

CHAPTER 69

SALES TAX

ARRANGEMENT OF SECTIONS

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Act No. 3 of 1986

AN ACT TO IMPOSE A TAX UPON RETAIL SALES OF ALL GOODS AND
SERVICES IN THE KINGDOM

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| <ol style="list-style-type: none"> 1. This Act may be cited as the Sales Tax Act. | <p>[1st July 1986] Commencement. Short title.</p> |
| <ol style="list-style-type: none"> 2. In this Act, unless the context otherwise requires: <ul style="list-style-type: none"> “Commissioner” means Commissioner of Inland Revenue; “companies” means any corporate body whether registered under the Companies Act or not and any partnership whether registered or not; “customer” means any person or individual or groups of individuals or traders or companies which pays a sum of money for goods or services or is debited with the sum or amount showing in a customer's bill; | <p>Interpretation.</p> |

“Department” means the Inland Revenue Department in Nuku‘alofa or the Sub-Treasuries in other islands of the Kingdom;

“fiscal year” means a period of 12 months ending with the 30th day of June in any year;

“goods” means commodities of all kinds whether produced, manufactured or processed locally or imported or acquired by a vendor for the purpose of selling at a profit or loss to a customer;

“Inspector of Sales Tax” means any officer of the Department or any other person designated by the Minister who is required to call and inspect records of sales of goods and services by vendors and to verify that the sales tax is paid to the Department;

“Minister” means the Minister of Finance;

“partnership” means an association of persons carrying on business as partners or in receipt of income jointly but does not include a registered company;

“returns” means a statement showing the total of all sales made by a vendor for a month or a period of 12 months together with the total sales tax collected and is submitted to the Department as required in this Act;

“sales” means all sums of money or amounts received by a vendor of goods and services and all other sums or amounts debited to and included in a customer’s bill. It also includes fees and charges for services whether government or private but excludes government taxes such as departure tax, as well as gifts and donations;

“services” means:

(1) services in the nature of food, refreshment, accommodation, entertainment or otherwise provided by hotels, motels, boarding houses, restaurants, night clubs, private licensed clubs, tourist resorts and similar institutions;

(2) the provision of any other facility for international travel by air, land or sea;

“stocks” means value of all trading stocks for resales at the beginning or end of a fiscal year;

“tax” means the retail sales tax imposed by this Act on retail sales of goods and services in the Kingdom;

“vendor” means any person whether carrying on or exercising business alone or jointly with others, engaged in the business of the sale of goods or services.

3. (1) Subject to the provisions of this Act and unless exempted by the Minister there shall be levied and imposed by all institutions or vendors engaged in business on all retail sales of goods and services in the Kingdom a sales tax at the rate of 5 seniti for each \$1 or part thereof of total sales in excess of 20 seniti.

Imposition of sales tax.

(2) For the purpose of computing the amount of tax a fraction of a seniti shall count as 1 seniti.

(3) The sales tax shall be paid by the customer to the vendor of goods and services and a receipt showing total sales plus sales tax shall be given to the customer unless not required by any customer.

Customer to pay sales tax to vendor.

(4) Notwithstanding the provisions of subsection (1) the sales tax shall be paid to the Commissioner of Inland Revenue and recoverable from the vendor of goods and services.

Vendor liable for sales tax.

(5) Any sales tax paid under the provisions of subsection (3) by a vendor of goods and services may be recovered by the vendor from the person liable for the whole or part of the customer's bill.

Vendor's right to recover sales tax from customers.

4. All sales tax is to be imposed by the vendor of goods and services in accordance with the following formula:

Formula of tax.

Total Sales plus Sales Tax equals Total paid by or debited to customers.

5. (1) The vendor of goods and services under this Act shall pay to the Commissioner within 28 days after the last day of each month the total amount of sales tax payable in respect of that month. In the case of small retail stores and other services institutions the Minister may approve weekly payment or fortnightly payment if this is more convenient to the vendor.

Vendor to pay sales tax monthly.

(2) The total of sales tax paid to the Commissioner under section 5(1) shall be accompanied by a return setting out the total sales and tax collected during the month or lesser period in respect of which the sales tax paid relates.

Return to be furnished with sales tax.

(3) Any vendor who fails to pay to the Commissioner the sales tax due on sales made by the vendor on goods and services in accordance with subsection (1) of this section shall be liable to pay the Commissioner in addition to the tax a penalty of 20 per cent of the amount of the unpaid sales tax.

Penalties for failing to pay within 28 days.

(4) Any person (being the proprietor or manager), who fails to make or cause to be made a return within the period specified in subsection (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a period not exceeding 6 months.

Penalties for failing to submit return.

(5) The Minister may from time to time as is deemed fit alter or prescribe a different format for the returns to be submitted to the Department.

Annual returns.

6. (1) All vendors shall submit to the Commissioner of Inland Revenue a return showing all sales made during the fiscal year and the total sales tax collected.

(2) Where the business involves the purchase of goods for reselling, the returns shall include a copy of the trading account showing total sales as represented by opening stock plus purchases during the year, less closing stock, plus gross profit.

(3) The Minister may in writing require the vendor to produce in addition to the requirement of subsection (1) and (2) of this section, all accounts, books and documents in his custody or control to ascertain the accuracy of the furnished returns.

Vendors to keep records of sales and books of account. Records to be made available to Inspector.

7. (1) All vendors under this Act shall keep a record of all sales of goods and services.

(2) The vendor of goods and services shall make available to the Inspector of Sales Tax all sales records and any other accounting records or information which the Inspector may require to enable him to assess and ascertain that the total sales tax paid to the Commissioner is true and correct.

Valuation of opening and closing stock.

8. (1) For the purpose of this section, the term "stock" includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture, sale or exchange.

(2) Whether or not he has derived sales income during the year, where the vendor owns and carries on any business the value of his trading stock at the beginning and at the end of every period or fiscal year shall be taken into account in ascertaining whether or not he has derived sales income during the year.

(3) The value of stock at the beginning of any period or fiscal year shall be its value at the end of the last preceding period or fiscal year:

Provided that where the vendor's business is commenced and his trading stock is acquired during the fiscal year the value of the stock at the beginning of the fiscal year shall be deemed to be an amount equal to its cost price.

(4) The value of the trading stock of any vendor to be taken into account at the end of any income year shall be its cost price.

(5) Notwithstanding anything in subsection (4), the Minister may in his discretion, on the application of the vendor, in relation to any trading stock determine that the value of that trading stock shall be higher or lower than its cost price.

(6) The value of opening stock plus purchase, less closing stock, plus gross profits shall be taken as the value of sales required by this section for the imposition of sales tax.

9. (1) The following sales shall be exempted from sales tax—

- (a) sales of goods and services to His Majesty the King;
- (b) sales of goods and services to or by government;
- (c) sales of goods from one vendor or business to another vendor or business for the purpose of further retailing or manufacturing and processing for sales to customers;
- (d) sales of local agriculture, livestock and fisheries products in government markets by individual sellers around the markets and at farm gates throughout the Kingdom;
- (e) sales of goods by street vendors such as the selling of handicrafts, woodcarving, clothing, and peanuts;
- (f) sales of tickets to patients approved by the Minister of Health for international travel on production of a certificate of exemption from the Minister;
- (g) sales of materials to be used for the building of residential homes on production of a certificate of exemption from the Minister;
- (h) sales of export goods to foreign markets;
- (i) sales of bread and flour throughout the Kingdom.

Sales
exempted
from tax.

(2) Upon application in writing by a vendor or customer the Minister may, with the approval by His Majesty In Council, exempt the sales of particular goods or services from tax if a request to do so is considered to be in the public interest. If the application is granted, the Minister shall issue a permit in writing notifying vendors of the exemption.

Application
for
exemption
on public
interest.

10. (1) The Minister may in his own discretion upon written application by a vendor enter into such arrangements as he deems fit with the vendor for the payment of tax by instalments or to defer the time for the payment of tax.

Alteration to
time of
payment of
sales tax.

(2) The Minister may in his discretion agree to accept from a vendor in settlement of his tax owing at any given time a lesser sum than the amount due.

11. Notwithstanding the provisions of other sections of this Act, any vendor who wilfully withholds any sales tax or with intent to evade or assist any other vendor to evade any tax imposed by this Act—

Other
penalties and
offences.

- (a) fraudulently withholds sales tax;

- (b) omits from a return made under this Act any sales which should be included;
- (c) makes any false statement or entry in any return made under this Act;
- (d) gives any false answer whether verbally or in writing to any question or request for information asked for or made in accordance with this Act;
- (e) prepares or maintains or authorises the preparation or maintenance of any false sales records or books or account or falsifies or authorises the falsification of any books of account or records; or
- (f) makes use of any fraud, art, or contrivance whatsoever or authorises the use of any such fraud, art or contrivance

shall be guilty of an offence and shall for each such offence be liable to a fine not exceeding \$20,000 and double the amount of tax for which such vendor is liable under this Act for the period or fiscal year in respect of or during which the offence was committed, or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment:

Provided that the Minister may in his discretion and on terms to be decided by him withdraw any proceedings brought under this section at any time before judgment.

- Limitation of time.** **12.** Proceedings for any offence under this Act may be instituted at any time within 3 years after the commission of the offence.
- Administration of the Act.** **13.** (1) This Act shall be administered by the Commissioner.
 (2) The Minister may appoint, with the approval of Cabinet, a Sales Tax Administrator who shall carry out specific duties to be delegated by the Commissioner for the proper administration of this Act.
- Regulations.** **14.** The Minister may, with the consent of His Majesty In Council, make such rules or regulations as may be necessary or expedient for giving effect to the provisions of this Act.