

VALUE ADDED TAX ACT 1997

With Explanatory Notes

Consolidated to 1 January 2006

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VALUE ADDED TAX

ANALYSIS

Title	
1.	Short Title, and commencement
	<u>PART I</u>
	<u>INTERPRETATION</u>
2.	Interpretation
3.	Extended meaning of term "supply"
4.	Meaning of term "taxable activity"
5.	Time of supply
6.	Value of supply
7.	Place of supply
8.	Place where supplier operates
9.	Application of the Act to the Crown
	<u>PART II</u>
	<u>IMPOSITION OF THE TAX</u>
10.	Imposition of value added tax
11.	Rates of tax
	<u>PART III</u>
	<u>REGISTRATION</u>
12.	Registration of persons making taxable supplies
13.	Cancellation of registration
14.	Registered person to notify change of Status
	<u>PART IV</u>
	<u>RETURNS AND PAYMENTS</u>
15.	Returns
15A.	Accounting Basis
15B.	Tax payable or refund where change in accounting basis
16.	Calculation of tax payable or refund due
17.	Payment of tax
17A.	Adjustments for changes of use
18.	Tax invoices
19.	Credit and debit notes
20.	Bad debt
	<u>PART V</u>
	<u>ASSESSMENT OF TAX</u>
21.	Assessment of tax
22.	Correctness of assessments
	<u>PART VI</u>
	<u>OBJECTIONS</u>
23.	Objections
	<u>PART VII</u>
	<u>RECOVERY OF TAX</u>
24.	Additional taxes for non-compliance or evasion
25.	Payment and recovery of tax
26.	Distrain for unpaid tax
27.	Priority for tax
28.	Statute of limitation
	<u>PART VIII</u>
	<u>REFUNDS AND RELIEF</u>
29.	Refunds of excess credits
30.	Interest on refunds of excess credits
31.	Refund of tax overpaid
32.	Relief from tax
	<u>PART IX</u>
	<u>SPECIAL CASES</u>
33.	Groups of companies
34.	Unincorporated bodies
35.	Agents and auctioneers
36.	Personal representatives, liquidators, receivers etc
37.	Agents in the case of absentees
38.	Goods and services acquired before incorporation

PART X

OFFENCES AND PENALTIES

- 39. Offences
- 40. Officers and employees of corporate bodies
- 41. Proceedings

PART XI

GENERAL PROVISIONS

- 42. Keeping of records
- 43. Agreement to defeat the intention and application of Act to be void
- 44. Liability for tax payable by company left with insufficient assets
- 45. Inspection of documents, inquiry
- 46. Limitation period
- 47. Regulations
- 47A. Tax to be included in prices

PART XII

TRANSITIONAL PROVISIONS AND

REPEALS

- 48. Effect on supply price of 1997 introduction of tax

- 49. Effect on trading stock or stationery held of 1997 introduction of tax
- 50. Effect on turnover tax liabilities of 1997 introduction of tax
- 51. Registration of persons liable to be registered on 1 July 1997
- 52. Supplies prior to 1 July 1997
- 53. Repeals and savings
- 54. Consequential amendments to the Customs Act 1913

FIRST SCHEDULE

Exempt supplies

SECOND SCHEDULE

Exempt importations

THIRD SCHEDULE

Zero-rated supplies

A BILL INTITULED

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

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short title and commencement - (1) The Act may be cited as the Value Added Tax Act 1997.
(2) This Act shall come into force on 1 July 1997.

PART I **INTERPRETATION**

2. Interpretation - 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 (as defined in the Hire Purchase Act 1986):

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

"Collector" means the Treasurer appointed under the Income Tax Act 1997:

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

"Credit note" means a document provided under section 19(3)(a) of this Act:

"Customs duty" means customs import duty imposed under the Customs Tariff Act 1980:

"Debit note" means a document provided under section 19(3)(b) of this Act:

"Department" means the Revenue Management Division of the Ministry of Finance and Economic Management:

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

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

"Import levy" means an import levy imposed under the Import Levy Act 1972:

"Minister" means a Minister of the Crown:

"Money" includes currency, promissory notes and bills of exchange of the Cook Islands 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 the Cook Islands 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 and an instrument of the Crown:

"Prescribed form" for the purposes of sections 15, 15A, 18, 19 and 51 is a form as prescribed from time to time by the Collector.

"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 the Cook Islands" means

- (a) A person who is resident in the Cook Islands under section 82 of the Income Tax Act 1997:
- (b) In the case of an unincorporated body of persons, that body if it has its centre of administrative management in the Cook Islands:

"Second hand goods" does not include livestock:

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

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

"Tax file number" means any identification number that has been allocated to a person by the Collector for the purposes generally of this Act or the Income Tax Act 1997:

"Tax invoice" means a document provided under section 18:

"Taxable supply" means a supply of goods or services in the Cook Islands which is charged with value added tax under Part 11, including where the rate of tax is 0%:

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

"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 Crown or an instrument of the Crown.

3. Extended meaning of term "supply" - (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) Except in the case of any appropriation by Parliament to any instrument of the Crown, if a payment in the nature of a grant or subsidy is made by the Crown 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 the Cook Islands 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; and

(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 Tattslotto or another 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.

History: Section 3(2) amended by No.2 of 2001 with application from 1 July 2001.

4. Meaning of the term "taxable activity" - (1) For the purposes of this Act, the term "taxable activity" means any activity (person, 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 Crown or an instrument of the Crown; 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) The provision of employment services by a natural person to an employer under a contract of employment; 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.

5. Time of supply - (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), it is to be treated as taking place at the time a casino count takes place. For the 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 that 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,

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).

(6) If goods or services are supplied progressively or periodically under an agreement or Act which provides for consideration in installments by reference to the progressive or periodic supplies, the goods or services are to be treated as being supplied successively, when and to the extent that a payment is due, a payment is reserved or a tax invoice is issued relating only to that payment (whichever is the earliest).

(7) If goods or services are supplied under a hire purchase agreement (as defined in the Hire Purchase Act 1986), the time of supply is the time the agreement is entered into.

(8) If goods are delivered by a supplier at a time when the consideration for the supply cannot finally be determined, the supply is to be treated as taking place successively when and to the extent that a payment is due, a payment is received or a tax invoice relating only to the payment is issued (whichever is the earliest).

6. Value of supply - (1) Subject to this section, for the purposes of this Act, the value of a supply of goods or services will be the aggregate of

- (a) The consideration in money for the supply, if any; and
- (b) The open market value of the consideration for the supply which is not in money, if any

reduced by the amount of value added tax charged to the supplier in respect of the supply.

(2) If the parties to a supply are related (by blood, marriage or ownership) and the relationship has resulted in a reduction in the consideration for the supply to an amount below the open market value, the consideration will be deemed to be equal to the open market value for the supply.

(3) Subsection (2) of this section will not apply to any supply to a person who is entitled under section 16(4) to a deduction for the whole of the tax charged in respect of the supply.

(4) If goods or services are deemed by section 3(3) to be supplied on cessation of registration, the consideration in money for the supply is to be treated as being the lesser of

- (a) The cost of the goods or services (inclusive of any tax charged in respect of the acquisition) to the supplier; and
- (b) The open market value of the supply.

(5) If a supply of second-hand goods to a non-resident is not zero-rated due only to the proviso to paragraph 1 of the Third Schedule, the consideration in money for the supply will be treated as being equal to the purchase price of the goods to the supplier.

(6) If a supply is treated as being made by a casino operator under section 3(5), the consideration in money for the supply will be equal to the amount paid to purchase or participate less any amount paid out by the casino as winnings.

(7) If a supply of services is deemed to be made under section 3(5), (which relates to games of chance), the consideration in money for the supply will be treated as being the portion of the amount paid to participate as is equal to the portion of the total proceeds of the game which is left after deducting all amounts paid out as prizes.

(8) If a right to receive goods or services for a monetary value stated on a token, stamp (not being a postage stamp) or voucher is granted for consideration in money, the supply will be disregarded except to the extent (if any) that the consideration exceeds the monetary value.

(9) If a taxable supply is not the only matter to which a consideration relates, the supply will be treated as being for such consideration as is properly attributed to the taxable supply.

(10) Subject to the preceding subsections of this section, if a supply is made for no consideration, the value of the supply is nil.

7. Place of supply - (1) The provisions of this section apply to determine the place of supply of goods or services for the purposes of this Act.

(2) If a supply of goods does not involve the removal of the goods from or to the Cook Islands, -

(a) The goods will be treated as being supplied in the Cook Islands if the goods are physically in the Cook Islands at the time of supply; and

(b) The goods will be treated as being supplied outside the Cook Islands in any other case.

(3) If a supply of goods does involve the removal of the goods

(a) From the Cook Islands, the goods will be treated as being supplied in the Cook Islands:

(b) To the Cook Islands, the goods will be treated as being supplied outside the Cook Islands.

(4) A supply of services will be treated as being made

(a) In the Cook Islands if the supplier operates in the Cook Islands in respect of the supply:

(b) Outside the Cook Islands if the supplier operates outside the Cook Islands in respect of the supply.

8. Place where supplier operates - A supplier will be treated as operating in the Cook Islands in respect of a supply if the supplier -

(a) Has a branch, agency or other fixed establishment only in the Cook Islands and not elsewhere; or

(b) Has no such fixed establishment anywhere but is resident in the Cook Islands; or "

(c) Has such a fixed establishment both in the Cook Islands and elsewhere but is making the supply in the course of carrying on activities through the fixed establishment in the Cook Islands.

9. Application of the Act to the Crown - (1) Subject to this section, this Act will apply to the Crown, or an agency of the Crown, if liable to be a registered person and carrying on a taxable activity.

(2) Each instrument or agency of the Crown will be treated as a separate person for the purposes of liability to tax under this Act.

PART II
IMPOSITION OF THE TAX

10. Imposition of value added tax - (1) Subject to the provisions of this Act, there shall be assessed levied and paid for the use of the Crown a tax herein referred to as value added tax.

- (2) Subject to the provisions of this Act, value added tax will be payable by
 - (a) Any registered person on account of any supply of goods or services made in the Cook Islands in the course of carrying on a taxable activity, with the amount of tax measured by reference to the value of the supply; and
 - (b) Any person importing goods into the Cook Islands, with the amount of tax measured by reference to the aggregate of the value of the goods for the purposes of customs duty determined under the Customs Tariff Act 1980 and the items specified in section 11 (b).
- (3) Notwithstanding subsection (2), no value added tax will be payable
 - (a) In respect of a supply of goods or services in the Cook Islands which is one of the exempt supplies listed in the First Schedule, unless the supply would (but for this paragraph) be subject to tax at a 0% rate under section 11(2):
 - (b) In respect of an importation of goods into the Cook Islands which is one of the exempt importations listed in the Second Schedule.
- (4) The provisions of Parts V, VI, VII and VIII are not applicable to tax payable on importation under section 19(2)(b) and subject to subsection (5) that tax will be collected and paid as if it were a customs duty levied on the importation of goods under the Customs Act 1913.
- (5) Subsection (4) will apply only in respect of goods that are
 - (a) imported by the same person as the person who exported them from the Cook Islands if, at the time of their export from the Cook Islands, those goods were not
 - (i) a supply of goods charged with tax at the rate of zero percent pursuant to section 11; or
 - (ii) a supply of goods, made before 1 July 1997, that would have been charged with tax at the rate of zero percent pursuant to section 11 if the supply of those goods had taken place on 1 July 1997; and
 - (b) for the purposes of sections 147 to 157 of the Customs Act 1913, imported by persons that are not registered persons.
- (6) This section will apply in respect of -
 - (a) Any supply of goods or services made on or after 1 July 1997; and
 - (b) Any goods imported into the Cook Islands and entered through customs on or after 1 July 1997.

11. Rates of tax - (1) The rate of value added tax will be 12.5% of -

- (a) Except in the case of importation, the value of the supply:
- (b) In the case of importation, the aggregate of -
 - (i) The value of the goods for the purposes of customs duty; and
 - (ii) The amounts of import levy and customs duty payable in respect of the goods under the Customs Tariff Act 1980 and excise duty payable in respect of the goods under the Customs Act 1913; and
 - (iii) The amount paid or payable to transport the goods to the Cook Islands and to insure the goods for such transport,

unless subsection (2) applies.

(2) Notwithstanding subsection (1), the rate of tax will be 0% of the value of the supply in the case of a supply in the Cook Islands by a registered person which is one of the zero-rated supplies listed in the Third Schedule.

PART III
REGISTRATION

12. Registration of persons making taxable supplies - (1) Subject to this section, every person who carries on a taxable activity and is not already registered becomes liable to be registered under this Act -

- (a) At the end of any month if the total value of supplies made in the Cook Islands by the person in the year which ends with that end of that month in the course of carrying on taxable activities has exceeded \$30,000 (or such other amount as the Queen's Representative may from time to time, by Order in Executive Council, stipulate);
- (b) At the start of any month if there are reasonable grounds for believing that the total value of supplies made in the Cook Islands by the person in the year which starts at that start of that month in the course of carrying on taxable activities will exceed the registration threshold amount.

(2) In determining whether the total value of supplies exceeds the registration threshold amount -

- (a) The value of exempt supplies will be disregarded; and
- (b) The value of supplies will be disregarded if and to the extent that the Collector is satisfied that the supply is solely as a consequence of -
 - (i) Any cessation of, or substantial and permanent reduction in the size or scale of, a taxable activity carried on by the person; or
 - (ii) The replacement of any plant or other capital asset used in any taxable activity carried on by the person.

(3) Every person who, under subsection (1) becomes liable to be registered must apply to the Collector in the form prescribed by the Collector for registration under this Act within 21 days of becoming so liable and must provide the Collector with such other information as the Collector may consider relevant.

(4) Notwithstanding subsections (1) and (3), every person who satisfies the Collector that -

- (a) The person is carrying on a taxable activity; or
- (b) The person intends to carry on a taxable activity from a specified date and;
- (c) The value of supplies to be made by the person in the course of carrying on the taxable activities is likely to exceed \$15,000 for the year from the date of the application or from the specified date, -

may apply to the Collector in the form prescribed by the Collector for registration under this Act, and must provide the Collector with such other information as the Collector may consider relevant.

(5) If a person has applied for registration under subsection (3) or subsection (4) and the Collector is satisfied that the person is eligible to be registered under this Act, the person shall be registered for the purposes of this Act with effect from such date as the Collector determines.

(6) If a person has not applied for registration under subsection (3) and the Collector is satisfied that the person is liable to be registered under this Act, the person will be deemed to be registered for the purposes of this Act with effect from the date on which the person first became liable to be registered under this Act (unless the Collector determines that it would be equitable for the person to be deemed to be registered from a later date stipulated by the Collector).

(7) Section 6 applies to determine the value of supplies for the purposes of this section except that no regard will be had to any amount of consideration payable in order to recover tax charged in respect of the supplies.

13. Cancellation of registration - (1) A registered person will cease to be liable to be registered at any time if the total value of supplies to be made in the Cook Islands by the person in the year which starts at that time will be below the registration threshold amount.

(2) If a registered person ceases to be liable to be registered, the person may request the Collector in writing to cancel the person's registration.

(3) If the Collector is satisfied that a registered person who has applied for cancellation is no longer liable to be registered, the Collector will cancel the person's registration with effect from the last day of the monthly return period following the period in which the application for cancellation was made (or with effect from such other date as the Collector may stipulate).

(4) If the Collector is satisfied that a registered person is no longer liable or eligible to be registered and the person has not applied for cancellation, the Collector may nevertheless cancel the person's registration with effect from the last day of the monthly return period in which the Collector gives notice to the person of the cancellation.

(5) The obligation 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 registered person will not be affected by the fact that the person ceases to be a registered person or by the fact that the Collector has cancelled the person's registration.

History: Section 13(4) amended by No.2 of 2001 with application from 1 July 2001.

14. Registered person to notify change of status - Every registered person shall within 21 days notify the Collector in writing of -

- (a) any change in the name, address or nature of the principal taxable activity or activities of the registered person;
- (b) any change in the address from which, or the name in which, a taxable activity is carried on by the registered person;
- (c) any change where the registered person, being a member of a group of companies under section 33 of this Act, ceases to be eligible to be a member of the group.

PART IV **RETURNS AND PAYMENTS**

15. Returns - (1) Every registered person will furnish to the Collector, in the prescribed form, a tax return for each calendar month -

- (a) By the 20th day of the following month, unless that day is not a working day in which case the return must be furnished by the working day which immediately succeeds the 20th day; and
- (b) Showing the amount of tax payable in respect of the month as calculated under section 16.

(2) If goods are treated as being supplied under section 3(1) (which relates to a creditor selling goods of a registered person in satisfaction of a debt), the creditor selling the goods (whether or not a registered person) must furnish a special return, in the prescribed form, by the 20th day of the month following the month in which the supply occurs and

- (a) The creditor and the debtor must exclude the supply and any tax charged on the supply from any other return; and
- (b) The tax charged will be treated as tax payable under this Act by the creditor.

(3) In addition to the returns specified in subsections (1) and (2), the Collector may require any person to furnish a return to the Collector, in the prescribed form, at any time for the purposes of this Act.

(4) The Collector, for good cause shown, may extend the time for making the return on the application of any registered person and grant such reasonable additional time within which to make the same as may, by the Collector, be deemed advisable.

15A. Accounting Basis - (1) A registered person may elect to account for tax payable on either an invoice basis or a payments basis and shall notify the Collector of the election in the prescribed form.

(2) If a registered person fails to elect a basis for accounting for tax payable under subsection (1), the registered person shall be deemed to have elected to account for tax payable on a payments basis.

(3) The Collector may, on application in writing by a taxpayer, approve a change in the basis for accounting for tax payable by the registered person and the change shall take effect from the beginning of the next month that follows the receipt of the application by the Collector or of such later month as the Collector approves.

(4) Where a registered person changes the basis for accounting for tax payable under subsection (3), the registered person shall:

- (a) Prepare a list of creditors of the registered person in relation to that person's taxable activity, showing the amounts due by that person as at the last day of the month preceding that in which the change takes effect;
- (b) Prepare a list of debtors of the registered person in relation to that person's taxable activity, showing the amounts due to that person as at the last day of the month preceding that in which the change takes effect.

(5) The particulars required to be furnished under subsection (4) shall be furnished to the Collector not later than the last day for furnishing a return pursuant to section 15 for the month preceding that in which the change takes effect.

15B. Tax payable or refund where change in accounting basis - (1) Every registered person whose accounting basis changes pursuant to section 15A shall, not later than the last day allowed under subsection 15A(5) for furnishing particulars in respect of the change, pay the Collector the tax payable, if any, as determined pursuant to this section.

(2) Where a registered person changes from an invoice basis to a payments basis of accounting, the tax payable shall be an amount determined in accordance with the following formula:

a-b

where -

a is the aggregate amount able to be deducted pursuant to section 16(4) in relation to the amounts due that are required to be shown in the list of creditors required to be prepared by the person under section 15A; and

b is the aggregate amount of the tax payable pursuant to section 16(3) in relation to the amounts due that are required to be shown in the list of debtors to be prepared by the person under section 15A.

(3) Where a registered person changes from a payments basis to an invoice basis of accounting, the tax payable shall be an amount determined in accordance with the following formula:

a-b

where -

a is the aggregate amount of the tax payable pursuant to section 16(3) in relation to the amounts due that are required to be shown in the list of debtors to be prepared by the person under section 15A; and

b is the aggregate amount able to be deducted pursuant to section 16(4) in relation to the amounts due that are required to be shown in the list of creditors to be prepared by the person under section 15A.

(4) If the amount determined under subsection (2) or (3) is a negative amount, the amount will be refunded by the Collector to the registered person under section 29.

16. Calculation of tax payable or refund due - (1) Every registered person will calculate the amount of tax payable by, or refund due to, the registered person in respect of each monthly return period under the rules in this section.

- (2) The tax payable or refund amount is calculated by
 - (a) Adding the amounts referred to in subsection (3); and
 - (b) Deducting the amounts referred to in subsection (4) but subject to subsections (5), (6), (7), and (10).
- (3) The amounts to be added are -
 - (a) In respect of supplies made by the registered person -
 - (i) If the registered person accounts for tax on an invoice basis, all amounts of tax payable in respect of supplies where the time of supply falls during the month; and
 - (ii) If the registered person accounts for tax on a payments basis, all amounts of tax payable in respect of supplies to the extent that payment for the supply has been received during the month; and
 - (b) All amounts to be added under section 19(2) or (7) (which relate to subsequent period adjustments) or section 20(2) (which relates to recovered bad debts).
- (4) The amounts able to be deducted are
 - (a) All amounts of tax payable by other registered persons in respect of supplies made to the first registered person
 - (i) If the first registered person accounts for tax on an invoice basis, where the time of supply falls during the month; and
 - (ii) If the first registered person accounts for tax on a payments basis, to the extent that a payment in respect of the supply has been made during the month,but subject to subsections (5), (6) and (7); and
 - (b) All amounts of tax payable under section 10(2)(b) by the registered person in respect of the importation of goods
 - (i) If the registered person accounts for tax on an invoice basis, where the tax is invoiced by the Collector or paid (whichever is the earlier) during the month; and
 - (ii) If the registered person accounts for tax on a payments basis, to the extent that payment of the tax is made during the month, -but subject to subsections (5) and (6); and
 - (c) Amounts equal to one-ninth of the consideration in money for all supplies of secondhand goods to the registered person
 - (i) If the registered person accounts for tax on an invoice basis, the time of supply falls during the month; and
 - (ii) If the registered person accounts for tax on payments basis, to the extent the consideration is paid during the month; and
 - (iii) The place of supply is in the Cook Islands; and
 - (iv) The goods are not supplied by a supplier who is not resident in the Cook Islands and who has previously supplied the goods to a registered person who has entered the goods for home consumption under the Customs Act 1913,and subject to subsections (5), (6), and (10) of this section; and
 - (d) All amounts deductible under section 19(2) or (8) (which relate to subsequent period adjustments) or section 20(1) (which relates to bad debts); and
 - (e) Amounts equal to one-ninth of any payments made during the month by the registered person to indemnify another person under a contract of

insurance but only if

- (i) The supply of the contract of insurance is a taxable supply; and
 - (ii) The payment is not in respect of the supply of goods or services to the registered person or importation of goods by the registered person; and
 - (iii) The supply of the contract of insurance was not subject to tax at the 0% rate in any case where the other person is, at the time of payment, neither a registered person nor resident in the Cook Islands; and
 - (iv) The payment does not result from a supply of goods or services to the other person where the place of supply is outside the Cook Islands; and
 - (v) The payment is not to indemnify the other person for loss of employment services earnings.
- (5) An amount to which subsection (4)(a), (b) or (c) refers
- (a) Will be wholly deductible if the goods or services are acquired by the registered person wholly for the purposes of making taxable supplies:
 - (b) If the goods or services are acquired by the registered person partially for the purposes of making taxable supplies and are not a car or pick-up truck, will be deductible only to the extent that the goods or services are acquired for the purposes of making taxable supplies:
 - (c) If the goods are a car or pick-up truck acquired by the registered person partially for the purposes of making taxable supplies, will be deductible only to the extent which the Collector, by notice in writing to the registered person, considers equitable.
- (6) In a case to which subsection (5)(b) of this section applies, the extent to which goods or services are acquired for the purposes of making taxable supplies will be determined
- (a) Having regard only to the circumstances existing in the month of acquisition or such longer period as the Collector considers equitable; and
 - (b) By the Collector, if the extent cannot be determined otherwise.
- (7) No deduction will be made for
- (a) An amount referred to in subsection (4)(a) or (d) unless
 - (i) A tax invoice provided under section 18 or debit or credit note provided under section 19 in respect of the supply is held by the registered person when the return is filed; or
 - (ii) None of a tax invoice, credit note or debit note is required to be provided in respect of the supply:
 - (b) An amount referred to in subsection (4)(c) unless the registered person keeps the records referred to in section 18(5):
 - (c) An amount referred to in subsection (4)(c) to the extent to which
 - (i) The supplier of the secondhand goods was a person related (by blood, marriage or ownership) to the registered person; and
 - (ii) Consideration for the supply exceeded the open market value of the supply.
- (8) A deduction in calculating the tax payable or refund due for a monthly return period will also be available if and to the extent that
- (a) A deduction would have been available in an earlier return period but for the fact that the registered person did not hold a tax invoice and the registered person holds such a tax invoice at the time the return is filed for the later return period:
 - (b) A deduction could have been claimed in an earlier return period but was not in fact included in a return for an earlier return period.
- (9) If the calculation in a return produces
- (a) A positive amount, the amount will be tax payable by the

- registered person under section 17:
- (b) A negative amount, the amount will be a refund due to the registered person under section 29.
- (10) No deduction shall be made pursuant to paragraph (c) of subsection (4) of this section in respect of any supply where
- (a) A deduction is made pursuant to paragraph (a) of subsection (4) of this section in respect of the supply; or
 - (b) The supply is a sale or transfer of any leasehold or sub-leasehold interest in any land or building by any person who is not a registered person.

History: Section 16(2)(b) and (4)(c) amended and subsection (10) inserted by No.2 of 2001 with application from 1 January 2000.

17. Payment of tax - (1) A registered person must pay any tax payable calculated under section 16 for a monthly return period by the day on which the return must be filed for the period.

(2) Subject to Parts V and VI, the amount of tax payable calculated in a return furnished by the registered person will be conclusively treated as being correct for the purposes of this Act.

(3) All remittances of tax will be made by money, bank draft, cheque, cashier's cheque, money order, or certificate of deposit to the office of the Department nearest to the principal place of business of the registered person, the office of the Department in Rarotonga, or such other place as may be determined by the Minister and notified in the Gazette. The Department will issue its receipts there to the taxpayer and shall pay the moneys into the Cook Islands Government account to be kept and accounted for as provided by law.

17 A. Adjustments for changes of use - (1) Where a registered person applies goods or services principally for the purposes of making taxable supplies that were formerly not so applied, and a deduction hasn't previously been made under section 16 of this Act, a deduction to the extent to which the goods or services are used for the purposes of making taxable supplies will be allowed in the month in which those goods or services are firstly so applied.

(2) For the purposes of subsection (1) the deduction shall be one-ninth of the lesser of

- (a) the current market value of those goods or services; or
- (b) the cost price of those goods or services.

(3) Where a registered person applies goods or services principally for a purpose other than for the making of taxable supplies in respect of which a deduction has previously been made under section 16 of this Act, an amount of tax will become payable in the month in which those goods or services are firstly so applied.

(4) For the purposes of subsection (3) the tax payable shall be one-ninth of the greater of

- (c) the current market value of those goods or services; or
- (d) the cost price of those goods or services.

History: Section 17A inserted by No.12 of 2005 with application from 1 July 2005.

18. Tax invoices - (1) Subject to this section, a registered person making a taxable supply to another registered person must provide the other registered person with a tax invoice within 28 days of the other registered person requesting such a tax invoice.

(2) A recipient of a supply of goods or services who is a registered person may create a document which is treated as a tax invoice provided by the supplier under subsection (1) if

- (a) The document otherwise complies with the requirements of this section; and
- (b) The Collector has previously granted approval for the issue of such a document by such a recipient; and

- (c) The supplier and the recipient agree that the supplier will not issue such a tax invoice; and
- (d) The supplier is provided with a copy of the document; and
- (e) The words "buyer created tax invoice - Inland Revenue Management approved" are contained on the document in a prominent place.
- (3) The tax invoice must contain the particulars specified in the prescribed form.
- (4) A registered person must not provide more than one tax invoice for a taxable supply, unless the other registered person claims to have lost the original, in which case a copy can be provided clearly marked "copy only".
- (5) Notwithstanding the preceding subsections, a registered person is not required to provide a tax invoice if
 - (a) The consideration in money for the supply does not exceed \$50 (or such greater amount as the Queen's Representative may declare by Order-in-Council); or
 - (b) The Collector determines that sufficient records will exist to establish the particulars of the supply and it would be impractical to require issue of a tax invoice.
- (6) A registered person who acquires secondhand goods under a supply which is not a taxable supply must keep records of the supply showing the particulars specified in the prescribed form.
- (7) Subsection (6) will not apply if the consideration in money for the supply does not exceed \$50 (or such greater amount as the Queen's Representative may declare by Order in Council).

19. Credit and debit notes - (1) This section applies if, in relation to a supply of goods and services by a registered person

- (a) The supply has been cancelled; or
 - (b) The nature of the supply has been fundamentally varied or altered; or
 - (c) The agreed consideration for the supply has been altered; or
 - (d) All or part of the goods or services have been returned to the registered person, -
- and the registered person has -
- (e) Provided a tax invoice in respect of the supply which is incorrect; or
 - (f) Furnished a return for the relevant monthly return period which shows an incorrect amount of tax payable or refund due,
- as a result of one or more of these events.

(2) If the registered person has accounted for an incorrect amount of tax payable or refund due, -

- (a) The registered person will make an adjustment in calculating the tax payable or refund due by the registered person in the return for the monthly return period during which it has become apparent that a correction is needed; and
 - (b) If the tax properly payable by the registered person in respect of the supply exceeds the tax accounted for, the excess is to be treated as tax payable in relation to a taxable supply in the later monthly return period and not in the original monthly return period; and
 - (c) If the tax properly payable by the registered person in respect of the supply is less than the tax accounted for, the registered person will make a deduction of the difference under section 16(4) in respect of the later monthly return period.
- (3) If a tax invoice to which subsection (1)(e) refers has been provided and -
- (a) The amount shown as tax payable on the invoice exceeds the correct amount of tax payable, the registered person must provide the recipient with a credit note;
 - (b) The amount shown as tax payable on the invoice is less than the correct

amount payable, the registered person must provide the recipient with a debit note, -
containing the particulars specified in the prescribed form.

(4) A registered person -

- (a) Must not issue more than one credit note or debit note in respect of the same excess or difference; and
- (b) May issue to a recipient a copy of a credit note or debit note if the recipient claims to have lost the original and the copy is clearly marked "copy only"; and
- (c) Is not required to provide a recipient with a credit note if and to the extent that the excess results from a prompt payment discount which is clearly described on the face of the tax invoice.

(5) If a recipient of a supply who is a registered person has created a document which complies with the requirements of this section in respect of a credit note or debit note in respect of that supply which could have been issued by the supplier, the document will be treated as if issued by the supplier under this section if -

- (a) The Collector has granted prior approval to the issue of such a document by such a recipient; and
- (b) The supplier and the recipient have agreed that the supplier will not issue such a credit note or debit note; and
- (c) The supplier does not in fact issue such a credit note or debit note; and
- (d) The supplier is provided with a copy of the credit note or debit note.

(6) A registered person is not required to issue a credit note or debit note if the Collector determines that sufficient records will exist to establish the particulars of the supply and it would be impractical to require issue of a credit note or debit note.

(7) If a recipient, being a registered person, -

- (a) Has been issued with a credit note under this section or otherwise knows that a tax invoice held by the recipient is incorrect as a result of one of the events listed in subsection (1); and
- (b) Has made a deduction under section 16(4) in respect of tax payable on the relevant supply, -

an amount equal to any excess of the tax for which a deduction has been made over the tax actually payable is to be treated as tax payable by the recipient in respect of a taxable supply made by the recipient in the monthly return period in which the credit note or the knowledge is received.

(8) If a recipient, being a registered person, -

- (a) Has been issued with a debit note under this section; and
- (b) Has made a deduction under section 16(4) in respect of the tax payable on the relevant supply, -

an amount equal to any excess of the tax actually payable over the tax for which a deduction has been made is to be treated as a deduction available to the recipient under section 16(4) for the monthly return period in which the debit note is received.

20. Bad debts - (1) If a registered person -

- (a) Has made a taxable supply for consideration in money; and
- (b) Has furnished a return for the monthly return period in which the time of supply fell; and
- (c) Has properly accounted for the tax payable on the supply as required under this Act; and
- (d) Has written off as a bad debt the whole or part of the consideration in money not paid to the registered person

the registered person will make a deduction under section 16(4) for that proportion of the tax payable in respect of the supply which the bad debt represents as a proportion of the total consideration for the supply.

(2) If an amount in respect of which a deduction has been made under subsection (1) is subsequently wholly or partly recovered, the portion of the deduction which is equal to the portion

which the recovered amount is of the bad debt is to be treated as tax payable in respect of a taxable supply by the registered person during the monthly return period in which the recovery takes place.

PART V
ASSESSMENT OF TAX

21. Assessment of tax - (1) The Collector may, from time to time, from returns furnished under this Act or from other information, make assessments of the amount which the Collector considers is the tax payable under this Act by any person.

(2) If -

- (a) A person is not satisfied with a return furnished by the person or by another person under section 15(2) in respect of goods supplied to satisfy a debt owed by the person; and
- (b) The person requests the Collector to alter the return; and
- (c) The Collector has not already made an assessment of the tax payable in respect of the monthly return period to which the return relates, -

the Collector will make an assessment of the amount that the Collector considers is the tax payable under this Act.

(3) Any person assessed by the Collector as being liable to tax will be liable to pay the tax assessed except to the extent that the person establishes on objection that the tax is not payable.

(4) The Collector may from time to time amend an assessment to ensure its correctness.

(5) If an assessment or amended assessment is made under this section, the Collector will -

- (a) Cause notice of the assessment or amended assessment to be given to the person liable to pay the tax; and
- (b) In the case of an assessment in respect of a return under section 15(2), send a copy of the assessment to whichever, of the person whose goods were supplied and the person selling the goods, is not the person assessed, -

but failure to give notice will not invalidate the assessment.

(6) In the case of an assessment not made until, or increased, after the due date of payment of the tax, the Collector will set a new due date for payment being one month after the date of payment but without prejudice to the application of section 24(a)(ii).

(7) For the purposes of Parts IV, VII and X, if

- (a) A person, not being a registered person, supplies goods and services and represents that tax is payable on that supply; or
- (b) A person furnishes, or makes default in furnishing, a return required to be made by the person under section 15(2),

the person will be treated as being a registered person and any tax represented to be payable on the relevant supply by the person will be tax payable by the person.

22. Correctness of assessments

(1) Except in objection proceedings under Part VI, an assessment by the Collector may not be disputed in any court and will be conclusively deemed and taken to be correct and the liability to tax of the person assessed will be determined accordingly.

(2) The validity of an assessment will not be affected by reason that any of the provisions of this Act have not been complied with.

PART VI OBJECTIONS

23. Objections - Any person who has been assessed for value added tax for any month may object against the assessment in the manner and within the time and in all other respects as provided in the case of income tax objections by Part IV of the Income Tax Act 1997, with any necessary modifications.

PART VII RECOVERY OF TAX

24. Additional taxes for non-compliance or evasion - There shall be added to and become part of the tax imposed by this Act and collected as such -

- (a) In the case of any failure to pay any tax required to be paid under this Act by the due date for payment under this Act, there will be added to the tax-
 - (i) Additional tax of 5% of the tax; and
 - (ii) Additional tax made up of a further 1 percent per month calculated and compounded on the amount (being the aggregate of the unpaid tax and the additional tax specified in subparagraph (i)» from time to time outstanding, for each complete month during which that amount remains unpaid;
- (b) If any part of the underpayment of tax required to be shown on any return is due to fraud, there shall be added to the tax an amount of up to 50% of the underpayment as determined by the Collector.

History: Section 24(a)(ii) amended by No.9 of 2002 with application from 13 December 2002.

25. Payment and recovery of tax - The provisions of sections 191 to 201 (both inclusive) of Part XI of the Income Tax Act 1997 relating to the payment and recovery of tax shall apply as if they were incorporated in and formed part of this Act, all references therein to "income tax" being read as references to "value added tax" and with all other necessary modifications.

26. Distrain for unpaid tax - The Collector may levy distress on the goods, other than real property, and chattels of any registered person who refuses or fails to pay any tax payable by the registered person or any other amount recoverable from the registered person under this Act and for the disposal of any such goods or chattels by supply or otherwise to recover the amount of the tax payable by the registered person and any other amount recoverable from the registered person including the costs and expenses of the disposal.

27. Priority for tax - Notwithstanding section 25, if a person has not paid any amount of value added tax as required under this Act, the amount of tax unpaid will, in the application of the assets of the person, rank as follows:

- (a) If the person is an individual, upon the person's bankruptcy or upon the person making an assignment for the benefit of the person's creditors, the amount of the tax payable will rank, in order of priority, immediately after preferential claims for wages or other sums payable to any worker, and in priority to all other claims;
- (b) If the person is a company, upon the liquidation of the company or upon the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company or upon possession being taken on behalf of that debenture holder of the property, the amount of the tax payable will rank immediately after preferential claims for wages or other sums payable

- to any worker, and in priority to all other claims;
- (c) If the person is a body of persons other than a company, upon the appointment of a receiver on behalf of any person under any order by a court, the amount of tax payable will rank, in order of priority, immediately after any preferential claims for wages or other sums payable to any worker, and in priority to any claims of holders of debentures under any floating charge (including a floating charge which has since creation become a fixed or specific charge) created by the body and will be paid accordingly out of any priority comprised in or subject to that charge.

28. Statute of limitation - No statute of limitation shall bar or affect any action or remedy for recovery of tax under this Act.

PART VIII **REFUNDS AND RELIEF**

29. Refunds of excess credits - (1) Subject to this section, if a refund is due to a registered person under section 16, the Collector will refund the amount to the registered person not later than 15 working days following the day on which the return of the registered person was received by the Collector.

(2) Notwithstanding subsection (1), if the Collector is not satisfied with the return made by a registered person and decides that further investigation is required, the Collector may withhold payment of the amount otherwise refundable until the later of the date the investigation is completed and the date the registered person has supplied all information requested.

(3) Notwithstanding subsection (1), but subject to subsections (2) to (7) inclusive, if a registered person has, -

- (a) In respect of a monthly return period, failed to pay the Collector in whole or in part any amount of tax payable before the due date for payment for the tax; or
- (b) In respect of any obligation imposed under the Income Tax Act 1997, the Customs Tariff Act 1980 or the Customs Act 1913, failed to pay to the Collector any amount in whole or in part, -

the Collector may set off, against that unpaid tax duty or levy, any amount otherwise refundable to the person under section 16, or any amount of interest payable under section 30, and will treat any amount so set off as a payment received from the registered person.

(4) Notwithstanding subsection (1), but subject to subsections (2) to (7) inclusive, if a registered person has failed to furnish a return for a monthly return period, the Collector may withhold any amount otherwise refundable under section 16, or any amount of interest payable under section 30, until the registered person has complied with the return filing requirements.

(5) The Collector will give notice in writing to the registered person of any action taken under subsection (2), (3) or (4) within the period of 15 working days following the day on which the return showing the refund due was received by the Collector.

(6) If the Collector requires further information from a registered person in order to investigate a monthly return, the Collector will give notice in writing to the registered person, -

- (a) In respect of an initial request for information in respect of the return, within the period of 15 working days following the day on which the return was received by the Collector; and
- (b) In relation to subsequent requests for information in respect of a return, within the period of 15 working days following the date of receipt of any information previously requested by the Collector.

(7) All money payable by the Collector under this Part will be paid without further appropriation than this Act.

30. Interest on refunds of excess credits - (1) In any case where the Collector is required by section 29 to refund an amount to a registered person and the Collector does not refund the amount within the period of 15 working days following the day upon which the return of the registered person was received by the Collector, the Collector will pay to the registered person interest on the amount withheld.

(2) Interest payable under this section will be payable at the rate of 12% per annum calculated on a daily basis from the day following the day on which the Collector is required under section 29 to refund an amount to the registered person.

(3) Notwithstanding anything in this section, no interest will be payable if the amount of interest that, but for this subsection, would be paid is less than \$5.

(4) Notwithstanding anything in this section, interest will not be payable in respect of any period -

- (a) During which the Collector is not satisfied with the return made by the registered person and is undertaking further investigation; or
- (b) During which the Collector has requested further information from the registered person in respect of the return and has not received all the information requested; or
- (c) After the Collector has set off under section 29(3) the amount of refund due against tax payable by the registered person; or
- (d) During which the registered person has failed to furnish a return under this Act for a monthly return period;

nor will interest be payable in respect of a period that ends ten working days after the end of any period referred to in paragraphs (a) to (d) above.

(5) If the Collector is satisfied that the amount of any interest paid to a person under this section is in excess of the proper amount, the Collector may recover the amount of the excess in the same manner, with any necessary modifications, as if it were tax payable by the person.

31. Refund of tax overpaid - (1) If a registered person has paid to the Collector any amount in excess of the amount of the tax payable under section 16 in respect of any monthly return period, the Collector will refund the amount paid in excess.

(2) Subject to subsection (3) of this section, no refund will be made after the expiry of the period of 8 years immediately following the end of the monthly return period, unless written application for the refund is made by or on behalf of the registered person before the expiration of that period.

(3) If an assessment made under this Act reduces any amount of tax payable by a registered person or increases any amount refundable by the Collector to a registered person, the Collector will, notwithstanding that the time limited in accordance with subsection (2) for the making of a refund may have expired, refund the excess tax or deficient refund.

(4) No refund will be made under subsection (3) after the expiry of the period of 8 years immediately following the end of the year in which the assessment was made, unless written application for the refund is made by or on behalf of the registered person before the expiry of the period.

32. Relief from tax - Sections 203, 204, and 205 of the Income Tax Act 1997 shall apply as if they were incorporated in and formed part of this Act. Any reference therein to "tax" shall be read as a reference to "value added tax" and with all other necessary modifications.

PART IX **SPECIAL CASES**

33. Groups of companies - (1) For the purposes of this Act, two or more companies, each being a registered person, are eligible to be members of a group of companies in respect of any month if

they consist of substantially the same shareholders under section 3(2) of the Income Tax Act 1997.

(2) If 2 or more companies apply to be members of a group of companies for the purposes of this section and the Collector is satisfied that they are eligible to be members of a group of companies under subsection (1) of this section, they will be members of a group of companies from the beginning of such monthly return period as is determined by the Collector.

(3) In any application made under subsection (2), one such company will be nominated to be the representative member.

(4) If any companies are members of a group of companies, the representative member may apply to the Collector for

- (a) The addition to that group of a further eligible company; or
- (b) The exclusion from that group of one of the current members; or
- (c) The substitution of another member of the group as the representative member; or
- (d) That group of companies to no longer be a group of companies for the purposes of this section,

and the Collector will grant the application from the beginning of such monthly return period as is determined by the Collector.

(5) If any member of a group of companies ceases to be eligible to be a member of the group and the Collector becomes aware of that fact, the Collector will, by notice in writing given to that member or the representative member, terminate that membership from such date as may be specified in the notice.

(6) For the purposes of this Act, a notice under this Act addressed to the representative member will be deemed to be served on all members of the group.

(7) If any companies form a group of companies for the purposes of this section-

- (a) Any taxable activity carried on by a member of the group will be deemed to be carried on by the representative member and not to be carried on by any other member of the group; and
- (b) Subject to the following paragraphs of this subsection, any taxable supply by a member of the group to another member of the group may be disregarded; and
- (c) Any taxable supply by a member of the group to a person outside the group or from a person outside the group to a member of the group will be deemed to be a taxable supply by or to the representative member; and
- (d) Any supply of goods and services which is not a taxable supply made by a member of the group will be deemed to be made by the representative member; and
- (e) Any deductions under section 16(4) otherwise available to a member of the group will be deemed to be available only to the representative member; and
- (f) Any obligation on a member of the group, other than the representative member, to file returns under section 15 of this Act will be disregarded.

(8) Notwithstanding subsection (7), -

- (a) All members of the group will remain liable jointly and severally for any tax payable by the representative member; and
- (b) The provisions of section 18, section 42 and Part III shall continue to apply to all members of the group.

(9) If the Collector is satisfied in relation to 2 or more registered persons (not each being companies) that -

- (a) One of them controls each of the others; or
- (b) One person controls all of them; or
- (c) Two or more persons carrying on a taxable activity in partnership control all of them, -

the Collector may deem those registered persons to be members of a group and the preceding subsections of this section (other than subsection (1)) will apply as if every reference in the said

subsections to a group of companies were a reference to that group and as if every reference in the said subsections to companies were reference to the members of the group.

34. Unincorporated bodies - (1) For the purposes of this section –

"Body" means an unincorporated body of persons and includes a partnership, a joint venture and the trustees of a trust:

"Member" means a partner, joint venturer, trustee, or other member of any body.

(2) If an unincorporated body that carries on any taxable activity is registered under this Act: -

- (a) The members of the body will not themselves be liable to be registered under this Act in relation to the carrying on of the taxable activity; and
- (b) Any supply of goods and services made in the course of carrying on the taxable activity will be treated for the purposes of this Act as being supplied by the body and not supplied by any member of a body; and
- (c) Any supply of goods and services to, or acquisition of goods by, a member of the body acting in the capacity as a member of the body and in the course of carrying on the taxable activity will be treated for the purposes of this Act as being supplied to or acquired by the body and will be treated as not being supplied to or acquired by the member; and
- (d) The registration will be in the name of the body, or where the body is the trustees of a trust, in the name of the trust; and
- (e) Subject to subsection (3), any change of members of the body will have no effect for the purposes of this Act.

(3) Notwithstanding anything in this section, every member is jointly and severally liable with any other members for tax payable by the body while that member remains a member of a body.

(4) If a body is a partnership, joint venture, or the trustees of a trust, a member will not cease to be a member of the body for the purposes of this section until the date on which any change of membership of the body is notified in writing to the Collector.

(5) For the purposes of this Act, a notice served in accordance with this Act which is addressed to a body by the name which it is registered under this Act will be treated as being served on the body and on all members of the body.

(6) Subject to subsection (7) of this section, if anything is required to be done under this Act by or on behalf of a body, it will be the joint and several liability of all the members to do any such thing but if any such thing is done by one member it will be sufficient compliance with this requirement.

(7) Notwithstanding anything in this section but subject to subsection (3), if anything is required to be done under this Act by or on behalf of a body (other than a partnership, joint venture or trustees of a trust) the affairs of which are managed by its members or a committee of its members, it will be the joint and several responsibility of -

- (a) Every member holding office as president, chair, treasurer, secretary or any similar office; or
- (b) In default of any such member, every member holding office as a member of a committee, -

but if any such thing is done by any official or committee member it will be sufficient compliance with any such requirement.

35. Agents and auctioneers - (1) Subject to this section, for the purposes of this Act, if an agent makes a supply of goods and services for and on behalf of any other person who is the principal of that agent, a supply will be treated as being made by the principal and not by the agent.

(2) Notwithstanding subsection (1), if the supply is a taxable supply, an agent of registered person may, notwithstanding anything in this Act, issue a tax invoice or a credit note or a

debit note in relation to the supply as if the agent had made the taxable supply and, to the extent that that tax invoice or credit note or debit note relates to the supply, the principal will not also issue the tax invoice or credit note or debit note (as the case may be).

(3) Subject to this section, for the purposes of this Act, if a registered person makes a taxable supply of goods and services to an agent who is acting on behalf of another person who is the principal for the purpose of the supply, the supply will be treated as being made to the principal and not to the agent.

(4) Notwithstanding subsection (3), the agent may nevertheless request that the agent be issued with a tax invoice and the registered person making the supply may issue a tax invoice or a credit note or a debit note as if the supply were made to the agent.

(5) If a tax invoice or a credit note or a debit note in relation to a supply has been issued under this section by an agent or to an agent, the agent will maintain sufficient records to enable the name and address and registration number (if any) of the principal to be ascertained.

(6) Notwithstanding anything in the foregoing provisions of this section, if the principal and an agent who is an auctioneer agreed to have a supply by auction of goods, not being a taxable supply, treated as if the supply had been made by the auctioneer and not by the principal, the supply will be subject to tax as if it were made by the auctioneer in the course or furtherance of the auctioneer's taxable activity and the auctioneer may-

- (a) Recover the amount of tax charged on the supply from the principal as a debt together with the costs of recovery in any Court of competent jurisdiction; or
- (b) Retain or deduct the same out of any money in the auctioneer's hands belonging or payable to the principal.

(7) Notwithstanding anything in subsection (3) of this section, if a registered person makes a taxable supply (not being a supply which is charged with tax at the rate of 0%) of goods or services to an agent, being a registered person, who is acting for and on behalf of another person who is a principal for the purpose of the supply and -

- (a) The principal is not resident in the Cook Islands and is not a registered person; and
- (b) The supply is directly in connection with the exportation of goods from the Cook Islands or the importation of goods into the Cook Islands,

this Act will, if the agent and the principal agree, have effect as if the supply were made to the agent and not to the principal.

36. Personal representatives. liquidators. receivers etc - (1) In this section -

"Agency period" means the period beginning on the date on which a person becomes entitled to act as a specified agent carrying on a taxable activity in relation to an incapacitated person and ending on the earlier of -

- (a) The date on which some person other than the incapacitated person or the specified agent is registered in respect of the taxable activity; or
- (b) The date on which the person ceases to be a specified agent in relation to the incapacitated person:

"Incapacitated person" means a registered person who dies, or goes into liquidation or receivership, or becomes bankrupt or is otherwise incapacitated:

"Specified agent" means a person carrying on any taxable activity in a capacity as personal representative, liquidator, or receiver of an incapacitated person, or otherwise as agent for or on behalf of or in the stead of an incapacitated person.

(2) For the purposes of this Act and notwithstanding section 35, if any person becomes a specified agent that person will, during the agency period, be deemed to be a registered person carrying on the taxable activity of the incapacitated person, and the incapacitated person will during that period be deemed not to be carrying on that taxable activity.

(3) If a mortgagee is in possession of any land or other property previously

mortgaged by the mortgagor, being a registered person, the Collector may, 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, deem the mortgagee, in any case if and to the extent that the mortgagee carries on any taxable activity of the mortgagor, to be a registered person.

(4) Any person who becomes a specified agent, or who as a mortgagee in possession carries on any taxable activity of the mortgagor, will, within 21 days of becoming a specified agent or commencing that taxable activity of the mortgagor, inform the Collector in writing of that fact and of the date of the death or of the liquidation or receivership or bankruptcy or mortgagee taking possession of any land or other property previously mortgaged by the mortgagor, or of the nature of the incapacity and the date on which it began.

37. Agents in the case of absentees - If any person acts or assumes to act as the agent of any other person who is outside the Cook Islands or does not have place of business in the Cook Islands, the agent will be liable to the same value added tax and all obligations imposed by this Act as if the agent were the principal for whom the agent so acts or assumes to act.

38. Goods and services acquired before incorporation - (1) If-

- (a) An amount of tax has been charged under this Act in relation to the acquisition of goods and services for and on behalf of a company or in connection with the incorporation of a company; and
- (b) The company becomes a registered person on incorporation; and
- (c) The goods and services were acquired prior to incorporation by a person who -
 - (i) Became a member, officer, or employee of the company and was reimbursed by the company for the whole amount of the consideration paid for the goods and services; and
 - (ii) Acquired those goods and services for the purposes of a taxable activity to be carried on by the company and has not used those goods and services for any purpose other than such taxable activity,

the company will be deemed to be the recipient of the goods and services as if the supply or importation in question had been made during the monthly return period in which the reimbursement referred to in this section is made.

(2) This section will not apply in relation to any goods and services where -

- (a) The supply of the goods and services by the person to the company is itself a taxable supply or is a supply of secondhand goods not being a taxable supply; or
- (b) The goods and services were acquired more than 6 months prior to the date of incorporation of the company; or
- (c) The company does not hold sufficient records to establish the particulars relating to the deduction to be made under section 16(4) as a result of the application of this section.

PART X **OFFENCES AND PENALTIES**

39. Offence - (1) Every person commits an offence against this Act who -

- (a) Fails to apply for registration as required under this Act; or
- (b) Refuses or fails to furnish any return or information as and when required by this Act, or any regulations made under this Act or by the Collector; or
- (c) Makes any false return, false statement or false declaration or gives any false information, knowing it to be false or being reckless as to whether it was false, or intentionally misleads or attempts to mislead the

- Collector in relation to any matter under this Act; or
- (d) Knowingly falsifies any records required to be kept under this Act; or
 - (e) Knowingly issues any incorrect tax invoice; or
 - (f) Knowingly misrepresents that an amount is payable as tax under this Act in respect of a supply; or
 - (g) Receives or deals with goods or services, if the person knows or has reason to believe that the tax payable on the supply of the goods or services has been or will be evaded; or
 - (h) Obstructs any officer of the Department acting in discharge of that officer's duties or the exercise of that officer's power under this Act; or
 - (i) Fails to keep or properly maintain records of a taxable activity carried on by the person as required under this Act; or
 - (j) Knowingly breaches the provisions of this Act prohibiting the issue of multiple tax invoices, credit notes or debit notes; or
 - (k) Fails to provide another registered person with a tax invoice as required under this Act; or
 - (l) Aids, abets, incites, or conspires with any other person to commit any offence against this Act or against any regulations made under this Act.

(2) Every person who commits an offence against paragraph (i) or paragraph (k) of subsection (1) will be liable to fine not exceeding \$500 for the first such conviction, to a fine not exceeding \$1,000 for the second such conviction and to a fine not exceeding \$4,000 for each subsequent such conviction.

(3) Every person who commits an offence against paragraph (b) of subsection (1) will be liable to a fine not exceeding \$500 for each month of the default for the first time upon which the person is convicted of such an offence and for a fine not exceeding \$1,000 for each month of default for the second and subsequent occasions on which the person is convicted of such an offence.

(4) Every person who commits an offence against this Act for which no other penalty is prescribed will be liable for a fine not exceeding \$2,000 for the first such conviction and for a fine not exceeding \$4,000 for each subsequent such conviction.

(5) Every person who commits an offence against paragraph (1) of subsection (1) will be liable to a fine not exceeding the maximum fine applicable to the resultant offence committed by the person aided, abetted, incited, or conspired with.

40. Officers and employees of corporate bodies - Directors, secretaries, statutory officers, receivers, managers of any property of or liquidators of a corporate body commit an offence against this Act if, being responsible for furnishing to the Collector any information or statement or return under this Act, they fail to furnish that information or statement or return to the Collector within the time required under this Act.

41. Proceedings - (1) Proceedings for offences under this Act will be taken by way of prosecution in the High Court upon the information of the Collector.

(2) Any information may charge the defendant with any number of offences against the Act if those offences are founded on the same set of facts or are of the same or similar character.

(3) Where any information charges more than one such offence, particulars of each offence charged will be set out separately in the information.

(4) All such charges will be heard together unless the Court, either before or at any time during the hearing, considers it just that any charge should be heard separately and makes an order to that effect.

(5) Notwithstanding anything in any other Act, any information in respect of any offence against this Act or against any regulations made under this Act may be laid at any time within 10 years after the end of the monthly return period in which the offence was committed.

PART XI
GENERAL PROVISIONS

41 A. Delegations by Collector - (1) The Collector may from time to time by written instrument delegate to any person all or any of the functions or powers of the Collector under this

(2) A delegation -

- (a) May be made subject to such restrictions and conditions as the Collector thinks fit; and
- (b) May be made to a person or to a specified class of persons; and
- (c) May be made either generally or in relation to a particular matter; and
- (d) May be revoked in writing by the Collector; and
- (e) Does not prevent the exercise or performance by the Collector of the function or power delegated.

(3) Except as provided in the instrument of delegation, a person to whom a function or power is delegated under this section may exercise or perform the function or power in the same manner and with the same effect as if it had been conferred on the person directly by this Act and not by delegation.

(4) Unless the context otherwise requires, every provision of this Act applying to the Collector in respect of the exercise or performance of a function or power applies, with any necessary modifications, to any person exercising or performing the function or power under a delegation made by Collector, as if the person were the Collector.

(5) Every person purporting to act under a delegation made under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.

(6) A delegation continues in force according to its tenor unless and until revoked.

History: Section 41A inserted by No.9 of 2002 with application from 13 December 2002.

42. Keeping of records - (1) In this section, the term "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.

(2) Without limiting the generality of subsection (1), the records required to be kept under this section will contain -

- (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 Collector; and
- (b) The system and programme documentation which describes the accounting system used.

(3) Subject to this section, every registered person who supplies in the Cook Islands goods and services will keep in the Cook Islands sufficient records to enable ready ascertainment by the Collector of the registered person's liability to tax and will retain in the Cook Islands all such records for a period of at least 5 years after the end of the monthly return period to which they relate.

(4) The Collector may on application in writing authorise a registered person to keep the records outside the Cook Islands.

(5) This section will not require the retention of records

- (a) In respect of which the Collector has given notice in writing that retention is not required:
- (b) Of a company which has been liquidated.

(6) The Collector may, by notice in writing given before the expiry of the 5 year retention period specified in subsection (3), require a registered person to retain the records specified for a further period not exceeding 3 years if

- (a) The affairs of the registered person are under investigation by the Collector; or

- (b) The Collector intends to conduct such an investigation or is actively considering such an investigation.

History: s.42(6) amended by No.20 of 1997 by deleting the figure "7" and substituting it with the figure "5" with application from 1 December 1997.

43. Avoidance - (1) A tax avoidance arrangement entered into by a person is void against the Collector for tax purposes.

- (2) A tax avoidance arrangement is one that directly or indirectly -
 - (a) Has tax avoidance as its purpose or effect; or
 - (b) Has tax avoidance as one of its purposes or effects, whether or not another purpose or effect relates to ordinary business or family dealings.

(3) If a tax avoidance arrangement is void against the Collector, the Collector may adjust the amount of tax payable by, or the amount of tax refundable to, a registered person affected by the arrangement, whether or not the registered person is a party to the arrangement, in the manner the Collector considers appropriate to counteract any tax advantage obtained by the registered person from or under the arrangement.

(4) For the purpose of subsection (3), the Collector may, in addition to any other treatment the Collector considers appropriate, treat -

- (a) A person who is not a registered person and who is a party to or has participated in an arrangement as being a registered person;
 - (b) A supply of goods and services, whether or not a taxable supply, that is affected by or is part of an arrangement as being made to or by a registered person;
 - (c) A supply of goods and services as occurring in a return period that, but for an arrangement affected by this section, would have occurred in the return period in which the supply was made;
 - (d) A supply of goods and services as having been made, or consideration for the supply as having been given, at open market value.
- (5) For the purpose of this section-

"Arrangement" means a contract, agreement, plan or understanding, whether enforceable or unenforceable, including all steps and

"Tax avoidance" includes -

- (a) A reduction in the liability of a registered person to pay tax;
- (b) A postponement in the liability of a registered person to pay tax;
- (c) An increase in the entitlement of a registered person to a refund of tax;
- (d) An earlier entitlement of a registered person to a refund of tax;
- (e) A reduction in the total consideration payable by a person for a supply of goods and services.

History: s.43 replaced by No.12 of 2005 with application from 1 July 2005.

44. Liability for tax payable by company left with insufficient assets - (1) This section will apply if -

- (a) An arrangement (as defined in section 44(2)) has been entered into in relation to a company; and

- (b) An effect of the arrangement is that the company is unable to satisfy a liability to tax under this Act, whether the liability exists at the time of entry into the arrangement or subsequently; and
 - (c) It can reasonably be concluded that
 - (i) A director of the company at the time of entry into the arrangement who had made all reasonable enquiries would have anticipated that the tax liability would be, or would likely to be, required to be satisfied by the company; and
 - (ii) A purpose of the arrangement was to have the effect referred to in paragraph (b) of this subsection.
- (2) This section will not apply to an arrangement to which the Collector is a party.
- (3) If an arrangement to which this section applies has been entered into, all persons who were directors of the company at the time the arrangement was entered into will, subject to this section, be jointly and severally liable for the tax liability as agent of the company.
- (4) If an arrangement to which this section applies has been entered into, a person who -
- (a) Together with persons related to that person (whether by blood, marriage or ownership), controlled the company at the time the arrangement was entered into; or
 - (b) Had an ownership interest (direct or indirect) in the company at the time the arrangement was entered into and who, it could reasonably be concluded, having regard to the materiality of a benefit derived by the person from the arrangement, was a party to the arrangement, -
- will be liable as agent for the company for the tax liability to the extent that the tax liability is no greater than the market value of the person's direct or indirect interest in the company at the time of entry into the arrangement and the value of any benefit derived by the person from the arrangement (whichever is larger).
- (5) A director will not be liable under this section for a tax liability of a company if the Collector is satisfied that the director derived no benefit from the arrangement and either notified the Collector of the arrangement and the application of this section to the arrangement in writing at the first reasonable opportunity after the director became aware of the arrangement or had no knowledge of the arrangement.
- (6) Subject to section 46, but notwithstanding any other provision of this Act, the Collector may at any time after the liquidation of a company make or amend any assessment of the company under this Act as if the company had not been liquidated, in order to give effect to this section.
- (7) If the Collector makes an assessment after liquidation of a company, the Collector will nominate one or more persons whom the Collector considers to be liable under this section in respect of the tax liability specified in the assessment and each such person will be treated for the purposes of this Act and the Income Tax Act 1997 as the agent of the company.

45. Inspection of documents. inquiry - The provisions of sections 219 to 223 (both inclusive) of the Income Tax Act 1997 shall apply as if they were incorporated in and formed part of this Act.

46. Limitation period - Any amount of value added tax imposed by this Act will be assessed within 7 years after the monthly return was filed or within three years of the due date prescribed for the filing of the said return, whichever is later, and no proceeding in Court without assessment for the collection of any such taxes shall be begun after the expiration of such period, provided that:

- (a) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the monthly return, the tax may be assessed or levied at any time. However, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim must first be made by a Judge of the High Court;

- (b) Where, before the expiration of the period prescribed in this section, both the Collector and the taxpayer have consented in writing to the assessment of the tax after the expiration of the period, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

47. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make all such regulations as, in his opinion, may be deemed necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof

(2) Without limiting the general power to make regulations conferred by subsection (1) of this section, it is hereby declared that regulations may be made under this section prescribing forms and rules or procedure for the ascertainment, assessment and collection of taxes imposed under this Act.

(3) All regulations made under this section shall be laid before the Legislative Assembly within 28 days after the making thereof, if the Legislative Assembly is then in session, and if not, shall be laid before the Legislative Assembly within 28 days after the commencement of the next ensuing session.

47A. Tax to be included in prices - a registered person shall include the amount of value added tax in prices of goods or services notified, advertised or displayed, and shall state that such prices are inclusive of value added tax.

PART XII **TRANSITIONAL PROVISIONS AND REPEALS**

48. Effect on supply price of 1997 introduction of tax - (1) If -

- (a) A supply of goods or services has become subject to value added tax as a result of this Act; and
- (b) The parties to the supply have not expressly agreed that this subsection will not apply; and
- (c) The agreement between the parties for the making of the supply is entered into before the 30th day of June 1997, -

the registered person making the supply may increase the agreed price for the supply by the amount of tax payable in respect of the supply, to the extent to which that tax exceeds the turnover tax (if any) which would have been payable, in respect of the supply but for the repeal of the Turnover Tax Act 1980 by this Act, and may recover it from the acquirer of the goods or services.

(2) If -

- (a) A fee, charge or other amount is payable under an act or regulation; and
- (b) The supply to which the fee, charge or other amount relates becomes subject to value added tax as a result of this Act; and
- (c) It is not expressly provided that the fee, charge or other amount is inclusive of value added tax; and
- (d) The fee, charge or other amount was determined before 1 July 1997, -

the fee, charge or other amount will be treated as if increased by the amount of the tax payable in respect of the supply, to the extent to which that tax exceeds the turnover tax (if any) which would have been payable in respect of the supply but for the repeal of the Turnover Tax Act 1980 by this Act, and the increase may be recovered from the acquirer of the goods or services.

49. Effect on trading stock or stationery held of 1997 introduction of tax - (1) Subject to subsection (2) of this section, a registered person may, in calculating the amount of the value added tax payable by the person, deduct an amount equal to turnover tax paid, if any, at the rate of either 10% or 1% whatever the case may be under the Turnover Tax Act 1980 on sale to the registered person of

trading stock or stationery held or of services supplied to the person that are attributable to any period after 1 July 1997 by the person on 1 July 1997 wholly for the purpose of making taxable supplies.

(2) No person may deduct under subsection (1) of this section an amount from the person's tax liability for any monthly return period ending after 30 September 1997.

(3) A registered person entitled to a deduction against value added tax under this section will disclose to the Department with the person's return for each month in which a claim for a deduction is made -

- (a) The total gross proceeds of sale for the purposes of turnover tax of trading stock or stationery in respect of which the deduction is claimed;
- (b) The total amount of the deduction to which the person is entitled;
- (c) The total amount, if any, claimed as a deduction in previous returns; and
- (c) The amount claimed as a deduction in the current return.

50. Effect on turnover tax liabilities of 1997 introduction of tax - (1) If a person -

- (a) Is a registered wholesale purchaser on 30 June 1997; and
- (b) Is not a registered person under this Act on 1 July 1997, -

any goods forming part of the person's business in the Cook Islands at midnight on 30 June 1997 will be deemed for the purposes of the Turnover Tax Act 1980 to have been supplied immediately before midnight on 30 June 1997, for an aggregate consideration determined under subsection (3) of this section.

(2) A person who is liable for turnover tax under subsection (1) will -

- (a) Disclose to the Department in the return for the month ending on 30 June 1997 the gross proceeds of sale deemed to arise under subsection (1) of this section and the total turnover tax payable as a result of subsection (1) of this section; and
- (b) Remit to the Department, in the form required by section 38 of the Turnover Tax Act 1980, the turnover tax payable under subsection (1) of this section by paying -
 - (i) A first installment of one-third of the turnover tax by 20 July 1997; and
 - (ii) A second installment of one-third of the turnover tax by 20 August 1997; and
 - (iii) A final installment of one-third of the turnover tax by 20 September 1997.

(3) The aggregate consideration in respect of goods forming part of the person's business in the Cook Islands that are deemed under subsection (1) of this section to be supplied will, at the election of the person, be equal to either -

- (a) The aggregate open market value of goods; or
- (b) An amount equal to the greater of -
 - (i) The aggregate gross proceeds of sale (as that term is defined in the Turnover Tax Act 1980, excluding any amount deemed to be received under subsection (1) of this section) of the business for the three months ending 30 June 1997; and
 - (ii) The total cost of all goods acquired by the person, for the principal purpose of the business of selling any tangible personal property, in the three months ending on 31 July 1997.

(4) The obligations and liabilities under the Turnover Tax Act 1980 of any person in respect of anything done, or omitted to be done, by that person while that person was liable to pay turnover tax will not be affected by the fact that the person ceases to be so liable as a result of this Act.

(5) This section applies with effect from the date on which this Act comes into force.

51. Registration of persons liable to be registered on 1 July 1997 - Notwithstanding anything in section 12, every person who, on or before 30 June 1997, knows, or could with reasonable

diligence have known, that the person will be liable to be registered from 1 July 1997 under section 12, will apply in the prescribed form for registration before 30 June 1997, and the Collector will register that person under section 12.

52. Supplies prior to 1 July 1997 - (1) For the purposes of this section, the expression "time of performance" means, -

- (a) In relation to a supply of goods, -
 - (i) If the goods are to be removed and the property in those goods will pass from the supplier to the recipient, the earlier of the time of the removal and the time that that property passes:
 - (ii) If the goods are to be removed but property in the goods will not pass from the supplier to the recipient, the time of the removal:
 - (iii) If the goods are not to be removed, the time they are made available to the recipient:
 - (iv) If the goods (being sent or taken on approval, sale or return or similar terms) are removed before it is known whether a supply will take place, the time when it becomes certain that the supply has taken place; and
- (b) In relation to a supply of services, the time when the services are performed.

(2) If a registered person supplies services under an agreement or enactment and the agreement or enactment expressly or impliedly provides that, for and in respect of any period, -

- (a) A right is to be granted or exercisable or anything is to be done or omitted to be done; or
- (b) A payment is due, or may be made; or
- (c) The agreement is enforceable or will have effect, -

those services will for the purposes of subsection (1)(b) be treated as if performed by the registered person continuously and uniformly during the whole of that period.

(3) If services are supplied under an agreement or enactment which provides that any right is to be granted or exercisable by an individual for a period which will end with the termination of the life of the individual and there is a single non-refundable payment as consideration, the services will, for the purposes of subsection (1)(b), be deemed to have been performed at the earlier of the time the right is granted by the supplier or at the time that it first becomes exercisable.

(4) Notwithstanding anything in this Act, for the purposes of subsection (1), goods supplied under an agreement to hire will be deemed to be a supply of services.

(5) Notwithstanding anything in section 5, if and to the extent that the time of performance of any supply of goods and services -

- (a) Is before 1 July 1997 and that supply would, but for this section, be deemed by section 5 to take place on or after 1 July 1997, and the value of the supply is ascertainable, the time of performance will, for the purposes of this Act, be treated as being the time when the supply of the goods and services takes place:
- (b) Is on or after 1 July 1997, and that supply would, but for this section, be deemed by section 5 to take place before 1 July 1997, -
 - (i) The time of performance will, for the purposes of the imposition of value added tax under section 10, be treated as being the time when the supply of the goods and services takes place; and
 - (ii) For the purposes of section 16, the time when the supply of those goods and services is made will be treated as being 1 July 1997.

53. Repeals and savings - (1) The Turnover Tax Act 1980 is repealed.

(2) The Stamp and Cheque Duties Act 1971-72 is repealed with respect to

instruments executed on or after 1 July 1997.

(3) The Overseas Exchange Fees Act 1975 is repealed with effect from 1 July 1997.

(4) The Private Import Tax Act 1984 is repealed with respect to goods cleared through Customs on or after 1 July 1997.

(5) The Rarotonga Entertainment Tax Act 1975 is repealed with respect to entertainment provided on or after 1 July 1997.

(6) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Acts referred to in subsections (1) to (5) inclusive ("the Acts") shall not (except as otherwise provided in this Act) affect the validity of any document made or anything done under the provisions of the Acts, and every such document or thing so far as it is subsisting or in force at the time of the repeal of the Acts, and could have been made or done under this Act shall continue and have effect as if it shall have been made or done under the corresponding provisions of this Act and as if that provision were in force when the document was made or the thing done.

54. Consequential amendments to the Customs Act 1913 - (1) Section 2 of the Customs Act 1913 is amended by adding at the end of the definition of "Duty" the following words:

"and value added tax imposed by the Value Added Tax Act 1997."

(2) A new section 126A is inserted as follows:

"126A. Deferral of Payment of Value Added Tax

(1) The Comptroller may, subject to such conditions as the Comptroller may impose to ensure compliance with this Act and to protect the revenue of the Customs, grant approval to persons allowing such persons to defer payment of the value added tax component of the duty due under section 126.

(2) Where approval has been given under subsection (1), the due date for payment of any value added tax due under section 126 shall be 20 days after the end of the month during which it would otherwise have become payable, unless that day is not a working day in which case the payment must be made on the next working day following that 20 day period.

(3) Where any such debt is not paid by the approved person by the due date pursuant to subsection (2), the Comptroller may suspend or withdraw the approval, or may vary the conditions under which the approval was given."

This Act is administered by the Revenue Management Division.

RAROTONGA, COOK ISLANDS: Printed by the Cook Islands Government - 1997

FIRST SCHEDULE

Section 10(3)(a)

Exempt supplies

1. Financial services, being anyone 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. Departure Tax collected under the Departure Tax Act 2005.
4. Attendance dues paid to private schools for educational services provided.

SECOND SCHEDULE

Section 10(3)(b)

Exempt importations

1. Passengers' baggage and personal effects admitted free of duty and import levy under references 85, 86 and 87 of the Customs Tariff Act 1980 and section 7 A of the Cook Islands Amendment Act 1981:
2. Goods admitted free of duty and import levy and entered into a Customs Bonded Warehouse under the Customs Tariff Act 1980:
3. Containers containing goods, being ordinary trade containers for packing of goods; or
4. Goods imported:
 - (a) by or on behalf of any overseas government for its use in the Cook Islands whether in an office established by that overseas government or in any approved aid project; or
 - (b) by or on behalf of the United Nations, Pacific Forum Secretariat or the South Pacific Commission or any agency of those organisations for approved project in the Cook Islands; or
 - (c) for use in any approved aid project in the Cook Islands; or
 - (d) by or on behalf of the University of the South Pacific for use at its centre on Rarotonga; or
 - (e) by a non profit body as donation for use in any project in the Cook Islands; or
 - (f) by any religious organisation, for its own use or for a specific church activity or project in the Cook Islands (except motor vehicles and motor cycles); or
 - (g) by any organisation for use in public projects in the Cook Islands, being projects designed primarily for the benefit of a particular island, vaka or village community; or
 - (h) by any school for educational purposes in the Cook Islands; or
 - (i) by or on behalf of any person or organisation being uniforms or sporting equipment to be donated to any sporting group in the Cook Islands;
 - (j) by or on behalf of any person requiring life saving medical supplies.

History: No. 4 of the Second Schedule amended by No.20 of 1997 with application from 1 December 1997.

5. Goods which the Collector is satisfied are:
 - (a) bona fide gifts sent from abroad to persons in the Cook Islands, the value of which does not exceed \$65 in any one importation.
 - (b) heirlooms;

- (c) trophies, prizes, medals and the like awarded to individuals and donated by persons resident abroad;
- (d) goods imported by an approved organisation, being gifts by persons resident abroad for the relief of victims of natural disasters;
- (e) goods temporarily imported under the Customs Act 1913, and any regulations made under that Act; and
- (f) goods imported by the Queen's Representative and entitled to be entered free of duty under the Customs Act 1913.

History: No. 5(a) of the Second Schedule amended by No.20 of 1997 with application from 1 December 1997.

6. Goods imported on or before 31 December 2004 consisting of:

- (a) preparations of a kind used in animal feeding falling within heading 23.09 of the Cook Islands Customs Tariff and not being dog or cat food; or
- (b) fertilisers falling under Chapter 31 of the Cook Islands Customs Tariff.

History: No. 6 of the Second Schedule amended by substituting "30 June 2002" with "31 December 2004" by No.9 of 2002 with application from 1 December 2002.

7. Dead persons transported from overseas to the Cook Islands for burial, and headstones.

History: No. 7 of the Second Schedule inserted by No.20 of 1997 with application from 1 December 1997.

THIRD SCHEDULE

Section 11(2)

Zero-rated supplies

1. Any supply of goods if the registered person
 - (a) exports the goods from the Cook Islands in the course of the supply; or
 - (b) satisfies the Collector that the goods have been exported from the Cook Islands by the registered person; or
 - (c) satisfies the Collector that the goods have been supplied to a person for consumption or use outside the Cook Islands (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 the Cook Islands, within an area under the control of the Collector of Customs as a customs examining place under the Customs Act 1913;

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 16(4)(c) of this Act has been allowed to the registered person; or
 - (f) Being goods which have been or will be reimported into the Cook Islands by the supplier.
2. Any supply of goods situated outside the Cook Islands 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 the Cook Islands to a place outside the Cook Islands;
 - (b) from a place outside the Cook Islands to the Cook Islands;

History: No. 3 of the Third Schedule amended by No.20 of 1997 by repealing “Any supply of services being the transportation of passengers or goods (including ancillary insurance) – ” and substituting “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) – ”, and by repealing paragraph (c), with application from 1 December 1997.

4. Any supply of services physically performed outside the Cook Islands
5. Any supply of services to a person who is not a resident of the Cook Islands and who is outside the Cook Islands at the time the services are performed or being services which are
 - (a) supplied directly in connection with tangible property situated in the Cook Islands at the time of the services are performed; or
 - (b) supplied in relation to the establishment or administration of any entity registered or to be registered under the Off-shore Insurance Act 1981-82, the Off-shore Banking Act 1981, the International Partnership Act 1984, the International Trusts Act 1984, or the International Companies Act 1981-82.”

History: The first item No.5 of the Third Schedule was repealed and replaced with the existing wording and the second item No.5

of the Third Schedule was repealed, both by No.20 of 1997 with application from 1 December 1997.

6. Any supply of goods made on or before 30 June 2002 consisting of:
 - (a) preparations of a kind used in animal feeding falling within heading 23.09 of the Cook Islands Customs Tariff and not being dog or cat food; or
 - (b) fertilisers falling under Chapter 31 of the Cook Islands Customs Tariff.

EXPLANATORY NOTES TO VALUE ADDED TAX BILL 1997

Note: The following are general explanatory notes to the Bill. The paragraph numbers and subparagraph numbers refer to the numbers of sections and subsections in the Bill.

1. Short title and commencement.
2. Defines certain important terms. The following should be noted.

The exclusion from the definition of "consideration" of unconditional gifts is designed to avoid difficulties potentially arising for charitable and other non-profit bodies.

The definition of "registered person" includes a person who is liable to be registered but has defaulted in completing the necessary formalities. The definition ensures that the person remains subject to V AT obligations.

The definition of "services" includes anything which is not "goods" and hence includes choses in action.

The definition of "taxable supply" includes zero-rated supplies and accordingly ensures that input tax deductions are fully available notwithstanding the fact that certain outputs are zero-rated.

3. This section includes certain things within the concept of "supply" so as to ensure that tax is payable in respect of amounts received. Specifically included are sales by a creditor of goods on behalf of the registered person debtor, grants or subsidies from the Crown, a deemed supply of all taxable activity assets on cessation of registration, indemnity payments received under contracts of insurance if (in general terms) the insurance contract was itself subject to VAT and amounts received for participation in lotto or casino games of chance. Subsection (7) separates out the taxable and zero-rated aspects of a supply which is partially one and partially the other.
4. This section broadly defines the concept of "taxable activity" which is one of the key elements necessary in order for tax to be imposed on a supply. Generally it includes anything involving the continuous or regular supply of goods or services for consideration. It does not matter whether the activities are profit-making or not but the concept does not include hobbies, provision of employment services under a contract of employment and an activity to the extent to which it involves exempt supplies. Anything done in connection with the commencement or termination of an activity is treated as being in the course of the activity.
5. This section contains rules to clarify precisely when a supply of goods and services is treated as taking place, which is primarily relevant for determining which monthly return must include tax on the supply. Generally a supply takes place as soon as a tax invoice is issued, a payment is received or the goods or services are delivered (whichever is the earliest). Of particular note are the rules inserted to deal with agreements for hire or agreements involving periodic or progressive supplies, with the general approach being that the arrangement is treated as involving successive supplies. There is also a specific rule to deal with circumstances where it is not possible at the time of supply to identify the total amount of consideration.
6. This section defines the value of a supply for the purposes of the calculation of the VAT amount. Generally the value of a supply is taken by aggregating the consideration in money and any non-monetary consideration valued at its open market value. An amount equal to any value added tax charged is then deducted from the total so as to produce a V AT-exclusive amount. An anti-avoidance rule applies to transactions between related parties to impose an open-market value. Specific rules are introduced to deal with certain specific circumstances, such as gambling.

7. This section defines the place of supply, as supply in the Cook Islands is another key element to the imposition of the tax. In the case of goods, generally the supply is treated as taking place in the Cook Islands if the goods are in the Cook Islands but a special rule applies in the case of importation and exportation. In the case of services, a supply is treated as taking place in the Cook Islands if the supplier operates in the Cook Islands.
8. This section defines where a supplier operates and generally treats a supplier as operating in the Cook Islands if resident in the Cook Islands or operating through a branch of fixed establishment in the Cook Islands in respect of a supply.
9. This section ensures that the Crown is liable to V AT in respect of supplies made by Crown agencies and instruments.
10. This section imposes V AT on supplies by a registered person in the course of a taxable activity in the Cook Islands and on importation of goods into the Cook Islands. Subsection (3) excludes from the application of the tax the exempt supplies listed in the First Schedule and the exempt importations listed in the Second Schedule. Subsection (4) ensures that the rules in the Customs Act 1913 for collection of tax apply to V AT payable on importation.
11. This section imposes the rate of tax. Generally the rate of tax is 12.5% applied to the value of the supply. In the case of importation, 12.5% applies to the aggregate of the value of the goods for customs duty purposes and any duties imposed on importation. Subsection (2) overrides the general rule and applies a zero-rate of V AT to the zero-rated supplies listed in the Third Schedule.
12. This section imposes the registration requirement, being another a key element of the circumstances which must exist in order for the tax to apply. Generally a person must be supplying goods or services in the course of a taxable activity for a total consideration exceeding \$30,000 per annum. The value of exempt supplies is disregarded as is the value of any extraordinary supplies occurring due to a substantial change in the scale of taxable activity being carried on. There is provision for voluntary registration. Subsection (7) excludes from calculation of the threshold amount any amounts which in fact become payable simply to recover VAT.
13. This section provides for cancellation of registration on application or if the Collector is satisfied that a registered person is no longer liable to be registered and chooses to cancel registration.
14. A registered person must notify the Collector of such matters as changes of address etc.
15. This section imposes a requirement for monthly tax returns, by the 20th day of the following month. A specific return is required to be filed by a creditor selling goods on behalf of a registered person. The Collector may extend the time of filing a return.
- 15A. This section introduces an alternative accounting basis, called a payments basis. This is easier for small business operators to comply with and overcomes any problems which may arise from the invoice system. A registered person may elect at any time to make returns on either the invoice basis or the payments basis, with the Collector's approval.

If a registered person does not elect either basis, he or she is deemed to have elected the payments basis.
- 15B. This section sets out calculation methods for determining whether there is any tax payable or refund due as a consequence of a change in accounting basis.
16. This section provides rules for calculation of the tax. Generally the amount of tax is to be calculated by aggregating all amounts of tax payable in respect of supplies by the registered person where the time of supply falls during the month and then deducting all amounts of tax payable in respect of input supplies acquired by the registered person during the month. Included in the amounts able to

be deducted are V AT amounts payable on importation and an amount equal to one-ninth of all acquisitions of secondhand goods from non-registered persons. Subsection (5) imposes an additional requirement for an input tax deduction: the goods or services must be acquired wholly for the purposes of making taxable supplies or else the input tax deduction will only be available to the extent to which the goods or services are acquired for the purpose of making taxable supplies. In the case of an acquisition of a car or a pick-up truck, the extent is to be determined by the Collector. Under subsection (6) the extent to which goods or services are acquired for the purpose of making taxable supplies is to be determined having regard to the circumstances in the month of acquisition unless the Collector considers that a longer period is appropriate. Under subsection (7), in order for an input tax credit to be available in respect of tax payable on supplies acquired from other registered persons, a tax invoice must be held. Under subsection (8), it is possible to defer the claiming of an input tax credit deduction until a later return period in certain circumstances.

17. This section imposes a requirement to pay tax by the day upon which the return must be filed.
18. This section generally imposes the requirement on a registered person to provide a tax invoice to another registered person within 28 days of request. There is provision for recipients to create tax invoices if the Collector agrees. The content of tax invoices is to be determined by regulation. There is a prohibition on providing multiple tax invoices. No tax invoice needs to be prepared if the consideration in money for the supply does not exceed \$50.
19. This section imposes various rules for dealing with circumstances where a supply has been cancelled or the supply or the consideration for the supply has been changed in nature or amount, rendering a tax invoice incorrect or a return incorrect. Generally, the registered person must make an appropriate adjustment in the monthly return for the return period when the change becomes apparent and must either pay additional tax or claim a further deduction as appropriate. Further, the registered person must provide the recipient with a credit note if a tax invoice has shown an excessive amount of tax or a debit note if a tax invoice has shown an insufficient amount of tax. Again, the content of credit notes and debit notes is to be determined by regulation. Again, there is provision for the Collector to allow recipients to create credit notes or debit notes. A recipient issued with a credit note or a debit note is required to make appropriate adjustments in the recipient's own tax return for the period in which the credit note or debit note is received.
20. This section provides for rules governing bad debts. Generally, a registered person who has been unable to recover an amount payable in respect of a taxable supply can claim a deduction for the tax previously payable to the extent to which it becomes excessive due to the bad debt amount.
21. This section provides for the Collector to issue assessments if returns are not filed or are incorrect.
22. This section deems assessments to be correct except as disputed in objection proceedings and provides that assessments will not be invalidated by any procedural failures.
23. This section provides for objections to assessments to be subject to the procedures for objection set out in the Income Tax Act 1997.
24. This section imposes additional taxes for late payment or evasion. Generally, any tax not paid by the due date is subject to additional tax of 5% immediately and a further 1 % for each complete month during which a failure continues. (It should be noted that the 5% will not apply if an assessment is not issued until after the original due date and will only apply if tax is not paid by the new due date set in the assessment). If any under-payment results from fraud, an additional tax penalty of 50% of the tax payable is applied.
25. This section applies a number of provisions in the Income Tax Act 1997, relating to payment and recovery of tax, to VAT.
26. This section allows the Collector to distrain on goods and chattels for unpaid tax.

27. This section imposes a priority for unpaid tax in circumstances of liquidation, bankruptcy, receivership etc, generally ranking the unpaid tax after preferential claims and fixed charges.
28. This section provides that no statute of limitation will bar any action for recovery of tax.
29. This section provides rules for refund of tax in circumstances where input tax deductions exceed the output tax payable in respect of a month. Generally the refund must be paid by the Collector within 15 working days. However, the Collector can defer payment of a refund if not satisfied with the return and undertake further investigation. A refund can be offset against unpaid VAT, income tax or other tax or duty amounts payable to the Crown. This section also provides rules for time limits for notice to be given to taxpayers of further investigation and information requests.
30. This section requires the Collector to pay interest to a taxpayer at the rate of 1 % per month in circumstances where the refund is not paid within the required period of 15 days. However, interest is not payable for periods during which the Collector is undertaking further investigation or where the taxpayer has failed to furnish a monthly tax return.
31. This section provides rules for refund of any tax overpaid by a taxpayer.
32. This section applies certain provisions of the Income Tax Act 1997 relating to relief from tax to VAT.
33. This section permits a group of companies to be treated as a single taxpayer for the purposes of VAT, with intra-group supplies being disregarded. Generally, one member of the group is nominated as the representative member required to perform tax obligations, but without prejudice to the joint and several liability of group members for the tax. Under subsection (9), the concept of group registration can also be applied to persons other than companies in circumstances where there is common control.
34. This section provides for rules governing the application of the VAT legislation to unincorporated bodies. Generally, the body is treated as being a registered person rather than individual members.
35. This section provides for rules governing supplies by and to agents. Generally the supply is treated as being by or to the principal for whom the agent acts. However the agent may issue a tax invoice or receive a tax invoice in substitution for the principal. Specific rules also apply in circumstances where an auctioneer and a principal agree that the supply will be treated as being made by the auctioneer.
36. This section provides for receivers, liquidators, mortgagees in possession and other like representatives to be treated as registered persons during a period of incapacity of a registered person.
37. This section provides that agents in the Cook Islands for non-resident taxpayers are liable for the obligations of the non-resident.
38. This section permits a company to have an input tax deduction in respect of goods or services acquired on behalf of the company prior to incorporation.
39. This section provides for various offences for failure to comply with obligations under the Act and imposes various specific penalties depending upon the category of offence.
40. This section provides that officers and employees of corporate bodies commit an offence if they fail to comply with obligations under the Act imposed on the corporate body for which the person is responsible.
41. This section provides for rules concerning the taking of proceedings in respect of offences.

42. This section imposes certain requirements for keeping of records, generally for a period of 7 years.
43. This section provides for a general anti-tax avoidance rule for arrangements entered into defeating the intent and application of the legislation. The Collector can treat the arrangement as void and adjust the amount of tax payable by a registered person as a result.
44. This section applies in circumstances where a company has been left with insufficient assets to meet a VAT liability as a result of an arrangement entered into at a time when it should have been clear that the tax liability could not be satisfied. Generally, directors become jointly and severally liable for the tax liability as agent of the company. Controlling shareholders can also become liable as agent for the company.
45. This section applies certain of the Income Tax Act 1997 rules for inspection of documents and inquiry to VAT.
46. This section generally prohibits the making of an assessment more than 7 years after a monthly return was filed except in the case of fraud or assessments issued by consent.
47. This section provides for the making of regulations for the purposes of the VAT legislation.
48. This section permits the price of goods or services to be increased to take account of the introduction of VAT, to the extent to which the VAT exceeds the turnover tax which would have been payable.
49. This section allows for an input tax credit for stocks on hand of trading stock and stationery at the date of introduction of VAT, to the extent to which turnover tax at the rate of 10% has applied to the acquisition of the trading stock or stationery.
50. This section deems a registered wholesale purchaser who does not become a registered person for VAT purposes to have supplied all business goods immediately before the repeal of turnover tax. The resultant tax is payable, in general terms, in three installments.
51. This section imposes an obligation on people, who know that they will be required to be registered for VAT purposes, to apply for registration by 30 June 1997.
52. This section is a transitional provision to ensure that, if the time of performance in respect of a supply of goods or services is after 1 July 1997, VAT applies notwithstanding the fact that the supply would be, under the new VAT legislation, deemed to occur before 1 July 1997.
53. This provision repeals the Turnover Tax Act 1980, the Stamp and Cheque Duties Act 1971-72, the Overseas Exchange Fees Act 1975, the Private Import Tax Act 1984 and the Rarotonga Entertainment Tax Act 1975.
54. This section amends the Customs Act 1913 to provide for collection of VAT as duty and for deferral of payment of VAT by approved persons.

First Schedule - this schedule lists supplies which are exempt from VAT, including in particular financial services. It should be noted that the effect of exemption is that input tax deductions cease to be available to the extent to which the inputs are acquired for the purposes of making exempt outputs.

Second Schedule - this schedule lists certain items which are exempt from VAT imposed on importation, including in particular certain personal effects and certain goods imported by overseas governmental or international agencies.

Third Schedule - this schedule lists supplies which are subject to VAT at the rate of 0%, including in particular exports and international transportation.