entered in terms of the said Customs and Excise Act, a customs document showing that any tax which may be payable under this Act has been paid in respect of such importation into the Republic; or
- (c) an exemption certificate issued by the Commissioner to the effect that no tax is payable in terms of this Act in respect of the importation of the motor vehicle.

**PENDLEX: Value-Added Tax Act 89 of 1991 after amendment by the Second Revenue Laws Amendment Act 34 of 2004**

**Section 41A - Advance tax rulings**

(1) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for purposes of this Act.

(2) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act, 1962, for implementation and operation of the advance tax ruling system apply *mutatis mutandis* for purposes of this Act.  
[S. 41A, previously s. 54A, renumbered by s. 12 (1) of Act 10 of 2005.]

<sup>i</sup>The following activities have been determined welfare activities by GN 112 in GG 27235 of 11 February 2005:

**1 Welfare and Humanitarian**

- (a) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
- (b) The care or counseling of poor and needy persons where more than 90 percent of those persons to whom the care or counseling are provided are over the age of 60.
- (c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatised persons.
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
- (j) The promotion or advocacy of human rights and democracy.
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provisions of legal services for poor and needy persons.



- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents, other than the services contemplated in section 12 (j) of the Value-Added Tax Act, 1991.
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.
- (p) Community development for poor and needy persons and anti-poverty initiative, including-
  - (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
  - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
  - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.
- (q) The promotion of access to media and a free press.

## **2 Health Care**

- (a) The provision of health care services to poor and needy persons.
- (b) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.
- (c) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.
- (d) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependants in this regard.
- (e) The provision of blood transfusion, organ donor or similar services.
- (f) The provision of primary health care education, sex education or family planning.

## **3 Land and Housing**

- (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act 107 of 1997).
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) Building and equipping of clinics, creches, community centres, sports facilities or other facilities of a similar nature for the benefit of the poor and needy.
- (d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

## **4 Education and Development**

- (a) The provision of school buildings or equipment for public schools and educational institutions engaged in exempt activities contemplated in section 12 (h) of the Value-Added Tax Act, 1991, for the benefit of the poor and needy and physically disabled.
- (b) Career guidance and counselling services provided to persons for purposes of attending any school or higher education institution as envisaged in section 12 (h) (i) (aa) and (bb) of the Value-Added Tax Act, 1991.
- (c) Programmes addressing life skill needs of children at schools, pre-schools or educational institutions as envisaged in section 12 (h) of the Value-Added Tax Act, 1991.

- 
- (d) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.
  - (e) Training for unemployed persons with the purpose of enabling them to obtain employment.

## **5 Conservation, Environment and Animal Welfare**

- (a) Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.
- (b) The care of animals, including the rehabilitation, or prevention of the ill-treatment of animals.
- (c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.

<sup>ii</sup>Manner prescribed in Government Notice 2835 (*Government Gazette* 13651) of 22 November 1991.

<sup>iii</sup>Manner prescribed in Government Notice 2835 (*Government Gazette* 13651) of 22 November 1991.

<sup>iv</sup>**Editorial Note:** This item has been inserted by section 118 (e) and deleted by section 118 (g) of Revenue Laws Amendment Act 31 of 2005. We are unsure of the intention of the legislator and will bring the matter to their attention.

<sup>v</sup>**Editorial Note:** This item has been inserted by section 118 (e) and deleted by section 118 (g) of Revenue Laws Amendment Act 31 of 2005. We are unsure of the intention of the legislator and will bring the matter to their attention.