

Value Added Tax (Amendment) Act No. 6 Of 2003

An Act to amend the Value Added Tax Act 2001¹ in order to make provision for zero ratings and to provide more comprehensively on electronic and cross border services and supplies.

Enacted by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as the Value Added Tax (Amendment) Act, 2003 and shall come into operation on the first day of July 2003.

Interpretation

2. The Value Added Tax Act 2001 (hereinafter referred to as “the principal law”) is amended in section 3 -

(a) by inserting the following definitions in their alphabetical order:

““amateur sporting activities”, in relation to exempted supplies, means supplies made by an organizer of non-professional sporting activities;

“Authority” means the Lesotho Revenue Authority established by the Lesotho Revenue Authority Act, 2001²;

“charity arrangements”, in relation to exempted supplies, means supplies made by a charity organizer or organization in the furtherance of charitable activities or those facilitated in the name of charity, where if there is any amount collected in monetary terms, its recipients include the destitute, abandoned, poor or suffering from serious terminal diseases;

“collection mechanisms and supplies” in relation to tax or revenue collection, means any systems, models or structures which are put in place to facilitate or enhance revenue collection;

“Commissioner General” means the Commissioner General appointed under the Lesotho Revenue Authority Act 2001;

“cultural activities and supplies” in relation to exemptions means any activities or supplies made by an organizer, promoter or supplier for a fee but which may not be deemed as profit or gain;

“dwelling” means 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, including fixtures and fittings belonging thereto and enjoyed therewith;

“electronic means” in relation to the supply of services means the transmission sent initially and received or downloaded at its destination of equipment for the processing (including digital compression) and storage of data or software, or entirely transmitted, conveyed and received by wire, wireless or optical means or by other electronic means including television broadcasting but excluding radio broadcasting;

“foreign supplier” in relation to any goods or services supplied by an auctioneer or by electronic means the person supplying the goods or services but who is supplying from a place of business outside Lesotho but does not include a foreign supplier who does not have a commercial establishment in Lesotho;

“intangible services” in relation to analogue, digitized or electronic supplies or services, means that for purposes of tax, such services or supplies are liable to tax irrespective of lacking any physical or tangible form, but being of an electronic nature or form, or in the form of a signal, airwave or satellite;

“place of consumption” in relation to cross-border supplies and services, means the place where consumption or enjoyment takes place;

“registration threshold” in relation to registration by vendors for purposes of Value Added Tax, is any amount which the Minister may prescribe in the Gazette;”;

(b) by deleting -

(i) the definition of the word “Commissioner”;

(ii) the definition of the word “officer” and substituting the following:

““officer” means the Commissioner General, the Commissioner of Value Added Tax, any person in the service of the Authority who is appointed to an office or is employed by the Authority, and any other person appointed by the Commissioner General to perform functions related to the administration and enforcement of this Act.”.

General Amendment

3. The principal law is amended -
- (a) by deleting the words “Department of Value Added Tax” wherever they appear and substituting the words “the Authority”;
 - (b) by deleting the word “Commissioner” wherever it appears and substituting the word “Commissioner General”, except in sections 3, 74 and 75.

Exempt Supplies and Exempt Imports

4. The principal law is amended in section 6 -
- (a) by inserting the following subsection after subsection (2)(c)(ii) :
 - “(iii) the supply is of low-income housing development schemes by an association, co-operative society or scheme;
 - (iv) the supply of any accommodation in a dwelling under an agreement for the leasing, letting, hiring or sale of accommodation;

where the supplier is the employer of the recipient (including any employer), the recipient is entitled to occupy the accommodation as a benefit of his office or employment and his right thereto is limited to the period of his employment or the term of his office or a period agreed upon by the supplier and the recipient;
 - (v) the supply of a hostel or boarding establishment which operates as a non-profit making establishment.”;
 - (b) by inserting the following paragraphs after subsection (2) (e) :
 - “(f) a supply by an amateur sporting organization of sport activities, where such activities are deemed for the purposes of this Act to be non-professional;
 - (g) a supply of cultural activities and supplies deemed to be so by the Commissioner General, which would include, but not restricted to, the collection of entrance fees, or where such events are regular events:

Provided that such activity is a non-profit supply or service;
 - (h) a supply of charity arrangements undertaken by an organization or institution deemed by the Commissioner General to engage in or conduct charitable activities or work:

Provided that -

- (i) after such event, audited accounts are filed with Lesotho Revenue Authority within a period not exceeding 2 months from the date on which the event was held;
- (ii) where such arrangement was made by a permanent establishment, such establishment shall first apply for exemption, and shall submit yearly audited accounts, at least two months after the financial year end.”;

5. The principal law is amended by adding the following section after section 6 :

"Zero ratings

- 6A (1) The rate of Value Added Tax imposed on an export of goods or services from Lesotho by a vendor is zero.
- (2) For the purposes of this Act, zero rated goods shall be restricted to those listed in Schedule IV;

Provided that -

- (i) the determination and duration of this rate shall be dictated by the extent to which such item or items are regarded as a basic necessity;
 - (ii) the Minister shall make Regulations to re-determine the rate as a matter of State policy.
- (3) A rate of tax at zero percent shall be allowed -
- (a) where goods are supplied in the course of repairing, renovating, or modifying a taxable supply:

Provided that –

- (i) such supply is a commercial building used for purposes of taxable supplies;
 - (ii) such supply consists of transportation used for the furtherance of commercial business;
- (b) where the supply consists of illuminating kerosene intended for use as fuel for cooking, illuminating or heating and are not mixed with another substance;

- (c) where a vendor supplies services which would otherwise be taxable, which comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from or importation into Lesotho of goods or the movement of goods through Lesotho from one export country to another export country, where such services are supplied directly to a person who is not a resident of Lesotho and is not a vendor, otherwise than through an agent or other person;
- (d) where the services are supplied directly in connection with land or any improvement thereto, situated in any export country;
- (e) where 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 Lesotho from an export country which are exempt from tax importation, as listed in Schedule II;
 - (iii) arranging the supply of goods being exported outside of Lesotho and transportation of goods within Lesotho for a person who is not a resident of Lesotho and is not a vendor;
 - (iv) international transport passengers originating in Lesotho with a destination outside Lesotho;
- (f) where a supply of goods or services is part of a transfer of an enterprise as a going concern by a vendor:

Provided that -

- (i) both the transferor and the transferee are registered for Value Added Tax;
- (ii) where the transferee has not yet registered for Value Added Tax, such transferee shall be liable to pay Value Added Tax;
- (iii) where such transferee is a relative, and where the Commissioner General makes a determination that the

consideration was too low, the Commissioner General may impose a fair market value."

(4) Where subsection (3)(f) applies, both vendors shall immediately notify the Commissioner General, in writing, of the details of the transfer, including, in particular, the quantities and value of goods on hand (including raw materials) at the date of the transfer on which the Value Added Tax has been credited as input tax.

(5) Where a rate of zero percent has been applied by a vendor under a provision of this section, the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under the provision as is acceptable to the Commissioner General.

Place of supply

6. The principal law is amended in section 10 -

- (a) by deleting the full stop at the end of subsection (3)(f);
- (b) by adding the following paragraph after subsection (3) (f) :
 - "(g) a supply by electronic means."

Imports

7. The principal law is amended in section 11(1) by deleting paragraph (b) and substituting the following:

- "(b) in the case of services, a supply of services by a person in the course or furtherance of an enterprise carried on outside Lesotho where the services are for use or consumption in Lesotho, where –
 - (i) such services are supplied by electronic means such as television or Internet;
 - (ii) where an importer of television services or Internet is an importer whose business was registered in Lesotho, then it shall be such importer who is liable to pay tax on such taxable import, and the supplier whose business is out of Lesotho;
 - (iii) where such foreign supplier conducts sufficient business in Lesotho to the extent that such cable television or other service may be treated as supplied in Lesotho and not imported, then the Lesotho operation shall be liable to Value Added Tax through its agency or branch."

Adjustments

8. The principal law is amended in section 15-

(a) by deleting subsection (2) and substituting the following:

“(2) Where subsection (1) applies, the vendor making the supply shall make an adjustment as follows:

- (i) that at the end of each actual fiscal year, an adjustment should be made where the proportion for this year differs from the last fiscal year;
- (ii) that the proportion for actual fiscal year shall be based on the proportion for the last fiscal year.

(2A) Notwithstanding subsection (2)(i) and (ii), the Minister may make Regulations for the determination of adjustments for fixed assets and for purchases therefore.”;

(b) by deleting subsection (3).

Registration of Vendors

9. The principal law is amended in section 17 by deleting subsection (6) and substituting the following:

(6) Notwithstanding subsection (1) -

- (a) a person who is an auctioneer shall apply for registration;
- (b) a person who carries on an enterprise outside of Lesotho but whose goods or services are consumed in Lesotho shall apply for registration in Lesotho irrespective of whether such person meets the threshold, and such registration shall be renewable annually, at the expiry of the last registration date.”.

Calculation of Value Added Tax Payable on a Taxable Transaction

10. The principal law is amended in section 19 by deleting subsection (3) and substituting the following:

- “(3) The rates of Value Added Tax shall be prescribed by Regulations made by the Minister.”.

Credit for Input Tax

11. The principal law is amended by deleting section 23 and substituting the following:

- “23 (1) Subject to this section, a credit is allowed to-
- (a) a vendor for input tax payable or paid in respect of a taxable supply to, or taxable import by the vendor in the course of furtherance of an enterprise carried on by the vendor; or
 - (b) a person on becoming registered under section 17 for input tax paid in respect of goods or services on hand at the date of registration held for making taxable supplies, provided the goods or services were acquired by that person not more than two months before the date of registration and an application for the credit is made within two months after the registration date; and
 - (c) a claim for input tax credit in respect of goods and services forming pre-incorporation expenses upon the incorporation of such vendor where the vendor is a legal persona, but:
 - (i) such vendor shall first register for Value Added Tax;
 - (ii) such vendor may claim in respect of a commercial entity.
- (2) Where a taxable supply to, or taxable import by a vendor, is partly for the making of taxable supplies by the vendor and partly for another use, the amount of the input tax allowed as a credit is that part of the input tax that relates to the making of taxable supplies.
- (3) An input tax credit allowed-
- (a) under sub-section (1)(a)-
 - (i) where the vendor accounts for tax under section 20, arises on the date of the goods or services are supplied to, or imported by, the vendor; or

- (ii) where the vendor accounts for tax under section 21, arises on the date the tax is paid; or
 - (b) under section 1(b) arises on the date registration takes effect.
- (4) Subject to subsection (5), an input tax credit allowed under subsection (1) may not be claimed until the tax period in which the vendor has-
 - (a) a Value Added Tax invoice; or
 - (b) a bill of entry or other document prescribed under the Customs and Excise Act, 1982³,
 evidencing the amount of input tax payable or paid.
- (5) Where a vendor to whom subsection (1) applies does not have a Value Added Tax invoice evidencing the input tax payable or paid, the Commissioner General may allow an input tax credit in the tax period in which the credit arises where the Commissioner General is satisfied-
 - (a) that the vendor took all reasonable steps to acquire a Value Added Tax invoice;
 - (b) that the failure to acquire a Value Added Tax invoice was not the fault of the vendor; and
 - (c) that the amount of input tax claimed by the vendor is correct.
- (6) For the purposes of this section, no input tax credit is allowable-
 - (a) for tax on purchases of used goods if the taxable value of a taxable supply of those goods is determined under section 14(3); or
 - (b) for any tax that is refundable under section 47;
 - (c) for tax on purchases for non-commercial vehicles, entertainment representation and payments in kind to staff.
- (7) No input tax credit is allowed to the extent provided for in the Regulations made under this Act.”

12. The principal law is amended by deleting section 74 and substituting the following:

“Division 1: Functions of the Commissioner General

Administration, and Appointment of Commissioner of Value Added Tax

74. (1) The Commissioner General is responsible for the general administration of this Act.

(2) The Commissioner General shall appoint the Commissioner of Valued added Tax, as contemplated by section 20 of the Lesotho Revenue Authority Act 2001.

(3) The Commissioner shall perform or exercise, under the direction of the Commissioner General, such duties and powers as are required to be performed or exercised under this Act or by the Commissioner General.”.

Delegation

13. The principal law is amended by deleting section 75 and substituting the following:

“75. The Commissioner General may delegate to any officer any power or duty conferred or imposed on the Commissioner General by this Act, other than this power of general delegation.”.

Transitional

14. The principal law is amended in section 90 by deleting subsection (5) and substituting the following:

“(5) A supply to, or an import by, the Lesotho Government, is a taxable supply or import.”.

SCHEDULE

15. The principal law is amended by adding the following Schedule after Schedule III:

**“SCHEDULE IV
(SECTION 6A)**

Zero Rated Supplies

The following goods are prescribed for zero rating for purposes of section 6A:

- (a) agricultural input – fertilizers, seeds and pesticides;
- (b) beans;
- (c) bread;
- (d) lentils;
- (e) livestock feed and poultry feed;
- (f) maize (grain);
- (g) maize meal;
- (h) milk;
- (i) paraffin intended for use as fuel for cooking, illuminating or heating;
- (j) peas;
- (k) sorghum meal;
- (l) unmalted sorghum grain;
- (m) wheat (grain);
- (n) wheat flour;

Provided that the determination of rates for any item in this list will be dictated by the extent that such item may be regarded as a necessity for the duration of a tax period.”.

NOTE

- 1. Act No. 9 of 2001
- 2. Act No. 14 of 2001
- 3. Act No. 12 of 1982