

No. 51 of 1998.

Value Added Tax Act 1998.

Certified on : 17.5.99

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

Value Added Tax Act 1998.

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with Constitutional requirements.
2. Interpretation.
 - "additional tax"
 - "associated person"
 - "capital goods"
 - "car"
 - "Commissioner"
 - "company"
 - "consideration"
 - "consideration in money"
 - "credit note"
 - "*Customs Act*"
 - "dealer in fine metal"
 - "debit note"
 - "document"
 - "due date"
 - "exempt supply"
 - "fine metal"
 - "further additional tax"
 - "going concern"
 - "goods"
 - "hire"
 - "hospital"
 - "*Income Tax Act*"
 - "insurance"
 - "contract of insurance"
 - "invoice"
 - "local authority"
 - "money"
 - "name"
 - "new fine metal"

“non-profit body”
“person”
“primary product”
“public authority”
“recipient”
“refiner of fine metal”
“registered person”
“registration number”
“resident”
“resident service provider”
“return”
“Review Tribunal” or “Tribunal”
“secondhand goods”
“services”
“supplier”
“tax”
“tax fraction”
“tax invoice”
“tax payable”
“taxable period”
“taxable supply”
“this Act”
“trustee”
“unconditional gift”
“working day”

3. Act to bind State.

PART II. - ADMINISTRATION.

4. Administration of Act.
5. Disclosure of information.

PART III. - IMPOSITION OF TAX.

Division 1. - Imports.

6. Imposition of value added tax on imported goods.
7. Exemption of imported goods.

Division 2. - Supplies of goods and services in Papua New Guinea.

8. Imposition of value added tax on supply.

Division 3. - Calculation of tax payable on supply.

9. Tax payable.

PART IV. - SUPPLY OF GOODS AND SERVICES IN COURSE OF TAXABLE ACTIVITY.

Division 1. - Taxable Activity.

10. Meaning of term "taxable activity".

Division 2. - Supply.

11. Meaning of term "supply".
12. Transfer of land.

Division 3. - Place of supply.

13. Supply in Papua New Guinea.
14. Reverse charge on services received from abroad.

Division 4. - Time of supply.

15. Time of supply.

Division 5. - Value of supply.

16. Open market.
17. Value of supply of goods and services.

Division 6. - Zero-rated supply.

18. Zero-rating of exported goods.
19. Sale of a going concern.
20. Other zero-rated goods.
21. Exemption to zero-rating of goods.
22. Exported services.

Division 7. - Supply exempt from tax.

- 23. Meaning of term "financial services".
- 24. Exempt supplies.

PART V. - TAX PAYABLE.

Division 1. - Taxable periods.

- 25. Taxable periods.

Division 2. - Accounting methods.

- 26. Accounting basis.
- 27. Requirements for accounting on payment basis.
- 28. Particulars to be furnished and prepared if change in accounting basis.

Division 3. - Deduction for input tax.

- 29. Input tax and output tax.
- 30. Calculation of tax payable.

Division 4. - Adjustments to input and output tax.

- 31. Tax payable, or refund, if change in accounting basis.
- 32. Adjustments for change in use.
- 33. Change in terms of supply.
- 34. Bad debts.
- 35. Allocation of taxable supplies following investigation by Commissioner.

PART VI. - INVOICES AND RELATED DOCUMENTS.

- 36. Deduction of input tax.
- 37. Retention of records.
- 38. Tax invoices.
- 39. Credit and debit notes.
- 40. Provisions applicable to invoices, credit notes and debit notes.
- 41. Commissioner may approve use of symbols, etc., electronically transmitted invoices and credit and debit notes.

PART VII. - REGISTRATION.

- 42. Persons making supplies in course of taxable activity to be registered.
- 43. Cancellation of registration.
- 44. Registered person to notify change of status.
- 45. Liabilities not affected by ceasing to be registered person.
- 46. Group of companies.
- 47. Group registration.
- 48. Consequences of group registration.
- 49. Group of persons.
- 50. Branches and divisions.

PART VIII. - SPECIAL CASES.

Division 1. - Pre-incorporation supply.

- 51. Goods and services acquired before incorporation.

Division 2. - Sale by creditor.

- 52. Sale by creditor deemed supply by debtor.
- 53. Special returns by creditor.
- 54. Invoice for creditor sale.

Division 3. - Unincorporated bodies.

- 55. Application of act to unincorporated bodies.

Division 4. - Agents.

- 56. Personal representative, liquidator, receiver, etc.
- 57. Liability of agent of absentee principal for returns and tax.
- 58. Agents.
- 59. Auctioneers.

Division 5. - Company amalgamations.

- 60. Effect of company amalgamations.

Division 6. - Gas projects.

- 61. Gas production projects.

PART IX. - RETURNS AND PAYMENT OF TAX.

- 62. Taxable period returns.
- 63. Other returns.
- 64. Payment of tax.
- 65. Tax payments to be banked to special account.

PART X. - ASSESSMENT OF TAX.

- 66. Assessment of tax.
- 67. Effect of cancellation of registration by Commissioner for purposes of Parts IV, VII, XII and XIV.
- 68. Validity of assessments not affected by failure to comply with Act.
- 69. Assessments deemed correct except in proceedings on objection.
- 70. Evidence of returns and assessments.
- 71. Limitation of time for assessment or amendment of assessment.

PART XI. - OBJECTIONS.

- 72. Objections to certain decisions.
- 73. Objections to assessments.
- 74. Commissioner may amend assessment, or objections may be submitted to Review Tribunal.
- 75. Powers of Review Tribunal on determination of objection or case stated.
- 76. When objection may be referred in first instance to National Court.
- 77. Court's powers.
- 78. Application of time limits by the Court.
- 79. Refusal of reference to Court.
- 80. Test case procedure.
- 81. Obligation to pay tax where objection lodged.
- 82. Determination of objection not to affect other assessments.
- 83. Objections to which this Part does not apply.

PART XII. - RECOVERY OF TAX.

- 84. Additional tax to be payable if default made in payment of tax.
- 85. Recovery of tax.
- 86. Deduction of tax from payment due to defaulters.

PART XIII. - REFUNDS AND RELIEF FROM TAX.

- 87. Refund of excess tax.

- 88. Tax paid in excess may be set off against tax payable when assessment re-opened.
- 89. Power of Commissioner in respect of small amounts.
- 90. Appropriation of refunds.

PART XIV. - PENALTIES.

- 91. Offences.
- 92. Officers and employees of corporate bodies.
- 93. Proceedings to be taken summarily.
- 94. Information may charge several offences.
- 95. Information may be laid within 10 years.
- 96. Further additional tax in case of evasion.
- 97. Nature of further additional tax.
- 98. Assessment of further additional tax.
- 99. Objections to further additional tax.
- 100. Recovery of further additional tax.
- 101. Recovery of further additional tax from executors or administrators.
- 102. Recovery of further additional tax not affected by conviction of registered person.

PART XV. - GENERAL PROVISIONS.

- 103. Keeping of records.
- 104. Agreement to defeat the intention and application of Act to be void.
- 105. Papua New Guinea currency.
- 106. Returns to be furnished in two parts for taxable period in which change in rate of tax occurs.
- 107. Adjustments to tax payable for persons furnishing returns on payments basis following change in rate of tax.
- 108. Adjustments to tax payable in relation to credit and debit notes following change in rate of tax.
- 109. Change in accounting basis coinciding with or occurring after change in rate of tax.
- 110. Liability to pay past tax, etc., not affected by alteration in the law.
- 111. Power to extend time for doing anything under Act.
- 112. Access to books, etc.
- 113. Regulations.

PART XVI. - TRANSITIONAL PROVISIONS.

- 114. Commencement day for value added tax.
- 115. Registration of persons liable to be registered on 1 July 1999.
- 116. Deduction for pre 1 July 1999 tax.
- 117. Phased introduction of input tax credits for capital goods supplied on or after 1 July 1999.

- 118. Phased introduction of refunds of tax.
- 119. Supplies prior to 1 July 1999.
- 120. Alternative method of accounting for transitional supplies.
- 121. Retentions and variations.
- 122. Effect of imposition or alteration of tax.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1998.

AN ACT

entitled

Value Added Tax Act 1998,

Being an Act to make provision for the imposition and collection of a value added tax on goods and services, and for related purposes,

MADE by the National Parliament to come into operation on 1 July 1999.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the right to privacy conferred by Section 49 of the *Constitution*; and
 - (b) the right to freedom of information conferred by Section 51 of the *Constitution*,
- is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

2. INTERPRETATION.

- (1) In this Act, unless the contrary intention appears -
 - “additional tax” means additional tax payable under Section 84;
 - “associated person” has the meaning assigned to the term ‘associate’ by the *Income Tax Act*;
 - “capital goods” means buildings, plant or articles which are or would be subject to depreciation under the relevant depreciation provisions of the *Income Tax Act* and includes such buildings, plant or articles in respect of which a deduction is allowable as capital expenditure under the mining, petroleum or timber provisions of the *Income Tax Act*;
 - “car” means a motor vehicle that is -
 - (a) a motor car, station wagon, panel van, utility truck or similar vehicle other than a panel van or utility truck designed to

Value Added Tax

- carry loads of 1 tonne or more; or
- (b) a motor cycle or similar vehicle; or
- (c) any other road vehicle designed to carry loads of less than 1 tonne or fewer than 9 passengers;

“Commissioner” means the Commissioner General of Internal Revenue appointed under Section 6 of the *Income Tax Act* ;

“company” means any body corporate, whether incorporated in Papua New Guinea or elsewhere, but does not include a local authority or a public authority;

“consideration”, in relation to the supply of goods or services to a person, includes payment made or act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and services, whether by that person or by any other person and where the supply is for a consideration in money it shall be taken to be such amount as, with the addition of the tax chargeable under this Act, is equal to the consideration, but does not include any payment made by a person as an unconditional gift to a non-profit body;

“consideration in money” includes consideration expressed as an amount of money;

“credit note” means a document provided under Section 39(1), and includes a document deemed to be a credit note under Section 40(2);

“*Customs Act* ” means the *Customs Act* (Chapter 101) as amended from time to time;

“dealer in fine metal” means a person who satisfies the Commissioner that a principal part of that person's business is the regular purchase and supply, for use as an investment item, of fine metal;

“debit note” means a document provided under Section 39(3), and includes a document deemed to be a debit note under Section 40(2);

“document” includes any electronic data, computer programmes, computer tapes and computer discs;

“due date”, in relation to the payment of tax by a registered person, means the last day for payment determined in Section 31(1), 64(1), 64(2) or 66(5), as the case may be, in respect of that registered person;

“exempt supply” means a supply that is exempt from tax under Section 24;

“fine metal” means -

- (a) gold, in any form, being gold of a fineness of not less than 99.5%;
or
- (b) silver, in any form, being silver of a fineness of not less than 99.9%; or
- (c) platinum, in any form, being platinum of a fineness of not less than 99.0%; or

Value Added Tax

- (d) any other substance which is prescribed as a fine metal for the purposes of this definition;
- “further additional tax” means further additional tax charged under Section 96;
- “going concern”, in relation to a supplier and a recipient, means the situation where -
 - (a) there is a supply of a taxable activity, or of a part of a taxable activity where that part is capable of separate operation; and
 - (b) all of the goods and services that are necessary for the continued operation of that taxable activity or that part of a taxable activity are supplied to the recipient; and
 - (c) the supplier carries on, or is to carry on, that taxable activity or that part of a taxable activity up to the time of its transfer to the recipient;
- “goods” means all kinds of personal or real property, but does not include choses in action or money;
- “hire”, in relation to goods, includes a letting on any terms, including a lease or licence;
- “hospital” means -
 - (a) a hospital, aid post or other institution having the principal purpose of the reception and treatment of persons requiring medical treatment or suffering from any disease; or
 - (b) a maternity hospital; or
 - (c) a private hospital or hospital licenced under the provisions of the *Medical Registration Act* (Chapter 398); or
 - (d) a mental hospital established pursuant to the *Public Health Act* (Chapter 226),and includes all clinics, dispensaries, outpatient departments, services, offices, and undertakings maintained in connection with or incidental to any such hospital or institution;
- “*Income Tax Act*” means the *Income Tax Act 1959*, as amended from time to time;
- “insurance” means insurance or guarantee against loss, damage, injury, or risk of any kind whatever, whether pursuant to contract or enactment, and includes reinsurance;
- “contract of insurance” includes a policy of insurance, an insurance cover, and a renewal of a contract of insurance, but nothing in this definition shall apply to any insurance specified in Section 23;
- “invoice” means a document notifying an obligation to make payment;
- “local authority” means a Provincial Government or Local-level Government as defined in the *Organic Law on Provincial Governments and Local-level Governments* and includes the National

Value Added Tax

Capital District Commission;

"money" includes -

- (a) bank notes and other currency, being any negotiable instruments used or circulated, or intended for use or circulation, as currency; and
- (b) postal notes and money orders; and
- (c) promissory notes and bills of exchange,

whether of Papua New Guinea or any other country, but does not include a collector's piece, investment article or item of numismatic interest;

"name", in relation to a registered person, includes -

- (a) the name (if any) specified by the registered person as a trading name in the person's application for registration under this Act; or
- (b) a trading name subsequently notified to the Commissioner under Section 44(3) as the name the registered person wishes to use for the purpose of issuing or creating tax invoices and credit or debit notes under this Act;

"new fine metal" means any fine metal which has been refined into fine metal by a refiner of fine metal;

"non-profit body" means a society, association, or organization, whether incorporated or not, which -

- (a) is carried on other than for the purposes of profit or gain to a proprietor, member, or shareholder; and
- (b) is, by the terms of its constitution, rules, or other document constituting or governing the activities of that society, association or organization, prohibited from making any distribution whether by way of money, property, or otherwise howsoever, to any such proprietor, member, or shareholder;

"person" includes a company, an unincorporated body of persons, a public authority, a local authority, and an instrument of a foreign state engaged in commercial activities;

"primary product" means a product resulting directly from -

- (a) the cultivation of land, but not including the production of timber; or
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase;

"public authority" means all instruments of the State in respect of the Government of Papua New Guinea, whether Departments, State entities, State enterprises or other instruments, and includes the offices of the National Parliament, but does not include the Governor-General, members of the National Executive Council, Ministers of the State or members of Parliament;

"recipient", in relation to a supply of goods and services, means the person

Value Added Tax

- receiving the supply;
- “refiner of fine metal” means a person who satisfies the Commissioner that, in the regular course of business, that person converts or refines any fine metal;
- “registered person” means a person who is registered or is liable to be registered under this Act;
- “registration number”, in relation to registered person, means the number allocated to that registered person for the purposes of this Act;
- “resident” means -
- (a) a resident as determined in accordance with Section 4(1) of the *Income Tax Act*; or
 - (b) a public authority; or
 - (c) a local authority; or
 - (d) a person who is an unincorporated body of persons, or is otherwise a body (as defined in Section 55), where that body has its centre of administrative management in Papua New Guinea; or
 - (e) a person who is not a resident within the categories specified in Paragraphs (a) or (d) to the extent that that person carries on, in Papua New Guinea, any taxable activity or any other activity;
- “resident service provider” means a resident falling within Paragraphs (a), (b), (c) or (d) of the definition of ‘resident’ who provides services other than those relating to the sale, construction or provision of capital goods;
- “return” means any return required to be furnished under Part IX;
- “Review Tribunal” or “Tribunal” means the Review Tribunal established under Section 240 of the *Income Tax Act*;
- “secondhand goods”, does not include -
- (a) secondhand goods consisting of any fine metal; or
 - (b) secondhand goods which are, or to the extent to which they are, manufactured or made from gold, silver, platinum or any other substance, which if it were of the required fineness, would be fine metal; or
 - (c) livestock;
- “services” means anything which is not goods or money;
- “supplier”, in relation to a supply of goods and services, means the person making the supply;
- “tax” means value added tax;
- “tax fraction” means the fraction calculated in accordance with the following formula:-

$$\frac{a}{100 + a}$$

Value Added Tax

where -

“a” is the rate of tax specified in Section 8;

“tax invoice” means a document provided under Section 38;

“tax payable” means an amount of tax calculated in accordance with Sections 30 and 31 and includes -

(a) any amount referred to in Section 53(3) or 67(2); and

(b) any amount of additional tax; and

(c) any amount of tax refundable by the Commissioner under Section 30 or 31;

“taxable period”, in relation to a registered person, means a taxable period determined under Section 25;

“taxable supply” means a supply of goods and services in Papua New Guinea which is charged with tax pursuant to Section 8, including tax charged at the rate of zero percent under Section 18, 19, 20 or 22;

“this Act” includes the Regulations;

“trustee” includes an executor and administrator, and also includes the Public Trustee;

“unconditional gift” means a payment voluntarily made to a non-profit body and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods and services to the person making that payment, or any other person where that person and that other person are associated persons, but does not include any payment made by the State or a public authority;

“working day” means any day of the week other than Saturday, Sunday or a declared national public holiday.

(2) For the purposes of this Act, a reference to goods and services includes a reference to goods or services.

3. ACT TO BIND STATE.

This Act binds the State.

PART II. - ADMINISTRATION.

4. ADMINISTRATION OF ACT.

(1) The Commissioner has the general administration of this Act.

(2) Sections 7, 8, 9 and 10 of the *Income Tax Act* apply to the value added tax imposed under Section 8 of this Act as if references in those sections to the *Income Tax Act* were references to this Act.

Value Added Tax

(3) The day to day administration of this Act, other than Section 12, is the responsibility of the Commissioner of Taxation and the Assistant Commissioners of Taxation, and the powers of the Commissioner shall be treated as delegated accordingly.

(4) In so far as this Act applies to the Commissioner of Customs, it is deemed to be part of the *Customs Act*.

5. DISCLOSURE OF INFORMATION.

(1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by an enactment or otherwise shall prevent either -

- (a) the Commissioner of Taxation or any officer authorized in that behalf; or
- (b) the Commissioner of Customs or any officer of Customs authorized in that behalf,

from disclosing to each other information obtained for revenue-gathering purposes and which is required to be disclosed by the persons authorized by this subsection for the same purpose to give effect to the provisions of the *Income Tax Act*, the *Customs Act* or this Act.

(2) Information obtained pursuant to Subsection (1) shall not be disclosed except -

- (a) to the persons authorized under that subsection; or
- (b) for the purpose of any proceedings connected with a matter in relation to which those persons so authorized perform their duties.

PART III. - IMPOSITION OF TAX.

Division 1. - Imports.

6. IMPOSITION OF VALUE ADDED TAX ON IMPORTED GOODS.

(1) Notwithstanding anything in this Act, a tax to be known as value added tax shall be levied, collected, and paid in accordance with the provisions of this section at the rate of 10% on the importation of goods (not being an exempt import) into Papua New Guinea, being goods that are -

- (a) entered therein, or delivered, for home consumption under the *Customs Act*; or
- (b) before their entry, or delivery, for home consumption, dealt with in breach of any provision of the *Customs Act*,

by reference to the value of the goods as determined under Subsection (2).

(2) For the purposes of Subsection (1), the value of goods imported into Papua New Guinea shall be the sum of the following amounts (excluding any tax charged under this Act):-

- (a) the amount of the value of the goods determined in accordance with the *Customs (Ad Valorem Duties) Regulation 1987* made under the *Customs*

Value Added Tax

- Act* (whether or not duty is payable under that Act); and
- (b) the amounts of duty (if any) payable on those goods under the *Customs Act*, but not including any tax levied or charged under this Act; and
- (c) the amount of duty (if any) payable on those goods under the *Customs Tariff (Dumping and Subsidies) Act* (Chapter 118); and
- (d) the amount of excise duty (if any) payable on those goods under the *Excise Tariff Act* (Chapter 107); and
- (e) the amount paid or payable to transport the goods to Papua New Guinea and to insure the goods for such transport, if not already included under Paragraph (a).

(3) Subject to this section, tax levied under Subsection (1) shall be collected and paid as if it were Customs duty levied on the importation of goods under the *Customs Act*, and as if all goods imported into Papua New Guinea were liable to Customs duty.

(4) No liability to value added tax shall arise under any provision of the *Customs Act* by virtue of the operation of Subsection (3).

(5) Where goods are imported for re-export under the provisions of Section 107 of the *Customs Act*, the Commissioner may grant to the importer permission to take the goods on giving a security or undertaking, to the satisfaction of the Commissioner, for payment of the value added tax payable under the provisions of this Act which shall be enforceable in the same manner as provided in Section 107 of the *Customs Act*.

7. EXEMPTION OF IMPORTED GOODS.

The following imports of goods are exempt from the tax under Section 6:-

- (a) imports of goods where a supply of the goods would be exempt under Section 24;
- (b) the duty free allowance for passengers and their accompanied baggage under the *Customs (Personal Effects) Regulation 1995*;
- (c) imports of goods which have been declared exempt from value added tax by virtue of the provisions of Section 24(10).
- (d) imports of goods by a diplomatic mission for the official use of the mission;
- (e) imports of goods by a diplomatic agent defined in Article 1 of the 'Vienna Convention on Diplomatic Relations' being Schedule 1 of the *Diplomatic and Consular Privileges and Immunities Act (Chapter 83)*, imported for the personal use of that agent or members of his family forming part of his household.

Value Added Tax

Division 2. - Supplies of goods and services in Papua New Guinea.

8. IMPOSITION OF VALUE ADDED TAX ON SUPPLY.

Subject to this Act, a tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act at the rate of 10% on the supply (but not including an exempt supply) in Papua New Guinea of goods and services, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.

Division 3. - Calculation of tax payable on supply.

9. TAX PAYABLE.

The tax payable by a registered person for a taxable period in respect of supplies of good and services in Papua New Guinea (in addition to the tax imposed under Section 6) is the output tax for that period less the input tax for that period as calculated under Part V.

PART IV. - SUPPLY OF GOODS AND SERVICES IN COURSE OF TAXABLE ACTIVITY.

Division 1 - Taxable Activity.

10. MEANING OF TERM "TAXABLE ACTIVITY".

- (1) For the purposes of this Act, the term "taxable activity" means -
- (a) business activity which is carried on continuously or regularly by a person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to another person for a consideration, and includes any such business activity carried on in the form of a trade, manufacture, profession, vocation, association, or club; and
 - (b) without limiting the generality of Paragraph (a), the activities of a public authority or local authority.

(2) Anything done in connection with the commencement or termination of a taxable activity is deemed to be carried out in the course or furtherance of that taxable activity.

(3) Notwithstanding anything in Subsections (1) and (2), for the purposes of this Act the term "taxable activity" does not include, in relation to a person -

- (a) being a natural person, an activity carried on essentially as a private recreational pursuit or hobby; or
- (b) not being a natural person, an activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational

Value Added Tax

- pursuit or hobby; or
- (c) an engagement, occupation, or employment under contract of service or as a director of a company; or
- (d) an engagement, occupation, or employment -
 - (i) as a public servant; or
 - (ii) as a Judge, Attorney-General, Departmental Head, Auditor General, Ombudsman or Constitutional Office-holder; or
 - (iii) pursuant to an appointment made by the Governor-General and prescribed for the purposes of this section; or
 - (iv) as a Chairman or member of a local authority or a statutory board, council, committee, or other body; or
- (e) any activity to the extent to which the activity involves the making of exempt supplies.

(4) Notwithstanding Subsection (3), where a person, in carrying on a taxable activity, accepts an office, any services supplied by that person as the holder of that office are deemed to be supplied in the course or furtherance of that taxable activity.

Division 2. - Supply.

11. MEANING OF TERM "SUPPLY".

- (1) For the purposes of this Act, the term "supply" includes all forms of supply.
- (2) For the purposes of this Act, where a supply is charged with tax in part under Section 8 and in part under Section 18, each part is deemed to be a separate supply.
- (3) For the purposes of this Act, where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by that person are deemed to be supplied by that person in the course of that taxable activity at a time immediately before that person ceases to be a registered person, unless the taxable activity is carried on by another person who, under Section 56, is deemed to be a registered person
- (4) The disposition of a taxable activity as a going concern is deemed to be a supply of goods made in the course or furtherance of the taxable activity.
- (5) For the purposes of this Act, a contract that is a layby sale shall not constitute a supply of goods and services unless the goods which are the subject of the contract are delivered to the buyer and the property therein is transferred to the buyer.
- (6) A supply of services is, in respect of any contract referred to in Subsection (5), deemed to have taken place where -
 - (a) a layby sale is cancelled; and

Value Added Tax

(b) the seller either -

- (i) retains any amount paid to the seller to recoup that seller's selling costs in respect of the layby sale; or
- (ii) recovers any amount (including, or in addition to, the amount referred to in Subparagraph (i)) from the buyer.

(7) Subject to Subsection (8), charges for permits or licences issued by public authorities or local authorities and fines or penalties levied by such authorities shall not give rise to a supply of goods or services.

(8) For the purposes of this Act, provincial road-users tax paid under Section 86 of the *Organic Law on Provincial Governments and Local-level Governments* is deemed to be a consideration for a supply of services in the course or furtherance of a taxable activity carried on by the relevant Province.

(9) For the purposes of this Act, a local authority is deemed to supply goods and services to a person consisting of sewerage, garbage and night soil collection and any other matter prescribed in regulations when any amount of rates is payable by that person to that local authority in respect of such goods and services.

(10) For the purposes of this Act, where a registered person receives an indemnity payment pursuant to a contract of insurance, that payment is, to the extent that it relates to a loss incurred in the course of making a taxable supply, deemed to be consideration received for a supply of services performed on the day of receipt of that indemnity payment by that registered person in the course or furtherance of that person's taxable activity.

(11) Subsection (10) does not apply in respect of an indemnity payment received pursuant to a contract of insurance where -

- (a) the supply of that contract of insurance is not a supply charged with tax under Section 8; or
- (b) that payment is to indemnify for the loss of earnings of an individual.

(12) Subject to Subsection (13), but notwithstanding any other provision of this section, to the extent that a registered person has or is deemed to have provided or granted a benefit assessable under Section 65E(1)(b) of the *Income Tax Act* to any other person, where that other person is an employee (as defined in Section 4(1) of the *Income Tax Act*) of that registered person, the provision or granting of that benefit is, except to the extent that any amount has been paid by that other person for the receipt or enjoyment of that benefit, deemed to be a supply of goods and services made by that registered person in the course of a taxable activity carried on by that registered person.

Value Added Tax

(13) Subsection (12) does not apply in respect of any assessable benefit to the extent that -

- (a) it has arisen by virtue of a supply of goods and services that is an exempt supply under Section 24; or
- (b) it has arisen by virtue of a supply of goods and services that is a supply charged with tax at the rate of zero percent under Section 18; or
- (c) it is, or is deemed to be, provided or granted by a registered person in the course of making exempt supplies; or
- (d) it is a car or the use of a car which is subject to income tax under Section 65E(1)(f) of the *Income Tax Act*; or
- (e) it is the provision of accommodation which is subject to income tax under Section 65E(1)(f) of the *Income Tax Act*.

12. TRANSFER OF LAND.

- (1) The transfer of ownership of land is deemed not to be a supply under this Act.
- (2) Where the owner of land has erected a building or otherwise improved the land, Subsection (1) does not apply to the transfer of ownership of the land to the extent that the consideration for the transfer relates to the transfer of ownership of the improvement.

- (3) For the purpose of this section, the ownership of land means -
 - (a) ownership of title to the land; or
 - (b) ownership of a State lease originally granted for a period in excess of 25 years; or
 - (c) ownership of shares in a company which confer rights equivalent to the rights referred to in Paragraph (a) or (b).

Division 3. - Place of supply.

13. SUPPLY IN PAPUA NEW GUINEA.

- (1) For the purposes of this Act, but subject to Subsection (2), goods and services are deemed to be supplied in Papua New Guinea where the supplier is resident in Papua New Guinea, and are deemed to be supplied outside Papua New Guinea where the supplier is not resident in Papua New Guinea.

- (2) For the purposes of this Act goods and services are deemed to be supplied in Papua New Guinea where -

- (a) the supplier is not resident in Papua New Guinea; and
- (b) either -
 - (i) the goods are in Papua New Guinea at the time of supply;
 - or

Value Added Tax

- (ii) the services are physically performed in Papua New Guinea by a person who is in Papua New Guinea at the time the services are performed; or
- (iii) the services are performed outside Papua New Guinea for the use or benefit within Papua New Guinea of a person resident in Papua New Guinea.

14. REVERSE CHARGE ON SERVICES RECEIVED FROM ABROAD.

(1) Subject to Subsection (2), where services are deemed to be supplied in Papua New Guinea under Section 13(2)(b)(iii), all the consequences shall follow under this Act (and particularly charges to tax on supply and deductions for input tax) as if the recipient had supplied the services in Papua New Guinea in the course or furtherance of that recipient's taxable activity.

(2) The provisions of this Act relating to the deduction of input tax shall apply in respect of supplies, which are treated as made by a registered person under Subsection (1), although those supplies themselves shall not be treated as being taxable supplies made by that person for the purposes of determining the input tax deductible under Section 30(2).

(3) For the purposes of this Act, where Subsection (1) treats a supply of relevant services as being made by a person in the course or furtherance of that person's taxable activity -

- (a) subject to Section 17(5), the value of that supply is for whatever consideration was paid or payable for the relevant services; and
- (b) the supply takes place when the relevant services are paid for, or where the consideration is not in money, on the last day of the taxable period in which the services are performed.

(4) Where a person carries on a taxable activity through an establishment of the person in Papua New Guinea and through another establishment outside Papua New Guinea, a supply of services by the establishment outside Papua New Guinea to the establishment in Papua New Guinea shall be treated as if -

- (a) the recipient had supplied the services in Papua New Guinea in the course or furtherance of that recipient's taxable activity; and
- (b) that supply between the two establishments were between two separate persons,

and the provisions of Subsections (1), (2) and (3) shall apply accordingly.

(5) Notwithstanding anything in Subsection (3)(a), where Subsection (4) applies, the value of the supply is deemed to be the open market value of the relevant services.

Division 4. - Time of supply.

15. TIME OF SUPPLY.

- (1) Subject to this Act, for the purposes of this Act a supply of goods and services is

Value Added Tax

deemed to take place at the earlier of the time an invoice is issued by the supplier or the recipient or the time any payment is received by the supplier, in respect of that supply.

(2) Subject to Subsection (3), where the supplier and the recipient are associated persons, a supply of goods or services is deemed to take place -

- (a) in the case of a supply of goods which are to be removed, at the time of the removal; and
- (b) in the case of a supply of goods which are not to be removed, at the time when they are made available to the recipient; and
- (c) in the case of a supply of services, at the time the services are performed.

(3) Subsection (2) does not apply in a case where an invoice is issued, or a payment is made, in respect of that supply, on or before the last day for furnishing the return in relation to the taxable period during which, but for this subsection, that supply would have been made.

(4) Where a supply is a layby sale to which Section 11(5) refers, the supply is deemed to take place at the time at which the property in the goods is transferred to the recipient.

(5) Where a supply of services is deemed to take place under Section 11(6) on the cancellation of a layby sale, that supply of services is deemed to take place at the time that the layby sale is cancelled.

(6) Where the supply of goods and services is for a consideration in money received by the supplier by means of a machine, meter or other device operated by a coin or token, the supply is deemed to take place at the time any such coin or token is taken from that machine meter, or other device by or on behalf of the supplier.

(7) Notwithstanding anything in Subsections (1) to (6) inclusive -

- (a) where goods are supplied under an agreement to hire (including a hire purchase agreement as defined in the *Hire Purchase Act* (Chapter 252)) or where services are supplied under an agreement or enactment which provides for periodic payments, they are deemed to be successively supplied for successive parts of the period of the agreement or the enactment, and each of the successive supplies is deemed to take place when a payment becomes due or is received, whichever is the earlier; and
- (b) where and to the extent that -
 - (i) goods are supplied progressively or periodically pursuant to an agreement or enactment which provides for the consideration for that supply to be paid in instalments or periodically and in relation to the periodic or progressive supply of those goods; or
 - (ii) goods and services supplied directly in the construction, major reconstruction, manufacture, or extension of a

Value Added Tax

building or an engineering work are supplied pursuant to an agreement or enactment which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of that construction, manufacture, or extension, those goods and services are deemed to be successively supplied, and each such successive supply is deemed to take place whenever any payment in respect of any supply becomes due, is received, or any invoice relating only to that payment is issued, whichever is the earlier.

(8) Subject to Subsection (2) and to Section 32(5), where goods are supplied under an agreement, other than an agreement to hire (as defined in Subsection (7)), and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time they are appropriated, that supply is deemed to take place when and to the extent that a payment under the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earlier.

Division 5. - Value of supply.

16. OPEN MARKET.

(1) For the purposes of this Act, the open market value of a supply of goods and services at any date shall be the consideration in money which the supply of those goods and services would generally fetch if supplied in similar circumstances at that date in Papua New Guinea, being a supply freely offered and made between persons who are not associated persons.

(2) Where the open market value of a supply of goods and services cannot be determined pursuant to Subsection (1), the open market value shall be determined in accordance with a method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply of those goods and services.

(3) For the purposes of Subsections (1) and (2), the open market value of a supply includes any value-added tax charged under Section 8 on that supply.

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

17. VALUE OF SUPPLY OF GOODS AND SERVICES.

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

Value Added Tax

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

(3) Subject to the provisions of this section, where a supply is made for no consideration, the value of that supply is nil.

(4) Subject to this section, the value of a supply of goods and services is such amount as, with the addition of the tax charged, is equal to the aggregate of -

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

(5) Subject to Subsections (6) and (10), where -

- (a) a supply is made by a person for no consideration or for a consideration in money that is less than the open market value of that supply; and
- (b) the supplier and the recipient are associated persons; and
- (c) the supply is not a benefit that the supplier has, or is deemed to have, provided or granted pursuant to the *Income Tax Act* to the recipient, being a person employed under a contract of service by the supplier,

the consideration in money for the supply is deemed to be the open market value of that supply.

(6) Subsection (5) does not apply to a supply made by a registered person where the recipient-

- (a) acquired that supply for the principal purpose of making taxable supplies; and
- (b) is entitled, under Section 9, to make a deduction in respect of that supply.

(7) Where a supply of goods is a supply which would, but for Section 21, be charged with tax at the rate of zero percent, the consideration in money for that supply is deemed to be an amount equal to the purchase price of those goods to the supplier.

(8) Where the deduction of input tax referred to in Section 21(a) has been made by any other person (where that supplier and that other person are associated persons), the consideration in money for that supply is deemed to be an amount equal to the purchase price of those goods to that other person.

(9) For the purposes of Subsections (7) and (8), the purchase price of goods shall not be reduced by an amount of input tax deducted by the supplier or, as the case may be, any other person where the supplier and that other person are associated persons, under Section 29(4).

Value Added Tax

- (10) Where goods and services are deemed to be supplied by a person under Section 11(3) or 32(4), the consideration in money for that supply is deemed to be the lesser of -
- (a) the cost of those goods and services to the supplier, including any input tax deduction claimed in respect of the supply of those goods and services to that supplier; or
 - (b) the open market value of that supply.

(11) Where a supply of services is deemed to be made under Section 11(6), the consideration in money for the supply is deemed to be an amount equal to the amount referred to in that subsection as being retained or recoverable.

(12) Notwithstanding anything in Subsection (1), where a supply of goods and services is made under a credit contract, the consideration in money for the supply is deemed to be the open market value of the goods or services apart from any financial services forming part of that supply.

(13) Notwithstanding anything in this section, where goods and services are, or are deemed to be, supplied to a person by any local authority under Section 11(9), the consideration in money for any such supply shall be an amount equal to any amount from time to time paid or payable by or on behalf of that person for that supply.

(14) Where goods and services are deemed to be supplied by a person under Section 30(12), the consideration in money for the supply is deemed to be an amount equal to the taxable value of that benefit as determined under Section 9A of the *Income Tax Regulations 1959*.

(15) Where a right to receive goods and services for a monetary value stated on any token, stamp (not being a postage stamp) or voucher is granted for a consideration in money, that supply shall be disregarded for the purposes of this Act, except to the extent (if any) that that consideration exceeds that monetary value.

(16) Where a right to receive goods and services is granted in exchange for -

- (a) any token, stamp, or voucher for a consideration in money and the monetary value of that token, stamp or voucher is not stated thereon; or
- (b) a postage stamp,

the value of the supply of goods and services made upon redemption of that token, stamp, or voucher or franking of that postage stamp shall be nil.

Division 6. - Zero-rated supply.

18. ZERO-RATING OF EXPORTED GOODS.

(1) Where, but for this section, a supply of goods would be charged with tax under Section 8, any such supply shall be charged at the rate of zero percent where -

Value Added Tax

- (a) the supplier has entered the goods for export, pursuant to the *Customs Act*, and those goods have been exported by the supplier; or
- (b) the supplier has satisfied the Commissioner that the goods have been exported by the supplier to a place outside Papua New Guinea; or
- (c) subject to Subsection (2), the supplier will enter the goods for export, under the *Customs Act*, in the course of, or as a condition of, making the supply and will export the goods; or
- (d) the goods are supplied, by a supplier licensed under Section 54A or 54B of the *Customs Act* as an outwards or inwards duty free shop, to -
 - (i) an inbound air traveller; or
 - (ii) an outbound air traveller (including a traveller who uplifts the supply by the goods upon returning to Papua New Guinea); or
- (e) subject to Subsection (4), the supply is the supply by way of sale of a boat to a recipient who exports that boat under its own power to a place outside Papua New Guinea; or
- (f) the goods are not situated in Papua New Guinea at the time of supply, and are not to be entered into Papua New Guinea for home consumption by the supplier of the goods; or
- (g) the goods have been supplied in the course of repairing, renovating, modifying, or treating any goods to which Section 20 applies and the goods supplied -
 - (i) are wrought into, affixed to, attached to, or otherwise form part of those other goods; or
 - (ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process; or
- (h) the goods have been supplied for use as stores for consumption outside Papua New Guinea on an aircraft or ship going to a destination outside Papua New Guinea.

(2) Where Subsection (1)(c) applies, and the goods are not exported by the supplier within -

- (a) 28 days of the time of supply; or
- (b) such longer period, from the time of supply, as the Commissioner has determined pursuant to Subsection (3),

the goods shall, notwithstanding Subsection (1)(c), but subject to Subsections (1)(a) and (3), be charged with tax under Section 8.

(3) Where Subsection (2) applies and the Commissioner has determined, upon application by the supplier in writing, that -

- (a) circumstances beyond the control of the supplier and recipient have

Value Added Tax

prevented, or will prevent, the exportation of those goods within 28 days of the time of supply; or

- (b) due to the nature of the supply, it is not practicable for the supplier to export those goods, or a class of those goods, within 28 days of the time of supply,

the Commissioner may extend the 28-day period before the supply of goods is charged with tax under Section 8, as the Commissioner sees fit.

(4) Subsection (1)(e) does not apply in respect of the supply of a boat, and the supply shall accordingly be charged with tax under Section 8, unless -

- (a) the boat is exported within 60 days of the time the recipient, or the recipient's agent, takes physical possession of it, or within such further period as the Commissioner may allow under Subsection (5); and
- (b) the Commissioner is provided with such documentation and undertakings as the Commissioner may require in relation to -
 - (i) records of the sale that constitutes the supply; and
 - (ii) limitations on dealings in and the uses to which the boat will be put before export; and
 - (iii) the proposed and actual date of export.

(5) The Commissioner may extend the 60-day period referred to in Subsection (4) where the Commissioner is satisfied, upon the written application of the supplier, that circumstances beyond the control of the supplier and the recipient have prevented, or will prevent, the export of the boat within that period.

19. SALE OF A GOING CONCERN.

(1) Where, but for this section, a supply of goods would be charged with tax under Section 8, any such supply shall be charged at the rate of zero percent where the supply is -

- (a) a supply to a registered person of a taxable activity, or part of a taxable activity, that is, or is to be, transferred from the supplier to the recipient as a going concern; and
- (b) the recipient is a registered person or a person who immediately becomes a registered person at the time of the transfer.

(2) Where -

- (a) a supplier and a recipient have agreed in writing that a supply is the supply of a going concern, and the supplier has accordingly treated the supply as being chargeable with tax at the rate of zero percent under Subsection (1); and
- (b) the contract or agreement for the supply contains no provision for an increase to the agreed price arising in the event that the supply is not a supply that comes within the provisions of Subsection (1), or does not

Value Added Tax

otherwise contemplate or provide for the consequences if tax is not chargeable at the rate of zero percent; and

- (c) the supply does not come within the provisions of Subsection (1), the supplier may increase the consideration for the supply by an amount equal to the agreed price in the contract or agreement multiplied by a percentage equal to the percentage specified in Section 8 applicable to that supply.

20. OTHER ZERO RATED GOODS.

(1) Where, but for this section, a supply of goods would be charged with tax under Section 8, any such supply shall be charged at the rate of zero percent where -

- (a) the supply is the supply of prescription drugs or medical prostheses prescribed by a registered medical practitioner or registered dental practitioner or the supply of prescription lenses with or without frames by a registered medical practitioner or optician or the supply of medical equipment as prescribed; or
- (b) the supply is the supply of new fine metal (being the first supply of that new fine metal following its refining) by the refiner of that fine metal to a dealer in fine metal or jewellery manufacturer, for the purposes of the supply of that fine metal for use as an investment item or of jewellery; or
- (c) the supply is the supply of goods or services to a prescribed foreign aid provider.

(2) Where a person is a refiner of fine metal and is also a dealer in fine metal or a jewellery manufacturer, that new fine metal shall, for the purposes of Subsection (1)(b), be deemed to have been supplied to a dealer in fine metal or jewellery manufacturer at a time immediately prior to the making of any exempt supply by the dealer or jewellery manufacturer.

21. EXCEPTION TO ZERO RATING OF GOODS.

Sections 18 and 20 do not apply in respect of a supply of goods by a registered person -

- (a) being goods in respect of which input tax specified in the definition of "input tax" in Section 29(1)(c) has been deducted by that registered person, or any other person where that registered person and that other person are associated persons, under Section 29(4); or
- (b) being goods which have been or will be reimported to Papua New Guinea by the supplier; or
- (c) being goods which are logs, flitches or woodchips and which are exported or otherwise sold in an unprocessed form, where unprocessed means logs, flitches or woodchips which have not been converted into sawn timber, plywood, veneer or any other form suitable for sale to end users.

22. EXPORTED SERVICES.

(1) Where, but for this section, a supply of services would be charged with tax under Section 8, any such supply shall be charged at the rate of zero percent where -

- (a) the services (not being ancillary transport activities such as loading, unloading, and handling) comprise the transport of passengers or goods -
 - (i) from a place outside Papua New Guinea to another place outside Papua New Guinea; or
 - (ii) from a place in Papua New Guinea to a place outside Papua New Guinea; or
 - (iii) for passengers only, from a place outside Papua New Guinea to a place inside Papua New Guinea; or
- (b) the services comprise the transport of a passenger from a place in Papua New Guinea to another place in Papua New Guinea to the extent that that transport is by aircraft and is in the course of an international air service as defined in the *Civil Aviation Act* (Chapter 239); or
- (c) the services (including any ancillary transport activities such as loading, unloading, and handling) comprise the transport of goods from a place in Papua New Guinea to another place in Papua New Guinea to the extent that those services are supplied by the same supplier as part of the supply of services to which Paragraph (a)(ii) or (iii) applies; or
- (d) the services comprise the insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which any provision of Paragraphs (a) to (c) inclusive applies.

(2) Where, but for this section, a supply of services would be charged with tax under Section 8, any such supply shall be charged at the rate of zero percent where -

- (a) the services are supplied directly in connection with land, or any improvement thereto, situated outside Papua New Guinea; or
- (b) the services are supplied directly in connection with moveable personal property, other than choses in action, situated outside Papua New Guinea when the services are performed.

(3) Where, but for this section, a supply of services would be charged with tax under Section 8, any such supply shall be charged at the rate of zero percent where -

- (a) subject to Subsection (4), the services are physically performed outside Papua New Guinea; or
- (b) the services are supplied for and to a person who is not resident in Papua New Guinea and who is outside Papua New Guinea at the time the services are performed, and are not -
 - (i) services which are supplied directly in connection with land or an improvement thereto or moveable personal property

Value Added Tax

- (other than choses in action) situated inside Papua New Guinea at the time the services are performed; or
- (ii) services which are the acceptance of an obligation to refrain from carrying on a taxable activity, to the extent that the conduct of that activity would have occurred within Papua New Guinea; or
- (c) the services are -
 - (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of intellectual property rights, including patents, designs, trade marks, copyrights, plant variety rights, know-how, confidential information, trade secrets, or similar rights; or
 - (ii) other services in respect of such rights, including services involved in the making of searches, the giving of advice, opposing the grant or seeking the revocation of such rights, or opposing steps taken to enforce such rights; or
 - (iii) the acceptance of an obligation to refrain from pursuing or exercising in whole or in part any such rights, where and to the extent that those rights are for use outside Papua New Guinea; or
- (d) the services are -
 - (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of intellectual property rights, including patents, designs, trade marks, copyrights, plant variety rights, know-how, confidential information, trade secrets, or similar rights; or
 - (ii) other services in respect of such rights, including services involved in the making of searches, the giving of advice, opposing the grant or seeking the revocation of such rights, or opposing steps taken to enforce such rights, where and to the extent that those services are supplied for and to a person who is not resident in Papua New Guinea and who is outside Papua New Guinea when the service is performed; or
- (e) the services are the acceptance of an obligation to refrain from carrying on any taxable activity, where the conduct of the taxable activity would have occurred outside Papua New Guinea.

(4) Subsection (3) does not apply to services of which are deemed to be supplied in Papua New Guinea under Section 13(2)(b)(iii).

Division 7. - Supply exempt from tax.

23. MEANING OF TERM "FINANCIAL SERVICES".

(1) For the purposes of this Act, the term "financial services" means any one or more of the following activities:-

- (a) the exchange of currency (whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise);
- (b) the issue, payment, collection or transfer of ownership of a cheque or letter of credit;
- (c) the issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debt security;
- (d) the issue, allotment or transfer of ownership of an equity security or a participatory security;
- (e) underwriting or sub-underwriting the issue of an equity security, debt security or participatory security;
- (f) the provision of credit under a credit contract;
- (g) the renewal or variation of a debt security, equity security, participatory security or credit contract;
- (h) the provision, taking, variation, or release of a guarantee, indemnity, security, or bond in respect of the performance of obligations under a cheque, credit contract, equity security, debt security or participatory security or in respect of the activities specified in Paragraphs (b) to (g) inclusive;
- (i) the provision, or transfer of ownership, of a life insurance contract or the provision of re-insurance in respect of any such contract;
- (j) the provision, or transfer of ownership, of an interest in a superannuation scheme, the National Provident Fund or an investment fund, or the management of a superannuation scheme, the National Provident Fund or an investment fund;
- (k) the provision or assignment of a future contract, forward contract, option, financial derivative and similar contracts;
- (l) the payment or collection of any amount of interest, principal, dividend or other amount whatever in respect of any debt security, equity security, participatory security, credit contract, contract of life insurance, superannuation scheme or future contract;
- (m) agreeing to do, or arranging, any of the activities specified in Paragraphs (a) to (l), other than advising thereon.

(2) The term "financial services" does not include the assignment or other transfer of any right to receive payment in relation to a taxable supply where, as a result of any such assignment or transfer, output tax in relation to that taxable supply would not be or become

Value Added Tax

attributable to a taxable period for the purposes of Section 30(10).

(3) Where a person supplies goods and services (being the supply of general accounting and record package services) to a person who is a supplier of financial services or to a customer of the person who is a supplier of financial services, that supply shall, for the purposes of this Act, be deemed not to be a supply of financial services.

(4) For the purposes of this section –

“cheque” means a cheque as defined in the *Bills of Exchange Act*

(Chapter 250), a postal note, a money order, a traveller's cheque or any order or authorization (whether in writing or by electronic means, or otherwise) to a financial institution to credit or debit any account;

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

“debt security” means an interest in or right to be paid money that is, or is to be, owing by a person, but does not include a cheque;

“equity security” means an interest in or right to a share in the capital of a body corporate;

“general accounting and record package services”, in relation to financial services, includes –

- (a) the provision of a financial clearing system which may form part of a settlement process; and
- (b) the posting of transactions to customers' accounts; and
- (c) the maintenance of those customers' accounts; and
- (d) the provision of ancillary services (such as network management, software support and development) supplied in relation to the services referred to in any of Paragraphs (a), (b) and (c),

but does not include the services referred to in Paragraphs (a) to (d) (inclusive) where those services are supplied by a supplier of a financial service and are reasonably incidental and necessary to the supply of that financial service by that supplier of the financial service;

“life insurance contract” means a contract lawfully entered into to the extent that it places a sum or sums at risk upon the contingency of the termination or continuance of human life or marriage or the birth of a child;

“participatory security” means an interest or right to participate in any capital, assets, earnings or other property of a person where that interest or right forms part of a contributory scheme, and includes

Value Added Tax

an interest in a unit trust, but does not include an equity security, a debt security, money or a cheque;

“superannuation scheme” means a scheme under which an indefinitely continuing fund has been established and is maintained solely for the purpose of making provisions for the payment of individual personal pensions or retiring allowances.

(5) Notwithstanding Subsection (4), the terms “debt security”, “equity security”, and “participatory security” do not include any of the following:-

- (a) a life insurance contract or any other contract of insurance; or
- (b) an estate or interest in land, other than an estate or interest as mortgagee or chargeholder; or
- (c) a share in the share capital of a flat-owning or office-owning company which gives the right to occupancy of a flat or office; or
- (d) an interest in a superannuation scheme.

24. EXEMPT SUPPLIES.

(1) Subject to Subsection (2), the supply of any financial services (together with the supply of any other goods and services, supplied by the supplier of those financial services, which are reasonably incidental and necessary to that supply of financial services) is exempt from tax under this Act.

(2) Subsection (1) does not apply to -

- (a) a supply of financial services which, but for this subsection, would be charged with tax at the rate of zero percent under Section 22; or
- (b) a supply of goods and services which (although being part of a supply of goods and services which, but for this subsection, would be an exempt supply under Subsection (1)) is not in itself, as between the supplier of that first-mentioned supply and the recipient, a supply of financial services in respect of which Subsection (1) applies.

(3) The supply of fine metal, not being a supply which, but for this subsection, would be charged with tax at the rate of zero percent under Section 18 or 20 is exempt from tax under this Act.

(4) The supply of logs of which are exported or otherwise supplied in an unprocessed form (as defined in Section 21(c)) is exempt from tax under this Act.

(5) Where a person who produces or deals in logs in an unprocessed form also processes them or causes them to be processed so that they are no longer in an unprocessed form (as defined in Section 21(c), that person is deemed to have supplied the unprocessed logs immediately before they ceased to be unprocessed.

Value Added Tax

(6) The supply of medical and related services by a hospital, a registered medical practitioner, registered dental practitioner, optician or nurse, or an aid post orderly is exempt from tax under this Act.

- (7) The supply of educational services by an educational institution including -
- (a) tuition; and
 - (b) boarding services provided by the educational institution pursuant to the provision of tuition; and
 - (c) text books, or writing materials; and
 - (d) other educational materials reasonably relevant to the purpose of education, is exempt from tax under this Act.

(8) For the purposes of Subsection (7), the term "educational institution" means a public educational institution of which includes -

- (a) an affiliated school, an associate member school, a school, a teachers college, a technical college, a technical school and a vocational centre as defined in the *Education Act* (Chapter 163); and
- (b) a place of tertiary education as defined in Section 9B of the *Income Tax Regulations* under the *Income Tax Act*; and
- (c) the Legal Training Institute established under the *Post Graduate Legal Training Act* (Chapter 168); and
- (d) any other educational institution that is prescribed.

(9) The following supplies are exempt from tax under this Act:-

- (a) the supply of public road transport to passengers by a registered Public Motor Vehicle (PMV) or Taxi;
- (b) the retail supply of newspapers by a distributor or newspaper vendor to readers (which does not include the supply of newspapers to distributors or newspaper vendors themselves);
- (c) the supply of betting, lotteries, and games of chance;
- (d) the supply of postage stamps;
- (e) the supply of housing or a motor vehicle to an employee by his employer in the course of employment.

(10) The Head of State, acting on advice, may, by notice in the National Gazette -

- (a) exempt from value added tax the supply of any good or service otherwise subject to value added tax under this Act; or
- (b) substitute a reduced rate of value added tax in respect of the supply of any good or service subject to value added tax under this Act.

Value Added Tax

- (11) An exemption from, or a reduced rate of value added tax under Subsection (10) -
- (a) may relate to -
 - (i) a class of goods or services; or
 - (ii) goods or services or a class of goods or services supplied for a purpose specified in the notice; and
 - (b) may further be subject to compliance with any conditions specified in the notice; and
 - (c) shall continue in force for such period as is specified in the notice or, where no such period is specified in the notice, until revocation of that notice by a subsequent notice.

PART V. - TAX PAYABLE.

Division 1. - Taxable periods.

25. TAXABLE PERIODS.

(1) The taxable period for each person registered under this Act shall be a calendar month ending on the last day of that month.

(2) Notwithstanding anything in this section, the Commissioner may, upon written application by a registered person, determine a day in substitution for the last day referred to Subsection (1), not being a day more than seven days earlier or seven days later than that last day, but any such determination shall be disregarded for the purposes of Section 62(1).

(3) Notwithstanding anything in this section, where, in relation to a registered person -

- (a) the total value of the registered person's taxable supplies has, in the period of 12 months ending with the last day of any taxable period of the registered person, not exceeded K250,000.00; and
- (b) that person has requested in writing, addressed to the Commissioner, a change of taxable period from one month to a longer period but not exceeding six months,

the Commissioner may, subject to such conditions as he sees fit, substitute a longer taxable period for that registered person which shall end on the last day of that extended period.

(4) Notwithstanding any other provision in this section, where a registered person dies, or goes into liquidation or receivership, becomes bankrupt, or ceases to exist on an amalgamation, the date of that person's death, liquidation, receivership or bankruptcy or cessation of existence, as the case may be, is deemed to be the last day of that person's taxable period.

Value Added Tax

Division 2. - Accounting methods.

26. ACCOUNTING BASIS.

(1) Subject to this section and to Sections 27 and 28 a registered person shall account for tax payable on an invoice basis for the purposes of Section 30.

(2) The Commissioner may, on application in writing in that behalf by a registered person, direct that for the purposes of Section 30 the registered person account for tax payable on a payments basis, where the registered person satisfies the requirements of Section 27(1).

(3) The Commissioner may, on application in writing in that behalf by a registered person who pursuant to a direction of the Commissioner accounts for tax payable on a payments basis, direct that the registered person account for tax payable on an invoice basis.

(4) Where the Commissioner gives a direction in respect of a registered person's accounting basis under Subsection (2) or (3) or under Section 27(2), the registered person shall account for tax payable on the accounting basis directed by the Commissioner with effect from -

- (a) the commencement of the taxable period immediately following the taxable period during which the direction is given by the Commissioner, in any case to which Paragraph (b) or (c) does not apply; or
- (b) the person's registration under this Act, where the direction is given by the Commissioner before the end of the first taxable period of the person that follows that registration; or
- (c) the commencement of such other taxable period as the Commissioner considers equitable, where the Commissioner and the person so agree.

27. REQUIREMENTS FOR ACCOUNTING ON PAYMENTS BASIS.

(1) The Commissioner shall not direct a registered person to account for tax payable on a payments basis under Section 26 unless -

- (a) the registered person is -
 - (i) a local authority; or
 - (ii) a non-profit body; or
- (b) in respect of the registered person -
 - (i) at the end of any month, the total value of the person's taxable supplies in the period of 12 months then ending has not exceeded K500,000.00 (or such greater amount as is prescribed for the purposes of this section); or
 - (ii) in the period of 12 months beginning on the first day of any month, the total value of the person's taxable supplies is not likely to exceed the amount specified in or under Subparagraph (i).

Value Added Tax

(2) Where the Commissioner is satisfied (whether by a notification given by the registered person under Section 44(1)(c) or otherwise) that a registered person who has been directed to account for tax payable on a payments basis has ceased to satisfy the conditions set out in Subsection (1), the Commissioner shall direct that the registered person account for tax payable on an invoice basis.

(3) For the purposes of Subsection (2), a registered person shall not be treated as having ceased to satisfy the conditions of Subsection (1) by reason only that the total value of the registered person's taxable supplies has exceeded, or as the case may be will exceed, the amount specified by or under Subsection (1)(b) solely as a consequence of -

- (a) any cessation of or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or
- (b) the replacement of any plant or other capital asset used in any taxable activity carried on by that person.

28. PARTICULARS TO BE FURNISHED AND PREPARED IF CHANGE IN ACCOUNTING BASIS.

(1) Where the Commissioner directs a change in a registered person's accounting basis under Section 26 or 27, the registered person shall furnish to the Commissioner particulars in the required form calculating the tax payable in respect of the change in accounting basis.

(2) The particulars required to be furnished under Subsection (1) shall be furnished to the Commissioner not later than the last day for furnishing a return under Section 62 for the taxable period preceding that in which the direction of the Commissioner takes effect.

(3) Where the Commissioner directs a change in a registered person's accounting basis under Section 26 or 27, 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 taxable period preceding that in which the direction takes effect; and
- (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 taxable period preceding that in which the direction takes effect.

Division 3. - Deduction for input tax.

29. INPUT TAX AND OUTPUT TAX.

(1) For the purposes of this Act, the term "input tax" in relation to the acquisition of goods and services by a registered person for the principal purpose of making taxable activities means -

- (a) tax charged under Section 8 on the supply of goods and services made to

Value Added Tax

that person; and

(b) tax levied under Section 6(1) on goods entered for home consumption under the *Customs Act* by that person; and

(c) any amount calculated under Subsection (2) or (6),

being (in each case) goods or services used or to be used for the purpose of a business carried on or to be carried on by him.

(2) In the case of a supply by way of a sale, that is not a taxable supply, to a registered person of any secondhand goods situated in Papua New Guinea, the input tax shall be an amount equal to the tax fraction applicable at the time of supply of the consideration in money for the supply.

(3) Subsection (2) does not apply to goods that are supplied by a supplier who -

(a) is not resident in Papua New Guinea; and

(b) has not previously supplied the goods to a registered person who has entered them for home consumption under the *Customs Act*.

(4) In relation to a supply to which Subsection (2) or (6) applies, where the supplier and recipient are associated persons, or the supply is not the only matter to which the consideration relates, the consideration in money for that supply is, for the purposes of that subsection, deemed to be the lesser of the purchase price or the open market value of that supply.

(5) "Output tax", in relation to a registered person, means the tax charged under Section 8 in respect of the supply of goods and services made by that person.

(6) In the case of a supply by way of a sale, that is not a taxable supply, to a registered person of a primary product, or a class of primary products, produced by the vendor in Papua New Guinea, the input tax shall be the amount, being a percentage of the consideration in money for the supply, as prescribed, but not exceeding in any case the tax fraction applicable at the time of supply of the consideration in money for the supply.

30. CALCULATION OF TAX PAYABLE.

(1) In respect of each taxable period every registered person shall calculate the amount of tax payable by that registered person in accordance with the provisions of this section.

(2) Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period the amounts referred to in the following subsections.

(3) A registered person who is required to account for tax payable on an invoice basis under Section 26, shall deduct the following amounts of input tax:-

(a) input tax in relation to the supply of goods and services (not being a

Value Added Tax

supply of secondhand goods or primary products to which Paragraph (c) of the definition of the term "input tax" in Section 29(1) applies), made to that registered person during that taxable period; and

- (b) input tax in relation to the supply of secondhand goods or primary products to which Paragraph (c) of the definition of the term "input tax" in Section 29(1) applies, to the extent that a payment in respect of that supply has been made during that taxable period; and
- (c) input tax invoiced or paid, whichever is the earlier, under Section 6 during that taxable period; and
- (d) input tax calculated in accordance with Section 33(4) or 34.

(4) A registered person, who is required to account for tax payable on a payments basis under Section 26, shall deduct the following amounts of input tax:-

- (a) input tax in relation to the supply of goods and services made to that registered person, being a supply of goods and services which is deemed to take place under Section 15(1), (7) or (8), to the extent that a payment in respect of that supply has been made during the taxable period;
- (b) input tax paid under Section 6 during that taxable period;
- (c) input tax in relation to the supply of goods and services made during that taxable period to that registered person, not being a supply of goods and services to which Paragraph (a) applies;
- (d) input tax calculated in accordance with Section 33(2)(b) or (4), to the extent that a payment has been made in respect of that amount, or Section 34.

(5) A registered person shall deduct an amount equal to the tax fraction of a payment made during the taxable period by that registered person to indemnify another person under a contract of insurance.

(6) Subsection (5) shall not apply where any of the following conditions are fulfilled:-

- (a) the supply of that contract of insurance is not a taxable supply or the supply of that contract of insurance would not have been a taxable supply if the time of performance of that supply had been on or after 1 July 1999;
- (b) the payment is in respect of the supply of goods and services to the registered person or the importation of any goods by that registered person;
- (c) the supply of that contract of insurance is a supply charged with tax at the rate of zero percent under Section 18 and that other person is, at the time that that payment is made, not a registered person and not resident in Papua New Guinea;
- (d) the payment results from a supply of goods and services to that other person and those goods are situated outside Papua New Guinea or those services are physically performed outside Papua New Guinea at the time

Value Added Tax

of that supply and were not performed for the benefit or use within Papua New Guinea of a person resident in Papua New Guinea;

(e) the payment is made to indemnify any loss of earnings of an individual.

(7) A registered person shall deduct any amount calculated in accordance with Section 32(7), 32(8) or 32(9) in relation to any goods and services so applied during that taxable period.

(8) A registered person shall deduct an amount of input tax in relation to a supply in respect of which either Section 36(a) or Section 37 has operated to deny a deduction of input tax in a previous taxable period, and that registered person has obtained, during the taxable period, a tax invoice in relation to that supply.

(9) Where a registered person is entitled, under Subsections (1) to (8) inclusive to deduct any amount in respect of any taxable period from the amount of output tax attributable to that taxable period, the registered person may deduct that amount from the amount of output tax attributable to any later taxable period to the extent that it has not previously been deducted from the output tax of that registered person.

(10) For the purposes of Subsections (2) to (9) inclusive, output tax in relation to a supply made by a registered person shall be attributable to a taxable period -

(a) in the case of a registered person who is required to account for tax payable on an invoice basis under Section 26, where a supply is made or is deemed to be made during the taxable period; or

(b) in the case of a registered person who is required to account for tax payable on a payments basis under Section 26 -

(i) to the extent that payment has been received during the taxable period in respect of that supply, being a supply of goods and services which is deemed to take place under Section 15(1), (7) or (8) or 33(2)(a); or

(ii) where the supply of goods and services is made or deemed to be made during that taxable period by that registered person, not being a supply of goods and services to which Subparagraph (i) applies.

(11) Notwithstanding anything in this Act, a deduction for input tax shall not be allowed to a registered person in relation to a taxable supply of a car or to import or rental of a car by that registered person unless the registered person is in the business of dealing in or hiring cars.

Value Added Tax

(12) Where Section 68(10) or 68AB(3) of the *Income Tax Act* applies to limit the deduction available under that Act to a registered person -

- (a) the registered person is deemed to have made a supply of goods and services for a consideration in money equal to the amount of deduction which is not allowed as a result of the application of those provisions; and
- (b) the time of the supply is deemed to be the date on which the registered person must furnish a return of income for the year of income in respect of which the deduction is not allowed (or would be required to furnish a return if the person was required to furnish a return under Section 223 of the *Income Tax Act*).

(13) Where, in relation to a taxable period and a registered person, the total amount that may be deducted under this section and Section 114(1) exceeds the aggregate amount of the output tax of that registered person attributable to that taxable period, the amount of the excess shall, subject to this Act, be refunded to that registered person by the Commissioner.

(14) Notwithstanding any other provision of this Act, a person who makes supplies exempted by virtue of this Act or who makes such exempted supplies and also makes taxable supplies, shall, subject to Subsections (15) and (19), deduct input credits in accordance with the following provisions:-

- (a) all the input tax for the taxable period that is in respect of goods and services supplied to or imported by that registered person wholly for the purpose of making, whether or not during that taxable period, taxable supplies;
- (b) none of the input tax for the taxable period that is in respect of goods and services supplied to or imported by that person wholly for the purposes of making, whether or not during that taxable period, supplies which are not taxable supplies;
- (c) such proportion of the input tax for the taxable period that is not in respect of supplies referred to in Paragraphs (a) and (b), as the value of the registered person's taxable supplies during that period, or such period as the Commissioner considers equitable, represents as a proportion of the person's total supplies during that taxable period, or such period as directed by the Commissioner.

(15) The calculation referred to in Subsection (14) shall be made monthly and shall be subject, within 60 days of the end of that person's annual fiscal year, to an annual reconciliation of the total input and output tax for that year, calculated in accordance with the principles set out in Subsection (14), and where the input credits calculated on an annual basis differ from the total

Value Added Tax

of the input credits calculated on a monthly basis for that year the amount of the difference shall

- (a) where the input credits calculated on an annual basis exceed the input credits calculated on a monthly basis - be refundable to the person; or
- (b) where the input credits calculated on an annual basis are less than the input credits calculated on a monthly basis - be payable by that person to the Commissioner as tax due at the time the annual reconciliation referred to is due.

(16) Notwithstanding Subsection (14), educational institutions as defined in Section 24(8) shall be entitled to deduct input taxes paid in respect of the supply, to the educational institution, of text books, writing materials and other educational materials reasonably relevant for the purpose of education and which were not supplied for the purpose of resale to persons, other than students of the educational institution.

(17) Where a registered person has temporarily imported goods under the provisions of Section 6(5), which are subject to the provision of a security for any value added tax which may become payable, that person shall not be entitled to deduct input taxes in respect of the value added tax payable at the point of import until such time as payment of the security referred to in Section 6(5) has been enforced by the Commissioner.

Division 4. - Adjustments to input and output tax.

31. TAX PAYABLE, OR REFUND, IF CHANGE IN ACCOUNTING BASIS.

(1) A registered person whose accounting basis is changed under Section 26 or 27 shall, not later than the last day allowed under Section 28(2) for furnishing particulars in respect of the change, pay to the Commissioner 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 under Subsection (1) shall be an amount determined in accordance with the following formula:-

$$a - b$$

where -

"a" - is an amount equal to the aggregate amount of the input tax deducted pursuant to Section 30(2) in relation to the amounts due that are required to be shown in the list of creditors required to be prepared by the registered person under Section 28(3)(a); and

Value Added Tax

- “b” - is an amount equal to the aggregate amount of output tax accounted for under Section 30(2) in relation to the amounts due that are required to be shown in the list of debtors required to be prepared by the registered person under Section 28(3)(b).

(3) Where a registered person changes from a payments basis to an invoice basis of accounting, the tax payable under Subsection (1) is an amount determined in accordance with the following formula:-

$$a - b$$

where -

- “a” - is an amount equal to the aggregate amount of output tax that would have been accounted for under Section 30(2), in relation to the amounts due that are required to be shown in the list of debtors required to be prepared by the registered person under Section 28(3)(b), where the person had been accounting for tax payable on an invoice basis; and
- “b” - is an amount equal to the aggregate amount of the input tax that would have been deducted under Section 30(2), in relation to the amounts due that are required to be shown in the list of creditors required to be prepared by the registered person under Section 28(3)(a), where the registered person had been accounting for tax payable on an invoice basis.

(4) Subject to this Act, where, in relation to any particulars required to be furnished by Section 28, the amount determined in accordance with Subsection (2) or (3) is a negative amount, the amount of that negative amount shall be refunded to the registered person by the Commissioner.

(5) For the purposes of this Act, a previous adjustment made to input tax or output tax, as the case may be, when a registered person changed -

(a) from an invoice basis to a payments basis; or

(b) from a payments basis to an invoice basis,

is deemed to have been deducted, or accounted for, as the case may be, under Section 30(2).

32. ADJUSTMENTS FOR CHANGE IN USE.

(1) Subject to Section 11(3), to the extent that goods and services applied by a registered person for the principal purpose of making taxable supplies are subsequently applied by that registered person for a purpose other than that of making taxable supplies, they are deemed to be supplied by that registered person in the course of that taxable activity to the extent that they are so applied.

Value Added Tax

(2) Subsection (1) does not apply to any goods and services to the extent that they are applied for the purpose of making exempt supplies where at the commencement of a taxable period there are reasonable grounds for believing that the total value of all exempt supplies to be made by that registered person in that month then commencing and the 11 months immediately following that month will not exceed the lesser of -

- (a) the amount equal to twice the registration threshold determined under Section 42(1)(a); or
- (b) an amount equal to 5% of the total consideration in respect of all taxable and exempt supplies to be made during that 12 month period.

(3) For the purposes of Subsection (2), in determining the total value of all exempt supplies to be made in any 12 month period by a registered person (where that person is required to account for tax payable on a payments basis under Section 26), an exempt supply is deemed to take place during that period -

- (a) to the extent that payment is expected to be received during that period in respect of that supply, being a supply of goods and services which, where that supply were a supply charged with tax under Section 8, would be deemed to take place under Section 15(1), (7) or 15(8) or 33(2)(a) or 33(3); or
- (b) where the supply of goods and services would be made or deemed to be made during that period by that person where that supply were a supply charged with tax under Section 8, not being a supply to which Paragraph (a) applies.

(4) Where Subsection (1) applies to any goods, being goods forming part of the capital assets of a taxable activity and having a cost of less than one half the registration threshold determined under Section 42(1)(a), that registered person may, for the purposes of the return to be furnished in respect of the taxable period during which those goods were acquired or produced, make an assessment in accordance with a method approved by the Commissioner, of the extent to which those goods are to be applied for a purpose other than that of making taxable supplies, and that registered person is deemed to make a supply of those goods, to that extent, in that return period and not in any later return period.

(5) Notwithstanding anything in Section 15, but subject to Subsection (4), where the supply is deemed to be made under Subsection (1) the time of supply is deemed to be the time that the goods and services are applied for a purpose other than in the course of making taxable supplies.

(6) For the purposes of this Act, where no deduction has been made under Section 30(2) in respect of or in relation to goods and services acquired or produced after 1 July 1999 by a person other than for the principal purpose of making taxable supplies, and any such goods and

Value Added Tax

services are subsequently applied in any taxable period by that person or, where that person is a member of a partnership (as defined in Section 55), by that partnership for the purpose of making taxable supplies, those goods and services are deemed to be supplied in that taxable period to that person or, as the case may be, that partnership.

(7) Where the person or partnership referred to in Subsection (6) is a registered person, the Commissioner shall, to the extent to which those goods and services are applied as referred to in that subsection, allow that person or, as the case may be, that partnership to make a deduction under Section 30(2) of an amount equal to the tax fraction of that part of the lesser of -

- (a) the cost of those goods and services, including any tax charged or any input tax deduction claimed in respect of those goods and services; or
- (b) the open market value of the supply of those goods and services,

as is referable to such application.

(8) To the extent that Subsection (1) has deemed a supply to be made of any goods and services, Subsection (6) applies as if no deduction had been made under Section 30(2) in respect of or in relation to those goods and services, and as if those goods and services were acquired or produced by the registered person other than for the principal purpose of making taxable supplies.

(9) Where Subsection (6) applies to any goods, being capital assets having a cost of less than K15,000.00, and the person or partnership referred to in the subsection is a registered person, that person or, as the case may be, that partnership may, for the purposes of the return to be furnished in respect of the taxable period during which those goods were acquired or produced, make an assessment in accordance with a method approved by the Commissioner, of the extent to which those goods are to be applied for the purpose of making taxable supplies, and that person or, as the case may be, that partnership is deemed to have acquired those goods for the purpose of making taxable supplies, to that extent, in that return period and not in any later return period.

(10) Where any goods and services that are deemed by Section 11(3) to be supplied to a person who ceases to be a registered person are subsequently applied by that person, or by a partnership (as defined in Section 55) of which that person is a partner, for the purpose of making taxable supplies -

- (a) those goods and services shall, for the purposes of Subsection (6), be deemed to have been acquired or produced by that person at the time of that deemed supply other than for the principal purpose of making taxable supplies; and
- (b) Subsection (6) applies as if no deduction had, before the time of that deemed supply, been made by that person in respect of or in relation to those goods and services under Section 30(2).

33. CHANGE IN TERMS OF SUPPLY.

(1) This section applies where, in relation to the supply of goods and services by a registered person -

- (a) that supply of goods and services has been cancelled; or
- (b) the nature of that supply of goods and services has been fundamentally varied or altered; or
- (c) the previously agreed consideration for that supply of goods and services has been altered, whether due to the offer of a discount or otherwise; or
- (d) the goods and services or part of those goods and services supplied have been returned to the supplier,

and the supplier has -

- (e) provided a tax invoice in relation to that supply and as a result of any one or more of the circumstances referred to in Paragraphs (a) to (d) inclusive, the amount shown thereon as tax charged on that supply is incorrect; or
- (f) furnished a return in relation to the taxable period for which output tax on that supply is attributable and, as a result of any one or more of the circumstances referred to in Paragraphs (a) to (d) inclusive, has accounted for an incorrect amount of output tax on that supply.

(2) Where a supplier has accounted for an incorrect amount of output tax as specified in Subsection (1)(e), that supplier shall make an adjustment in calculating the tax payable by that supplier in the return for the taxable period during which it has become apparent that the output tax is incorrect, and where -

- (a) the output tax properly charged in relation to that supply exceeds the output tax actually accounted for by the supplier, the amount of that excess is deemed to be tax charged by that supplier in relation to a taxable supply attributable to the taxable period in which the adjustment is to be made, and not attributable to any prior taxable period; and
- (b) the output tax actually accounted for exceeds the output tax properly charged in relation to that supply, that supplier shall reduce the output tax payable in respect of the period referred to above by the amount of that excess.

(3) Where a recipient, being a registered person, has been issued with a credit note under Section 39, or has written or given other notice or otherwise knows that a tax invoice which that registered person holds is incorrect as a result of any one or more of the circumstances specified in Subsection (1)(a) to (d) inclusive, and has made a deduction of any amount of input tax in any taxable period in respect of that supply of goods and services to which the credit note or that notice or other knowledge, as the case may be, relates, the amount of the excess referred to in Section 39 shall reduce the amount of input tax attributable to the taxable period in which the credit note was issued, or that notice or, as the case may be, other knowledge was received.

Value Added Tax

(4) Where a recipient, being a registered person, has been issued with a debit note under Section 39(3) and has made a deduction of any amount of input tax in any taxable period in respect of that supply of goods and services to which that debit note relates, the recipient shall make a deduction of input tax under Section 30(2) of the amount of the excess referred to in Section 39(3) in the taxable period in which the debit note is issued, to the extent that the output tax properly charged exceeds the input tax deducted.

34. BAD DEBTS.

(1) Where a registered person -

- (a) has made a taxable supply for consideration in money; and
- (b) has furnished a return in relation to the taxable period during which the output tax on the supply was attributable and has properly accounted for the output tax on that supply as required under this Act; and
- (c) has written off as a bad debt the whole or part of the consideration not paid to that person,

that registered person shall make a deduction under Section 30(2) of that portion of the amount of tax charged in relation to that supply as the amount written off as a bad debt bears to the total consideration for the supply.

(2) Where goods are supplied under a hire purchase agreement to which the *Hire Purchase Act* (Chapter 252) applies, the registered person shall, pursuant to Subsection (1), only make a deduction under Section 30(2) of the tax fraction (being the tax fraction applicable at the time that the hire purchase agreement was entered into) of that portion of the amount written off as a bad debt as the cash price bears to the total amount payable under the hire purchase agreement.

(3) Subsection (1) does not apply to a registered person who is required to account for tax payable on a payments basis under Section 26 or 27, except in respect of any supply made by that person to which Section 15(7) applies.

(4) Where an amount in respect of which a deduction has been made in accordance with Subsection (1) is at any time wholly or partly recovered by the registered person, that portion of the amount of the deduction allowable under Subsection (1) as the amount of the bad debt recovered bears to the bad debt written off is deemed to be the tax charged in relation to a taxable supply made during the taxable period in which the bad debt is wholly or partly recovered.

35. ALLOCATION OF TAXABLE SUPPLIES FOLLOWING INVESTIGATION BY COMMISSIONER.

(1) For the purposes of this section -

“discrepancy” means an understatement or overstatement of the taxable supplies made or received by a registered person calculated or

Value Added Tax

otherwise ascertained in respect of any specified period;
“specified period” means any period, being a period that extends over more than a single taxable period, to which a discrepancy relates;
“tax discrepancy”, in relation to a discrepancy, means an amount equal to the tax fraction (being the tax fraction applicable to the taxable period, or any part of a taxable period, in relation to which the discrepancy has been deemed to have occurred) of the amount of the taxable supplies made or received by a registered person that have been understated or overstated.

(2) For the purposes of this Act, in a case where, upon investigation by the Commissioner of the liability of a registered person for tax, the Commissioner has calculated or otherwise ascertained a discrepancy in relation to a specified period then -

- (a) subject to Paragraphs (b) and (c), the amount of the discrepancy is deemed to be taxable supplies made or received (as the case may be) by the registered person at a uniform daily rate throughout that specified period, and those taxable supplies are deemed to have been so made or received by the registered person in the taxable periods, or parts thereof, included in the specified period;
- (b) subject to Paragraph (c), where the Commissioner is satisfied that the registered person did not carry on the taxable activity for any part of any specified period, the amount of the discrepancy is deemed to be taxable supplies made or received (as the case may be) by the registered person at a uniform daily rate throughout the part of the specified period in which the taxable activity was carried on, and those taxable supplies are deemed to be so made or received by the registered person in the taxable periods, or parts thereof, in which the taxable activity was carried on during the specified period; and
- (c) where the registered person satisfies the Commissioner that it would be appropriate for the amount of the discrepancy to be allocated on a basis otherwise than in accordance with Paragraph (a) or (b), the amount of the discrepancy shall be allocated on that basis, and the amount so allocated is deemed to be taxable supplies made or received (as the case may be) by the registered person in the taxable periods, or parts thereof, to which the discrepancy has been so allocated.

(3) For the purposes of Section 30, where a discrepancy has been deemed under this section to be taxable supplies made or received by a registered person in respect of any taxable period or any part of a taxable period, the tax discrepancy calculated in respect of the discrepancy is deemed to be output tax or, as the case may be, input tax in respect of that taxable period or part of a taxable period.

PART VI. - INVOICES AND RELATED DOCUMENTS.

36. DEDUCTION OF INPUT TAX.

Notwithstanding any other provision in this Act, no deduction of input tax shall be made in respect of a supply, unless -

- (a) a tax invoice or debit note or credit note, in relation to that supply, has been provided in accordance with Sections 38 and 39 and is held by the registered person making that deduction at the time any return in respect of that supply is furnished; or
- (b) a tax invoice is not required to be issued under Section 38(5) or 40(5), or a debit note or credit note is not required to be issued under Section 39; or
- (c) sufficient records are maintained as required under Section 38(6) where the supply is a supply of secondhand goods or primary products to which that section relates.

37. RETENTION OF RECORDS.

Where a tax invoice or debit note or credit note in relation to a supply of goods and services has been provided in accordance with this Act, the Commissioner may determine that no deduction for input tax in relation to that supply shall be made unless that tax invoice or debit note or credit note is retained in accordance with the record-keeping provisions of this Act.

38. TAX INVOICES.

(1) Except as otherwise provided in this section, a supplier, being a registered person, making a taxable supply to a recipient, being a registered person, shall, at the request of the recipient, provide that recipient, within 28 days of the making of that request, with a tax invoice containing such particulars as are specified in this section.

(2) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice shall contain the following particulars:-

- (a) the words "tax invoice" in a prominent place;
- (b) the name, address and registration number of the supplier;
- (c) the name and address of the recipient;
- (d) the date upon which the tax invoice is issued;
- (e) a description of the goods and services supplied;
- (f) the quantity or volume of the goods and services supplied;
- (g) either -
 - (i) the total amount of the tax charged, the amount payable, excluding tax, and the consideration, inclusive of tax for the supply; or

Value Added Tax

- (ii) where the amount of tax charged is the tax fraction of the consideration, the consideration for the supply and a statement that it includes a charge in respect of the tax.

(3) Notwithstanding anything in Subsection (2), where the consideration in money for a supply does not exceed K200.00 (or such greater amount as is, from time to time, prescribed), a tax invoice may contain either the particulars specified in Subsection (2) or the following particulars:-

- (a) the words "tax invoice" in a prominent place;
- (b) the name, address and registration number of the supplier;
- (c) the date upon which the tax invoice is issued;
- (d) a description of the goods and services supplied;
- (e) either -
 - (i) the total amount of the tax charged, the amount payable, excluding tax, and the consideration, inclusive of tax for the supply; or
 - (ii) where the amount of tax charged is the tax fraction of the consideration, the consideration for the supply and a statement that it includes a charge in respect of the tax.

(4) Subsection (3) does not apply to a supply that is charged with tax under Section 18.

(5) Notwithstanding any other provision of this Act, a supplier is not required to provide a tax invoice where the consideration in money for a supply does not exceed K50.00 (or such greater amount as is, from time to time, prescribed).

(6) Notwithstanding anything in this section, where a supplier makes a supply, not being a taxable supply, of secondhand goods or primary products to a recipient, being a registered person, the recipient shall maintain sufficient records to enable the following particulars to be ascertained:-

- (a) the name and address of the supplier;
- (b) the date upon which the secondhand goods or primary products were acquired;
- (c) a description of the goods supplied;
- (d) the quantity or volume of the goods supplied;
- (e) the consideration for the supply.

(7) Subsection (6) does not require that the recipient keep such records where the consideration in money for that supply does not exceed K50.00 (or such greater amount as is, from time to time, prescribed).

39. CREDIT AND DEBIT NOTES.

(1) Subject to this section, where a tax invoice has been provided as specified in Section 33(1)(e) and the amount shown as tax charged on that tax invoice exceeds the actual tax charged in respect of that supply, the supplier shall provide the recipient with a credit note, containing the following particulars:-

- (a) the word "credit note" in a prominent place;
- (b) the name and registration number of the registered person;
- (c) the name and address of the recipient;
- (d) the date on which the credit note was issued;
- (e) either -
 - (i) the amount of consideration for that supply contained in that tax invoice, the correct amount of consideration for the supply, the difference between those two amounts, and the tax charged in respect of that supply to the extent that it relates to the amount of that difference; or
 - (ii) where the tax charged in respect of the supply is the tax fraction of the consideration, the difference referred to in Subparagraph (i) and a statement that that difference includes a charge in respect of the tax;
- (f) a brief explanation of the circumstances giving rise to the issuing of the credit note, including details of the date the original invoice was issued and the invoice number.

(2) A supplier is not required to provide a recipient with a credit note pursuant to this section in any case where and to the extent that the amount of the excess referred to in Subsection (1) arises as a result of the recipient taking up a prompt payment discount offered by the supplier and that the terms of the prompt payment discount offer are clearly stated on the face of the tax invoice.

(3) Subject to this section, where a tax invoice has been provided as specified in Section 33(1)(e), and the actual tax charged in respect of that supply exceeds the tax charged shown on the tax invoice, the supplier shall provide the recipient with a debit note, containing the following particulars:-

- (a) the words "debit note" in a prominent place;
- (b) the name and registration number of the registered person;
- (c) the name and address of the recipient;
- (d) the date on which the debit note was issued;
- (e) either -
 - (i) the amount of consideration for that supply contained in that tax invoice, the correct amount of consideration for the supply, the difference between those two amounts, and the

Value Added Tax

- tax charged in respect of that supply to the extent that it relates to the amount of that difference; or
- (ii) where the tax charged in respect of the supply is the tax fraction of the consideration, the difference referred to in Subparagraph (i) and a statement that that difference includes a charge in respect of the tax;
- (f) a brief explanation of the circumstances giving rise to the issuing of the debit note.

(4) Notwithstanding anything in this section where, in relation to any taxable supplies, or a class or classes of taxable supplies, made by a supplier to a recipient, or a class or classes of recipients -

- (a) the supplier has provided, in terms of Section 38, one or more tax invoices to a recipient in respect of those taxable supplies; and
- (b) the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of those taxable supplies to a recipient;

the Commissioner may determine in respect of any recipient, or class or classes of recipients, that, subject to any conditions that the Commissioner may consider necessary, the supplier may issue one credit note or debit note to each recipient with respect to those tax invoices.

40. PROVISIONS APPLICABLE TO INVOICES, CREDIT NOTES AND DEBIT NOTES.

(1) For the purposes of Sections 38(1), 39(1) and 39(3) -

- (a) it shall not be lawful to issue more than one tax invoice, credit note or debit note for each taxable supply or each adjustment to a taxable supply; and
- (b) where a registered person claims to have lost the original tax invoice, credit note or debit note, the supplier or the recipient, as the case may be, may provide a copy clearly marked "copy only".

(2) Where a recipient, being a registered person, creates a document containing the particulars specified in Section 38 or 39 and purporting to be a tax invoice, credit note or debit note in respect of a supply of goods and services made to the recipient by a supplier, being a registered person, that document is deemed to be a tax invoice, credit note or debit note provided by the supplier under Section 38(1), 39(1) or 39(3) where -

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or class or classes of recipients in relation to the supplies or class or classes of supplies to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a tax invoice, credit note or debit note in respect of any supply to which this subsection applies; and

Value Added Tax

- (c) the document is provided to the supplier and a copy is retained by the recipient; and
- (d) in the case of a tax invoice only, the words "buyer created tax invoice - IRC approved" are contained in a prominent place on that document.

(3) Where approval has been granted by the Commissioner to issue tax invoices, credit notes or debit notes pursuant to Subsection (2), that approval may be withdrawn at any time where the Commissioner is satisfied that the conditions of that approval have not been complied with.

(4) Where a tax invoice, credit note or debit note is issued under Section 38 or 39, a tax invoice, credit note or debit note issued by the supplier in respect of that supply is deemed not to be a tax invoice, credit note or debit note for the purposes of this Act.

(5) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or class of supplies, and that it would be impractical to require that a tax invoice, credit note or debit note be issued pursuant to this Division, the Commissioner may determine that, subject to any conditions that the Commissioner may consider necessary -

- (a) any one or more of the particulars specified in Section 38(2) or 38(3) shall not be contained in a tax invoice; or
- (b) any one or more of the particulars specified in Section 39(1) or 39(3) shall not be specified in a credit note or debit note; or
- (c) a tax invoice, credit note or debit note is not required to be issued.

(6) A tax invoice issued under Subsection (5)(a) shall contain the words "modified tax invoice - IRC approved" in a prominent place.

(7) Where the Commissioner has determined that a tax invoice, credit note or debit note may be issued under Subsection (5)(a) or (5)(b), or is not required to be issued under Subsection (5)(c), that determination may be revoked where the Commissioner is satisfied that any conditions specified have not been complied with.

(8) Where an amount of tax is required to be shown on a tax invoice, credit note or debit note and that amount consists of any number of Kina and Toea together with any fraction or part of a toea, that fraction or part of that toea -

- (a) where less than or equal to half of that toea, may be disregarded for the purposes of this section; and
- (b) where in excess of half of that toea, is deemed for the purposes of this section to be an amount equal to one toea.

41. COMMISSIONER MAY APPROVE USE OF SYMBOLS, ETC., ELECTRONICALLY TRANSMITTED INVOICES AND CREDIT AND DEBIT NOTES.

(1) The Commissioner may, for the purpose of facilitating the electronic transfer of tax invoices and credit or debit notes, approve the use in any such electronic transfer of symbols, abbreviations, or other notations to represent any particulars required by Section 38 or 39 to be contained in a tax invoice or a credit or debit note.

(2) An approval under Subsection (1) -

- (a) may be expressed to apply generally, or to such registered person or class of registered persons as the Commissioner may specify; or
- (b) may be limited to such cases or be subject to such conditions as the Commissioner thinks fit to impose; or
- (c) may be withdrawn or varied by the Commissioner at any time on the giving of such notice as is reasonable in the circumstances.

PART VII. - REGISTRATION.

42. PERSONS MAKING SUPPLIES IN COURSE OF TAXABLE ACTIVITY TO BE REGISTERED.

(1) Subject to this Act, a person who, on or after 1 July 1999, carries on a taxable activity and is not registered, becomes liable to be registered -

- (a) at the end of any month where the total value of supplies, excluding exempt supplies, made in Papua New Guinea in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has exceeded K100,000.00 (or such larger amount as may, from time to time, be prescribed); or
- (b) at the commencement of any month where there are reasonable grounds for believing that the total value of the taxable supplies to be made in Papua New Guinea in that month and the 11 months immediately following that month will exceed the amount specified in Paragraph (a).

(2) A person does not become liable to be registered by virtue of Subsection (1)(a) where the Commissioner is satisfied that the value of those taxable supplies in the period of 12 months beginning on the day after the last day of the period referred to in Subsection (1)(a) will not exceed that amount.

(3) A person referred to in Subsection (1) shall not become liable to register where the Commissioner is satisfied that the value of taxable supplies will exceed the threshold amount

Value Added Tax

in that period solely as a consequence of -

- (a) any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or
- (b) the replacement of any plant or other capital asset used in any taxable activity carried on by that person.

(4) A person who, by virtue of Subsection (1), becomes liable to be registered, shall, within 21 days of becoming so liable or before the end of the period by reference to which the liability arises, whichever is the earlier -

- (a) apply to the Commissioner in the prescribed form for registration under this Act; and
- (b) provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person,

and where the Commissioner is satisfied he shall register that person with effect from the first day of the month following.

(5) Notwithstanding Subsections (1) and (2), a person who satisfies the Commissioner that, on or after 1 July 1999 -

- (a) that person is carrying on any taxable activity; or
- (b) that person intends to carry on any taxable activity from a specified date,

may apply to the Commissioner in the prescribed form for registration under this Act, and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.

(6) Where a person has -

- (a) made application for registration under Subsection (2) or (5) and the Commissioner is satisfied that that person is eligible to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from such date as the Commissioner may determine; or
- (b) not made application for registration under Subsection (3) and the Commissioner is satisfied that that person is liable to be registered under this Act, that person is deemed to be a registered person for the purposes of this Act with effect from the date on which that person first became liable to be registered under this Act.

(7) The Commissioner may, having regard to the circumstances of the case, determine that a person referred to in Subsection (6)(b) is a registered person from such later date as the Commissioner considers equitable.

(8) Notwithstanding anything in this Act, where any taxable activity is carried on by any non-profit body in branches or divisions, that non-profit body may apply in writing to the

Value Added Tax

Commissioner for any such branch or division to be a separate person for the purposes of this section, and where a branch or division maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of that branch or division, such branch or division is deemed to be a separate person, and not a part of the non-profit body, and, where any such branch or division is a separate person under this subsection, a taxable activity carried on by that branch or division is, to that extent, deemed not to be carried on by the non-profit body first mentioned in this subsection.

(9) The provisions of this Act relating to the determination of the value of a supply of goods and services apply for the purposes of this section, with the modification that no regard shall be had to any tax charged in respect of any such supply.

(10) An application for registration under this Act purporting to be made by or on behalf of a person is for all purposes deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

43. CANCELLATION OF REGISTRATION.

(1) Subject to this Act, a registered person who carries on a taxable activity ceases to be liable to be registered where at any time the Commissioner is satisfied that the value of that person's taxable supplies in the period of 12 months then beginning will be not more than the amount specified for the purposes of Section 42(1).

(2) A person who, by virtue of Subsection (1), ceases to be liable to be registered may, where he has been registered for 12 months or more, request the Commissioner in writing to cancel that person's registration, and where the Commissioner is at any time satisfied, as mentioned in Subsection (1), the Commissioner shall cancel that person's registration with effect from the last day of the taxable period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify that person of the date on which the cancellation of the registration takes effect.

(3) A registered person who ceases to carry on all taxable activities shall notify the Commissioner of that fact within 21 days of the date of cessation and, subject to Subsection (4), the Commissioner shall cancel the registration of that person with effect from the last day of the taxable period during which all such taxable activities ceased, or from such other date as may be determined by the Commissioner.

(4) The Commissioner shall not at any time cancel the registration of a registered person under Subsection (3) where there are reasonable grounds for believing that the registered person will carry on any taxable activity at any time within 12 months from that date of cessation.

Value Added Tax

(5) A notification by a registered person under Subsection (3) shall be made in writing to the Commissioner and shall state the date upon which that person ceased to carry on all taxable activities and whether or not that person intends to carry on any taxable activity within 12 months from that date.

(6) Where the Commissioner is satisfied that a registered person is not carrying on a taxable activity, the Commissioner may cancel that person's registration with effect from the last day of the taxable period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify that person of the date on which the cancellation of the registration takes effect.

(7) A date determined by the Commissioner for the cancellation of registration under Subsection (6) may be retrospective to a date not earlier than -

- (a) the last day of the taxable period during which taxable activity by the person ceased; or
- (b) the date on which the person was registered under this Act, where the Commissioner is satisfied that the person did not, from that date, carry on any taxable activity.

44. REGISTERED PERSON TO NOTIFY CHANGE OF STATUS.

(1) Subject to this Act, a registered person shall within 21 days notify the Commissioner in writing of -

- (a) any change in the name, address, constitution, or nature of the principal taxable activity or activities of that registered person; and
- (b) any change of address from which, or the name in which, any taxable activity is carried on by that registered person; and
- (c) any change whereby that registered person ceases to satisfy the conditions of Section 27, where the Commissioner has made a direction in respect of that registered person under that section; and
- (d) any change whereby that registered person, being a member of a group within the meaning of Section 46, ceases to be eligible to be a member of that group.

(2) Subsection (1)(a) to (c) inclusive shall not apply to the notification of any changes in the ownership of a company.

(3) A registered person who wishes to change or to adopt a trading name used or to be used by the registered person for the purpose of issuing or creating tax invoices and credit and debit notes, shall notify the Commissioner in writing of -

- (a) the new trading name; and
- (b) the date from which that new trading name is to be used by the person for

the purposes of this Act.

45. LIABILITIES NOT AFFECTED BY CEASING TO BE REGISTERED PERSON.

The obligations and liabilities under this Act of a person in respect of anything done, or omitted to be done, by that person while that person is a registered person shall not be affected by the fact that that person ceases to be a registered person, or by the fact that, being a registered person, the Commissioner cancels that person's registration.

46. GROUP OF COMPANIES.

(1) Any two or more companies whose aggregate of common voting interests is 90% or greater shall constitute a wholly owned group of companies.

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

- (a) a nominal shareholding held by a person solely for the purpose of complying with the requirements of company law shall be disregarded; and
- (b) shares in a company held by a trustee of, or held by employees or former employees as a consequence of an employee share purchase scheme shall be disregarded to the extent that the shares so held by the trustee, employees or former employees represent no more than 5% of the voting interests in the company; and
- (c) shares held by the Investment Corporation, the State or a company set up to hold shares in a company as the State's nominee shall be disregarded.

(3) The common voting interest of any person in two or more companies at a particular time is that percentage which is equal to -

- (a) the percentage voting interest of that person in each of those companies at that time, where those percentages are the same in the case of each company; or
- (b) the lowest of the percentage voting interest of the person in each of those companies at that time if those percentages differ as between the companies.

(4) Where a company directly or indirectly controls 100% of the voting interest in another company each of those companies shall be a member of a wholly owned group of companies.

(5) 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 where they are a wholly owned group of companies, or are part of a wholly owned group of companies in respect of that month.

47. GROUP REGISTRATION.

(1) Where two or more companies apply to be members of a group of companies for the purposes of this section and the Commissioner is satisfied that they are eligible to be members of a group of companies under Section 46, they shall be members of a group of companies from the beginning of such taxable period as is determined by the Commissioner.

(2) In an application made under Subsection (1) by two or more companies, one such company shall be nominated to be the representative member.

(3) Where any companies are members of a group of companies, the representative member nominated under Subsection (2) may apply to the Commissioner for -

- (a) a further company eligible to be a member of that group of companies to be a member of that group of companies; or
- (b) one of the members of that group of companies to be excluded from that group of companies; or
- (c) another member of the group of companies to be nominated as the representative member, and the member nominated under Subsection (2) to no longer be 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 Commissioner shall grant the application from the beginning of such taxable period as is determined by the Commissioner.

(4) Where a member of a group of companies has ceased to be eligible to be a member of that group, and -

- (a) that member or the representative member of that group of companies notifies the Commissioner of that cessation under Section 44(1)(d); or
- (b) the Commissioner is otherwise satisfied that a member of a group of companies has ceased to be so eligible,

the Commissioner shall, by notice in writing given to that member or that representative member, terminate that membership from such date as may be specified in the notice.

(5) For the purposes of this Act, a notice served in accordance with this Act, which is addressed to the representative member of any group of companies, is deemed to be served on that representative member and on all members of that group of companies.

48. CONSEQUENCES OF GROUP REGISTRATION.

- (1) Where any companies are a group of companies for the purposes of this section -
 - (a) a taxable activity carried on by a member of the group is deemed to be carried on by the representative member and not to be carried on by any

Value Added Tax

- other member of the group; and
 - (b) all members of the group shall have the same accounting basis under Section 26 or 27; and
 - (c) subject to Paragraphs (f) and (g), a taxable supply of goods and services by a member of the group to another member of the group shall be disregarded; and
 - (d) any other taxable supply of goods and services by or to a member of the group is deemed to be a taxable supply by or to the representative member; and
 - (e) a supply of goods and services, other than a taxable supply, made by a member of the group, is deemed to be made by the representative member; and
 - (f) to the extent that goods and services applied by a member of a group for the principal purpose of making taxable supplies are subsequently applied by the representative member of that group for a purpose other than that of making taxable supplies, that first-mentioned application of those goods and services is, for the purposes of Section 32(1), deemed to have been made by the representative member of that group; and
 - (g) to the extent that goods and services acquired or produced on or after 1 July 1999 by a member of a group other than for the principal purpose of making taxable supplies are subsequently applied by the representative member of that group for a purpose of making taxable supplies, that acquisition or production of those goods and services is, for the purposes of Section 32(6), deemed to have been made by the representative member of that group; and
 - (h) any input tax paid or payable by a member of the group is deemed to be paid or payable by the representative member; and
 - (i) any obligation on any member of the group, other than the representative member, under Section 62, shall be disregarded.
- (2) Notwithstanding Subsection (1) -
- (a) all members of the group shall remain liable jointly and severally for any tax payable by the representative member; and
 - (b) the provisions of Section 47, Section 48 and Part VII shall continue to apply to all such members of the group.

49. GROUP OF PERSONS.

Where the Commissioner is satisfied in relation to two 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

Value Added Tax

(c) two or more persons carrying on a taxable activity in partnership control all of them,
the Commissioner may deem those registered persons to be members of a group, and Sections 47 and 48 apply as if every reference in those sections to a group of companies were a reference to that group, and as if every reference in those sections to companies were a reference to the members of the group.

50. BRANCHES AND DIVISIONS.

(1) Where a taxable activity is carried on by a registered person in branches or divisions, that person may apply in writing to the Commissioner for any such branch or division to be registered as a separate registered person for the purposes of this Act.

(2) The Commissioner may, upon application made under Subsection (1), register any branch or division as a separate registered person where each such branch or division maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of the branch or division, and where any such branch or division is so separately registered, a taxable activity carried on by that branch or division is, to that extent, deemed not to be carried on by the person first mentioned in Subsection (1).

(3) The person first mentioned in Subsection (1) may, at any time, apply in writing to the Commissioner for a branch or division separately registered under Subsection (2) to cease to be so registered, and the Commissioner shall cancel that separate registration with effect from the last day of the taxable period of the branch or division during which that application was made, and any taxable activity carried on by that branch or division shall thereafter, to that extent, be deemed to be carried on by the registered person first mentioned in Subsection (1).

(4) The Commissioner shall cancel the separate registration of a branch or division on the cancellation of the registration of the registered person first mentioned in Subsection (1).

(5) Where a branch or division separately registered pursuant to this section makes default in doing anything required to be done under this Act, the liability for the doing of that thing shall revert to the registered person first mentioned in Subsection (1).

(6) Notwithstanding Subsections (1) to (5) inclusive, for the purposes of Sections 25, 26 and 27 this section is deemed not to have applied, and any placement or direction made under Sections 25, 26 and 27 in respect of the person first mentioned in Subsection (1) shall, for the purposes of this Act, apply equally to each branch or division separately registered under this section.

PART VIII. - SPECIAL CASES.

Division 1. - Pre-incorporation supply.

51. GOODS AND SERVICES ACQUIRED BEFORE INCORPORATION.

(1) Subject to Subsection (3), a company, being a registered person, is, where any amount of tax has been paid under Section 6 or 8 in relation to the acquisition of goods and services for or on behalf of that company or in connection with the incorporation of that company, deemed to be the recipient of the goods and services and to have paid that tax as if the supply and the payment of the tax had been made during the taxable period in which the reimbursement referred to in Subsection (2)(a) is made.

(2) Subsection (1) applies only where the goods and services were acquired prior to incorporation of the company by a person who -

- (a) 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
- (b) acquired those goods and services for the purpose of a taxable activity to be carried on by the company and has not used those goods and services for any other purpose.

(3) Subsection (1) shall not apply in relation to any goods and services where -

- (a) the supply of those goods and services by that person to the company is a taxable supply or is a supply of secondhand goods or primary products not being a taxable supply; or
- (b) those goods and services were acquired more than six 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.

Division 2 - Sale by creditor.

52. SALE BY CREDITOR DEEMED SUPPLY BY DEBTOR.

For the purposes of this Act, where any goods acquired (whether in terms of a hire purchase agreement, as defined in the *Hire Purchase Act* (Chapter 252), or otherwise) or produced by a person (that person being referred to as the debtor) are sold, under a power exercisable by another person (that person being referred to as the creditor), in or towards the satisfaction of a debt owed by the debtor, those goods are deemed to be supplied in the course or furtherance of a taxable activity carried on by the debtor (being deemed a registered person), unless -

- (a) the debtor has furnished to the creditor a statement in writing that the supply of

Value Added Tax

- those goods would not be a taxable supply where those goods were sold by the debtor (notwithstanding that the debtor may not be the owner of those goods), and stating fully the reasons why that supply would not be a taxable supply; or
- (b) where the creditor has been unable to obtain the written statement referred to in Paragraph (a), that person may determine, in relation to any reasonable information held, that the supply of those goods would not have been a taxable supply if those goods had been sold by the debtor (notwithstanding that the debtor may not be the owner of those goods).

53. SPECIAL RETURNS BY CREDITOR.

(1) Where goods are deemed to be supplied by a creditor under Section 52, the creditor, whether or not a registered person, shall, on or before the 21 day of the month following the month within which the sale was made -

- (a) furnish to the Commissioner in the required form a return showing-
- (i) the creditor's name and address and, if registered, registration number; and
 - (ii) the name, address, and, if registered, registration number of the debtor; and
 - (iii) the date of the sale; and
 - (iv) the description and quantity of the goods sold; and
 - (v) the amount for which they were sold and the amount of tax charged on that supply; and
 - (vi) such other particulars as may be prescribed; and
- (b) pay to the Commissioner the amount of tax charged on that supply; and
- (c) furnish to the debtor details of the information shown on the return referred to in Paragraph (a).

(2) The creditor and debtor shall exclude from any return, other than a return required under this section, which either or both may be required to furnish under this Act, the tax charged on that supply of goods.

(3) An amount of tax charged on a supply of goods to which this section applies is deemed, for the purposes of this Act, to be tax payable and shall be recoverable as a debt due to the State.

54. INVOICE FOR CREDITOR SALE.

(1) Subject to Subsection (2), for the purposes of Section 38(1), where goods are deemed to be supplied by a person under Section 52, the person selling those goods, whether or not that person is a registered person, in making that taxable supply to a recipient, is deemed to be the supplier of those goods.

Value Added Tax

(2) In any case where Subsection (1) applies and the person who is deemed to be the supplier is not a registered person, the reference to the registration number of the supplier in Section 38(2)(b) and 38(3)(b) shall be read as if that reference were to the Internal Revenue Commission's identification number of the supplier.

Division 3. - Unincorporated bodies.

55. APPLICATION OF ACT TO UNINCORPORATED BODIES.

(1) For the purposes of this section -

“body” means an unincorporated body of persons, and includes -

- (a) a partnership; and
- (b) a joint venture; and
- (c) the trustees of a trust;

“member” means a partner, a joint venturer, a trustee, or a member of any body;

“partnership” and “partner” have the same meanings as in the *Partnership Act* (Chapter 148).

(2) Where a body that carries on a taxable activity is registered pursuant to this Act -

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

(3) Notwithstanding anything in this section, a member is liable jointly and severally with any other members for all tax payable by the body while that member remains a member of that body, and, where that member is an individual, that member's estate shall, after that member's death, be severally liable in due course of administration for such tax payable as far as it remains unpaid.

Value Added Tax

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

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

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

(7) Notwithstanding anything in this section, but subject to Subsection (3), where anything is required to be done under this Act by or on behalf of a body, not being a partnership, joint venture, or trustees of a trust, the affairs of which are managed by its members or a committee or committees of its members, it shall be the joint and several responsibility of-

- (a) every member holding office as president, chairman, 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 where it is done by any official or committee member, referred to in Paragraph (a) or (b), that shall be sufficient compliance with the requirement.

Division 4. - Agents.

56. PERSONAL REPRESENTATIVE, LIQUIDATOR, RECEIVER, 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, goes into liquidation or receivership or becomes bankrupt or incapacitated;

Value Added Tax

“specified agent” means a person carrying on a 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 58, where a person becomes a specified agent that person is, during the agency period, deemed to be a registered person carrying on the taxable activity of the incapacitated person, and the incapacitated person is during that period deemed not to be carrying on that taxable activity.

(3) A specified agent is not personally liable for any liabilities under this Act incurred by the incapacitated person before the agency period.

(4) Where a mortgagee is in possession of any land or other property previously mortgaged by the mortgagor, being a registered person, the Commissioner 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 where and to the extent that the mortgagee carries on any taxable activity of the mortgagor, to be a registered person.

(5) A person who becomes a specified agent, or who as a mortgagee in possession carries on any taxable activity of the mortgagor, shall, within 21 days of becoming a specified agent or commencing that taxable activity of the mortgagor, inform the Commissioner 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.

57. LIABILITY OF AGENT OF ABSENTEE PRINCIPAL FOR RETURNS AND TAX.

- (1) For the purposes of this section, the term “absentee” means -
- (a) a person, not being a company, who is for the time being out of Papua New Guinea; or
 - (b) a company, not being a company incorporated in Papua New Guinea, unless it has a fixed or permanent place in Papua New Guinea relating to the carrying on of a taxable activity in Papua New Guinea in its own name; or
 - (c) a company, not being a company incorporated in Papua New Guinea, which is declared by the Commissioner to be an absentee for the purposes of this Act by notice given to that company or to its agent or attorney in Papua New Guinea, so long as that declaration remains unrevoked.

Value Added Tax

(2) A person who in Papua New Guinea carries on a taxable activity for and on behalf of a principal who is an absentee is, for the purposes of this Act, the agent of that principal in respect of that taxable activity so carried on in Papua New Guinea by means of that agent, and the agent shall make returns and be liable for any tax payable under this Act.

58. AGENTS.

(1) Subject to this section, for the purposes of this Act, where an agent makes a supply of goods and services for and on behalf of any other person who is the principal of that agent, that supply is deemed to be made by that principal and not by that agent.

(2) Where a supply of goods and services referred to in Subsection (1) is a taxable supply, that agent, being a registered person, may, notwithstanding anything in this Act, issue a tax invoice or a credit note or a debit note in relation to that supply as if that agent had made a taxable supply, and to the extent that that tax invoice or credit note or debit note relates to that supply, that principal shall not also issue, as the case may be, a tax invoice or a credit note or a debit note.

(3) Subject to this section, for the purposes of this Act, where 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 purposes of that supply, that supply is deemed to be made to that principal and not to that agent.

(4) An agent referred to in Subsection (3) may request to be issued with a tax invoice and that registered person may issue a tax invoice or a credit note or a debit note as if the supply were made to that agent.

(5) Where a tax invoice, credit note or debit note in relation to a supply has been issued -

- (a) by an agent under Subsection (2); or
- (b) to an agent under Subsection (3),

the agent shall maintain sufficient records to enable the name and address and registration number (if any) of the principal to be ascertained.

(6) Notwithstanding anything in Subsection (3), where a registered person makes a taxable supply (not being a supply that is charged with tax at the rate of zero percent under Section 18) of goods and services to an agent, being a registered person, who is acting for or on behalf of another person who is the principal for the purposes of that supply, and -

- (a) that principal is not resident in Papua New Guinea and is not a registered person; and
- (b) that supply is directly in connection with either the exportation, or the arranging thereof, of goods from Papua New Guinea to a country or place outside Papua New Guinea, or the importation, or the arranging thereof, of

Value Added Tax

goods to Papua New Guinea from a country or place outside Papua New Guinea, including, in either case, the transportation of those goods within Papua New Guinea as part of that exportation or, as the case may be, importation,

this Act shall, where that agent and that principal agree, have effect as if that supply were made to that agent and not to that principal.

59. AUCTIONEERS.

(1) For the purposes of Subsection (2), the expression "auctioneer" means a registered person carrying on a taxable activity which comprises or includes the supply by auction of goods as an auctioneer or agent for or on behalf of another person (hereafter in this section referred to as the principal).

(2) Notwithstanding anything in Section 58, where the principal and the auctioneer agree to have a supply by auction of any goods, not being a taxable supply, treated as if that supply had been made by that auctioneer and not by that principal, that supply shall be charged with tax as if it were made by that auctioneer in the course or furtherance of that auctioneer's taxable activity and that auctioneer may -

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

Division 5. - Company amalgamations.

60. EFFECT OF COMPANY AMALGAMATIONS.

(1) For the purposes of this section -

"amalgamated company" means the one company which is the result of and continues after an amalgamation, which may be one of the amalgamating companies or a new company;

"amalgamating company" means a company which amalgamates with one or more other companies under an amalgamation;

"amalgamation" means a amalgamation whereby two or more companies amalgamate and continue as one company.

(2) In a case where -

- (a) an amalgamation occurs; and
- (b) either -

- (i) the amalgamated company is a registered person immediately after the amalgamation; or
- (ii) an amalgamating company is not a registered person

Value Added Tax

- immediately before the amalgamation; and
- (c) the amalgamated company acquires in the course of the amalgamation any goods and services of the amalgamating company,
- then for the purposes of this Act -
- (d) the amalgamating company is deemed not to have made a supply of those goods and services; and
- (e) except to the extent to which Paragraph (f) applies, the amalgamated company is deemed not to have paid or provided any consideration for the acquisition of those goods and services; and
- (f) Section 32 applies as if the amalgamated company had acquired those goods and services -
- (i) at the same time; and
 - (ii) with the same purposes; and
 - (iii) for the same cost,
- as the amalgamating company.

(3) In a case where -

- (a) an amalgamation occurs; and
- (b) the amalgamated company is not a registered person immediately after the amalgamation; and
- (c) an amalgamating company is a registered person immediately before the amalgamation; and
- (d) the amalgamated company acquires in the course of the amalgamation any goods and services of the amalgamating company,

then for the purposes of this Act the goods and services are deemed to have been supplied by the amalgamating company and acquired by the amalgamated company for a consideration equal to the open market value of the goods and services at the date of the amalgamation.

(4) Where -

- (a) an amalgamating company ceases to exist on an amalgamation; and
- (b) but for this subsection, Section 30(12) would deem the amalgamating company to make a supply on a date after the amalgamation,

then for the purposes of this Act the supply is deemed to be made by the amalgamated company (as if, in any case where the amalgamated company is not at that date a registered person, the amalgamated company were a registered person), and not by the amalgamating company, on that date.

(5) Where -

- (a) an amalgamating company ceases to exist on an amalgamation; and
- (b) where the amalgamated company were the same person as the amalgamating company, a deduction would have been available to, or tax would have been charged to, the amalgamated company under Section 34,

Value Added Tax

the deduction shall be available to, or tax will be charged to, the amalgamated company.

(6) Where an amalgamating company ceases to exist on an amalgamation, Section 42(1)(a) applies as if all supplies made by the amalgamating company had been made by the amalgamated company.

Division 6. - Gas projects.

61. GAS PRODUCTION PROJECTS.

(1) Where a designated gas project, as defined in Section 4(1) of the *Income Tax Act*, is developed pursuant to a Gas Agreement, as defined in Section 124A of the *Petroleum Act* (Chapter 198), the supply of goods and services for the development of that gas project are subject to tax imposed by this Act as provided in that Gas Agreement.

(2) To the extent that the provisions of a Gas Agreement conflict with the provisions of this Act, the provisions of that Gas Agreement shall take precedence over the provisions of this Act.

PART IX. - RETURNS AND PAYMENT OF TAX.

62. TAXABLE PERIOD RETURNS.

(1) A registered person shall, on or before the 21 day of the month following the taxable period, furnish to the Commissioner a return, in the required form, setting out the amount of tax payable in respect of the taxable period by that person under Section 30, together with such other particulars as may be prescribed.

(2) Where the Commissioner is satisfied that in order to meet the circumstances of a non-profit body or in a particular case it is necessary to vary the date on which a return shall be furnished, the Commissioner may require a registered person to furnish returns accordingly.

(3) Where the day on which a return is due is not a working day, the day on which the return is due shall be the next succeeding working day.

(4) A registered person who ceases to be registered shall, not later than the 21 day of the month following the month in which the cessation of registration occurred, furnish to the Commissioner a final return in the required form in respect of that part of the last taxable period during which that person was registered.

63. OTHER RETURNS.

In addition to the returns specified in Sections 26 and 62, the Commissioner may require any person, whether a registered person or not, to furnish (whether on that person's own behalf or as an agent or trustee) to the Commissioner such further or other returns in the required

Value Added Tax

form as and when the Commissioner requires for the purposes of this Act.

64. PAYMENT OF TAX.

(1) A registered person, for each taxable period, shall, not later than the last day allowed under this Act for furnishing a return for that taxable period, pay to the Commissioner the tax payable for that period as calculated under Section 30.

(2) Notwithstanding Subsection (1), where a later due date has been fixed under Section 66(5), the tax payable shall be paid to the Commissioner on or before that later due date.

(3) Subject to Parts X and XI, the amount set forth as tax payable on a return furnished by a registered person is conclusively deemed to be correct for the purposes of this Act.

(4) A return purporting to be made by or on behalf of a person is for all purposes deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

65. TAX PAYMENTS TO BE BANKED TO SPECIAL ACCOUNT.

(1) Payments of tax and all other payments under this Act shall be paid to the credit of an account to be known as the VAT Revenue Trust Account maintained by the Central Bank of Papua New Guinea and, in the manner required by the *Value Added Tax Revenue Distribution Act 1998*, to such other trust accounts as are required pursuant to the provisions of that Act.

(2) Refunds of tax and other amounts pursuant to this Act shall be a first charge on the VAT revenue trust account.

(3) The balance of the VAT Revenue Trust Account after satisfying the charge in Subsection (2) shall be disbursed as agreed by the National and Provincial Governments of Papua New Guinea and published in the National Gazette.

PART X. - ASSESSMENT OF TAX.

66. ASSESSMENT OF TAX.

(1) Subject to Section 71, the Commissioner may from time to time, from returns furnished under this Act and from any other information in the Commissioner's possession, make assessments of the amount that, in the Commissioner's judgment, is the tax payable under this Act by -

- (a) a person required to furnish a return under this Act; or
- (b) a person, not being a registered person, who supplies goods and services and represents that tax is charged on that supply; or

Value Added Tax

- (c) a person whose registration has, under Section 43(6) been cancelled by the Commissioner, with effect from the date on which the person was registered under this Act; or
- (d) in the case of an assessment in relation to goods deemed to be supplied by a person under Section 52 -
 - (i) the person selling the goods; or
 - (ii) the person whose goods are sold, where any written statement supplied by that person under Section 52(a) to the person selling the goods is in the judgment of the Commissioner incorrect,

and that person shall be liable to pay the tax so assessed except in so far as the person establishes an objection that the assessment is excessive or that tax is not payable.

(2) Where -

- (a) a person is not satisfied with -

- (i) a return furnished by that person under this Act; or
- (ii) a return furnished under Section 53 by another person in relation to goods sold in or towards satisfaction of a debt owed by the person,

and requests the Commissioner, in writing, to make any addition or alteration to that return; and

- (b) the Commissioner has not already made an assessment of the amount of tax payable in respect of the period to which the return relates,

the Commissioner shall make an assessment of the amount that, in the Commissioner's judgment, is the tax payable under this Act, and the person so assessed shall be liable to pay the tax so assessed except in so far as the person establishes on objection that the assessment is excessive or that tax is not payable.

(3) Subject to Section 71, the Commissioner may from time to time and at any time make all such alterations in or additions to an assessment made under this section as the Commissioner thinks necessary to ensure the correctness thereof, notwithstanding that tax already assessed may have been paid.

(4) Where an assessment or amended assessment is made under this section, the Commissioner shall -

- (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 or amended assessment in relation to goods deemed to be supplied by a person under Section 52, send a copy of such notice to whichever of -
 - (i) the person whose goods were sold; or

Value Added Tax

(ii) the person selling the goods,
is not the person assessed.

(5) In a case in which an assessment is not made until after the due date of the tax payable, or is increased after the due date, and the Commissioner is satisfied that the person has not been guilty of neglect or default in making due and complete returns for the purposes of that tax, the Commissioner shall fix a new due date, being one month after the date of the assessment, for the payment of the tax payable or, as the case may be, of the increase in the tax payable, and the date so fixed is deemed to be the due date of the tax or increase in tax for the purposes of this Act.

(6) Omission to give any notice under Subsection (4) does not invalidate the assessment or in any manner affect the operation thereof.

**67. EFFECT OF CANCELLATION OF REGISTRATION BY COMMISSIONER
FOR PURPOSES OF PARTS IV, VII, XII AND XIV.**

(1) For the purposes of this Part and Parts VI and VII in a case where Section 66(1)(c) applies -

- (a) the person shall, notwithstanding that the person's registration has been cancelled under Section 43(6) with effect from the original date of registration, be deemed to have been a registered person during the period commencing with that original date of registration and ending with the day on which the Commissioner makes the cancellation; and
- (b) a tax represented to be charged on any supply made by the person during that period shall be tax payable by that person.

(2) For the purposes of this Part and Parts VI, VII and XIV, where -

- (a) a person, not being a registered person, supplies goods and services and represents that tax is charged on that supply; or
- (b) a person furnishes, or makes default in furnishing, a return required to be made by that person under Section 53 in relation to a supply of goods referred to in Section 52; or
- (c) a person whose goods are sold in the circumstances referred to in Section 52 supplies a statement under Section 52(a) to the person selling the goods, and that statement is in the judgment of the Commissioner incorrect,

that person is deemed to be a registered person and any tax represented to be charged on the relevant supply by that person shall be tax payable by that person.

68. VALIDITY OF ASSESSMENTS NOT AFFECTED BY FAILURE TO COMPLY WITH ACT.

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

69. ASSESSMENTS DEEMED CORRECT EXCEPT IN PROCEEDINGS ON OBJECTION.

Except in proceedings on objection to an assessment under Section 73, no assessment made by the Commissioner shall be disputed in any Court or in any proceedings (including proceedings before a Review Tribunal) either on the ground that the person so assessed is not a registered person or on any other grounds, and, except as aforesaid, every such assessment and all the particulars thereof is conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

70. EVIDENCE OF RETURNS AND ASSESSMENTS.

The production of a document under the hand of the Commissioner or his authorized delegate purporting to be a copy of or extract from any return or assessment shall in all Courts and in all proceedings (including proceedings before a Review Tribunal) be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts and Review Tribunals shall in all proceedings take judicial notice of the signature of the Commissioner or his authorized delegate either to the original or to any such copy or extract.

71. LIMITATION OF TIME FOR ASSESSMENT OR AMENDMENT OF ASSESSMENT.

(1) Where a person has furnished a return in respect of a taxable period or has been assessed for tax in respect of that period, it shall not be lawful for the Commissioner -

- (a) where an assessment has not been made, to make an assessment; or
- (b) where an assessment has been made, to alter the assessment so as to increase the amount thereof,

after the expiration of four years from the end of the taxable period in respect of which the return was furnished or, as the case may be, the assessment was made.

(2) Notwithstanding anything in Subsection (1), where a person has furnished a return under Section 53, or has been assessed for tax under Section 66, it shall not be lawful for the Commissioner -

- (a) where an assessment has not been made, to make an assessment; or
- (b) where an assessment has been made, to alter the assessment so as to increase the amount thereof,

after the expiration of four years from the end of the month in which the sale was made or, as the case may be, the assessment was made.

Value Added Tax

(3) Notwithstanding anything in Subsection (1) or (2), in a case where, in the opinion of the Commissioner, a person has knowingly or fraudulently failed to make a full and true disclosure to the Commissioner of all the material facts necessary to determine the amount of tax payable for a taxable period, or as the case may be, tax payable pursuant to any return furnished under Section 53, it shall be lawful for the Commissioner -

- (a) where an assessment for that taxable period has not been made, or an assessment for a return under Section 53 has not been made, to make an assessment at any time; or
- (b) where an assessment has been made under Section 66, to alter the assessment at any time.

PART XI. - OBJECTIONS.

72. OBJECTIONS TO CERTAIN DECISIONS.

(1) For the purposes of this section, "decision" means anything that is left to the discretion, judgment, direction, opinion, approval, consent, satisfaction, or determination of the Commissioner under this Act but does not include any such discretion, judgment, direction, opinion, approval, consent, satisfaction, or determination which, apart from this section, is subject to objection under Section 73.

(2) The Commissioner shall give notice in writing of a decision to the person affected thereby.

(3) Where, in respect of any person, the Commissioner has made a decision, and that person is dissatisfied with that decision, that person may object to that decision by delivering or posting to the Commissioner, within two months after the date on which the notice of that decision was given by or on behalf of the Commissioner, a written notice of objection stating shortly the grounds of objection.

(4) A notice of objection given after the time specified in Subsection (3) shall not be of any force or effect unless the Commissioner, in the Commissioner's discretion, accepts the same and gives notice to the objector accordingly.

(5) The Commissioner shall consider an objection made under this section and may alter the decision pursuant thereto.

(6) Where an objection is not wholly allowed by the Commissioner, the objector may, within two months after the date on which the notice of disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner, require that the objection be referred to the Review Tribunal, and in that event the objection shall be heard and determined by the Tribunal, and the provisions of the *Income Tax Act* shall apply in respect of the institution, hearing and determination of the proceedings on the objection.

Value Added Tax

(7) For the purposes of this section, Sections 75, 76, and 82 shall, in relation to an objection under this section, apply with any necessary modifications in the same manner and to the same extent that they would apply where the objection were an objection made under Section 73.

(8) The Review Tribunal shall consider every objection referred to it by the Commissioner under Subsection (6) and may in each case confirm or cancel or vary the decision, or make any decision which the Commissioner was empowered to make at the time the Commissioner made the decision to which the objection relates or direct the Commissioner to make such a decision, in which case a decision shall be made by the Commissioner so as to conform to that direction.

73. OBJECTIONS TO ASSESSMENTS.

(1) Subject to Subsection (2), a person who has been assessed for tax payable may object to that assessment by delivering or posting to the Commissioner a written notice of objection stating shortly the grounds of that person's objection, within such time as may be specified in that behalf in the notice of assessment, not being less than two months after the date on which that notice of assessment is given, or within such extended time as the Commissioner may allow on the application of the person made before the expiry of -

- (a) the time for objection specified in the notice of assessment; or
- (b) any extended time for objection previously allowed by the Commissioner in respect of the assessment.

(2) Where an assessment is an amended assessment, the person so assessed shall have no further right of objection than that person would have had if the amendment had not been made, except to the extent to which by reason of the amendment a fresh liability in respect of any particular is imposed on that person or an existing liability in respect of any particular is increased.

(3) No notice of objection given after the time specified in the notice of assessment, or after such extended time as the Commissioner may allow under Subsection (1), shall be of any force or effect unless the Commissioner, in the Commissioner's discretion, accepts the same and gives notice to the objector accordingly.

74. COMMISSIONER MAY AMEND ASSESSMENT, OR OBJECTIONS MAY BE SUBMITTED TO REVIEW TRIBUNAL.

(1) The Commissioner shall consider all objections under Section 73, and may alter the assessment pursuant thereto.

(2) Where an objection is not wholly allowed by the Commissioner, the objector may, within two months after the date on which notice of the disallowance is given to the objector by

Value Added Tax

or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by the Review Tribunal, and in that event the objection shall be heard and determined by the Tribunal, and the provisions of the *Income Tax Act* shall apply in respect of the institution, hearing, and determination of the proceedings on the objection.

(3) Where the Commissioner, after considering the objection, has allowed the objection in part and has reduced the assessment, the reduced assessment shall be the assessment to be dealt with by the Tribunal.

75. POWERS OF REVIEW TRIBUNAL ON DETERMINATION OF OBJECTION OR CASE STATED.

- (1) On hearing an objection the Tribunal may -
 - (a) confirm or cancel or vary the assessment, or reduce the amount thereof, or increase the amount thereof to the extent to which the Commissioner was empowered to make an assessment of an increased amount at the time the Commissioner made the assessment to which the objection relates, and that last-mentioned assessment shall be altered by the Commissioner to such extent as may be necessary to conform to that determination; and
 - (b) make any assessment which the Commissioner was empowered to make at the time the Commissioner made the assessment to which the objection relates, or direct the Commissioner to make such an assessment, in which case an assessment shall be made by the Commissioner so as to conform to that direction.
- (2) Nothing in Section 71 applies with respect to -
 - (a) a determination of the Tribunal under Subsection (1)(a) or any alteration made by the Commissioner to an assessment for the purpose of conforming to any such determination; or
 - (b) an assessment made by the Tribunal or the Commissioner under Subsection (1)(b).

76. WHEN OBJECTION MAY BE REFERRED IN FIRST INSTANCE TO NATIONAL COURT.

- (1) Notwithstanding anything in this Part, where -
 - (a) an objection to an assessment is made in accordance with Section 73(1) or accepted by the Commissioner under Section 73(2); and
 - (b) the objection is not wholly allowed by the Commissioner; and
 - (c) the objection is one to which Subsection (2) or (3) applies,the objection may be referred directly to the National Court by way of case stated in accordance

Value Added Tax

with this section.

- (2) Where an objection relates to a question of law only -
 - (a) the objector may, within two months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner, require the Commissioner to state a case for the opinion of the National Court, and shall specify in the notice the registry of that Court in which the objector requires the case to be filed; and
 - (b) the Commissioner, in any case if under Section 74 the objector has required the objection to be heard and determined by a Review Tribunal, may, in the Commissioner's discretion, instead of referring the objection to a Review Tribunal, state a case for the opinion of the National Court, and shall notify the objector accordingly.
- (3) Where an objection relates to a question of fact (whether or not it also relates to a question of law) -
 - (a) the objector may, within two months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, give notice in writing to the Commissioner that the objector desires the Commissioner to state a case for the opinion of the National Court, specifying in the notice the registry of that Court in which the objector desires the case to be filed; and
 - (b) the Commissioner may, in any case if the objector has under Section 74 required the objection to be heard and determined by a Review Tribunal, notify the objector that the Commissioner desires the objection to be referred directly to the National Court.
- (4) Where any notice is given by the objector or the Commissioner under Subsection (3), the objection shall be referred directly to the National Court where both the Commissioner and the objector consent thereto, or with the leave of that Court granted on the application of the objector or the Commissioner, as the case may be, upon the ground that in the opinion of the Court, by reason of the amount of the tax in dispute between the parties or of the general or public importance of the matter or of its extraordinary difficulty or for any other reason, it is desirable that the objection be heard and determined by the National Court instead of by a Review Tribunal.
- (5) Within three months after -
 - (a) the date of the objector's giving notice under Subsection (2)(a) or (3)(a), where it is the objector who requires or desires the Commissioner to state a case for the opinion of the National Court; or

Value Added Tax

- (b) the date of the objector's giving notice in relation to the objection under Section 74(2), where it is the Commissioner who determines or desires under Subsection (2)(b) or (3)(b) to state a case for the opinion of the National Court,

the objector shall serve on the Commissioner, by delivery to the Head Office of the Internal Revenue Commission in Port Moresby or to such other address as may have been notified in writing by the Commissioner to the objector for the purpose, a notice in the prescribed form of the objector's points of objection.

(6) The points of objection shall state, with sufficient particularity so as to fairly inform the Commissioner and the Court -

- (a) the facts upon which the objector relies in support of the objection; and
- (b) the propositions of law (if any) on which the objector relies in support of the objection; and
- (c) the issues which the objector considers require to be determined by the Court.

(7) The objector shall annex to the points of objection copies of any documents upon which the objector intends to rely in support of the objection, but where the documents upon which the objector intends to rely are numerous, the objector may annex a list of those documents instead of copies of the actual documents.

(8) Where the objector fails to serve on the Commissioner the points of objection within the period referred to in Subsection (5), or within such further period as may be allowed under Subsection (12), the objection is deemed to be withdrawn and the Commissioner shall not be required to take any further steps in relation to the objection.

(9) Where under this section an objection is to be referred directly to the National Court, the Commissioner shall, within three months after the date of service of the points of objection or within such further period as may be allowed under Subsection (12), state and sign a case which shall comprise -

- (a) a notice in the prescribed form containing -
 - (i) particulars of the assessment made by the Commissioner to which the objection has been made; and
 - (ii) the grounds of objection given by the objector; and
 - (iii) the question for the determination of the Court; and
- (b) the points of objection served by the objector; and
- (c) a notice in the prescribed form stating -
 - (i) any further facts which the Commissioner considers are relevant to the issues to be determined by the Court; and

Value Added Tax

- (ii) the issues which the Commissioner claims require to be determined by the Court.

(10) The case so stated under Subsection (9) and signed together with one copy thereof shall be filed by the Commissioner -

- (a) in the registry of the National Court specified by the objector in the notice under Subsection (2)(a) or (3)(a), where such a notice has been given by the objector; or
- (b) in such registry of the National Court as the Commissioner thinks fit in any other case, having due regard to the convenience of the objector.

(11) A copy of the case filed under Subsection (10) shall be served by the Commissioner on the objector either personally or by sending it to the objector by registered post addressed to the objector at the address for service specified by the objector in the points of objection, or at such other address as the objector may have notified to the Commissioner in writing for the purpose; and the copy so sent by registered post is deemed to have been received when in the ordinary course of post it would be delivered.

(12) Subject to Subsection (1), the National Court may, on the written application of the objector or the Commissioner, as the case may be -

- (a) extend the time for service by the objector on the Commissioner of the points of objection; or
- (b) extend the time for the filing of the case by the Commissioner,

until such time as the Court thinks fit, whether the application is made before or after the expiry of the time limit, but where application is made for an extension of time more than two months after the date for service of the points of objection or the date for filing the case, as the case may be, an order for extension of time shall be made only in exceptional circumstances.

(13) Where the Commissioner fails to file a case within the time specified in Subsection (9), or within such further time as may be allowed under Subsection (12), the objector may apply to the National Court for an order directing the Commissioner to allow the objector's objection, and the National Court -

- (a) shall make such an order accordingly, unless it is satisfied that there are reasonable grounds for the failure to file the case; or
- (b) may, where it refuses to make such an order, make such other orders as in the circumstances it thinks fit, whether relating to the filing of the case in the National Court, the remitting of the objection to the Review Tribunal for hearing and determination, or otherwise.

Value Added Tax

(14) The contents of the case shall not be conclusive as to the matters set forth therein either against the objector or the Commissioner, except so far as agreed to in writing by or on behalf of the objector and the Commissioner.

(15) At any time before the case stated is set down for hearing -

- (a) the Commissioner may file an amended case and serve a copy on the objector at the objector's address for service; and
- (b) the objector may serve on the Commissioner amended points of objection at the Commissioner's address for service specified in the case.

77. COURT'S POWERS.

On hearing any case stated under this Part, the National Court may -

- (a) confirm or cancel or vary the assessment, or reduce the amount thereof, or increase the amount thereof to the extent to which the Commissioner was empowered to make an assessment of an increased amount at the time the Commissioner made the assessment to which the objection relates, and that last-mentioned assessment shall be altered by the Commissioner to such extent as may be necessary to conform to that determination; or
- (b) make any assessment which the Commissioner was empowered to make at the time the Commissioner made the assessment to which the objection relates, or direct the Commissioner to make such an assessment, in which case an assessment shall be made by the Commissioner so as to conform to that direction.

78. APPLICATION OF TIME LIMITS BY THE COURT.

Nothing in Section 71 applies with respect to -

- (a) a determination of the Court under Section 77(a) or an alteration made by the Commissioner to an assessment for the purpose of conforming to any such determination; or
- (b) an assessment made by the Court or the Commissioner under Section 77(b).

79. REFUSAL OF REFERENCE TO COURT.

Where a notice is given by the objector to the Commissioner under Section 76(3)(a) and the Commissioner gives notice to the objector that the Commissioner does not consent to the objection being referred directly to the National Court under that section, then -

- (a) where within one month after the last-mentioned notice is given to the objector by the Commissioner no application is made by the objector to the National Court for the leave of the Court to refer the objection directly to that Court; or
- (b) where on any such application the National Court refuses to grant such leave, the first-mentioned notice shall have effect as if it were a notice requiring the objection to be heard and determined by a Review Tribunal, and this Part applies accordingly.

80. TEST CASE PROCEDURE.

(1) Where -

- (a) an objector has given notice under Section 74(2), 76(2)(a) or 76(3)(a) requiring or requesting that an objection be heard and determined by a Review Tribunal, or that a case be stated for the opinion of the National Court in respect of an objection; and
- (b) the Commissioner considers that determination of the objection, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections,

the Commissioner may designate that objection as a test case, and shall notify the objector accordingly.

(2) The Commissioner may, notwithstanding Section 76(4), state a test case for the opinion of the National Court without need for -

- (a) the objector's consent; or
- (b) the leave of the National Court,

and Section 76(5) to (12) inclusive shall apply in respect of any test case as if the Commissioner had determined to state the case under Section 76(2)(b).

(3) The Commissioner may in relation to any objection, at any time after the objection has been lodged and before it has been determined by a Review Tribunal or the National Court, notify the objector in writing that the objection will be stayed by reason of the taking of a test case on a similar objection before the National Court, where the Commissioner considers that the test case is likely to be determinative of all or a substantial number of the issues in the objection proposed to be stayed.

(4) Subject to Subsection (9), the written notification by the Commissioner referred to in Subsection (3) shall have the effect of staying the objection pending the determination of the test case.

(5) Upon receipt by an objector of the written notification by the Commissioner referred to in Subsection (3), the objector may notify the Commissioner that the objector requires that the objection be heard and determined notwithstanding the stating of a test case for the opinion of the National Court and such notice shall be given in writing at such address as may be specified by the Commissioner in the notice given under Subsection (3).

(6) Within 14 days after the receipt by the Commissioner of the notice from the objector referred to in Subsection (5), the Commissioner may apply to the National Court by originating application for an order that the objection be stayed pending the determination of the test case or the further order of the Court.

Value Added Tax

(7) An application by the Commissioner under Subsection (6), shall be made on notice to the objector whose objection the Commissioner seeks to have stayed.

(8) Where an objection has been stayed, the objector, the Commissioner, or both of them, may at any time apply to the National Court for an order that the objection cease to be stayed.

(9) A stay under Subsection (4) shall lapse on the expiry of 14 days following the day on which occurs any of the following:-

- (a) the expiry of the 14-day period specified in Subsection (6), where the objector has issued a notice in writing under Subsection (5) and the Commissioner has not within the 14-day period made an application under Subsection (6); or
- (b) the making by the National Court of an order dismissing an application by the Commissioner under Subsection (6); or
- (c) the making by the National Court, on an application under Subsection (8), of an order that the objection cease to be stayed; or
- (d) the determination of the test case which caused the objection to be stayed by the expiration of all rights of appeal.

(10) For the purposes of this Act -

- (a) for so long as an objection is stayed under this section, any time limits or periods specified in or pursuant to this Act (other than in Subsections (5) to (9) inclusive) in relation to proceedings on the objection shall not apply; and
- (b) where the stay of an objection lapses under Subsection (9), any time limits or periods so specified shall be treated as if they were extended by the period commencing with the date of the Commissioner's written notification under Subsection (3), and ending with the day on which the stay lapses under Subsection (9).

(11) Service of notices by the Commissioner under Subsections (3) and (7) may be effected -

- (a) personally; or
- (b) by sending a copy of the notice to the objector by registered post to the objector at the objector's usual or last known place of abode or business in Papua New Guinea, in which case it is deemed to have been received when in the ordinary course of post it would be delivered; or
- (c) by service on a solicitor who accepts service, in writing, on behalf of the objector, which service is deemed for the purposes of this section to be personal service on the objector; or

- (d) by effective delivery to an address for service supplied by the objector to the Commissioner.

81. OBLIGATION TO PAY TAX WHERE OBJECTION LODGED.

- (1) For the purposes of this section -

“competent objection”, in relation to a person and to any assessment, means an objection made by the person, to the assessment, in accordance with Section 73, but does not include any non qualifying objection;

“day of determination of final liability”, in relation to any amount of deferrable tax, means -

- (a) where the Commissioner receives from the person a notice in writing of the withdrawal by the person of the objection to the assessment in relation to which there is that amount of deferrable tax, the day on which the Commissioner receives that notice; or
- (b) where the objection to the assessment is deemed to be withdrawn under Section 76(8), the day following the expiry of the period referred to in Sections 76(5) or, where appropriate, 76(12); or
- (c) where the objection to the assessment is otherwise deemed to be withdrawn by or under this Act, the expiry of the period of two calendar months following the day on which the objection is deemed to be withdrawn; or
- (d) where the objection is determined by a Review Tribunal and not by a Court, the day on which the Review Tribunal determines the objection; or
- (e) where the objection is determined as a result of proceedings taken in a Court, whether or not by way of appeal, the day on which the objection is finally determined, whether in those proceedings or, as the case may be, on any appeal; or
- (f) where the person does not, within the period of two months immediately succeeding the date on which the notice of disallowance of the objection is given to that person by or on behalf of the Commissioner, by notice in writing to the Commissioner, require -
 - (i) that the objection be heard and determined by a Review Tribunal; or
 - (ii) the Commissioner to state a case for the opinion of the National Court, specifying in the notice the registry of that Court in which that person requires the case to be filed, the

Value Added Tax

day on which there expires that period of 2 months; or

- (g) where, and to the extent that, an objection is allowed by the Commissioner, the day on which the notice of that allowance (to that extent) is given in writing to the person by the Commissioner;

“deferrable tax”, in relation to a person and to an assessment in relation to which the person has made an objection, being a competent objection, means an amount equal to one-half of so much of the tax assessed (in the assessment) as, after the disallowance, in whole or in part, by the Commissioner of the objection, is determined by the Commissioner to be, and is notified by the Commissioner in writing to the person as being, the amount by which, where the person succeeded, in a hearing and determination by either the Review Tribunal or the National Court, with the whole or, as the case may be, the part of the objection that was so disallowed, the amount of the assessment of the tax would, by reason of the person so succeeding, be reduced;

“non-qualifying objection”, in relation to a person and to any assessment, means an objection made by the person, to the assessment, in accordance with Section 73 where, and to the extent that, any ground of objection stated by the person is that -

- (a) the return furnished under this Act or the other particulars supplied together therewith, being the return and the other particulars from and by reference to which the assessment has been made, is deficient or, as the case may be, are deficient or insufficient; or
- (b) the assessment has been made, under Section 66(1), in the absence of any return required under this Act or the particulars from or by reference to which, had that return or those particulars been furnished to the Commissioner, the assessment would have been made.

- (2) The obligation to pay and the right of the Commissioner to receive and recover -
 - (a) any tax, being deferrable tax, shall be suspended until the expiry of the day that, in relation to the deferrable tax, is the day of determination of final liability; and
 - (b) any tax, not being deferrable tax, shall not be suspended by any objection, appeal, or case stated, made or requested under this Part.

- (3) Where, in relation to a person and to an assessment in which the tax assessed has become due and payable, an amount of deferrable tax is unpaid and an amount of tax that is not

Value Added Tax

deferrable tax is unpaid, each such amount of unpaid tax may be recovered by the Commissioner as a separate debt arising from a separate cause of action.

(4) Subject to Section 87 and to Subsection (5), where the objector succeeds, in whole or in part, with the objection, appeal, or case stated, the Commissioner shall forthwith refund the amount (if any) of the tax received by the Commissioner in excess of the amount which, according to the decision on the hearing of the objection, appeal, or case stated, was properly payable.

(5) No amount shall be refunded under Subsection (6) until the expiry of whichever of the following days is the latest:-

- (a) the day on which the objection is determined by the Commissioner;
- (b) the day on which there is given, in relation to the grounds of the objection, a decision of the Review Tribunal;
- (c) the day on which there is given, in relation to the grounds of the objection, such judgment of any Court, whether or not on appeal, as, in relation to the objection, is the judgment which finally determines the objection.

82. DETERMINATION OF OBJECTION NOT TO AFFECT OTHER ASSESSMENTS.

The determination of an objection under this Part shall relate solely to the assessment or decision (as defined in Section 72(1)) objected to, and shall not affect the right of the Commissioner to make any other assessment or such decision in respect of the objector, or to amend the assessment or such decision objected to in any manner rendered necessary by that other assessment or such decision.

83. OBJECTIONS TO WHICH THIS PART DOES NOT APPLY.

Except so far as may be expressly provided in this Act, this Part does not confer any right of objection with respect to -

- (a) a decision or determination of the Commissioner made in exercise of any power or discretion conferred upon the Commissioner to enlarge or extend the time for giving a notice, making any application, furnishing any return, or doing any other act, matter, or thing; or
- (b) a matter in respect of which provision is made by this Act or by any regulations -
 - (i) for the matter to be inquired into, considered, reported upon, heard, decided, determined, or otherwise dealt with by; or
 - (ii) for the matter to be the subject of any recommendation of, any special committee, tribunal, or authority (other than a Review Tribunal) established in that behalf or any person or official (other than the Commissioner); or
- (c) a matter which by any provision in Part X (other than Section 71), XII, VIII, XIV or Part XV (other than Section 101) is left to the discretion, judgment, opinion,

Value Added Tax

- (d) approval, consent, or determination of the Commissioner; or a matter in respect of which it is expressly provided in this Act, or in any provision of the *Income Tax Act* applied to value added tax by this Act, that there shall be no right of objection to the decision or determination of the Commissioner.

PART XII. - RECOVERY OF TAX.

84. - ADDITIONAL TAX TO BE PAYABLE IF DEFAULT MADE IN PAYMENT OF TAX.

(1) Subject to this section, additional tax shall be, and is deemed to be, added to any tax remaining unpaid, and shall be payable accordingly, as follows:-

- (a) on the amount of any tax remaining unpaid at the expiry of the due date, additional tax of 10%; plus
- (b) an amount calculated at the rate of 20% from the date of expiry of the due date, on so much of the amount as remains unpaid.

(2) Where the amount of additional tax calculated under Subsection (1) in respect of any default in paying an amount of tax by its due date does not exceed K5.00 (or such other amount as may be prescribed for the purposes of this section) -

- (a) the Commissioner shall not charge, and there shall be no liability to pay, the amount so calculated; and
- (b) the amount so calculated shall be deemed not to be additional tax imposed under this section, and shall not be added to the amount in default.

(3) For the purposes of Subsection (1), the term "tax remaining unpaid" includes any amount refunded under Sections 30(13), 31(4) and 87 in respect of any taxable period, to the extent that that amount -

- (a) is not properly so refundable; or
 - (b) is in excess of any amount properly so refundable,
- under Sections 30(13), 31(4) and 87.

(4) The Commissioner may in any case, for reasons that he thinks sufficient, and either before or after making an assessment or notice, remit the additional tax or any part of that tax.

85. RECOVERY OF TAX.

(1) Tax payable by a person under this Act is recoverable as a debt due to the State.

(2) Where a person has not paid the amount of the tax payable or any part thereof in the manner required by Part IX, the amount of the tax for the time being unpaid to the

Value Added Tax

Commissioner shall, in the application of the assets of the person, rank as follows:-

- (a) where the person is an individual, upon that person's bankruptcy or upon that person making an assignment for the benefit of that person's creditors, the amount of the tax payable shall rank without limitation in amount, in order of priority immediately after preferential claims for wages or other sums payable to or on account of any servant or worker or apprentice or articulated clerk, and in priority to all other claims;
- (b) where the person is a company, upon the liquidation of the company, the amount of the tax payable shall rank immediately prior to the ranking provided for income taxes in Subsection 4(b) of Schedule 9 to the *Companies Act 1997* (whether or not the company has been incorporated or registered under that Act);
- (c) where the person is a company, 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 the debenture holder of the property, the amount of the tax payable shall rank immediately prior to the ranking provided for income taxes in Subsection 4(b) of Schedule 9 to the *Companies Act 1997* (whether or not the company has been incorporated or registered under that Act), as if the receiver or person taking possession were a liquidator;
- (d) where a person is a body (as defined in Section 55(1)), upon the appointment of a receiver on behalf of a person pursuant to an order by the Court, the amount of any tax payable shall rank immediately after any preferential claims for any wages or other sums payable to or on account of a servant or worker or apprentice or articulated clerk, and in priority over any claims of holders of debentures under a floating charge created by the person and be paid accordingly out of any property comprised in or subject to that charge.

(3) This section shall apply notwithstanding anything in any other Act.

(4) For the purposes of this section, a floating charge shall include a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge.

86. DEDUCTION OF TAX FROM PAYMENT DUE TO DEFAULTERS.

(1) For the purposes of this section -

"defaulter" means a registered person who has made default in the payment to the Commissioner of any tax payable by the registered person under this Act;

Value Added Tax

“person” includes a bank, a company, a partnership, the Government of the Independent State of Papua New Guinea and any public authority constituted by or under a law of Papua New Guinea;

“tax” means any tax or additional tax or further additional tax payable by a registered person under this Act and includes any fines and costs imposed upon any person under any provision of this Act.

(2) The Commissioner may at any time, or from time to time, by notice in writing (a copy of which shall be forwarded to the defaulter at his last place of address known to the Commissioner), require -

- (a) a person by whom any money is due or accruing or may become due to a defaulter; or
- (b) a person who holds or may subsequently hold money for or on account of a defaulter; or
- (c) a person who holds or may subsequently hold money on account of some other person for payment to a defaulter; or
- (d) a person having authority from some other person to pay money to a defaulter,

to pay to the Commissioner, either forthwith upon the money becoming due or being held or at or within a time specified in the notice (not being a time before the money becomes due or is held) -

- (e) so much of the money as is sufficient to pay the amount of tax due by the default, or the whole of the money when it is equal to or less than that amount; or
- (f) such amount as is specified in the notice out of each of any payments that the person so notified becomes liable from time to time to make to the defaulter until the amount due by the defaulter in respect of any tax is satisfied,

and may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment under the notice.

(3) A person who fails to comply with a notice under this section is liable to pay -

- (a) the amounts specified in the notice; or
- (b) the amount due or held on behalf of the defaulter,

whichever is the lesser amount and any amount collected under this subsection shall be applied against the tax owing by the defaulter.

(4) In addition to any amount he is liable to pay under Subsection (3), a person who fails to comply with a notice under this section is guilty of an offence.

Penalty: A fine of not less than K400.00 and not exceeding K1000.00.

Value Added Tax

(5) A person making a payment under this section is deemed to have been acting under the authority of the defaulter and of all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.

(6) Where the Commissioner receives a payment in respect of the amount due by the defaulter before payment is made by the person so notified, the Commissioner shall forthwith give notice of receipt of that payment to the person.

(7) A notice to be given under this section to the Government may be served upon such person as is prescribed and a notice so served is deemed to have been served upon the Government.

PART XIII. - REFUNDS AND RELIEF FROM TAX.

87. REFUND OF EXCESS TAX.

(1) Subject to this Part and to Subsections (2), (3) and (5), where a registered person has paid to the Commissioner an amount in excess of the amount of tax assessed under Section 66 in respect of any taxable period the Commissioner shall refund the amount paid in excess.

(2) Subject to Subsection (2), no refund shall be made after the expiration of the period of eight years immediately after the end of the taxable period, unless written application for the refund is made by or on behalf of the registered person before the expiration of that period.

(3) Notwithstanding anything in Section 30(13) but subject to Subsection (4), in any case where an assessment has been made pursuant to Section 66 so as to change any amount of tax payable by a registered person or refundable by the Commissioner, and the Commissioner is satisfied that by reason of that assessment either -

- (a) tax has been paid by that person in excess of the amount so assessed; or
- (b) an amount has been refunded to that person by the Commissioner under Section 30(13) or 31(4) and that amount is less than the amount properly refundable,

the Commissioner shall, notwithstanding that the time limited in accordance with Subsection (1) for the making of a refund may have expired, refund, pursuant to this section, the tax so paid in excess or, as the case may be, the amount properly refundable to the extent that that amount exceeds the amount that has been refunded.

(4) In a case to which Subsection (3) refers, no refund shall be made after the expiration of the period of eight years immediately after 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 expiration of that period.

Value Added Tax

(5) Notwithstanding any other provision in this Act, the Commissioner may apply any amount refundable under this Act, or part thereof, in satisfaction of any amount of tax or duty due and owing by the taxpayer under the provisions of any other revenue legislation which the Commissioner is empowered to administer and any amount so applied shall be deemed to have been refunded to the taxpayer.

88. TAX PAID IN EXCESS MAY BE SET OFF AGAINST TAX PAYABLE WHEN ASSESSMENT RE-OPENED.

In a case where, upon the investigation by the Commissioner of the liability of a registered person for tax over a number of taxable periods -

- (a) the Commissioner assesses the registered person with tax for a taxable period in respect of which no assessment has been made previously or alters an assessment for a taxable period as so as to increase the amount thereof; and
- (b) in respect of any taxable period or taxable periods within that group of taxable periods tax has been paid in excess of the amount properly payable,

the Commissioner may, in the Commissioner's discretion and to the extent that in the opinion of the Commissioner is equitable, allow an amount so paid in excess to be deducted from or set off against a tax payable for any taxable period or taxable periods, notwithstanding that the time limited for the making of a refund of any tax so paid in excess may have expired.

89. POWER OF COMMISSIONER IN RESPECT OF SMALL AMOUNTS.

(1) Notwithstanding anything in this Act but subject to Subsection (2), the Commissioner may refrain from collecting or refunding tax in any case where, as the case may be -

- (a) the amount of any tax payable calculated in accordance with this Act, or the balance of any such tax payable remaining unpaid, does not exceed K5.00; or
- (b) the amount to be refunded in accordance with Section 30, 31 or 87, or the balance of any such amount that remains to be refunded, does not exceed K5.00.

(2) An amount referred to in Subsection (1) shall be refunded to a registered person upon written request being provided to the Commissioner by that registered person within six months of the date on which the return in respect of which the refund was due has been furnished.

90. APPROPRIATION OF REFUNDS.

Any refund of tax under this Act may be made without further appropriation than this section.

PART XIV . - PENALTIES.

91. OFFENCES.

- (1) A person commits an offence against this Act who -
 - (a) fails to apply for registration as required under Section 42; or
 - (b) fails to notify the Commissioner of any of the matters required under Section 44; or
 - (c) refuses or fails to furnish a return or information as and when required by this Act, or any regulations made under this Act, or by the Commissioner; or
 - (d) makes a false return, or a false statement, or a false declaration, or gives a false information, knowing it to be false, or being reckless as to whether it was false, or intentionally misleads or attempts to mislead the Commissioner or any other officer of the Internal Revenue Commission in relation to any matter under this Act; or
 - (e) knowingly falsifies any records required to be kept under this Act; or
 - (f) knowingly issues a tax invoice showing an amount charged as tax where -
 - (i) no amount of tax is charged in respect of any supply to which such tax invoice applies; or
 - (ii) the amount shown as being charged as tax is in excess of the amount properly so charged under this Act; or
 - (iii) the supply in respect of the tax charged will not take place; or
 - (g) knowingly represents to a person, in writing or otherwise that an amount is charged as tax where either -
 - (i) no amount of tax is charged in respect of any supply to which such representation refers; or
 - (ii) the amount represented as being charged as tax is not the amount properly so charged under this Act; or
 - (h) receives, acquires possession of, or deals with any goods, or accepts the supply of any services, where that person knows or has reason to believe that the tax on the supply of the goods or the services has been or will be evaded; or
 - (i) obstructs any officer of the Internal Revenue Commission acting in the discharge of that officer's duties or the exercise of that officer's powers under this Act; or
 - (j) fails to keep or to properly maintain records of any taxable activity carried on by that person sufficient to satisfy the requirements of Section 103; or

Value Added Tax

- (k) knowingly issues any tax invoice required under this Act which is in any material aspect erroneous or incomplete, or knowingly makes any statement or declaration in relation to any matter under this Act which is erroneous or incomplete in any material aspect; or
- (l) knowingly contravenes the provisions of Section 39(2) or 40(1)(a); or
- (m) being a registered person, fails to provide another registered person with a tax invoice as required under this Act; or
- (n) knowingly fails to make a deduction or extraction required by a notice under Section 86; or
- (o) fails, after making a deduction or extraction required by a notice under Section 86, to pay the sum deducted or extracted to the Commissioner within the time specified in the notice; or
- (p) permits the payment to or on behalf of a person, other than the Commissioner, of any amount that, under Section 86(9), is deemed to be held in trust for the State; or
- (q) aids, abets, incites, or conspires with any other person to commit any offence against this Act or against any regulations made under this Act.

92 is - (2) A person who commits an offence against Subsection (1)(b), (j) or (l) or Section

- (a) on the first occasion on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K2,000.00; and
- (b) on the second occasion on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K4,000.00; and
- (c) on every occasion, other than the occasions referred to in Paragraphs (a) and (b) on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K6,000.00.

(3) A person who commits an offence against Subsection (1)(c) or (m) is -

- (a) on the first occasion on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K500.00 for each month of default; and

Value Added Tax

- (b) on the second occasion on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K750.00 for each month of default; and
 - (c) on every occasion, other than the occasions referred to in Paragraphs (a) and (b), on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K1,000.00 for each month of default.
- (4) A person who commits an offence against this Act for which no other penalty is prescribed is -
 - (a) on the first occasion on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K15,000.00; and
 - (b) on every occasion, other than the occasion referred to in Paragraph (a), on which the person is convicted of any such offence or more than one such offence, liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding K25,000.00.
- (5) A person who commits an offence against Subsection (1)(q) is liable to a fine not exceeding the maximum fine applicable to the offence committed by the person aided, abetted, incited or conspired with.

92. OFFICERS AND EMPLOYEES OF CORPORATE BODIES.

- (1) For the purposes of this section, unless the context otherwise requires, "officer", in relation to a corporate body, includes -
 - (a) a director or secretary or other statutory officer of the corporate body; and
 - (b) a receiver or a manager of any property of the corporate body, or a person having powers or responsibilities, similar to those of such a receiver or manager, in relation to the corporate body; and
 - (c) a liquidator of the corporate body.
- (2) A person commits an offence against this Act who, being an officer or an employee of a corporate body, is, by reason of that office or, as the case may be, that employment, responsible (whether pursuant to a statute or rule of law, or any instructions of the corporate body or for any other reason) for furnishing to the Commissioner any information, statement or return under this Act or under any notice, order, or requirement issued, made, or notified under this Act, and who fails to furnish that information or that statement or that return, as the case may be, to the Commissioner within the time specified for the furnishing thereof.

93. PROCEEDINGS TO BE TAKEN SUMMARILY.

All proceedings for offences against this Act shall be taken by way of summary prosecution before a District Court Judge upon the information of the Commissioner.

94. INFORMATION MAY CHARGE SEVERAL OFFENCES.

(1) An information may charge the defendant with any number of offences against this Act where those offences are founded on the same set of facts, or form or are part of a series of offences of the same or similar character.

(2) Where an information charges more than one such offence, particulars of each offence charged shall be set out separately in the information.

(3) All charges shall 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.

95. INFORMATION MAY BE LAID WITHIN 10 YEARS.

Notwithstanding anything in any other Act, an information in respect of any offence against this Act or against any regulations made thereunder may be laid at any time within 10 years after the end of the taxable period in which the offence was committed.

96. FURTHER ADDITIONAL TAX IN CASE OF EVASION.

Where -

(a) a registered person -

- (i) evades; or
- (ii) attempts to evade; or
- (iii) does any act with intent to evade; or
- (iv) makes default in the performance of any duty imposed upon that person by this Act or regulations made under this Act with intent to evade,

the payment of any amount of tax payable (which amount is hereafter referred to as the deficient tax); or

(b) a registered person -

- (i) causes; or
- (ii) attempts to cause; or
- (iii) does any act with intent to cause; or
- (iv) makes default in the performance of any duty imposed upon that person by this Act or regulations made under this Act with intent to cause,

the refund to that person by the Commissioner of any amount (which amount is hereafter also referred to as the deficient tax), under Section 30(13), in excess of the amount properly so

Value Added Tax

refundable to that person, that person shall be chargeable, by way of penalty for that offence, with additional tax (hereafter called further additional tax) not exceeding an amount equal to treble the amount of the deficient tax.

97. NATURE OF FURTHER ADDITIONAL TAX.

Subject to this Part, further additional tax shall for all purposes be deemed to be tax of the same nature as the deficient tax to which it relates, and shall be deemed to be payable in and for the same taxable period as that deficient tax.

98. ASSESSMENT OF FURTHER ADDITIONAL TAX.

(1) Further additional tax shall be assessed by the Commissioner in the same manner, so far as may be, as the deficient tax to which it relates, but separately therefrom.

(2) An assessment of further additional tax may be amended from time to time in the same manner as any other assessment.

(3) It is lawful for the Commissioner to make or amend an assessment of further additional tax at any time.

99. OBJECTIONS TO FURTHER ADDITIONAL TAX.

(1) Subject to Subsection (2), an assessment of further additional tax is subject, in the same manner as any other assessment of tax, to objection on the ground that the person so assessed is not chargeable with further additional tax, or on the ground that the amount so assessed is excessive having regard to the nature and degree of the offence or to the reason for the imposition of the further additional tax, and notwithstanding that the amount so assessed is not in excess of treble the amount of the deficient tax.

(2) Where a person so assessed is chargeable with further additional tax, the amount of further additional tax assessed by the Commissioner shall not be reduced by a Review Tribunal or any Court below the smaller of the following amounts:-

- (a) the amount of further additional tax so assessed;
- (b) an amount calculated, in respect of the period commencing with the last day of the taxable period for which the deficient tax is payable and ending with the day on which the assessment of the further additional tax is made by the Commissioner, at the rate of 20% per annum of the amount of the deficient tax.

(3) Subject to Subsections (1) and (2) the provisions of this Act as to objections apply to an objection to an assessment of further additional tax, save that the burden of proving the offence in respect of which further additional tax is chargeable lies upon the Commissioner.

Value Added Tax

100. RECOVERY OF FURTHER ADDITIONAL TAX.

An assessment of further additional tax may be made and the tax so assessed is recoverable at any time, whether before or after the deficient tax to which it relates has been assessed or paid, or has become assessable or payable.

101. RECOVERY OF FURTHER ADDITIONAL TAX FROM EXECUTORS OR ADMINISTRATORS.

(1) Further additional tax is assessable against and recoverable from the executors or administrators of a deceased registered person, but, where so assessed, the amount thereof is recoverable only as a debt incurred by the deceased in that person's lifetime.

(2) No further additional tax is recoverable from a person other than the registered person or that person's executors or administrators.

102. RECOVERY OF FURTHER ADDITIONAL TAX NOT AFFECTED BY CONVICTION OF REGISTERED PERSON.

The assessment or recovery of further additional tax in respect of an offence is not in any manner barred or affected by the fact that the registered person has been convicted under this Act of the same or any other offence, but no person who has paid the further additional tax assessed against that person for any offence shall be thereafter convicted of the same offence.

PART XV. - GENERAL PROVISIONS.

103. KEEPING OF RECORDS.

(1) For the purposes of this section, "records" includes books of account (whether contained in a manual, mechanical, or electronic format) recording receipts of payments of income or expenditure and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts, and such other documents as are necessary to verify the entries in any such books of account.

(2) Without limiting the generality of Subsection (1), the records required to be kept and retained, under Subsection (3), shall contain -

- (a) a record of all goods and services supplied by or to that registered person showing the goods and services and the suppliers or their agents, in sufficient detail to enable the goods and services, the suppliers or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes and debit notes relating thereto; and
- (b) the charts and codes of account, the accounting instruction manuals and the system and programme documentation which describes the accounting system used in each taxable period in the supply of goods and services; and

Value Added Tax

- (c) any list required to be prepared in accordance with Section 28(3) or 107(10).

(3) Subject to Subsections (4), (5) and (6), a registered person who supplies in Papua New Guinea goods and services shall keep in Papua New Guinea copies of records issued by that registered person and sufficient records in the English language to enable ready ascertainment by the Commissioner or any officer authorized by the Commissioner in that behalf, of that person's liability to tax and shall retain in Papua New Guinea all such records for a period of at least seven years after the end of the taxable period to which they relate.

(4) The Commissioner may, in the Commissioner's discretion, on application in writing being made to the Commissioner in that behalf, authorize a registered person referred to in Subsection (3), by notification in writing, to keep and retain outside Papua New Guinea or, as the case may be, in a language other than the English language, such of those records as the Commissioner determines.

- (5) This section does not require the retention of any records -
- (a) in respect of which the Commissioner has given notice in writing that retention is not required; or
 - (b) of a company which has been liquidated.

(6) The Commissioner may, by notice in writing given before the expiry of the seven year retention period specified in Subsection (3), require a registered person to retain the records specified in that subsection for a further period not exceeding three years following the expiry of the seven year period where -

- (a) the affairs of the registered person are or have been under audit or investigation by the Commissioner; or
- (b) the Commissioner intends to conduct such an audit or investigation before the expiry of the retention period as so extended, or is actively considering any such audit or investigation.

104. AGREEMENT TO DEFEAT THE INTENTION AND APPLICATION OF ACT TO BE VOID.

- (1) For the purposes of this section -

“arrangement” means any contract, agreement, plan, or understanding (whether enforceable or unenforceable) including all steps and transactions by which it is carried into effect;

“tax advantage” includes -

- (a) a reduction in the liability of a registered person to pay tax; and
- (b) an increase in the entitlement of a registered person to a refund of tax; and

Value Added Tax

- (c) a reduction in the total consideration payable by a person in respect of a supply of goods and services.

(2) Notwithstanding anything in this Act, where the Commissioner is satisfied that an arrangement has been entered into between persons to defeat the intent and application of this Act, or of any provision of this Act, the Commissioner shall treat the arrangement as void for the purposes of this Act and shall adjust the amount of tax payable by a registered person (or refundable to that person by the Commissioner) who is affected by the arrangement, whether or not that registered person is a party to it, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that registered person from or under that arrangement.

- (3) The Commissioner may, for the purposes of this section, deem -
 - (a) a person (not being, apart from this subsection, a registered person) who is a party to or has participated in any way in any arrangement, to be a registered person; and
 - (b) a supply of goods and services, whether or not a taxable supply, that is affected by or is part of any arrangement, to be both made to and made by any registered person; and
 - (c) a supply of goods and services to occur in any taxable period that, but for a arrangement affected by this section, would have been the taxable period in which the supply was made; and
 - (d) a supply of goods and services to have been made, or consideration for such supply to be given, at open market value.

- (4) Where -
 - (a) a person (in this subsection referred to as the original person) enters into any arrangement on or after 31 December 1998 whereby a taxable activity formerly carried on by the original person is carried on, in whole or in part, by any other person or other persons; and
 - (b) the original person and the other person or other persons are associated persons,

for the purposes of Sections 27(1) and 42(1), the value of the supplies made in the course of carrying on all taxable activities in any period of 12 months commencing on the first day of any month by the original person and by the other person or, as the case may be, by the other persons shall, so far as the value relates to those supplies arising from the taxable activity formerly carried on by the original person, each be deemed to be equal to the aggregate of the value of the taxable supplies made by all of them for that period.

- (5) The Commissioner may, having regard to the circumstances of the case and where the Commissioner thinks it equitable to do so, determine in a particular case that Subsection (4)

does not apply to all or any of the original person and that other person or, as the case may be, those other persons.

105. PAPUA NEW GUINEA CURRENCY.

For the purposes of this Act, all amounts of money shall be expressed in terms of Papua New Guinea currency, and in any case if and to the extent that such amount is consideration in money for a supply, that amount shall be expressed in terms of Papua New Guinea currency as at the time of that supply.

106. RETURNS TO BE FURNISHED IN TWO PARTS FOR TAXABLE PERIOD IN WHICH CHANGE IN RATE OF TAX OCCURS.

(1) Where there is a change in the rate of tax imposed by Section 8, a registered person who does not have a taxable period beginning on the same day as the date on which the new rate comes into force (other than a person with a taxable period commencing within seven days before or after the day immediately preceding that date who furnishes returns in accordance with Subsection (5)) shall furnish to the Commissioner a return in two parts for the taxable period in which the new rate comes into force, comprising -

- (a) a Part I return, covering the period beginning on the first day of the person's taxable period and ending with the day immediately preceding the date on which the new rate comes into force; and
- (b) a Part II return, covering the period beginning on the date on which the new rate comes into force and ending with the last day of the person's taxable period.

(2) Each part referred to in Subsection (1)(a) and (b) shall be furnished in a form or forms prescribed by the Commissioner and the two parts are together deemed to form a single return.

(3) A person, whether registered or not, who is required to make a return under Section 62(4) in respect of a period in which a new rate of tax comes into force shall (except where the new rate comes into force on the first day of that period) furnish a return in two parts in accordance with this section, as if the period for which the return is required to be made were a taxable period.

(4) A registered person who, under a determination to the Commissioner under Section 25(2), has a taxable period that ends within seven days before or after the day immediately preceding the date on which a new rate of tax comes into force may, upon written notification to the Commissioner, disregard that determination in relation to the two taxable periods that, but for that determination, would have -

- (a) ended with the day immediately preceding the date on which the new rate comes into force; or

Value Added Tax

(b) commenced with the day on which the new tax rate comes into force, and where a person so notifies the Commissioner, that person shall accordingly furnish returns in respect of those two taxable periods as where -

- (c) the earlier of those periods ended with the day immediately preceding the date on which the new rate of tax comes into force; and
- (d) the later of those periods commenced on the day on which the new rate of tax comes into force.

107. ADJUSTMENTS TO TAX PAYABLE FOR PERSONS FURNISHING RETURNS ON PAYMENTS BASIS FOLLOWING CHANGE IN RATE OF TAX.

(1) Where there is a change in the rate of tax imposed by Section 8 -

- (a) any payments that are made or received by a registered person on or after the date on which the new rate comes into force, to the extent that -
 - (i) any such payment is made or received in respect of any qualifying supply referred to in Subsection (3)(a) by a registered person who, as at that date, is required to account for tax payable on a payments basis; or
 - (ii) any such payment is made in respect of any qualifying supply of secondhand goods or primary products referred to in Subsection (3)(b) by a registered person who, as at that date, is required to account for tax payable on an invoice basis,is deemed, notwithstanding any other provision of this Act, to be consideration for a supply made or received by that registered person on or after the date on which the new rate of tax comes into force, and the amount of any input tax or output tax in respect of any such supply shall accordingly be determined on the basis of the new rate of tax; but
- (b) the amount of tax payable under Section 30 by a registered person referred to in Paragraph (a) who makes or receives a qualifying supply shall be adjusted by an amount calculated in accordance with this section.

(2) Where Subsection (1)(b) requires an adjustment to be made of the amount of tax payable by a registered person -

- (a) the calculation of the adjustment shall be recorded in a form prescribed by the Commissioner; and
- (b) the registered person shall furnish that prescribed form to the Commissioner together with -
 - (i) that person's Part I return furnished under Section 106; or
 - (ii) where the person is not required to furnish a Part I return, the return for the taxable period ending with the day

Value Added Tax

preceding the date on which the new rate of tax comes into force.

(3) For the purposes of this section, the term "qualifying supply" means -

(a) in relation to a person who, as at the date on which the new rate of tax comes into force, is required to account for tax payable on a payments basis -

- (i) a taxable supply made by the registered person; or
- (ii) a taxable supply made to the registered person; or
- (iii) a supply made to the registered person that is a supply of secondhand goods or primary products to which Paragraph (c) of the definition of the term "input tax" in Section 29(1) applies; and

(b) in relation to a person who, as at the date on which the new rate of tax comes into force, is required to account for tax payable on an invoice basis, any supply made to the registered person that is a supply of secondhand goods or primary products to which Paragraph (c) of the definition of the term "input tax" in Section 29(1) applies,

to the extent that -

(c) as at the commencement of the day on which the new rate of tax comes into force, the consideration for the supply -

- (i) remains unpaid; and
- (ii) has not been written off by the registered person as a bad debt; and

(d) the supply is not required to be taken into account (otherwise than pursuant to this section) in calculating the tax payable by the registered person in respect of -

- (i) that part of the taxable period in which the new rate of tax comes into force that is required by Section 106 to be covered by a Part I return; or
- (ii) any other taxable period ending before the new rate of tax comes into force; and

(e) the supply is not charged with tax at the rate of zero percent; and

(f) the supply, in the case of a supply made to the registered person, is a supply in respect of which -

- (i) a tax invoice or debit note or credit note has been provided in accordance with Sections 38 and 39 and is held by that registered person at the time the prescribed form is furnished in accordance with Subsection (2); or
- (ii) a tax invoice is not required to be issued under Sections 38(5) or 40(5), or a debit note or credit note is not required to be issued under Sections 39 or 40; or

Value Added Tax

- (iii) sufficient records are maintained as required under Section 38(6), where the supply is a supply of secondhand goods or primary products to which that section relates.
- (4) The adjustment required by this section shall be calculated as follows:-
 - (a) first determine the amount of consideration payable by the registered person on qualifying supplies made to the registered person;
 - (b) subtract the amount of the consideration payable to the registered person on qualifying supplies made by the registered person;
 - (c) multiply the resulting total by an amount equal to the old tax fraction subtracted from the new tax fraction (as respectively calculated in accordance with Section 2 immediately before and immediately after the new rate of tax comes into force).
- (5) Where the amount of an adjustment calculated in accordance with this section is a positive amount, that amount is, in relation to the registered person, deemed to be output tax attributable to the taxable period for the return referred to in Subsection (2)(b).
- (6) Where the amount calculated in accordance with this section is a negative amount, that amount shall be a credit to the registered person, and -
 - (a) shall be set off against any amount of tax payable by the registered person in respect of any taxable period ending before the day on which the new rate of tax comes into force; and
 - (b) to the extent that it cannot be so set off, shall be set off against any amount of tax payable by the registered person in respect of the taxable period in which the new rate comes into force; and
 - (c) to the extent that it cannot be so set off, shall be carried forward to the next taxable period and set off against any amount of tax payable by the registered person in respect of that next taxable period, and so on,but no such credit shall be refunded by the Commissioner.
- (7) Subject to Subsections (8) and (9), where a registered person who has made an adjustment under this section subsequently writes off as a bad debt any amount that was consideration for a qualifying supply -
 - (a) the registered person shall make an adjustment of an amount equal to the amount written off as a bad debt, multiplied by an amount equal to the old tax fraction subtracted from the new tax fraction (as referred to in Subsection (4)(c)); and

Value Added Tax

- (b) the amount of that adjustment is, in the taxable period in which the amount is written off, deemed to be -
 - (i) output tax where the amount of the adjustment is a positive amount; and
 - (ii) input tax where the amount of the adjustment is a negative amount.
- (8) Where -
 - (a) at any time after a new rate of tax comes into force, a registered person has been directed by the Commissioner under Section 26 to change from an invoice basis to a payments basis of accounting; and
 - (b) that registered person subsequently writes off as a bad debt an amount that would have been consideration for a qualifying supply where that registered person had in fact been on the payments basis of accounting as at the date on which the new rate of tax came into force,that registered person shall, for the purposes of Subsection (7), be deemed, in respect of such amounts written off as a bad debt, to have made an adjustment under Subsection (1).
- (9) Where -
 - (a) at any time after a new rate of tax comes into force, a registered person has been directed by the Commissioner under Section 26 to change from a payments basis to an invoice basis of accounting; and
 - (b) that registered person subsequently writes off as a bad debt any amount that was consideration for a qualifying supply,that registered person is, for the purposes of Subsection (7), deemed, in respect of such amounts written off as a bad debt, to have not made an adjustment under Subsection (1).
- (10) For the purposes of this section, a registered person shall, in respect of all qualifying supplies made by or to that person, prepare -
 - (a) a list of debtors of the registered person showing the amounts due to that person as at the commencement of the day on which the new rate of tax comes into force; and
 - (b) a list of creditors of the registered person showing the amounts due by that person as at the commencement of that day.

108. ADJUSTMENTS TO TAX PAYABLE IN RELATION TO CREDIT AND DEBIT NOTES FOLLOWING CHANGE IN RATE OF TAX.

- (1) Subject to Section 107(7) where -
 - (a) there is a change in the rate of tax imposed by Section 8; and
 - (b) a registered person (being a supplier) has made an adjustment under Section 107 in respect of any qualifying supply made by that person; and

Value Added Tax

- (c) that registered person subsequently issues a debit note or credit note (in accordance with Section 39) in respect of a qualifying supply made for which payment has not been received as at the time of the issue of that debit note or credit note,

that registered person shall, in the taxable period in which the debit note or credit note is issued, adjust the amount of tax payable under Section 30 by an amount calculated in accordance with this section.

- (2) Where -

- (a) there is a change in the rate of tax imposed by Section 8; and
- (b) a registered person (being a recipient) has made an adjustment under Section 107 in respect of a qualifying supply received by that person; and
- (c) that registered person has subsequently, in respect of any qualifying supply
 - (i) been issued with a debit note or credit note; or
 - (ii) received written or other notice, or otherwise knows that any tax invoice held is incorrect, for which payment has not been made as at the time of the receipt of that debit note or credit note, or other notice, or knowledge,

that registered person shall, in the taxable period in which the debit note or credit note or other notice or knowledge was received, adjust the amount of tax payable under Section 30 by an amount calculated in accordance with this section.

- (3) The adjustment required by this section shall be calculated as follows:-

- (a) subtract from the amount of consideration originally payable to, or, as the case may be, by that registered person the amount of consideration that is now payable to, or, as the case may be, by that registered person;
- (b) multiply the resulting total by an amount equal to the old tax fraction subtracted from the new tax fraction (as respectively calculated in accordance with Section 2 immediately before and immediately after the new rate of tax comes into force).

- (4) For the purposes of Subsection (1), the amount of the adjustment under this section is deemed to be -

- (a) output tax where the amount of the adjustment is a positive amount; and
- (b) input tax where the amount of the adjustment is a negative amount.

- (5) For the purposes of Subsection (2), the amount of the adjustment pursuant to this section is deemed to be -

- (a) output tax where the amount of the adjustment is a negative amount; and
- (b) input tax where the amount of the adjustment is a positive amount.

109. CHANGE IN ACCOUNTING BASIS COINCIDING WITH OR OCCURRING AFTER CHANGE IN RATE OF TAX.

(1) Where -

- (a) there is a change in the rate of tax imposed by Section 8; and
- (b) a registered person is required under Section 106 to furnish both a Part I return and a Part II return for any taxable period during which the new rate of tax comes into force; and
- (c) the Commissioner has during that taxable period, at any time before the date on which the new rate of tax comes into force, under Section 33 directed the person to change -
 - (i) from an invoice basis to a payments basis; or
 - (ii) from a payments basis to an invoice basis,

the provisions of Section 26 shall have effect in respect of that registered person as if each of the periods for which a Part I return or a Part II return is required to be made were a separate taxable period, and the Commissioner's direction shall have effect from the commencement of the period for which a Part II return is required to be furnished.

(2) Where the Commissioner directs a change in accounting basis for a registered person under Section 26 or 27 at any time after a new rate of tax comes into force -

- (a) for the purpose of determining under Section 31 the amount of any input tax deducted and output tax accounted for, and any input tax that would have been deducted and output tax that would have been accounted for if the person had been accounting for tax payable on a different basis -
 - (i) the amount of any such input tax in respect of any taxable supply, or any supply of secondhand goods to which Paragraph (c) of the definition of "input tax" in Section 29(1) applies, is deemed to be an amount equal to the new tax fraction (being the tax fraction as calculated in accordance with Section 2 immediately after the coming into force of the new rate of tax) of the consideration in money for the supply or for the secondhand goods; and
 - (ii) the amount of any such output tax in respect of any taxable supply is deemed to be an amount equal to that new tax fraction of the consideration in money for the supply, notwithstanding that the supply may have occurred during any taxable period or part of a taxable period occurring before the date on which the new rate came into force; and
- (b) for the purpose of determining the amount of any such input or output tax deducted or accounted for, or that would have been deducted or accounted for, no account shall be taken of the amount of any adjustment under Section 107; and

Value Added Tax

- (c) any payments that are made or received by that registered person after that change in accounting basis are deemed, notwithstanding any other provision of this Act, to be consideration for a supply made or received by that registered person on or after the date on which the new rate of tax comes into force, and the amount of any input tax or output tax in respect of any such supply shall accordingly be determined on the basis of the new rate of tax.

110. LIABILITY TO PAY PAST TAX, ETC., NOT AFFECTED BY ALTERATION IN THE LAW.

Except as otherwise expressly provided in any enactment, the repeal or amendment of any provision of this Act shall not affect any liability or right of any person or of the State that existed under that provision immediately before its repeal or amendment, and in particular -

- (a) a liability to tax, or to a fine or penalty, of a person under the repealed or amended provision, and the right of the State to any revenue, tax, fee, fine, or penalty pursuant to the repealed or amended provision, shall not be affected by the repeal or amendment; and
- (b) all acts and proceedings for the assessment or recovery of any revenue, tax, fine, or penalty assessed or assessable or paid or payable pursuant to the repealed or amended provision, and all proceedings in respect of offences committed or alleged to be committed in respect of the repealed or amended provision, may be instituted or continued as if the provision had not been repealed or amended.

111. POWER TO EXTEND TIME FOR DOING ANYTHING UNDER ACT.

(1) Where anything required by or under this Act to be done at or within a fixed time cannot be or is not so done, the Commissioner may, from time to time and for any reasons which may appear just to him, appoint a further or other time for doing the same, whether the time at or within which the same ought to have been done has or has not expired.

(2) Anything done at, or, as the case may be, within the time prescribed by any such decision of the Commissioner shall be as valid as if it had been done at, or, as the case may be, within the time fixed by or under this Act.

112. ACCESS TO BOOKS, ETC.,

(1) The Commissioner, or an officer authorized by him for that purpose, shall at all times have full and free access to all buildings, places, books, documents, other papers and electronic storage mediums for any of the purposes of this Act and for that purpose may seize, retain and remove for inspection or make extracts from or copies of any such books, documents or papers or may seize, retain or remove for inspection such electronic storage mediums.

(2) The occupier of a building or place entered or proposed to be entered by the Commissioner or by an officer authorized by him for that purpose, shall provide the

Commissioner or the officer with all reasonable facilities and assistance for the effective exercise of his powers under this section.

113. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for giving effect to this Act which in particular shall, to the extent necessary, include the following purposes:-

- (a) prescribing the duties and functions of officers and other persons appointed or employed under this Act;
- (b) prescribing the form of returns to be made, the particulars to be set forth therein, the persons by whom and the time when or within which such returns are to be made, and the forms of the assessments, notices, and other documents referred to in this Act or necessary in order to give effect thereto;
- (c) providing, if there is no provision in this Act or no sufficient provision in respect of any matter or thing necessary to give effect to this Act, in what manner and form the deficiency shall be supplied;
- (d) prescribing offences against any such regulations and prescribing fines not exceeding K500.00 in respect of any such offence.

PART XVI. - TRANSITIONAL PROVISIONS.

114. COMMENCEMENT DAY FOR VALUE ADDED TAX.

- (1) The tax imposed by Section 6 applies to goods imported into Papua New Guinea -
 - (a) entered therein, or delivered, for home consumption on or after 1 July 1999 under the *Customs Act*; or
 - (b) before their entry, or delivery, for home consumption, dealt with on or after 1 July 1999 in breach of any provision of the *Customs Act*.
- (2) The tax imposed by Section 8 applies to the supply in Papua New Guinea of goods and services on or after 1 July 1999.

115. REGISTRATION OF PERSONS LIABLE TO BE REGISTERED ON 1 JULY 1999.

- (1) Notwithstanding anything in Section 42, a person who, on or after the commencement of this Act and on or before 31 March 1999, knows, or could with reasonable diligence have known, that that person will be liable to be registered with effect on and from 1 July 1999 under Section 42, shall, to enable the Commissioner to effect registration of any such person with effect on and from 1 July 1999, apply in the prescribed form, before 30 April 1999, to the Commissioner to be registered, and the Commissioner shall register that person in the manner prescribed by Section 42.

Value Added Tax

(2) A person who is liable to be registered under this Act on or after 1 July 1999, shall apply for registration under Section 42.

(3) A person to whom Subsection (1) applies, who fails to comply with that subsection, is guilty of an offence.

Penalty: In the case of a natural person, a fine not exceeding K2,000.00.
In the case of a person, other than a natural person, a fine not exceeding K10,000.00.

116. DEDUCTION FOR PRE 1 JULY 1999 TAX.

- (1) In this section the term "qualifying goods" means goods, other than -
- (a) land and fixtures on land; and
 - (b) any goods held on hire; and
 - (c) any goods of a type which are as at 1 July 1999 subject to excise duty imposed under the *Excise Tariff Act* (Chapter 107); and
 - (d) any goods acquired by a registered person as secondhand goods or primary products, other than goods imported and held by the importer for sale on or after on 1 July 1999, being goods on which PNG import duty was paid by the importer on or prior to 30 June 1999 and which are -
 - (i) second hand cars imported by dealers in used cars for sale as second hand cars; or
 - (ii) primary products; or
 - (iii) second hand clothing imported by dealers in second hand clothing for sale as such; and
 - (e) any cars as defined in Section 2(1), other than new cars held for sale by motor vehicle dealers on 1 July 1999 on which PNG import duty was paid on or prior to 30 June 1999 or second hand cars referred to in Subsection (d)(i); and
 - (f) any goods held for the purpose of export from Papua New Guinea or for the purpose of sale for export from Papua New Guinea,

and which are otherwise trading stock or capital goods held at the close of 30 June 1999 for the principal purpose of making taxable supplies on or after 1 July 1999 and which shall have the following values:-

- (g) for qualifying trading stock, the lower of the cost or market value at 30 June 1999, as per a stock valuation of that stock carried out on or about 30 June 1999 and calculated as per the provisions of the *Income Tax Act* relating to trading stock; and
- (h) for qualifying capital goods, the written down value, calculated as at 30 June 1999 as per the depreciation provisions of the *Income Tax Act*, of any capital goods purchased during the period 1 January 1999 to 30 June 1999.

Value Added Tax

(2) Notwithstanding anything in Section 30(2), in calculating the amount of tax payable by a registered person in any one taxable period there may be deducted any amounts calculated in accordance with this section.

(3) Where a registered person held, at the close of 30 June 1999, qualifying goods other than capital goods (being trading stock), for the principal purpose of making taxable supplies on or after 1 July 1999, the amount of tax that may be deducted under Subsection (2) in respect of those goods is the tax fraction of the value of that stock.

(4) The deduction calculated under Subsection (3) shall be allowed at the rate of 10% per month of the total amount of the deduction for each of the ten months commencing with July 1999 and ending with April 2000.

(5) Where a registered person held, at the close of 30 June 1999, qualifying goods that are capital goods for the principal purpose of making taxable supplies on or after 1 July 1999, the amount of tax that may be deducted under Subsection (2) in respect of those goods is the tax fraction of the value of those goods.

(6) The deduction calculated under Subsection (5) shall be allowed at the rate of 5% per month of the total amount of the deduction for each of the 20 months commencing with July 1999 and ending with February 2001.

117. PHASED INTRODUCTION OF INPUT TAX CREDITS FOR CAPITAL GOODS SUPPLIED ON OR AFTER 1 JULY 1999.

The input tax deduction that would otherwise be allowed under this Act for capital goods supplied from 1 July 1999 to 31 March 2000 shall be reduced by the following percentages:-

- (a) where the goods are supplied on or after 1 July 1999 and before 1 October 1999 - 75%;
- (b) where the goods are supplied on or after 1 October 1999 and before 1 January 2000 - 50%;
- (c) where the goods are supplied on or after 1 January 2000 and before 1 April 2000 - 25%.

118. PHASED INTRODUCTION OF REFUNDS OF TAX.

(1) Where a registered person would be entitled to a refund of tax under this Act for a taxable period ending on or before 31 December 1999, no refund shall be made under the other provisions of this Act and the provisions of this section shall apply instead.

(2) Subject to Subsection (4), where there is an excess of input tax allowable as a deduction under this Act (including under the other sections of this Division) over output tax in any taxable period ending on or before 31 December 1999, no refund of the excess shall be made

Value Added Tax

under this Act and the excess shall be carried forward and allowed as an input tax deduction as provided in Subsection (3).

(3) Where there is an excess of input tax allowable as a deduction under this section over output tax over the taxable period commencing on 1 July 1999 and ending on or before 31 December 1999, that excess shall be allowed as a deduction at the rate of 20% of the total excess per month for the succeeding taxable periods until it is exhausted.

(4) Notwithstanding the previous provisions of this section, the Commissioner may authorize a refund of any excess input tax deductions at any time during the period August 1999 to December 1999 in any case where -

- (a) it has been established to his satisfaction that the person entitled to the refund is carrying on a continuing business in Papua New Guinea; and
- (b) the amount of that refund has been confirmed by an audit carried out by staff of the Internal Revenue Commission,

and in that case Subsections (2) and (3) shall be of no effect.

119. SUPPLIES PRIOR TO 1 JULY 1999.

(1) For the purposes of this Part of this Act, the expression "time of performance" means -

- (a) in relation to a supply of goods -
 - (i) where the goods are to be removed, the time of the removal; and
 - (ii) where the goods are to be removed and where 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; and
 - (iii) where the goods are not to be removed, the time when they are made available to the recipient; and
 - (iv) where 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) subject to Subsection (10), in relation to a supply of services, the time when the services are performed.

Value Added Tax

(2) Where a registered person supplies or agrees to supply services by virtue of or under any contract, agreement, or enactment, (whether conditionally or unconditionally, on the happening of any event or any contingency, or otherwise), and that contract, agreement, or enactment expressly or impliedly provides that for, or in respect of, any period or periods, that

- (a) any right is to be granted or exercisable, or any thing is to be done, or omitted to be done; or
 - (b) a payment is due, or may be made; or
 - (c) the contract or agreement is in force, or enforceable, or will have effect,
- those services shall for the purposes of Subsection (1)(b) be deemed to be performed by that registered person continuously and uniformly during the whole of that period or those periods.

(3) Where services are supplied pursuant to a contract, 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 that individual, and where that contract, agreement, or enactment provides for a single non-refundable payment as consideration for the granting or exercising of that right, those services are, for the purposes of Subsection (1)(b), deemed to have been performed at the earlier of the time that that right is granted by the supplier or first becomes exercisable.

(4) Notwithstanding anything in this Act, for the purposes of Subsection (1), goods supplied under an agreement to hire as defined in Section 15(7) are deemed to be a supply of services.

(5) Subject to Subsection (6) and notwithstanding anything in Section 15 or 32, where, and to the extent that, the time of performance of any supply of goods and services -

- (a) is before 1 July 1999, and that supply would, but for this section, be deemed by Section 15 or 32 to take place on or after 1 July 1999, and the value of that supply is ascertainable, that time of performance shall, for the purposes of this Act, be the time when the supply of those goods and services is deemed to take place; and
- (b) is on or after 1 July 1999, and that supply would, but for this section, be deemed by Section 15 or 32 to take place before 1 July 1999 -
 - (i) that time of performance shall, for the purposes of Section 8, be the time when the supply of those goods and services is deemed to take place; and
 - (ii) the time when the supply of those goods and services is made shall, for the purposes of Section 30, be deemed to be 1 July 1999; and

Value Added Tax

- (iii) for the purposes of Sections 30(4)(a) and 30(10)(b)(i), where and to the extent that any payment has been made or, as the case may be, received in respect of that supply before 1 July 1999, that payment is deemed to have been made or, as the case may be, received on 1 July 1999.

(6) Notwithstanding anything in Subsection (5), where and to the extent that a supply of goods is the construction, major reconstruction, manufacture, or extension of a building or a civil engineering work by the supplier, and the goods -

- (a) are sold under any written contract entered into before 1 July 1999; and

- (b) are made available to the recipient on or after 1 July 1999,

the value of all work and materials permanently incorporated in or affixed on the site of the building or civil engineering work pursuant to that contract shall be determined as at the close of 30 June 1999, and -

- (c) to the extent that the aggregate of the consideration in money for all supplies in respect of the sale of those goods which, under Section 15(1), took place before 1 July 1999, exceeds that value, the amount of that excess is deemed to be consideration in money for a taxable supply made by that supplier on 1 July 1999 and charged with tax under Section 8; and

- (d) to the extent that that value exceeds the aggregate of the consideration in money for all supplies in respect of the sale of those goods which, under Section 15, took place before 1 July 1999, the consideration in money for the first supply in respect of the sale of those goods which, under Section 15, takes place on or after 1 July 1999 is deemed to be reduced by the amount of that excess.

(7) Any part of the amount of the excess referred to in Subsection (6)(d) remaining, in any case where that consideration is reduced to nil as a result of the application of this subsection shall be carried forward and the consideration for any subsequent such supply is deemed to be reduced to that extent, and so on.

(8) Subsection (6) applies only to the extent that the value has been determined on or before 1 September 1999 in a manner acceptable to the Commissioner by a competent independent valuer, or by any other competent valuer that the Commissioner may, in the Commissioner's discretion approve.

(9) Where a supply referred to in Subsection (6) is made to a registered person, exclusively for the purposes of making taxable supplies, Subsection (8) does not apply.

Value Added Tax

(10) Where the services referred to in Subsection (1)(b) consist of the supply of insurance coverage provided on or after 1 July 1999, that supply shall be deemed to have taken place on or before 30 June 1999 providing -

- (a) payment for that insurance coverage was made on or before 30 June 1999; and
- (b) the insurance coverage is for a period commencing on or prior to 30 June 1999 and not exceeding one year.

120. ALTERNATIVE METHOD OF ACCOUNTING FOR TRANSITIONAL SUPPLIES.

(1) For the purposes of this Act, where a registered person who is required to account for tax payable on a payments basis under Section 26 makes application in writing, the Commissioner shall direct that the provisions of this section apply to that registered person in respect of any supply or class of supply determined at the discretion of the Commissioner (hereafter in this section referred to as a "specified supply").

(2) For the purposes of this Act, in respect of a specified supply, where the Commissioner has made a determination in accordance with Subsection (1) -

- (a) the supplier is deemed to be required to account for tax payable on an invoice basis under Section 26 for each such specified supply to which Section 119 applies and in respect of which an invoice has been issued or any payment received prior to 1 July 1999, and is deemed to have received payment in full on 1 July 1999 for each such supply; and
- (b) where any amount of the consideration in money for that supply (not being a supply to which Paragraph (c) applies) remains unpaid as at the end of 30 June 1999 (not being an amount written off as a bad debt as at that date), the supplier shall set off against any amount of tax payable by that supplier in respect of the taxable period in which 1 July 1999 occurs, an amount equal to the tax fraction of the amount of such consideration remaining unpaid, and to the extent that it cannot be so set off, that amount shall be carried forward to the next taxable period and set off against any amount of tax payable by that supplier in respect of the next taxable period, and so on; and
- (c) where a supply to which Section 119 applies and in respect of which no invoice has been issued nor any payment received prior to 1 July 1999, the supplier shall, in any one taxable period ending prior to 30 June 1999, set off against any amount of tax payable by that supplier in respect of that taxable period, an amount equal to the tax fraction of the portion of the consideration in money in respect of any such supply that, by virtue of Section 119(5)(a), is not subject to tax under Section 8, and to the extent that it cannot be so set off, that amount shall be carried forward to the next taxable period and set off against any amount of tax payable by that

Value Added Tax

- (d) supplier in respect of that next taxable period, and so on; and a payment received on or after 1 July 1999 in respect of any specified supply to which Paragraph (b) or (c) applies is, notwithstanding anything in this Act, deemed to be consideration in money for a taxable supply made by that supplier and charged with tax under Section 8, and the supplier shall include as output tax, in the taxable period during which that payment has been received, an amount equal to the tax fraction of that payment; and
- (e) where and to the extent that any amount remaining unpaid to which Paragraph (b) or (c) applies is written off as a bad debt on or after 1 July 1999, that amount written off is, notwithstanding anything in this Act, deemed to be consideration for a taxable supply made by that supplier and charged with tax under Section 8, and the supplier shall include as output tax, in the taxable period during which that amount is written off as a bad debt, an amount equal to the tax fraction of that amount written off.

121. RETENTIONS AND VARIATIONS.

(1) Notwithstanding the provisions of this section, where a contract for the supply, on or after 1 July 1999, of goods and services, or any Act, provides for the retention of any part of the consideration by one party pending full and satisfactory performance of the contract, or of any part of it, by the other party, the supply to which the retention relates is deemed to take place whenever, and to the extent to which, any payment is made in respect of that retention.

(2) Notwithstanding the foregoing provisions of this section, where a contract for the supply, on or after 1 July 1999, of goods and services, being a building or a civil engineering work, or any Act, provides for the variation of such work or any part of it, the supply to which the variation relates is deemed to take place whenever, and to the extent to which, any payment is made in respect of that variation.

122. EFFECT OF IMPOSITION OR ALTERATION OF TAX.

(1) For the purposes of this section the expression "alteration in the law" means the coming into force of the provisions of this Act, any amendment to this Act or any notice in the National Gazette pursuant to Section 24(10) by which -

- (a) a supply of goods and services is charged with, or exempted from, tax; or
- (b) the rate of tax in relation to a supply of goods and services is increased or reduced

Value Added Tax

(2) Where an alteration in the law is made and a supplier has at any time entered into any agreement or contract in respect of the supply of goods and services with a recipient, unless express provision for the exclusion of any such alteration in the law is contained in the agreement or contract, or if the alteration in the law has been taken into account, every such agreement or contract is deemed to be modified as follows:-

- (a) where the alteration in the law renders that supply liable to be charged with tax or increases the amount of any tax charged or chargeable in relation to that supply, the supplier may add to the agreed price in the said agreement or contract the amount of that tax or the increase of that tax; or
- (b) where the alteration in the law renders that supply exempt from tax or reduces the amount of tax charged or chargeable in relation to that supply, the supplier or the recipient may deduct from the agreed price in the said agreement or contract the amount of that tax or the reduction of that tax.

(3) Subsection (2) does not apply where that contract or agreement is entered into after the expiry of the period of three months that commences with the coming into force of the alteration in the law.

(4) Subsection (2) does not apply to require a public authority to alter any amount agreed to be paid by the authority in respect of any supply of goods and services if the consideration for that supply is in the nature of a grant or subsidy.

(5) Where an alteration in the law is made, any fee, charge, or other amount, prescribed by, or determined under, any Act or by any regulation, in respect of any supply of goods and services is, unless provision to the contrary is contained in that Act or regulation, deemed to be modified as follows:-

- (a) where the alteration in the law renders the fee, charge, or other amount prescribed by, or determined pursuant to, that Act or regulation liable to be charged with tax or increases the amount of tax charged or chargeable, the fee, charge, or other amount prescribed or determined shall be increased by that amount of tax charged or chargeable; or
- (b) where the alteration in the law renders the fee, charge, or other amount prescribed, or determined pursuant to, that Act or regulation exempt from tax or reduces the amount of tax charged or chargeable, the fee, charge, or other amount prescribed or determined shall be exempted from tax or reduced by the amount of tax no longer charged or chargeable.

Value Added Tax

(6) Where any such Act or regulation prescribes or determines either a maximum or a minimum amount in respect of any supply of goods and services, that maximum or, as the case may be, minimum amount is, for the purposes of any such Act or regulation, deemed to be increased or, as the case may be, decreased, by the amount of tax charged or, as the case may be, tax no longer charged by virtue of this subsection.

(7) Subsection (5) or (6) shall not apply to a fee, charge, or other amount prescribed or determined which is required to be paid by any public authority to any other person by virtue of that Act or regulation.

(8) Where a supply is or becomes charged with tax pursuant to this Act, the amount of any increase in consideration in respect of that supply attributable to the tax charged on that supply shall be recoverable by the supplier from the recipient of the taxable supply.

I hereby certify that the above is a fair print of the *Value Added Tax Act 1998* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Value Added Tax Act 1998* was made by the National Parliament on 12 November 1998 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.