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REPUBLIC OF VANUATUVALUE ADDED TAX ACT NO. 12 OF 1998

UNIVERSITY OF LEWIS
INSTITUTE OF ACCOUNTS
15 OCT 1998

17, PRINCE STREET
- LONDON, W1P 2RT

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REPUBLIC OF VANUATU

Assent: 16/07/98
Commencement: 01/08/98

THE VALUE ADDED TAX ACT NO. 12 OF 1998

An Act to impose value added tax which will provide a more equitable taxation system and to provide for its collection.

BE IT ENACTED by the President and Parliament as follows: -

PURPOSE

1. An Act to impose value added tax and to provide for its collection.

PART I
INTERPRETATION

INTERPRETATION

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

"Agreement for hire" means an agreement for the bailment of goods for hire but does not include -

- (a) An agreement under which property in the goods passes, or is expressly contemplated to pass, to the bailee; or
- (b) A hire purchase agreement:

"Approved aid project" and "approved project" means a project entered into with the consent of the Government of the Republic of Vanuatu:

"Consideration" includes all forms of consideration but does not include an unconditional gift:

"Credit note" means a document provided under section 22(3)(a) of this Act:

"Customs duty" means customs duties and other charges imposed under the Import Duties Consolidation Act [CAP 91]:

"Debit note" means a document provided under section 22(3)(b) of this Act:

"Department" means the Department of the State responsible for the collection of value added tax:

"Director" means the person appointed as the Director for the purposes of this Act or any person acting under the authority of the Director:

"Exempt supply" means a supply of goods or services in Vanuatu which is exempt from tax under section 10(3)(a) and the First Schedule:

"Goods" means all kinds of real or personal property, but does not include choses in action or money:

"Local authority" includes any municipality established under the Municipal Councils Act [CAP 126] and any Local Government Council established under the Decentralisation Act No 1 of 1994 (as amended):

"Minister" means the Minister of the State responsible for Finance:

"Money" includes currency, promissory notes and bills of exchange of Vanuatu or any other country; but does not include a mere collector's piece, investment article or item of numismatic interest:

"Non-profit body" means a religious, charitable or other organisation which is carried on other than for the purposes of profit or gain to owners or members of the body and which is prevented by its constitution from making any distribution to owners or members of the body:

"Open market value", in respect of a supply of goods or services, means the consideration in money which the supply would generally fetch if supplied in similar circumstances at that date in Vanuatu in a supply freely offered and made between persons who are not related (by blood, marriage or ownership), and includes any value added tax payable under this Act in respect of the supply:

"Person" includes a company, an unincorporated body of persons, an instrument of the State (whether departments, ministries, agencies, or other instruments) and a local authority:

"Prescribed form", for the purposes of sections 12, 16, 17, 21, 22, 23, 26 and 72, is a form prescribed from time to time by the Director:

"Records" includes books of account (whether manual, mechanical or electronic) and tax invoices, credit notes, debit notes and such other documents as are necessary to verify the entries in the books of account including –

- (a) A record of all goods and services supplied by or to the registered person showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services and the suppliers or their agents to be readily identified by the Director; and
- (b) The system and programme documentation which describes the accounting system used.

"Registered person" means a person who is registered under Part III or who is liable to be so registered:

"Registration threshold amount" means the amount applying under section 12:

"Resident of Vanuatu" means -

- (a) In the case of a natural person, that person if the person has spent not less than 12 months in Vanuatu in the preceding 24 month period:
- (b) In the case of a company or an unincorporated body of persons, that company or body if it has its centre of administrative management in Vanuatu, -

but does not include a company registered under the International Companies Act 1992:

"Second hand goods" does not include livestock:

"Services" means any thing which is not goods or money:

"State" means the Republic of Vanuatu:

"Supply" includes all forms of supply and the extended meanings in section 3 of this Act; and "supplies", "supplier" and "supplied" have corresponding meanings:

"Tax file number" means any identification number that has been allocated to a person by the Director for the purposes generally of this Act:

"Tax invoice" means a document provided under section 21:

"Taxable period", in relation to a registered person, means a taxable period determined under section 15:

"Taxable supply" means a supply of goods or services in Vanuatu which is charged with value added tax under Part II, including where the rate of tax is 0%:

"Taxpayer" means any person liable for any tax hereunder:

"Tribunal" means the Value Added Tax Tribunal established under Part XII:

"Unconditional gift" means a payment voluntarily made to any non-profit body for the carrying on or carrying out of the purposes of that non-profit body and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods and services to the person making that payment, or any other person where that person and that other person are associated persons; but does not include any payment made by the State or an instrument of the State.

EXTENDED MEANING OF TERM "SUPPLY"

3. (1) If goods or services acquired or produced by a registered person in the course of carrying on a taxable activity are supplied by a creditor in satisfaction of the registered person's debt, the goods or services are to be treated as if supplied by the registered person in the course of the taxable activity.
- (2) If a payment in the nature of a grant or subsidy is made by the State to a person in respect of the person's taxable activity, the payment is to be treated as consideration for the supply of goods or services by the person in Vanuatu in the course of the person's taxable activity.
- (3) If a person ceases to be a registered person, goods and services then forming part of the assets of a taxable activity of the person are to be treated as if supplied by the person in the course of the taxable activity immediately before the cessation of registration.
- (4) An indemnity payment received by a registered person under a contract of insurance will be treated as if it were consideration received for a supply of services made on the date of receipt in the course of the registered person's taxable activity, if and to the extent that -
 - (a) The supply of the insurance was a taxable supply by the insurer;
 - (b) The loss of the registered person was incurred in the course of the registered person's taxable activity; and
 - (c) The payment is not to indemnify the registered person for loss of employment services earnings.
- (5) If a person pays an amount of money to participate in lotteries or any other legal game of chance, the money paid is to be treated as consideration for a supply of services by the person conducting the game of chance.
- (6) If a person pays to a casino an amount of money -
 - (a) To purchase a chip or otherwise to participate in a game played in the casino; or
 - (b) As commission in respect of participation in such a game, -the money paid is to be treated as a supply of services by the casino operator.
- (7) For the purposes of this Act, if a supply is charged with tax in part at the standard rate under section 11(1) and in part at zero rate under section 11(2), each such part is to be treated as a separate supply.
- (8) For the purposes of this Act, every local authority is deemed to supply goods and services to any person where any amount of municipal tax is payable by that person to that local authority.

- (9) Any contract that is a layby sale does not constitute a supply of goods and services unless the goods to which the contract relates are delivered to the buyer and the property therein is transferred to the buyer:

Provided that a supply of services will, in respect of any such contract, be deemed to take place where –

- (a) A layby sale is cancelled; and
 - (b) The seller either –
 - (i) Retains any amount paid to the seller to recoup that seller's selling costs in respect of the layby sale; or
 - (ii) Recovers any amount (including, or in addition to, the amount referred in subparagraph (i)) from the buyer.
- (10) Subject to subsection (3), to the extent that goods and services supplied by a registered person for the principal purposes of making taxable supplies are subsequently applied by that person for a purpose other than that of making taxable supplies, they shall be treated as being supplied by that person in the course of that taxable activity to the extent that they are so applied.

MEANING OF THE TERM "TAXABLE ACTIVITY"

4. (1) For the purposes of this Act, the term "taxable activity" means any activity (personal, professional, corporate or otherwise) carried on continuously or regularly and involving the supply of goods or services to any other person for a consideration.
- (2) Without limiting subsection (1), the term "taxable activity" includes any activity referred to in subsection (1) carried on –
- (a) Without the intention of making a profit; or
 - (b) By the State or an instrument of the State; or
 - (c) By an association or club.
- (3) Notwithstanding subsections (1) and (2), the term "taxable activity" does not include –
- (a) Any activity carried on by a natural person essentially as private recreation or a hobby; or
 - (b) Any engagement, occupation, or employment under any contract of service or as a director of a company:

Provided that, where any person in carrying on any taxable activity, accepts an office, any services supplied by that person as the holder of that office shall be deemed to be supplied in the course or furtherance of that taxable activity; or

- (c) Any activity to the extent to which it involves making exempt supplies.
- (4) Anything done in connection with the commencement or termination of a taxable activity, including its supply as a going concern, is to be treated as if done in the course of the taxable activity.

TIME OF SUPPLY

- 5. (1) Subject to this Act and in particular the following subsections of this section, for the purposes of this Act a supply of goods or services is to be treated as taking place at the earliest of the times -
 - (a) A tax invoice is issued by the supplier or recipient in respect of the supply;
 - (b) A payment is received by the supplier in respect of the supply;
 - (c) The supplier delivers the goods or services.
 - (2) If a supply is treated as being made by a casino operator under section 3(6) is to be treated as taking place at the time a casino count takes place. For purposes of this section, "casino count", in relation to a casino, means a count of money or money's worth paid for the right to participate in gaming in a casino.
 - (3) If a supply is treated as taking place under section 3(5) (which relates to games of chance), the time of supply is to be treated as being the date on which the first drawing or determination of a result commences.
 - (4) If the supply is for consideration received by the supplier in the form of a coin or token inserted into a machine, the supply is to be treated as taking place at the time the coin or token is removed from the machine.
 - (5) If -
 - (a) Goods are supplied under an agreement for hire; or
 - (b) Services are supplied under an agreement or Act which provides for periodic payments, -
- (8) the goods or services are to be treated as being supplied successively when and to the extent that a payment is due or is received (whichever is earlier).

FIRST SCHEDULE

Section 10(3)(a)

Exempt supplies

1. Financial services, being any one or more of the following services:
 - (a) Exchanging currency;
 - (b) Issuing, paying, collecting or transferring ownership of a cheque or letter of credit;
 - (c) Issuing, allotting, transferring ownership of, renewing or varying a debt instrument, a share in the capital of a company, an interest in a unit trust or similar contributory scheme, or any interest in such property;
 - (d) Underwriting the issue of a debt instrument, share in the capital of a company or interest in a unit trust or similar contributory scheme;
 - (e) Providing credit or varying a contract for the provision of credit;
 - (f) Providing, taking, varying or releasing a guarantee, indemnity, security or bond in respect of the performance of obligations under a cheque, letter of credit, debt instrument, share in the capital of a company, interest in a unit trust or similar contributory scheme, or contract for the provision of credit;
 - (g) Providing, or transferring ownership of, a life insurance contract or a life reinsurance contract;
 - (h) Providing, or transferring ownership of, an interest in a superannuation scheme;
 - (i) Providing, or transferring ownership of, a futures contract through a recognised futures exchange;
 - (j) Paying or collecting any amount of interest, principal, dividend or other amount in respect of any debt instrument, share in the capital of a company, interest in a unit trust or similar contributory scheme, contract for the provision of credit, life insurance contract, interest in a superannuation scheme or futures contract;
 - (k) Agreeing to do, or arranging, any of the services specified in the preceding paragraphs of this section, other than merely advising on those services.
2. A supply of donated goods or services by a non-profit body.
3. The supply of accommodation in a residential dwelling by way of hire.

4. The supply of leasehold land by way of rental (not being a grant or sale of the lease of that land) to the extent that the land is used for the principal purpose of accommodation in a dwelling erected on that land.
5. The supply, being a sale, by any registered person in the course or furtherance of any taxable activity of –

(a) Any dwelling; or

(b) The reversionary interest in the fee simple estate of any leasehold land,-

that has been used by the registered person for a period of 5 years or more before the date of the supply exclusively for the making of any supply or supplies referred to in paragraphs 3 or 4 of this Schedule.

6. The supply of education by an educational institution, including the supply of any goods and services incidental thereto.
7. The supply of services by a person being the direct operation of local tours, bookings of tours within Vanuatu and the renting of motor cars and motorcycles before 30 June 1999 where the person held a business licence under categories E5, E9 or E10 of the Business Licence Act [CAP 173] on 30 April 1998 unless the person elects in writing to the Director that this clause not apply to such supplies made by the person.
8. Payments to an instrument or agency of the State made on or before 31 December 1998 that represent appropriations under an Appropriation Act.
9. A payment in the nature of a grant or subsidy by the State to a person that is treated as a supply in the course of the person's taxable activity under section 3(2) of this Act that is made on or before 31 December 1998.
10. For the purposes of this Schedule the terms:

"Donated goods and services" means goods and services that are gifted to a non-profit body and are intended for use in carrying on or carrying out of the purposes of that non-profit body;

"Dwelling" means any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling;

"Educational institution" means any pre-school, primary school or secondary school registered by the Department of Education, the University of the South Pacific or any other similar educational institute approved by the Director.

SECOND SCHEDULE

Section 10(3)(b)

Exempt importations

Goods admitted free of duty under the following provisions of the Import Duties Act [CAP 91]:

- (a) X.20 relating to certain personal and household reliefs;
- (b) X.21 relating to certain photographic film, negatives and audio or video recordings;
- (c) X.22 relating to legacies and inheritances;
- (d) X.23 relating to certain post and airfreight packages;
- (e) X.24 relating to certain wedding presents and other unsolicited goods;
- (f) X.30 relating to charities;
- (g) X.31 relating to trophies;
- (h) X.33 relating to uniforms, medals and decorations;
- (i) X.35 relating to certain school supplies;
- (j) X.40 relating to visiting vessels and aircraft;
- (k) X.41 relating to certain goods imported for display or use at exhibitions, fairs, meetings or similar events;
- (l) X.42 relating to certain goods imported for hire or loan;
- (m) X.43 relating to certain tools of trade and professional equipment;
- (n) X.44 relating to certain scientific and pedagogic material and equipment;
- (o) X.45 relating to certain commercial samples;
- (p) X.46 relating to inward processing relief;
- (q) X.47 relating to goods imported for duty free sale to tourists and departing passengers;
- (r) X.48 relating to certain goods imported temporarily for supply to foreign-going vessels and aircraft;
- (s) X.54 relating to certain items associated with funeral services;
- (t) X.60 relating to returned goods;
- (u) X.61 relating to certain containers, crates and the like;
- (v) X.64 relating to certain goods that not in accordance with the terms of a contract of sale imported by persons who are not registered persons; and
- (w) paragraphs (a) to (h) of X.65 relating to certain goods admitted under an international convention or agreement.

THIRD SCHEDULE

Section 11(2)

Zero-rated supplies

1. Any supply of goods if the registered person -
 - (a) Exports the goods from Vanuatu in the course of the supply; or
 - (b) Satisfies the Director that the goods have been exported from Vanuatu by the registered person; or
 - (c) Satisfies the Director that the goods have been supplied to a person for consumption or use outside Vanuatu (including as stores on departing ships or aircraft or where the acquirer of the goods is a departing sea or air traveller); or
 - (d) Sells the goods, to an air traveller arriving in Vanuatu, within an area under the control of the Director of Customs as a customs examining place under the Customs Act [CAP 3], -

Provided that this paragraph will not apply to a supply of goods by a registered person -

- (e) Being goods in respect of which a deduction under section 19(4)(c) of this Act has been allowed to the registered person; or
 - (f) Being goods which have been or will be reimported into Vanuatu by the supplier.
2. Any supply of goods situated outside Vanuatu at the time of supply.
3. Any supply of services being the transportation of passengers or goods (including ancillary insurance or the arranging of the insurance or the arranging of the transport of passengers or goods) -
 - (a) From Vanuatu to a place outside Vanuatu;
 - (b) From a place outside Vanuatu to Vanuatu;
 - (c) Within Vanuatu if part of the supply of transport services to which subparagraph (a) or (b) of this paragraph applies.
4. Any supply of services physically performed outside Vanuatu.
5. Any supply of services to a person who is not a resident of Vanuatu and who is outside Vanuatu at the time the services are performed, not being services which are supplied directly in connection with tangible property situated in Vanuatu at the time the services are performed.
6. Any supply of the following goods or services to an educational institution that provides education that is exempt under clause 6 of the First Schedule to this Act:

- (a) Building materials, including paint, for the erection, maintenance or repair of, and electricity supplied to, any school or building attached to or in close proximity to a school and which is to be used exclusively in relation to the accommodation of boarding pupils or permanent members of teaching staff;
- (b) School furniture including desks, chairs, whiteboards and blackboards;
- (c) Educational supplies, including books, stationery, maps, charts, pencils, rulers and equipment for technical education; and
- (d) Office equipment, generators, lawn mowers, kitchen equipment and any goods intended exclusively for use in schools;

Provided that:

- (e) The institution holds a certificate that is given by an official of the institution (such official having been specifically nominated for this purpose) to the registered person at the time of supply, stating that the goods or services are solely for use in or by the institution for the purposes of providing education and that they are not intended to be resold or disposed of (otherwise than to the pupils of the institution) in any other manner;
- (f) The certificate referred to in paragraph (e) details the goods and services to be supplied; and
- (g) The Director is satisfied, upon the advice of the Director General of Education, that the goods and services meet the requirements specified in paragraph (e) and are reasonable having regard to relevant circumstances, such as the value of the supply and the value of previously zero-rated supplies to the institution.

- 7. Any supply of goods or services by a person in respect of an approved aid project where the person is paid for those goods and services directly by a Diplomatic Mission of a foreign state or an international organisation.
- 8. For the purposes of this Schedule the term "approved aid project" means an aid project in respect of which a signed copy of an agreement under X.65 of the Import Duties Act [CAP 91] had been lodged with the Minister of Finance before 31 December 1998.

FOURTH SCHEDULE

Section 74

Enactments repealed or amended

1. The following enactments are repealed with effect from 1 August 1998:
 - (a) The Hotel and Licensed Premises Tax Act [CAP 141];
 - (b) The Amusement Machines Act [CAP 33]; and
 - (c) The Video Cassettes (Tax on Hiring) Act [CAP 180].
2. The Rent Taxation Act [CAP 196] is amended, with effect from 1 August 1998, by repealing section 4 and substituting the following section:

"4 The tax shall, subject to the provisions of this Act, be charged to and paid by each person who derives rent from any leases, other than a person who is a registered person under the Value Added Tax Act 1998 to the extent that the registered person derives rent which is subject to value added tax."
3. The Rent Taxation Act [CAP 196] is further amended, with effect from 1 August 1998, by deleting the term "15%" where it appears in Schedule 1 and substituting the term "12.5%".
4. The Gaming Control Act [CAP 172] is amended, with effect from 1 August 1998, by repealing section (5)(1) and substituting the following section:

"5(1) Subject to the provisions of this Act, there shall be charged a gaming duty calculated on the gross profit derived in each month from every gaming machine and gaming table at:

 - (a) 25% on any premises specified in paragraphs (a) and (c) of section 3: and
 - (b) 5% on any premises specified in paragraph (b) of section 3."
- (5) Schedule 1 of the Export Duties Act [CAP 31] is repealed and the following schedule is substituted:

"Schedule 1

Unworked shells	30%
Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared	15%
	plus VT3,000 per cubic meter
Other goods of any description	Free"