

LEGAL NOTICE NO. 95 OF 2003

**Value Added Tax Regulations, 2003**

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LEGAL NOTICE NO. ... OF 2003  
VALUE ADDED TAX REGULATIONS 2003

In exercise of the powers conferred upon me by section 88 of the Value Added Tax Act, 2001<sup>1</sup>, I,

**T.T. THAHANE,**

Minister of Finance and Development Planning, make the following Regulations:

**Part I - Preliminary**

**Citation and commencement**

1. These Regulations may be cited as the Value Added Tax Regulations, 2003 and shall come into operation on the date the Value Added Tax Act comes into operation.

**Interpretation**

2. In these Regulations, unless the context otherwise requires –

“Commissioner General” means the Commissioner General appointed under the Lesotho Revenue Authority Act<sup>2</sup>, 2001;

“Government” means the Government of Lesotho;

“the Act” means the Value Added Tax Act, 2001.

## Part II – Mixed Supplies

### Mixed Supplies

3. (1) Subject to subregulation (4), where –
- (a) there is a single supply of goods and services (referred to as the “primary supply”); and
  - (b) section 8(7) and (8) of the Act does not apply to the supply,

each item of goods and services provided in the supply shall be treated as the subject of a separate supply occurring at the time of the primary supply.

- (2) Subject to subregulation (4), where a single supply of goods or services (referred to as the “primary supply”) would, if separate consideration had been payable, consist both of a supply charged to tax at a positive rate and –
- (a) a supply charged to tax at a zero rate;
  - (b) a supply charged to tax at a different positive rate; or
  - (c) an exempt supply,

then if sections 8(7) and (8) of the Act does not apply, each part of the supply shall be treated as a separate supply occurring at the time of the primary supply.

- (3) The taxable value of each separate supply under subregulation (1) or (2) shall be calculated according to the following formula:

$$\mathbf{A \times B/C}$$

where –

- A** is the total consideration for the primary supply;
- B** is the fair market value of the separate supply at the time of the supply; and
- C** is the sum of the fair market values of each separate supply at the time of the supply.

## **Adjustments**

4. (1) In this regulation, input tax adjustments shall be as set out in subregulation (2).

(2) Where adjustments are in respect of fixed assets the taxpayer shall be entitled to credit for input tax to the extent of the percentage used for taxable purposes where –

(a) there is a change in use of goods or services for taxable purposes;

(b) such change may warrant an adjustment of input tax.

(3) For the purposes of an asset with a fixed life span, adjustments shall be made yearly of the duration of such life span, at the expiry of which adjustments shall cease where –

(a) land and buildings, plant and equipment, and machinery have a fixed life span of 10 years; or

(b) furniture and fixtures have a fixed life span of 5 years.

(4) For the purposes of supplies of utilities used for both taxable and private use, taxation of such utilities shall be by allowing input tax credit only of supplies exceeding a fixed amount annually, where –

(a) utilities include but are not exclusive to telephone, electricity and computers;

(b) such amount is M5000.00 annually per utility:

Provided that such taxpayer remains consistently operational for 1 year.

## **Part III – Consideration**

### **Consideration and Discounts**

5. (1) In calculating the consideration for a supply or import under section 3 of the Act, the amount payable or paid may be reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import.

- (2) Except as provided in subregulation (3), for purposes of “consideration” as defined in the Act –
- (a) a prompt payment discount may be taken into account only if it does not exceed 5 percent of the amount otherwise payable for the supply or import; and
  - (b) a combination of prompt payment and any other price discount or rebate may be taken into account only if it does not exceed 10 percent of the amount otherwise payable for the supply or import, and then only if --
    - (i) the price discount or rebate is a legal entitlement of the purchaser or importer;
    - (ii) the consideration as reduced by the discount or rebate is not less than the fair market value of the supply or import; and
    - (iii) the importer or purchaser regularly pays the price as reduced by the discount or rebate.
- (3) Notwithstanding subregulation (2), the Commissioner General may, upon written application by a supplier or importer, approve a price discount or rebate plan for Value Added Tax purposes if the supplier or importer establishes to the satisfaction of the Commissioner General that the particular price discount or rebate plan is part of a common business practice and that the importer or purchaser regularly pays the price as reduced by the discount or rebate.
- (4) Nothing in this regulation shall be construed to prevent the Commissioner General from proceeding under section 84 of the Act where a price discount or rebate does not reflect the legal rights of the parties with respect to the consideration for a supply or import.

#### **Part IV - Rates of Value Added Tax**

##### **Rates of Tax**

6. The rates of Value Added Tax prescribed for the purposes of section 19 of the Act shall be –

- (a) in the case of supplies listed in Schedule IV in terms of section 6A of the Act and also in the case of exports, 0%;

- (b) in the case of supplies of electricity and telephone calls, 5 %
- (c) in the case of import and supplies of alcoholic beverages and tobacco, 15%;
- (d) in the case of all other taxable supplies and services, 14% as a basic rate;

### **Variation of Consideration on a Change in the Rate of Value Added Tax**

#### 7. (1) Where -

- (a) an agreement for a supply of goods or services by a vendor has been entered into; and
- (b) subsequent to entering into the agreement, tax is imposed on the supply or the rate of tax applicable to the supply is increased,

the supplier may, notwithstanding anything to the contrary in any agreement or law, recover from the recipient, in addition to the amounts payable by the recipient, an amount equal to the amount of tax imposed or the amount by which tax was increased, as the case may be.

#### (2) Where -

- (a) an agreement for a supply of goods or services by a vendor has been entered into; and
- (b) subsequent to entering into the agreement, tax on the supply is withdrawn or the rate of tax applicable to the supply is decreased,

the supplier shall, notwithstanding anything to the contrary in any agreement or law, reduce the amount payable by the recipient by an amount equal to the amount of tax withdrawn or the amount by which tax was decreased, as the case may be.

- (3) Subject to subregulations (4) and (5), where subregulation (1) or (2) applies in respect of a supply of goods or services subject to any fee, charge, or other amount (whether a fixed, maximum, or minimum fee, charge, or other amount) prescribed by, or determined pursuant to, any Act, regulation, or measure having force of law, that fee, charge, or other amount shall be increased or decreased, as the case may be, by the

amount of tax or further tax chargeable, or the amount of tax no longer chargeable.

- (4) Subregulation (3) does not apply where the fee, charge, or other amount has been altered in any Act, regulation, or measure having force of law to take account of any imposition, increase, decrease, or withdrawal of tax.
- (5) Nothing in subregulation (3) shall be construed so as to permit any further increase or require any further decrease, as the case may be, in a fee, charge, or other amount where the 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.

### **Application of Increased or Reduced Rate**

- 8.(1) Where a supply of goods or services is treated as a successive supply under section 9(4) of the Act for a period beginning and ending before the date on which a change in the rate of tax levied becomes effective in respect of the supply or the date on which the tax is imposed or withdrawn in respect of the supply and the supply is treated under section 9 of the Act as having been made on or after the said date, then -
  - (a) in the case of a change in rate on the said date, the rate of tax applicable to the supply is the rate applicable immediately before the said date;
  - (b) in the case of the imposition of tax on the said date, the supply is treated as not being subject to tax; or
  - (c) in the case of withdrawal of the tax on the said date, the supply is treated as being subject to tax as if the tax had not been withdrawn.
- (2) Where a supply of goods or services is treated as a successive supply under section 9(4) of the Act during a period beginning before and ending on or after the date on which a change in the rate of tax levied becomes effective in respect of the supply or the date on which the tax is imposed or withdrawn in respect of the supply and the supply is treated under section 9 of the Act as having been made on or after the said date, the taxable value of the supply shall, on the basis of a fair and reasonable apportionment, be treated as consisting of a part (referred to as the "first part") relating to the performance of services or provision of goods before the said date and a part (referred to as the "second part") relating to the performance of services or provision of goods on or after the said date and -



- (a) in the case of a change in the rate on the said date, the tax payable in respect of the first part shall be determined at the rate applicable before the said date and the tax payable in respect of the second part shall be determined at the rate or percentage applicable on the said date; or
- (b) in the case of the imposition of tax on the said date, the first part shall not be subject to tax; or
- (c) in the case of the withdrawal of the tax, the first part shall be subject to tax as if the tax had not been withdrawn.

### **Part V – Calculation of Value Added Tax Payable**

#### **Calculation of Value Added Tax Payable on the Cash Method for a Tax Period**

9. Where a vendor to whom section 21 of the Act applies receives or makes a payment in respect of a supply that is part only of the tax inclusive amount receivable or payable for a supply, the tax received or paid is calculated according to the following formula:

$$\mathbf{A \times B/C}$$

where –

- A is the total tax receivable or payable in respect of the supply;
- B is the amount received or paid; and
- C is the total tax inclusive amount receivable or payable in respect of the supply.

#### **Input tax credit**

10. (1) In this regulation -

"entertainment" means the provision of food, beverages, tobacco, accommodation, amusement, recreation, or hospitality of any kind; and

"passenger vehicle" means a motor vehicle principally designed or adapted for the transport of nine or fewer seated persons, but not including a commercial truck designed and used primarily for the carriage of goods.

(2). In this regulation, for the purposes of section 23(1) of the Act, input tax credit is not allowed to a vendor under that section in respect of –

- (a) any supply or import by a vendor which is deemed not to be made with the sole purpose of furthering such vendor's enterprise;
- (b) any claim for expenses incurred on subscription fees of any sporting or recreational clubs;
- (c) goods or services, for which input tax has been paid, have been in the possession of the vendor for a period exceeding 2 months prior to the date of registration.

(3) Notwithstanding subregulation (2), credit for input tax is allowable where the claim is in respect of a taxable supply of goods or services to the vendor, or taxable import of goods or services by the vendor, where such goods or services are deemed to form pre-incorporation expenses, upon the incorporation of such vendor where such vendor is a legal persona:

Provided that –

- (i) such vendor is registered; and
- (ii) the credit is in respect of property used for commercial purposes.

(4) For purposes of this regulation, credit for input tax shall not be allowed-

- (a) where credit is claimed in respect of input tax paid for a non-commercial or passenger vehicle by a vendor, unless such person is in the business of dealing in, or hiring of, passenger vehicles and that vehicle was acquired for the purposes of that business;
- (b) for input tax paid for a purported commercial vehicle which is not -
  - (i) a vehicle with an unladen mass of 3 500kg or more;
  - (ii) a vehicle constructed for a special purpose other than the carriage of passengers and having no accommodation of carrying persons other than such as is incidental to the special purpose of the vehicle;
  - (iii) a vehicle capable of accommodating only one person.

(5) For the purposes of subregulation (4), “non–commercial vehicle” is a vehicle of a kind normally used on public roads, which has three or more wheels, and which is constructed or adapted wholly or mainly for the carriage of passengers.

(6) For the purposes of section 23(1) of the Act, credit for input tax may not be allowed in respect of goods and services acquired for purposes of entertainment, where such goods or services are –

- (a) staff refreshments such as coffee, tea and other snacks;
- (b) food and other ingredients purchases in order to provide meals to staff, clients and business associates;
- (c) catering services acquired for staff canteens and dining rooms;
- (d) equipment and utensils used in kitchens;
- (e) furniture and other equipment and utensils used in canteens and dining rooms, kitchens, but excluding dining rooms in restaurant.
- (f) Christmas lunches and parties, including hire of venues;
- (g) beverages, meals and other hospitality and entertainment supplied to customers and clients at product launches and other promotional events; and
- (h) entertainment of customers and clients in restaurants, theatres and night clubs.

(7) Credit for input tax shall not be allowed to a vendor, for goods or services acquired for the personal subsistence of employees, directors or partners where such employee, director or partner is by virtue of their duties in furtherance of the vendor’s enterprise to spend a night away from the place of business, or where he is obliged to attend a seminar or workshop in the course of such person’s duties.

(8) Credit for input tax may be allowed in respect of the following:-

- (a) utilities used in making taxable supplies where such utilities include electricity and telecommunication; and
- (b) pre-incorporation expenses.

(9) Where credit is allowed under subregulation (8), calculation of the extent of such credit shall be determined by the Commissioner General and shall be subject to a threshold to be determined as follows:

(a) Value Added Tax on any amount which falls below M500,000 per annum is not allowed as credit on input tax and any amount which falls above M500,000 per annum is allowable for electricity, on condition that the expenditure is related to taxable transactions or activities;

(b) any amount which falls below M5000.00 per annum is not allowed or telecommunication, whereas any amount which falls above M5000.00 is allowable, on condition that the expenditure is related to taxable transactions or activities.

## **Part VI - Collection of Tax**

### **Security**

11. To the extent that any security provided under section 39 of the Act is in the form of a cash deposit, when the Commissioner General is satisfied that the security is no longer required, the Commissioner General shall apply the deposit in the manner specified in section 46(2) of the Act on the basis that the deposit is overpaid tax.

### **Recovery of Value Added Tax from Recipient of Supply**

12. Section 43 of the Act applies also where the vendor has, in consequence of a fraudulent action or misrepresentation by the recipient of the supply, applied a lower rate of tax (including a zero rate) than that correctly applicable to the supply.

## **Part VII – Travel Agents and Tour Operators**

### **Resident Travel Agents and Tour Operators**

13. (1) For the purposes of these Regulations, “a resident travel agent or tour operator” is a resident person engaged in travel agent or tour operator activities in Lesotho, or is a non-resident engaged in travel agent or tour operator activities in Lesotho through an agent or enterprise in Lesotho.

(2) If a resident travel agent books a foreign tour package for a resident of Lesotho, the portion of the consideration for the tour

attributable to services to be rendered outside Lesotho (including international air travel, and hotels and meals outside Lesotho) is zero-rated under section 6A(3)(e)(iii) and (iv) or section 19(2) of the Act. The consideration attributable to the travel agent's services in arranging the tour package is a taxable supply in Lesotho.

- (3) If a resident tour operator sells as principal a domestic tour package to a Lesotho resident, and the tour operator pays the hotel, restaurant, or other provider of services related to the tour package, the tour operator is making a taxable supply of the tour package.
- (4) If a resident travel agent or tour operator, or an agent in Lesotho for a non-resident travel agent or tour operator, books a domestic tour for a non-resident, the tour package is taxable, except for services that are exempt under section 6 or zero-rated under section 19(2) of the Act.

### **Non-Resident Travel Agents and Tour Operators**

14. (1) Services rendered in Lesotho on behalf of a non-resident travel agent or tour operator generally are taxable supplies, unless the supplies are exempt or zero-rated under the Act.
- (2) If a non-resident, such as a foreign tour operator or foreign travel agent, sells a tour package to a non-resident that includes services to be rendered in Lesotho, the domestic tour services are taxable, unless the services are exempt or zero-rated under the Act.
- (3) If a non-resident travel agent or tour operator, serving as agent for a vendor in Lesotho, sells a tour package for a tour in Lesotho, the services to be supplied in Lesotho are subject to tax, except to the extent that they are exempt or zero-rated under the Act.
- (4) For purposes of subregulation (3), the commissions earned by the non-resident travel agent or tour operator for services rendered by the non-resident outside Lesotho are not taxable.

## **Part VIII – Commission Agents**

### **Commission Agents**

15. (1) In these Regulations “a commission agent” is a person who supplies goods or renders services as agent on behalf of the person's principal.
- (2) The commission, incentive, bonus, or other amount earned or received

by a commission agent as compensation for services rendered in Lesotho for the principal is consideration for a taxable supply.

(3) The time of the supply of services rendered by a commission agent is governed by the timing rules under section 9 of the Act, and depends on whether the agent reports on the invoice method or cash method.

(4) When a commission agent earns commissions, incentives, bonuses, or other compensation payments and is registered as a vendor, the agent is obliged to issue a tax invoice covering the consideration for the services rendered by him or her to the principal.

(5) A registered commission agent may claim input tax credits on purchases used in making taxable supplies to the extent allowable under the input tax credit rules.

(6) A change in the commission or other compensation charged by a registered commission agent to his or her principal may require that agent to issue a tax debit note or tax credit note as prescribed under section 25 of the Act.

## **Part IX - Notices**

### **Notices**

16. Unless the Act provides otherwise, any request or notice required or that may be given under the Act shall be in writing.

## **Part X – Exemptions**

### **Medical and Dental Services**

17. (1) For the purposes of this regulation –
- (a) “a qualified medical facility” means the office of a qualified medical practitioner, a hospital, maternity home, nursing home, convalescent home, hospice, or clinic;
  - (b) “a qualified medical professional” means a general practitioner, physician, healer, nurse, dresser, health officer, physical therapist, and other health care provider who is required to register and is registered with the Ministry of Health;
  - (c) “medical services” involve the diagnosis, treatment, prevention, or amelioration of a disease, including the

promotion of dental health and mental health, and may involve nursing and personal care, and assistance with daily living activities to meet the needs of a resident or patient.

- (2) Medical or dental services are exempt under section 6(2)(a) of the Act, whether provided with or without charge and whether paid for by the patient or resident, the government, an insurer, an employer, or any third party, but only if the medical or dental services meet the following conditions:
  - (a) that they are rendered in a qualified medical facility or by a qualified medical professional, or both; and
  - (b) that they qualify as exempt medical services in this regulation.
- (3) For the purposes of subregulation (2), exempt medical services include the following goods or services rendered incidental to medical services under subregulation (1)(c):
  - (a) medicine and drugs that are issued or administered by a qualified medical professional;
  - (b) laboratory, x-ray, or other diagnostic services;
  - (c) medical devices as defined in subregulation (4) that are provided as part of the supply of medical services;
  - (d) the use of operating rooms, case rooms, or anesthetic facilities, including necessary equipment or supplies;
  - (e) the use of radiotherapy, physiotherapy, or occupational therapy facilities;
  - (f) accommodation and meals (except in a restaurant or cafeteria available to persons other than patients or residents) provided to patients or residents in the course of receiving medical services;
  - (g) services rendered by the staff of a qualified medical facility (including orderlies or technicians);
  - (h) dental, periodontal, and endodontal services, but not for cosmetic reasons other than in connection with a disease, trauma, or congenital deformity;
  - (i) cosmetic surgery required to alter a defect in appearance caused by disease, trauma, or congenital deformity; and
  - (j) psychoanalytic services.
- (4) For the purposes of subregulation (3)(c), medical devices are devices that are supplied to a resident or patient in a qualified medical facility, supplied to a qualified medical facility, or supplied on prescription to a patient in connection with the rendition of

qualified medical services, including –

- (a) a respiratory or heart monitor, dialysis machine, or feeding utensil for use by an individual with a disability;
- (b) a medical or surgical prosthesis or orthopedic aid; and
- (c) medical or surgical equipment supplied to a qualified medical facility, or the sale or rental of such equipment to a patient or resident.

### **Educational Services**

18. (1) For the purposes of this regulation, a “qualified educational institution” is a registered:

- (a) pre-primary, primary, or secondary school;
  - (b) college or university; or  
institution established to promote adult education, vocational training, technical education, or education or training of physically or mentally handicapped persons.
- (2) Education services are exempt under section 6(2)(a) of the Act if the services meet the following conditions:
- (a) that they are specified as exempt in these Regulations; and
  - (b) that they are provided to students by a qualified educational institution.
- (3) An educational institution referred to in subregulation (1) is a qualified institution, whether it is a private school operating on a for-profit basis, or a non-profit organization, church, charity, or department of government.
- (4) An educational institution referred to in subregulation (1) is a qualified institution only if the institution is registered by the Ministry of Education or is being evaluated for registration by the Ministry of Education at the time the services are rendered.
- (5) The following categories of services rendered by a qualified educational institution are exempt education services:
- (a) subject to this regulation, courses of instruction provided to its students;
  - (b) qualified meal plans, and other associated goods or services provided in kind as part of its education program;
  - (c) instruction in, or the administration of examinations to its students; and



- (d) instruction or tutoring related to a qualified course.
- (6) For purposes of subregulation (5), school bus transportation to and from pre-primary, primary, or secondary schools is an exempt education service if it is provided by the school authority, but not if provided by a private company under contract with the school authority.
- (7) For purposes of subregulation (5), the exemption for education services include –
- (a) charges for tuition, facilities, and curriculum-related activities and instruction;
  - (b) compulsory levies for facilities that directly relate to the supply of exempt educational services;
  - (c) student council fees, athletic fees, and other mandatory fees related to course registration;
  - (d) charges for reports, library services, identity cards, record keeping and other administrative services provided by the educational institution and directly related to the supply of education courses;
  - (e) charges by a qualified educational institution for books and other course materials, for the rental of curriculum-related goods by the supplier of the education, and for field trips directly related to the curriculum if not predominantly recreational; and
  - (f) student accommodations for a long-term that are supplied by the qualified educational institution.
- (8) For purposes of subregulation (7), qualified facility charges include charges for buildings, grounds, libraries, and computer, science and other laboratories.
- (9) For purposes of subregulation (5), the exemption for education services does not include –
- (a) courses in sports, games, video recording, photography or other hobbies or recreational pursuits, unless they are taken as part of a degree- or diploma-granting program;
  - (b) courses, such as picture framing, cooking, and personal investment, that are designed to improve knowledge for personal purposes; and
  - (c) music, dance, and similar lessons that are not part of a school curriculum.
- (10) For the purposes of subregulation (5), the exemption for education

services rendered by a pre-primary, primary, or secondary school include fees or charges for –

- (a) basic instruction, including special education courses;
- (b) a pre-school or after-school program operated by the school;
- (c) the use of school musical instruments or sports equipment;
- (c) services rendered by students or their teachers as part of the instructional program; and
- (d) student attendance at a school play, dance, field trip, or other school-sanctioned activity primarily for the students.

(11) For the purposes of subregulation (5), the exemption for education services rendered by a university or college includes courses that qualify for credit toward a degree or diploma, whether or not the student is pursuing a degree or diploma program.

(12) For the purposes of subregulation (5), the exemption for adult education, vocational training, technical education, and education or training of physically or mentally handicapped persons includes charges for –

- (a) adult education courses leading to a degree or diploma or courses that are likely to enhance employment-related skills of the students enrolled in the courses;
- (b) courses of study at a vocational school that develop or enhance a student's occupational skills;
- (c) courses leading to, or to maintain or upgrade, a professional or trade accreditation or designation recognized by the appropriate government accrediting agency; and
- (d) a certificate or examination in a course or program for accreditation or designation.

(13) For the purposes of subregulation (12), a course enhances employment-related skills if the course objectives specify those skills that students will acquire, and there is a reasonable expectation that the skills taught will be used by the students in their employment, businesses, professions or trades, rather than for recreational, hobby, artistic, or cultural purposes.

(14) For purposes of this regulation, the exemption for education services does not include –

- (a) charges for the rental of facilities by an educational institution to an outside group;
- (b) charges for admission to school athletic events open to the general public;
- (c) commissions and other fees earned from the placement of

- coin-operated machines on an educational institution's property; and
- (d) charges for non-course-related material, such as clothing with the school logo.

### **Specified Imports from the Republic of South Africa**

19. For purposes of Schedule II, paragraph (4) of the Act, the import of goods by an individual may be exempt from Value Added Tax if the conditions in that paragraph are met and Value Added Tax was imposed on the goods by the Republic of South Africa and not rebated on export, but only if the total value of the imported goods for any one day does not exceed M250, **other than where the goods enter Lesotho through the designated borders of Maseru, Caledon's Spoort, Maputsoe, Van Rooyen's Gate, and Qacha's Nek, in which case the total value of the imported goods for any one day shall not exceed M100.**

### **Other exemptions**

20. For the purposes of section 6(2)(f) of the Act, a supply by an amateur sporting organization of sporting activities, where such activities are deemed for purposes of the Act to be non-professional, where the Commissioner General deems them to be so, is exempt and such will be deemed to be non-professional

–

- (a) where no remuneration, bonus or lump sum, but which does not include a monetary prize, is allowed the players;
- (b) where no loan sought by a player from a financial institution is guaranteed by such sporting organization, with which the player is listed;
- (c) where no activity, behaviour, association or relationship with such organization may be construed by the Commissioner General as professional:

Provided that:

- (i) a sporting organization shall first apply for a Value Added Tax certificate granted by the Commissioner General in order to qualify for the exemption;
- (ii) a sporting organization submits to the Commissioner General audited accounts within 2 months after the financial year end.

- (2) For the purposes of section 6(2)(g) of the Act, cultural activities and services are exempt:

Provided –

- (a) that an organization submits audited accounts and statements to the Commissioner General for him to determine whether such activity is a non-profit making supply or service. It may be a once-off supply or service, or a regular supply or service;
  - (b) that such audited accounts are filed with the Commissioner General within 2 months from the date of the event;
  - (c) that where it is a regular supply, that audited accounts must be submitted within 2 months from the financial year end.
- (3) For purposes of section 6(2)(h) of the Act a supply of goods and services in a charity arrangement is exempt:

Provided the Commissioner General is satisfied that the department, body or organization making such arrangement is not masquerading as a charity organizer for purposes of tax evasion, whereby if it were so determined, such organizer would have committed an offence and be held liable under Part VII, Division I and II of the Act.

## **Part XI - Zero ratings**

### **Zero ratings**

21. (1) For purposes of section 6A of the Act, basic food supplies listed in Schedule IV are zero rated.
- (2) Maize meal (Tariff Heading 1102.20) is zero rated, where it is graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal.
  - (3) Maize (Tariff Heading 1005.00) is zero rated, where it is dried maize or dried seed of the plants *zea mays indurate* and *zea mays inderata* or any one or more crossings thereof of a mixture of the dried seed of such plants, but excluding pop corn (*zea mays everta*) or green mealies for human consumption.

(4) Beans (Tariff Heading 0713.00) are zero rated, provided they are dried peas, whole split, or crushed or is in powder form, but not further prepared or processed, or where packaged as seed.

(5) Agricultural input, viz. fertilizers (chapter 31) seeds (chapter 7/10) and pesticides (3808.00) zero rated; where fertilizers constitutes 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; where pesticides consists of 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;

(c) where seeds are in form used for cultivation.

(6) Paraffin (Tariff Heading 2710.00) intended for cooking, illuminating and heating is zero rated, provided it is not mixed or blended with any other substance for any purpose other than cooking, illuminating or heating.

(7) Milk (Tariff Headings 041.10, 0402.2; 0403.90) intended for domestic consumption is zero rated.

(8) Bread (Tariff Heading 1905.90) intended for domestic consumption is zero rated.

(9) Peas (Tariff Heading 07.13.00) are zero rated provided they are dried peas, whole, split or crushed or in powder form, but not further prepared or processed, canned, or frozen, or packaged as seed.

(10) Animal feeds (Tariff heading 12.14.00) are zero rated provided they are goods which consist of:-

(i) any substance obtained by a process of crushing, gritting or grinding, or by addition to any substance or the removal there from any ingredient; or

(ii) any condimental food, vitamin or mineral substance which possesses or is alleged to possess nutritive properties; or

- (iii) any bone product; or
- (iv) any maize product
- (11) Lentils (Tariff Heading 07.13.40) provided they are dried, shelled or not skinned or split.
- (12) Sorghum meal (Tariff Heading 1102.90.30) is zero rated.
- (13) Unmalted sorghum grain (Tariff Heading 1007.00) is zero rated, provided it is of those varieties of sorghum which are known as grain sorghum and whose grain may be used as cereals for human consumption and includes sorghums such as *caffrorum* (kafir), *cernuum* (white durra), *durra* (brown durra) and *nervosum* (kaoliang).
- (14) Wheat grain (tariff heading 10.01) is zero rated.
- (15) Wheat flour (tariff heading 11.01.00) is zero rated.

## **Part XII - Used goods**

### **Used goods**

22 (1) Where used goods are sold by a second hand dealer (who bought the goods from a private person or an estate of a deceased person), Value Added Tax shall not be charged on the same goods, and such re-seller shall not show any amount of Value Added Tax, or other statements from which Value Added Tax may be calculated.

(2) Where one is a dealer or supplier of used goods in retail business, he shall be liable to pay Value Added Tax only on the profit, and not on the sale price.

(3) Where a resaler of used goods is determined as being one who does not have in his possession, or who did not receive an invoice including Value Added Tax upon his purchase of the goods, he shall be liable to Value Added Tax.

(4) Where for the purposes of the Act and these Regulations a re-saler has –

- (a) purchased the goods from a non-Value Added Tax registered person; or

(b) purchased the goods from another re-saler who is covered by these Regulations,

he shall be liable to Value Added Tax.

### **Taxable value of used goods**

23. (1) For purposes of this regulation, “Used goods” are movable items which can be re-used as they are or after repair in such a manner as they are deemed to have kept their identity. They are exclusive to precious stones, precious metals, antiques and collectors’ items.

(2) The taxable value on the supply of used goods is calculated on the difference between sales price and purchase price.

(3) Where taxable value is so determined, the retailer, shall not declare or show VAT in such retailer’s invoice.

(4) Where the purchase price exceeds the sales price, these special regulations shall not apply and the purported “loss” shall not be deducted in future “profits”.

(5) Where a resaler invokes these special regulation, such resaler must issue special invoices which clearly stipulate that such sale is being carried out under such regulations:

Provided that the buyer of such goods is under an obligation to keep special accounts for the purchases and sales under these Regulations.

## **Part XIII – Imports**

### **Imports**

24. Services supplied from a place of business outside Lesotho by electronic means as per section 11(b)(i)(ii) of the Act, are considered as supplied in Lesotho if the supplier has an agency, branch, a physical address or a cash – receiving point in Lesotho, or operated for by a Lesotho resident approved by the Lesotho Authorities, then such supplier shall register for Value Added Tax whether such supplier makes an annual turn-over of M500,000 or not, and as such, shall be liable to VAT in Lesotho.

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**Dr T.T. THAHANE**

**Minister of Finance and Development Planning**

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Note

1. Value Added Tax Act No. 9 of 2001.