



SAMOA

VALUE ADDED GOODS AND SERVICES TAX ACT 2015

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**VALUE ADDED GOODS AND SERVICES TAX ACT 2015
2015, No. 43**

**AN ACT to impose and regulate collection of consumption tax
on goods and services and for related purposes.**

[Assent and commencement date: 5 November 2015]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Value Added Goods and Services Tax Act 2015.

(2) This Act commences on the date of assent by the Head of State except that provisions relating to “supply of imported services” are to commence on a date nominated by the Minister.

2. Interpretation - In this Act, unless the context otherwise requires:

“adjustment event” means an event specified in section 28(6);

“approved form” means the form approved under section 51;

“associate” has the meaning in the Income Tax Act;

“Commissioner” means the person appointed as such under section 5 of the Tax Administration Act;

“Comptroller” has the meaning in the Customs Act;

“company” has the meaning in the Income Tax Act;

“consideration”, for the supply of goods and services to any person:

(a) includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but

(b) does not include an unconditional gift to any non-profit body;

“credit note” means a document that a supplier is required to issue under section 36(1);

“creditable acquisition” in relation to a registered person means:

(a) a taxable supply made to the person by another registered person; or

(b) a taxable import made by the person.

“Customs Act” means the Customs Act 2014;

“customs control” has the meaning under the Customs Act;

“debit note” means a document that a supplier is required to issue under section 36(2);

“deemed output tax” in relation to a registered person, means output tax taken to be received by the registered person under section 13(2), 20(2), 28(1) or 28(4);

“deemed taxable supply” means a taxable supply taken to have been made by a person under section 13(1) or 20(1);

“exempt import” means an import listed in Schedule 1;

“exempt supply” means a supply listed in Schedule 2;

“fair market value” has the meaning in section 4;

“goods” means immovable property or tangible movable property, but does not include money;

“goods and services tax” or “GST” means value added goods and services tax imposed under section 8;

“Government” means the Government of Samoa;

“GST periods” means the periods specified under section 29;

“GST representative” means a person appointed as such under section 44;

“hire purchase agreement” means a sale and purchase agreement under which the price is paid by instalments and each instalment includes an interest charge;

“import” means to bring goods, or cause the goods to be brought, into Samoa from a place outside Samoa;

“importer” in relation to an import of goods, includes the person who owns goods, or any other person for the time being possessed of or beneficially interested in the goods, or permitted to make a Customs entry in relation to the goods under section 60 of the Customs Act;

“Income Tax Act” means the Income Tax Act 2012;

“input tax”, for a registered person:

- (a) means—
 - (i) the GST paid for a creditable acquisition by the person; or
 - (ii) an amount that is treated as input tax paid by the person for the purposes of this Act; but
- (b) does not include any late payment interest or penalty imposed under this Act or the Tax Administration Act in respect of a creditable acquisition;

“input tax credit” means the credit for input tax allowed under this Act;

“inventory” means anything produced, manufactured, purchased, or otherwise acquired for sale or exchange, and includes any raw materials or consumables used in the production or manufacturing process, and livestock;

“invoice” means a document notifying an obligation to make a payment and includes a tax invoice;

“late payment interest” means late payment interest imposed under the Tax Administration Act;

“money” means:

- (a) any coin or paper currency that is legal tender in Samoa or any other country, other than a coin or paper currency that is a collector’s piece;
- (b) a bill of exchange, promissory note, bank draft, or postal or money order; or
- (c) whatever is supplied as payment by way of—
 - (i) a credit card or debit card; or
 - (ii) the crediting or debiting of an account.

“non-resident” has the meaning in the Income Tax Act;

“output tax” means:

- (a) the GST received by a registered person on a taxable supply made by the person;
- (b) the GST payable by a registered person on a supply of imported services made to the person; or
- (c) an amount that is treated as output tax of the person;

“penalty” means penalty imposed under this Act or the Tax Administration;

“person” means an individual, partnership, trust, company, Government, or an international organisation;

“price” has the meaning in section 5;

“public authority” means:

- (a) the Government;
- (b) a Ministry designated under Schedule 1 of the Ministerial and Departmental Arrangements Act 2003;
- (c) a public body as defined in the Public Finance Management Act 2001;
- (d) a public office established under the Constitution, an Act, or otherwise to independently perform duties involving the exercise of Government functions;

“received”, in relation to a person, includes applied on behalf of the person either at the instruction of the person or under any law;

“recipient”, in relation to a supply, means the person or persons to whom the supply is made;

“recipient-created tax invoice” means a recipient-created tax invoice referred to in section 34 or 39(3);

“registered person” means a person registered under section 10, and includes a person who is required to apply for registration but who has not done so within the time specified in section 9;

“registration threshold” means the amount specified in section 9(2);

“revenue from the Government” means revenue received from the Government (not being revenue received from any other public authority) by any public authority for the supply of outputs by that public authority; but does not include:

(a) GST chargeable in accordance with the provisions of this Act, on the supply of outputs by that public authority;

(b) revenue collected by that public authority as agent on behalf of the Government;

“resident” has the meaning in the Income Tax Act;

“services” means anything that is not goods or money;

“supplier”, in relation to a supply, means the person or persons who made the supply;

“supply”, has the meaning in section 6;

“Tax Administration Act” means the Tax Administration Act 2012;

“tax fraction”, in relation to a taxable supply, means the fraction computed under the formula:

$$r / (1+r),$$

where r is the rate of GST applicable to the supply as determined under section 8;

“taxpayer identification number”, in relation to a person, means the taxpayer identification number issued to the person under the Tax Administration Act;

“tax invoice” means a document required to be issued under section 33;

“taxable activity” has the meaning in section 3;

“taxable import” means an import of goods, other than an exempt import;

“tax payable” means an amount of tax calculated pursuant to section 30;

“taxable supply” means a supply, other than an exempt supply, made in Samoa by a person in the course or furtherance of a taxable activity, and includes a deemed taxable supply;

“telecommunications services”:

(a) has the meaning in the Telecommunications Act 2005; and

(b) for the purposes of this Act, includes -

(i) the related transfer or assignment of the right to use capacity for such transmission, emission, or reception; or

(ii) the provision of access to global or local information networks; but

(c) does not include the supply of underlying writing, images, sounds, or information;

“trust” has the meaning in the Income Tax Act;

“working days” does not include Saturday, Sunday or a public holiday;

“zero-rated supply” means a supply listed in the Schedule 3.

3. Definition of “taxable activity”-(1) In this Act, “taxable activity” means:

(a) any activity which is carried on continuously or regularly by any 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 any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club; or

(b) without limiting paragraph (a), the activities of any public authority.

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

(3) Despite subsections (1) and (2), for the purposes of this Act, “taxable activity” does not include, in relation to any person:

(a) being an individual, any activity carried on entirely as a private recreational pursuit or hobby; or

(b) not being an individual, any activity which, if it were carried on by an individual, would be carried on

- entirely as a private recreational pursuit or hobby;
or
- (c) any engagement, occupation, or employment under any contract of service or as a director of a company except that if a person, in carrying on any taxable activity, accepts any office, any services supplied by that person as the holder of that office is taken to be supplied in the course or furtherance of that taxable activity; or
 - (d) any engagement, occupation, or employment –
 - (i) pursuant to the Public Service Act 2004;
 - (ii) as a Judge, the Attorney General, the Controller and Auditor General or the Ombudsman;
 - (iii) pursuant to an appointment made by the Head of State and evidenced by a warrant or by an Order;
 - (iv) as a chairperson or member of board, council, committee, or other body, that is established by an enactment; or
 - (e) that part of an activity to the extent to which the activity involves the making of exempt supplies.

4. Definition of “fair market value” – (1) In this Act, “fair market value” of a supply, means:

- (a) the price that the supply would fetch in an open market transaction freely made at the time of supply between persons dealing with each other at arm’s length;
- (b) if it is not possible to determine the fair market value of a supply (“actual supply”) under paragraph (a), the price that a similar supply would ordinarily fetch in an open market transaction freely made at the time of the actual supply between persons dealing with each other at arm’s length, adjusted to take in account of the differences between the similar supply and the actual supply;
- (c) if the fair market value of a supply cannot be determined under paragraph (a) or (b), the price that is an objective approximation of the price the supply would fetch in an open market transaction freely

made at the time of supply between persons dealing with each other at arm's length, as determined by the Commissioner based on generally accepted principles of valuation; or

- (d) if a provision of this Act requires the fair market value to be determined at a particular time for particular goods or services held by a person, the value worked out by reference to the fair market value of a supply of those goods or services as determined under this section, at that time.

(2) A supply is similar to another supply if it is the same as, or closely resembles, the other supply taking account of the character, quality, quantity, functionality, materials, or reputation of the goods or services supplied.

5. Definition of “price” - (1) In this Act and subject to this section, “price” of a supply means the total of the following amounts:

- (a) the amount in money paid or payable by any person, directly or indirectly, for the supply;
- (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly, for the supply;
- (c) any taxes, duties, levies, fees, and charges (not including GST) paid or payable on, or by reason of the supply, reduced by any discounts or rebates allowed and accounted for at the time of supply.

(2) The price of a sale of goods under a hire purchase agreement to which section 14 applies does not include any amount payable for a supply of credit under the hire purchase agreement.

6. Definition of “supply” - (1) In this Act:

“other forms of supply” includes;

- (a) grant or subsidy made on behalf of the Government or by any public authority (that payment is taken to be consideration for a supply of goods or services by the person to whom or for whose benefit the payment is made in the course of furtherance of that person’s taxable activity); or
- (b) government supplies, including –

- (i) a payment made by the Government to or on behalf of the public authority in relation to a payment for the supply of goods; or
- (ii) an amount brought to account as a revenue of the Government or a public authority, from any person (including the Government) by way of a charge, fee, impost, levy, payment or rate, but not income tax, customs tariff, excise tax, or stamp duty, petroleum levy under the Petroleum Act, or any foreign exchange levy.

“supply” means:

- (a) supply of goods;
- (b) supply of services;
- (c) supply of imported services; or
- (d) any other forms of supply specified under this section.

“supply of goods” means a sale, exchange, or other transfer of the right to dispose of goods as owner, including under a hire purchase agreement;

“supply of services”:

- (a) means anything done that is not a supply of goods or money, including the provision of utilities and the grant, assignment, or surrender of any right; and
- (b) includes, if a person bets any money on any horse race, the amount of money so bet is taken to be for a supply of services –
 - (i) by the holder of a totalisator licence under the Betting (Totalisator Agency) Act 1990, in the case of money placed as a bet with that licence holder; or
 - (ii) by the Totalisator Agency Board in the case of money placed as a bet with the Board at an office or agency of the Board, where that amount of money is dealt with in terms of sections 35 and 36 of the Betting (Totalisator Agency) Act 1990; or
 - (iii) by the holder of a licence under section 16A of the Betting (Totalisator Agency) Act 1990 in the case of money placed as a bet with that licence holder; but
- (c) does not include an indemnity payment for any loss of earnings received under a contract of insurance if

the supply of that contract of insurance is not charged with GST or that payment is to indemnify for any loss of earnings (being earnings within the meaning of the Accident Compensation Act 1989).

“supply of imported services” means a supply of services that satisfies the following conditions:

- (a) the supply is made to a registered person;
- (b) the supply is made by a person who is not a registered person;
- (c) the supply is not a taxable supply because the supply is not made in Samoa;
- (d) the supply would have been a taxable supply if it had been made in Samoa;
- (e) the registered person receiving the supply would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply.

(2) In this section:

“game of chance” includes bingo, as defined in section 2 of the Gaming Act 1978;

“lottery” includes a lottery as defined in section 2 of the Gaming Act 1978 and in section 2 of the National Lotteries Act 1978;

“promoter” includes the National Lotteries Board established by the National Lotteries Act 1978.

(3) The following are treated as supply of service:

- (a) if a person pays an amount in money to participate in a game of chance, or lottery, the amount is taken to be for a supply of services by the person, society, promoter, or organiser who conducts the game of chance or lottery; or
- (b) for the purposes of this Act (except for section 29) if a registered person receives an indemnity payment under a contract of insurance, to the extent it relates to a loss incurred in making a taxable supply, the payment is treated as 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.

(4) In the definition of “other forms of supply”, a grant or subsidy made on behalf of the Government or by any public authority to:

(a) a person (not being a public authority) for that person’s taxable activity; or

(b) a person for the benefit and on behalf of another for that other person’s taxable activity:

(aa) includes –

(i) a suspensory loan or advance, when that loan or advance becomes non-repayable because conditions for non-repayment are satisfied; and

(ii) a grant or subsidy, of a kind declared by the Head of State by Order to be a taxable grant or subsidy for the purposes of this subsection, which but for the declaration, would be excluded from this definition by virtue of paragraph (b)(ii); but

(bb) does not include –

(i) a benefit under Part XII of the National Provident Fund Act 1972;

(ii) a payment made to a person for the personal use and benefit of the person or a relative of the person; and

(iii) a payment of a kind declared by the Head of State by Order not to be a taxable grant or subsidy for the purposes of this subsection.

7. Application - (1) This Act binds the Government.

(2) Subject to subsection (3), a provision in another Act providing any exemption on any matter or zero rating of supply does not have legal effect unless the exemption or zero rating of the supply is also provided under this Act.

(3) Subsection (2) does not apply to a provision in another Act that is in force before the commencement of this Act.

PART 2

VALUE ADDED GOODS AND SERVICES TAX

8. Imposition and liability for GST - (1) Subject to this Act, value added goods and services tax is imposed at the rate specified in subsection (3) on the following:

- (a) a taxable supply made by a registered person;
- (b) a taxable import;
- (c) a taxable supply of imported services.

(2) The amount of GST payable for a taxable supply, taxable import, or supply of imported services is computed by applying the rate specified in subsection (3) to the value of the supply or import.

(3) The rate of GST is:

- (a) for a taxable supply that is a zero-rated supply, zero percent; or
- (b) in any other case, 15%.

(4) The liability for GST:

- (a) for taxable supply –
 - (i) arises at the time of supply; and
 - (ii) must be accounted for under section 42(1) to the Commissioner by the registered person making the supply; and
- (b) for taxable import –
 - (i) arises at the time of import; and
 - (ii) must be paid by the importer under section 42(2);
- (c) for imported services –
 - (i) arises at the time of supply; and
 - (ii) must be accounted for under section 42(1) to the Commissioner by the registered person receiving the supply.

(5) Despite any other enactment, the GST payable by a registered person for a taxable supply is recoverable by the person from the recipient of the supply.

PART 3 REGISTRATION

9. Application for registration - (1) A person must apply to the Commissioner for registration for GST:

- (a) at the beginning of a 12 month period, if there are reasonable grounds to expect that the total value of taxable supplies to be made by the person in that period will exceed the registration threshold;

- (b) at the end of a 12 month period or a lesser period, if in that period, the total value of taxable supplies made by the person exceeds the registration threshold; or
- (c) if the person is a public authority that has commenced to undertake a taxable activity.

(2) The registration threshold is at least \$130,000.

(3) In determining whether a person exceeds the registration threshold for a period, the value of the following taxable supplies is ignored:

- (a) a taxable supply by way of the sale of a capital asset of the taxable activity of the person;
- (b) a taxable supply made solely as a consequence of the person selling the whole or a part of the person's taxable activity or permanently ceasing to carry on the person's taxable activity.

(4) In determining whether a person exceeds the registration threshold, the Commissioner may have regard to the value of taxable supplies made by an associate of the person.

(5) Despite subsection (1), a person who satisfies the Commissioner that, on or after 1 January 1994:

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

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

(6) An application for registration under this section must:

- (a) be in the approved form; and
- (b) filed in the prescribed manner within 15 working days of the person becoming required to apply for registration.

(7) In this section:

“capital asset” means a tangible or intangible asset of a taxable activity having a useful life of longer than 1 year, but does not include inventory;

“taxable supply made by a person” includes a supply of imported services made to the person determined on the assumption that the person is already a registered person.

10. Registration-(1) The Commissioner must:

- (a) register a person who has applied for registration if satisfied that the person is required to apply for registration under section 9; or
- (b) register the person, if satisfied that a person who is required to apply for registration has not done so within the period of 12 months specified in section 9; and
- (c) issue to the person a GST registration certificate in the approved form.

(2) If, in relation to a person, the Commissioner is satisfied of the matters referred to in section 9(5), the Commissioner may:

- (a) register the person; and
- (b) issue to the person a GST registration certificate in the approved form.

(3) The registration of a person under subsection (1) or (2) takes effect from the beginning of the first GST period after the person was required to apply for registration or such later time as set out in the person's GST registration certificate.

11. Obligations of a registered person - (1) A registered person must display in a visible place:

- (a) the original copy of its GST registration certificate at the principal place at which the person carries on its taxable activity; and
- (b) a certified copy of the certificate obtained from the Commissioner at every other place at which the person carries on its taxable activity.

(2) A registered person must notify the Commissioner, in writing, of any change in the name (including business name), address, place of business, or nature of the taxable activity of the person within 15 working days of the change occurring.

12. Cancellation of registration - (1) A registered person must apply, in the approved form, for cancellation of the person's registration if:

- (a) for a public authority, the carrying on of a taxable activity has ceased; or
- (b) subject to paragraph (c), for registered person under section 9 –
 - (i) the person has ceased to make taxable supplies; or

- (ii) the person continues to make taxable supplies but the annual value of those supplies has fallen below the registration threshold, unless the fall in value is reasonably expected to be only temporary;
 - (c) for a registered person under section 9(5), the person has ceased to carry on a taxable activity.
- (2) An application under:
 - (a) subsection (1)(a) must be made within 15 working days of the date on which the public authority ceased to carry on a taxable activity;
 - (b) subsection (1)(b)(i) must be made within 15 working days of the date on which the person ceased to make taxable supplies; or
 - (c) subsection (1)(b)(ii) must be made within 15 working days of the date on which the annual value of the person's taxable supplies ceased to exceed the registration threshold;
 - (d) subsection (1)(c) must within 15 working days of the date on which the person has ceased to carry on the taxable activity.
- (3) The Commissioner must, by notice in writing, cancel the registration of a person if:
 - (a) the person has applied for cancellation under subsection (1)(a) and the Commissioner is satisfied that the public authority has ceased to carry on a taxable activity;
 - (b) the person has applied for cancellation under subsection (1)(b)(i) and the Commissioner is satisfied that the person has ceased to make taxable supplies;
 - (c) the person has applied for cancellation under subsection (1)(b)(ii), unless the Commissioner has a reasonable expectation that the annual value of the person's taxable supplies is only temporarily below the registration threshold; or
 - (d) the person has applied for cancellation under subsection (1)(c) and the Commissioner is satisfied that the person has ceased to carry on the taxable activity;
 - (e) the person has not applied for cancellation but the Commissioner is satisfied that the person is required

to apply for cancellation of registration under subsection (1).

(4) The cancellation of a person's registration takes effect from the date set out in the notice of cancellation.

(5) A person whose registration is cancelled under this section must:

- (a) immediately cease to hold out that the person is a registered person, including on any documentation used by the person;
- (b) file a final GST return and pay all GST due, including the GST due as a result of section 14, within 15 working days after the date of cancellation of the person's registration; and
- (c) immediately (but not later than 10 working days) return the GST registration certificate and its certified copies to the Commissioner.

(6) The cancellation of registration under this section does not affect the liability of the person for any act done or omitted to be done while being registered.

13. Deemed taxable supply on cancellation of registration -

(1) A person whose registration is cancelled is taken to have made a taxable supply of any inventory on hand at the time the registration is cancelled but only if the person was allowed an input tax credit for the acquisition or import of the inventory, or for the acquisition or import of goods that have been subsumed into that inventory.

(2) The taxable supply under subsection (1) is taken to have been made by the person immediately before the person's registration is cancelled and the person is taken to have received, at that time, an amount of output tax equal to the amount of the input tax credit allowed to the person on acquisition or import of the inventory.

PART 4 SUPPLIES

Division 1 - General rules

14. Mixed supplies - In this Act, unless the context otherwise requires:

- (a) a supply of a particular kind that is ancillary or incidental to a supply of another kind (“the principal supply”) is treated as part of the principal supply; or
- (b) a supply of services that is ancillary or incidental to an import of goods is treated as part of the import of goods.

15. Time of supply - (1) Subject to this Act, a supply occurs on the earlier of:

- (a) the date on which the invoice for the supply is issued; or
- (b) the date on which any payment (including part payment) for the supply is made.

(2) A supply between associates or by way of a gift occurs:

- (a) for goods, on the date the goods are delivered; or
- (b) for services, on the date the performance of the services is complete.

(3) A supply of goods by means of a vending machine, meter, or other device operated by a coin, note, or token occurs on the date the coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.

(4) If services are supplied:

- (a) by way of a lease of goods; or
- (b) progressively under an agreement or law that provides for periodic payments,

the supply of services is treated as a series of separate, successive supplies of services corresponding to the successive parts of the period of the lease or agreement, or as determined by law, and each successive supply is treated as occurring on the earlier of the date on which the payment for that successive supply is due or received.

(5) If, and to the extent that:

- (a) goods are supplied progressively under an agreement or law that provides for instalment or periodic payments; or
- (b) goods and services supplied directly in the construction, major reconstruction, manufacture, or extension of a building or an engineering work are supplied under an agreement or law that provides for instalment or periodic payments in relation to the progressive nature of that construction, manufacture, or extension,

the supply of goods or services is treated as a series of separate, successive supplies of goods and each successive supply is treated as occurring on the earlier of the date on which the payment for that successive supply is due or received.

(6) If a public authority is treated to have supplied goods and services under section 6(4), the supply is, to the extent that the supply is brought to charge as revenue from the Government, taken to occur in the taxable period in which the bringing to charge applies.

(7) If the supply is treated to be made under section 6(3)(a), the supply is taken to occur on the date on which the first drawing or determination of a result of the game of chance or lottery commences.

16. Place of supply of goods - A supply of goods occurs in Samoa if:

- (a) the goods are delivered or made available in Samoa by the supplier; or
- (b) where the delivery or making available involves transportation, the goods are in Samoa when the transportation commences.

17. Place of supply of services - (1) A supply of services occurs in Samoa if the taxable activity of the supplier from which the services are supplied is in Samoa.

(2) Despite subsection (1), a supply of services occurs in Samoa if the recipient of the supply is not a registered person and:

- (a) the services are physically performed in Samoa by a person who is in Samoa at the time of supply;
- (b) the services are directly related to immovable property in Samoa;
- (c) the services are radio or television broadcasting services received at an address in Samoa;
- (d) the services are electronic services delivered to a person in Samoa at the time of supply;
- (e) the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark, or similar right in Samoa; or
- (f) the services are telecommunications services and the supply is initiated by a person in Samoa at the time of supply, other than a supply initiated by—

(i) a supplier of telecommunications services; or

(ii) a person who is global roaming while temporarily in Samoa.

(3) For the purposes of subsection (2)(f), the person who initiates a supply of telecommunications services is the person who appears first in the following paragraphs:

(a) the person who—

(i) controls the commencement of the supply;

(ii) pays for the services; or

(iii) contracts for the supply; or

(b) the person to whom the invoice for the supply is sent.

(4) In this section, “electronic services” means the development or maintenance of, or access to, any of the following when provided or delivered on or through a telecommunications network:

(a) websites, web-hosting, or remote maintenance of programs and equipment;

(b) software and its updating;

(c) images, text, and information;

(d) databases;

(e) self-education packages;

(f) music, films, and games, including games of chance;

(g) any broadcasts or events, including any political, cultural, artistic, sporting, scientific broadcasts, including broadcast television.

18. Value of a supply - (1) Subject to this Act, the value of a supply is the price of the supply.

(2) If:

(a) no price is charged on a taxable supply made by a registered person to an associate or the price is less than the fair market value of the supply; and

(b) the recipient of the supply is not entitled to an input tax credit for whole of the input tax payable in respect of the supply,

the value of the supply is the fair market value of the supply determined at the time of supply.

(3) Except as provided in this Act, if no price is charged for a supply, the value of the supply is zero.

(4) If a taxable supply is made by a registered person without a separate amount being identified as GST, the value of the supply is computed using the following formula:

$$A - (A \times B)$$

where—

- A is the total amount charged for the supply; and
- B is the tax fraction.

(5) If goods and services are, or are taken to be, supplied by any public authority:

- (a) pursuant to paragraph (b)(i) of the definition of “supply of services” in section 6, the value of the supply is an amount equal to any amount from time to time paid by the Government to or on behalf of that public authority for that supply; or
- (b) pursuant to paragraph (b)(i) of the definition of “supply of services” in section 6, the value of the supply is an amount equal to any amount that is from time to time brought to charge as revenue from the Government in respect of the supply of outputs by that public authority.

(6) If a supply of services is taken to be made within the meaning of the definition of “supply of services” in section 6, the value of the supply is so much of the amount in money a person pays to participate in a game of chance or lottery, as represents the total proceeds (after deducting the amount of all prizes paid and payable in money) of the game of chance or lottery.

19. Value of a supply of imported services - (1) Subject to subsection (2), the value of a supply of imported services:

- (a) if the supplier and recipient are associates, is the fair market value of the supply at the time of supply; or
- (b) in any other case, is the price of the supply.

(2) If a registered person, liable for GST under section 8(1)(c) for the supply of imported services, would have been entitled to a credit for part of the amount of input tax payable if the person had acquired the services in a creditable acquisition, the value of the supply under subsection (1) is reduced by an amount equal to the proportion of the input tax that would have been creditable.

(3) A registered person liable for GST under section 8(1)(c) for a supply of imported services must prepare a recipient-created tax invoice in the approved form for the supply.

Division 2 - Special rules

20. Application of goods to private or exempt use - (1) The application of goods by a registered person to a private or exempt use is deemed to be a taxable supply made by the person, but only if the person has been allowed an input tax credit for the acquisition or import of the goods.

(2) A taxable supply under subsection (1) is deemed to have been made by the registered person at the time that the goods are first applied to private or exempt use and the person is taken to have received, at that time, an amount of output tax equal to the amount of input tax credit allowed to the person in respect of the acquisition or import of the goods.

(3) In this section, “exempt use” means the use of goods or services to make an exempt supply.

21. Second-hand goods - (1) This section applies if the following conditions are satisfied:

- (a) a taxable supply of second-hand goods has been made by a registered person who is a second-hand goods supplier;
- (b) the second-hand goods were purchased by the registered person from a person who is not a registered person;
- (c) the supply of the second-hand goods to the registered person would not have been an exempt or zero-rated supply if the supplier of the goods to the registered person was also a registered person;
- (d) the supply of the second hand goods to the registered person was not an import; and
- (e) the second-hand goods were supplied by the registered person in substantially the same state as they were in when purchased by the registered person.

(2) If subsection (1) applies:

- (a) the registered person is taken to have paid an amount of input tax for the acquisition of the second-hand goods equal to the tax fraction of the price paid for the second-hand goods; and

(b) the registered person is allowed an input tax credit for the deemed input tax under paragraph (a) in the GST period in which the time of supply by the registered person of the second-hand goods occurs.

(3) If a second-hand goods supplier receives second-hand goods (“traded-in goods”) as part payment for a supply the supplier makes to a person who is not registered, the fair market value of the traded-in goods used to determine the price for the supply is to be the same as the fair market value used to determine the price paid by the dealer to purchase the traded-in goods.

(4) In this section:

“second-hand goods” means goods that have previously been used by a person who is not a registered person;

“second-hand goods supplier” means a registered person whose taxable activity principally involves the re-supply of second-hand goods in substantially the same state as they were in when purchased by the person.

22. Rights, options, and vouchers - (1) If:

- (a) the supply of a right or option was a taxable supply; and
- (b) another supply (“subsequent supply”) is made on the exercise of the right or option,

the price for the subsequent supply is limited to the additional price, if any, given for the subsequent supply or in connection with the exercise of the right or option.

(2) The issue of a voucher is not a supply if the voucher:

- (a) entitles the holder to receive supplies of goods or services up to a monetary amount on redemption of the voucher; and
- (b) is issued for an amount in money.

(3) If a voucher referred to in subsection (2) is redeemed for a taxable supply by a registered person, the amount referred to in subsection (2)(b) is treated as comprising the following two (2) components:

- (a) an amount as the price or part of the price for the supply calculated as the amount referred to in subsection (2)(b) reduced by the tax fraction of that amount; and
- (b) an amount as the GST or part of the GST payable for the supply calculated as the tax fraction of the amount referred to in subsection (2)(b).

(4) If:

- (a) a registered person issues a voucher for no charge;
- (b) the voucher entitles the holder to a discount on the price of goods or services supplied by another person; and
- (c) the voucher is redeemed for a taxable supply,

the price of the supply includes the monetary value of the voucher reduced by an amount equal to the monetary value multiplied by the tax fraction.

(5) A registered person is entitled to an input tax credit in respect of any amount paid to a supplier for the redemption by the supplier of a voucher referred to in subsection (4).

(6) The amount of the input tax credit referred to in subsection (5) is the amount paid to the supplier multiplied by the tax fraction and the input tax credit is allowed in the GST period in which the amount is paid to the supplier.

(7) A supply of telecommunications services through the use of a phone card acquired in Samoa that can be used either in or outside Samoa occurs at the time the phone calls are made with the card.

(8) In this section:

“phone card”:

- (a) means a card or similar item in whatever form it is issued, including electronically, that entitles the holder to receive telecommunications services up to its face value; and
- (b) includes a pre-paid Subscriber Identity Module (“SIM”) card, a rechargeable card, or a similar item.

“voucher”:

- (a) means a voucher, stamp, token, coupon, or similar article, including an article issued electronically, that can be redeemed by the holder only for supplies of goods or services; and
- (b) includes a phone card; but
- (c) does not include a postage stamp.

23. Lay-by sales - (1) A supply of goods under a lay-by agreement occurs on the date the goods are delivered to the purchaser and the output tax payable for the supply is treated as received on that date.

(2) If a lay-by agreement is cancelled and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under the agreement:

- (a) the cancellation of the agreement is a supply of services by the seller at the time of cancellation; and
- (b) the value of the supply –
 - (i) if the seller is a registered person at the time of cancellation, is the amount retained or recovered by the seller reduced by an amount equal to the amount retained or recovered multiplied by the tax fraction; or
 - (ii) in any other case, is the amount retained or recovered by the seller.
- (3) In this section, “lay-by agreement” means a purchase agreement for goods under which:
 - (a) the price is payable by at least one additional payment after the payment of a deposit;
 - (b) delivery of the goods takes place at any time after payment of the deposit; and
 - (c) ownership of the goods is transferred by delivery.

PART 5 IMPORTS

24. Time of import - (1) An import of goods occurs:

- (a) if the goods are under Customs control, on the date on which the goods are entered for use in Samoa or otherwise cease to be under Customs control as determined under the Customs Act; or
- (b) in any other case, on the date the goods are brought into Samoa.

(2) In this section, “entered”, in relation to an import of goods, has the same meaning as “entry” under the Customs Act.

25. Value of import - (1) Subject to subsection (2), the value of an import of goods is the sum of the following amounts:

- (a) the customs value of the goods as determined under the Customs Act, whether or not any duty is payable on the import;
- (b) to the extent not included under paragraph (a), the cost of services treated as part of the import of the goods under section 14(1)(b), including the cost of freight or insurance in transporting the goods to Samoa;

(c) the amount of any import duty, excise tax, levy, or other fiscal charge (other than GST), or any fee or other charge payable for the import.

(2) When goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, the value of the import is the amount of the increase in value of the goods as a result of the repair, renovation, or improvement if:

- (a) the form or character of the goods has not changed; and
- (b) ownership of the goods has not changed since the goods were exported.

PART 6 INPUT TAX CREDITS

26. Allowance of an input tax credit - (1) Subject to this Act, a registered person is allowed a credit for the input tax imposed on a creditable acquisition by the person to the extent that the acquisition was for the purpose of making taxable supplies as determined at the time of the acquisition.

(2) Subject to subsection (3), an input tax credit is allowed in the GST period in which the input tax is paid.

(3) If, at the time a registered person files a GST return for a GST period in which an input tax credit would otherwise be allowable under this Act, the person does not hold the documentation referred to in subsection (4), the input tax credit is not allowed in that GST period but instead is allowed in the first GST period in which the person holds the documentation.

(4) The documentation required for the purposes of subsection (3) is:

- (a) for a creditable acquisition that is a taxable import, a bill of lading and all of the documents required under section 64(1) of the Customs Act, relevant to the import;
- (b) for a creditable acquisition that is a taxable supply, the tax invoice for the taxable supply to which the acquisition relates;
- (c) for an input tax credit allowed for input tax allowed under section 28(2), the debit note; or
- (d) for an input tax credit allowed under section 28(3), a copy of the credit note.

27. Input tax credit for newly registered person - (1) Subject to this Act, a registered person may claim, in the first GST return filed by the person after being registered, an input tax credit determined under this section and section 26 for the input tax paid for the goods held at the date of registration for the purpose of making taxable supplies, if:

- (a) at the end of the last day before the date of the person's registration, the person held the goods as inventory;
- (b) the inventory was acquired by the person in a creditable acquisition;
- (c) the acquisition occurred no more than 4 months prior to the date of registration; and
- (d) the person can provide documentary evidence satisfactory to the Commissioner that input tax has been paid on the acquisition.

(2) Section 26(3) does not apply to an input tax credit allowed under this section.

PART 7 POST-SUPPLY ADJUSTMENTS

28. Post-supply adjustments - (1) If:

- (a) an adjustment event occurs to a taxable supply; and
- (b) the GST properly chargeable for the supply exceeds the GST actually accounted for by the supplier,

the excess is taken to be output tax received by the supplier in the GST period when the event occurred.

(2) If:

- (a) subsection (1) applies; and
- (b) the supplier has issued a debit note,

the recipient is allowed an input tax credit for the additional GST specified in the debit note in the GST period when the debit note is received.

(3) Subject to subsection (5), if:

- (a) an adjustment event occurs to a taxable supply; and
- (b) the GST actually accounted for by the supplier exceeds the GST properly chargeable for the supply,

the supplier is allowed an input tax credit for the amount of the excess in the GST period when the event occurred.

(4) If:

- (a) subsection (3) applies; and

(b) the supplier has issued a credit note, the additional GST specified in the credit note is deemed to be output tax received by the recipient in the GST period when the credit note is received.

(5) If the recipient of a supply to which subsection (3) applies is not a registered person, an input tax credit is not allowed under that subsection until the supplier has repaid the excess GST to the recipient of the supply, whether in cash or as a credit against any amount owing to the supplier by the recipient.

(6) The following are adjustment events for the purposes of this section:

- (a) the cancellation of a supply;
- (b) a fundamental alteration in the nature of a supply;
- (c) a change in the price of a supply;
- (d) the return of the whole or part of the goods the subject of a supply to the supplier.

PART 8 GST PERIOD AND REFUNDS

29. GST Periods-(1) The Commissioner must determine the GST period of a registered person in either of the following category:

- (a) Category (A): with GST periods of 2 months ending on the last day of January, March, May, July, September and November in any year; or
- (b) Category (B): with GST periods of 2 months ending on the last day of February, April, June, August, October and December in any year.

(2) Despite subsection (1), the Commissioner:

- (a) may transfer a person who fails to comply with this Act to a special category specified as category (C); and
- (b) must determine the GST period for a registered person in category (C) that is less in duration than that specified in the categories in subsection (1).

30. Net GST Payable for a GST Period - The net GST payable by a registered person for a GST period is computed according to the following formula:

$$(A+B)-C$$

where:

- A** is the total output tax received or deemed to have been received by the person in the period in respect of taxable supplies made by the person;
- B** is the total GST that the registered person is liable for under section 8 for supplies of imported services made to the person during the period; and
- C** is the total input tax credit allowed to the person for the period under this Act.

31. Refunds - If, for any GST period, component “**C**” of the formula in section 30 exceeds component “**(A + B)**” for the period, the Commissioner must credit to the registered person the excess amount, subject to this Act.

32. Diplomatic missions and International Agreements - (1) The Commissioner may, on application and subject to conditions, refund all or part of the GST paid to a taxable supply pursuant to and to the extent required under the Diplomatic Privileges and Immunities Act 1978.

(2) The application under subsection (1) must be:

- (a) made in the approved form and in the prescribed manner; and
- (b) accompanied by any supporting documentation as the Commissioner may require including but not limited to -
 - (i) evidence that the GST for which the refund is sought was paid; and
 - (ii) evidence of the applicant’s entitlement to make an application under subsection (1).

PART 9 DOCUMENTATION AND PROCEDURES

Division 1 - GST documentation

33. Tax invoices - (1) A registered person making a taxable supply to another registered person must, within 28 days from the

time of supply, issue that other person with the original tax invoice, in the approved form, for the supply.

(2) It is not required to provide a tax invoice for a supply that is not required if the price is less than \$20 or instead another prescribed price.

34. Recipient-created tax invoices - (1) The Commissioner may determine that a recipient or class of recipients may issue a recipient-created tax invoice in relation to certain taxable supplies or class of taxable supplies, if:

- (a) the supplier and the recipient agree that the supplier will not issue a tax invoice for any taxable supply to which this subsection applies;
- (b) the document is in the approved form; and
- (c) the original invoice is provided to the supplier and a copy is retained by the recipient.

35. Commissioner may determine alternative arrangements - The Commissioner may:

- (a) in particular circumstances, determine alternative arrangements for the issuing of tax invoices if the Commissioner considers that it is impractical to require a tax invoice under this section; and
- (b) impose any condition of the arrangement necessary to maintain compliance.

36. Credit and debit notes-(1) If:

- (a) a registered person (referred to as “the supplier”) has made a taxable supply to another registered person (referred to as “the recipient”);
- (b) the supplier has issued an original tax invoice in respect of the supply to the recipient; and
- (c) the amount shown on the tax invoice as the GST actually charged for the supply exceeds the GST properly chargeable for the supply,

the supplier must provide the recipient with a credit note, in the approved form, for the supply.

(2) If:

- (a) a registered person (referred to as “the supplier”) has made a taxable supply to another registered person (referred to as “the recipient”);

- (b) the supplier has issued an original tax invoice in respect of the supply to the recipient;
- (c) section 30 applies to the supply; and
- (d) the GST properly chargeable in respect of the supply exceeds the amount shown on the tax invoice as the GST actually charged,

the supplier must provide the recipient with a debit note, in the approved form, in respect of the supply.

37. GST documentation issued by or to agents - (1) If:

- (a) a taxable supply is made by or to an agent on behalf of a principal; and
- (b) both the agent and principal are registered persons, any tax invoice, credit note, or debit note, required to be issued by or to the principal may be issued by or to the agent, using the name, address, and taxpayer identification number of the agent.

(2) If:

- (a) a taxable supply is made by or to an agent on behalf of a principal; and
- (b) the principal (other than the agent) is a registered person, any tax invoice, credit note, or debit note required to be issued by or to the principal may be issued by or to the agent, but using the name, address, and taxpayer identification number of the principal.

(3) If a taxable supply is made by or to an agent on behalf of a principal, any tax invoice, credit note, or debit note required to be issued is to be issued to either the agent or principal but not both.

(4) A tax invoice, credit note, or debit note issued by or to an agent under this section is treated as issued by or to the principal for the purposes of this Act.

38. Requests for GST documentation - (1) A registered person who, for any reason, has not been issued with an original tax invoice, credit note, or debit note as required under this Act may make a written request (“written request”) to the supplier to issue the document.

(2) The written request must be made:

- (a) for a tax invoice, within 60 days from the date of supply;
or
- (b) for a credit note or debit note, within 60 days from the date of the adjustment event to which the credit note or debit note relates.

(3) A registered person receiving a request under subsection (1) must comply with the request within 14 days of receiving the request.

39. Maintenance of GST documentation - (1) A registered person may issue only one original tax invoice for a taxable supply, or one original credit note or debit note for an adjustment event, but a copy clearly marked as such may be provided to a registered person who claims to have lost the original.

(2) A person must not issue a tax invoice, credit note, or debit note other than in the circumstances specified in this Act.

(3) The following documents must be maintained for the period and in the manner specified in the Tax Administration Act by a registered person for the purposes of this Act:

- (a) original (or copies issued under subsection (1)) of all tax invoices, credit notes, and debit notes received by the person;
- (b) a copy of all tax invoices, credit notes, and debit notes issued by the person;
- (c) documentation relating to imports and exports of goods by the person; and
- (d) recipient-created tax invoices in respect of supplies made to the person.

(4) The documents referred to in subsection (3)(b) must be maintained in chronological order.

40. GST-inclusive pricing of taxable supplies to unregistered persons - (1) Despite section 5(1)(c), the registered person must:

- (a) when making a taxable supply to a person who is not a registered person, state the price for the supply as inclusive of GST;
- (b) display a sign in a prominent location on the business premises, or disclose prominently on its invoices that taxable supplies are made inclusive of GST; and
- (c) disclose prominently on its invoice for a supply that the supply is a taxable or exempt supply and, if a taxable supply, the amount of GST charged.

(2) A tourism publicity material for use outside of Samoa may display the price of relevant goods and services as exclusive of GST

if the material also clearly states that the price displayed is subject to tax.

Division 2 - Procedures

41. GST returns - (1) A registered person must, for each GST period and in the approved form and prescribed manner, file a GST return within 15 working days after the end of that GST period.

(2) Despite subsection (1), the Commissioner may determine an alternative filing date for a non-profit body or any particular case if the Commissioner is satisfied that it is necessary to meet their circumstances.

42. Due date for payment of GST - (1) The net GST payable by a registered person for a GST period, as computed under section 30, is payable by the due date for filing the GST return for that period.

(2) The GST payable by an importer in respect of a taxable import is payable at the time of import.

43. Collection of GST on imports - (1) The Comptroller:

(a) must -

(i) collect GST payable under this Act on an import of goods at the time of import; and

(ii) at that time, obtain the name and tax identification number (if any) of the importer, the customs declaration, and invoice values for the import; and

(b) may exercise any power conferred on the Comptroller by the Customs Act as if the reference to import duty in that Act includes a reference to GST payable on a taxable import under this Act.

(2) Unless the contrary intention appears, the provisions of the Customs Act relating to the import, transit, coastwise carriage, and clearance of imported goods, and the payment and recovery of import duty, apply, with necessary adaptations, to the GST payable on a taxable import.

44. GST representatives of non-residents - (1) This section applies to who:

(a) is required to apply for registration under section 9; and

(b) does not carry on a taxable activity through a fixed place in Samoa.

(2) A non-resident to whom this section applies must:

(a) appoint a GST representative in Samoa; and

(b) if required to do so by the Commissioner, lodge security with the Commissioner pursuant to the Tax Administration Act.

(3) The GST representative is responsible for doing all things required of the non-resident under this Act, including applying for registration, the filing of GST returns, and the payment of GST.

(4) The registration of a GST representative is to be made in the name of the non-resident they represent.

(5) A person may be a GST representative for more than one non-resident but must have a separate registration for each non-resident they represent.

(6) A person must not be appointed as a GST representative unless the person is a registered tax agent under the Tax Administration Act.

45. Assessment of recipient of a supply - (1) If a registered person has, in consequence of misrepresentation or fraud by the recipient of a supply, incorrectly treated the supply as:

(a) an exempt supply; or

(b) a zero-rated supply,

the Commissioner may assess the recipient of the supply for payment of the GST due for the supply, and any late payment interest and penalty imposed as a result of the incorrect treatment of the supply.

(2) The Commissioner must serve notice of an assessment under subsection (1) on the recipient setting out the following:

(a) the reason for the assessment under subsection (1);

(b) the GST, late payment interest, and penalty payable under the assessment;

(c) the date on which the GST payable under the assessment is due, which must be at least thirty days after the date on which the notice is served;

(d) the time, place, and manner of objecting to the assessment.

(3) For this section, the Commissioner:

(a) may recover the whole or part of the GST due for the supply, including any late payment interest and

- penalty from the registered person who made the supply;
- (b) must credit the amount recovered from –
 - (i) the recipient of the supply against the liability of the supplier for that supply; and
 - (ii) the supplier against the liability of the recipient of the supply; and
 - (c) must not recover more than the total amount of GST, late payment interest, and penalty payable in relation to the supply.

(4) A supplier who pays GST, late payment interest, or penalty referred to in subsection (1) may recover the amount from the recipient of the supply.

(5) Nothing in the Tax Administration Act limits the power of the Commissioner to amend an assessment, including a self-assessment, of the registered person making the supply to give effect to subsection (3).

PART 10 MISCELLANEOUS

- 46. Offences** - (1) A person commits an offence who:
- (a) fails to apply for registration under section 9; or
 - (b) fails to notify the Commissioner of any of the changes of circumstances under section 11(2); or
 - (c) knowingly issues any tax invoices showing any amount charged as tax where –
 - (i) no amount of tax is charged for any supply to which the 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 for the tax charged will not take place; or
 - (d) knowingly represents to any person, in writing or in other manner, that any amount is charged as tax if either –
 - (i) no amount of tax is charged for any supply to which the representation refers; or

- (ii) the amount represented as being charged as tax is not the amount properly so charged under this Act; or
 - (e) knowingly issues a duplicate tax invoice contrary to this Act; or
 - (f) being a registered person, fails to provide another registered person with a tax invoice under this Act; or
 - (g) knowingly issues any tax invoice under this Act which is in any material aspect erroneous or incomplete;
 - (h) knowingly makes any statement or declaration on any matter under this Act, which is erroneous or incomplete in any material aspect; or
 - (i) receives, acquires possession of, or deals with any goods, or accepts the supply of any services, if 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
 - (j) applies for cancellation of registration when still required to be registered;
 - (k) fails to display their GST registration certificate pursuant to section 11(1);
 - (l) fails to apply for cancellation of registration pursuant to section 12;
 - (m) fails to state tax inclusive prices under section 40;
 - (n) being a non-resident, fails to appoint a GST representative under section 44.
- (2) A person convicted of an offence under subsection (1)(b) or (e) is liable:
- (a) on first or second conviction for the offence, to a fine not exceeding 10 penalty units; or
 - (b) on third or subsequent conviction for the offence, to a fine not exceeding 30 penalty units for each offence.
- (3) A person convicted of an offence under subsection (1)(f) is liable:
- (a) on first conviction for the offence, a fine not exceeding 5 penalty units;
 - (b) on second conviction for the offence, to a fine not exceeding 7 penalty units;
 - (c) on third or subsequent conviction for the offence to a fine not exceeding 10 penalty units.

(4) A person convicted for an offence under subsection (1)(m) is liable:

- (a) on first conviction of the offence, to a fine not exceeding 5 penalty units; and
- (b) for second or subsequent conviction of the offence, a fine not exceeding 10 penalty units.

(5) A person convicted for an offence under this Act for which no penalty is provided is liable:

- (a) on first conviction for the offence, a fine not exceeding 50 penalty units;
- (b) on second or subsequent conviction for the offence, to a fine not exceeding 100 penalty units.

47. Penal tax in case of evasion - (1) This section applies:

- (a) to a registered person who –
 - (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 under this Act or the regulations with intent to evade,

the payment of any amount of tax payable; or

- (b) to a registered person who –
 - (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 under this Act or the regulations with intent to cause,

the input credit to the person to be in excess of the amount properly so to be credited that person.

(2) A person to whom this section applies shall be charged, by way of penalty for any act under subsection (1), with additional tax not exceeding an amount equal to three (3) times the amount of the deficient tax.

(3) The penal tax is:

- (a) to be assessed by the Commissioner; and
- (b) treated to be tax of the same nature as the deficient tax to which it relates, and is taken to be payable in and for the same taxable period as that deficient tax.

(4) In this section:

“deficient tax” means tax referred to under subsection (1)(a) or input credit (other than the proper input credit) referred to under subsection (1)(b);

“penal tax” means the additional tax referred to in subsection (2).

48. Tax avoidance schemes - (1) Despite anything in this Act, if the Commissioner is satisfied that:

- (a) a tax avoidance scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain the tax benefit,

the Commissioner may determine the GST liability of the person who obtained the tax benefit as if the scheme were void.

(2) The Commissioner must, when a determination is made, issue an assessment giving effect to the determination.

(3) A determination must be made within 6 years from the last day of the GST period to which the determination relates.

(4) In this section:

“determination” means a determination made under subsection (1);

“tax avoidance scheme” means a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable, where one of the main purposes of a person in entering into it is the avoidance or reduction of any person’s GST liability,

any scheme if one of the main purposes of a person in entering into the scheme is the avoidance or reduction of any person’s GST liability;

“tax benefit” means:

- (a) a reduction in the liability of a person to pay GST;
- (b) an increase in the entitlement of a person to an input tax credit;
- (c) an entitlement to a refund;

- (d) a postponement of a liability for the payment of GST;
- (e) an acceleration of an entitlement to an input tax credit;
- (f) any other advantage arising because of a delay in payment of GST or an acceleration of the entitlement to an input tax credit;
- (g) anything that causes a taxable supply, taxable import, or supply of imported services not to be a taxable supply, taxable import or supply of imported services; or
- (h) anything that gives rise to an input tax credit entitlement for an acquisition or import that is used or is to be used other than in making taxable supplies.

49. Branches and divisions - (1) A registered person (“first person”) who carries on a taxable activity in another branch or division may apply in writing to the Commissioner:

- (a) to register the branch or division as a separate registered person (“second person”); or
- (b) to cancel the registration of the branch or division.

(2) The Commissioner must, on the application of the first person:

- (a) register the branch or division under the name of the second person if satisfied the branch or division -
 - (i) maintains an independent system of accounting; and
 - (ii) can be separately identified by the nature of the activities carried on, or the location of the branch or division; or
- (b) cancel the registration of the branch or division effective from the last day of the GST period of the branch or division during which that application was made, and the taxable activity carried on by that branch or division is then to be treated as carried on by the first person.

(3) If a branch or division is separately registered under subsection (2), the first person is not treated as carrying on the taxable activity carried on by that branch or division.

(4) The Commissioner must cancel the separate registration of a branch or division if a registration of the person first is cancelled.

(5) If a branch or division separately registered under this section defaults in doing anything required to be done under this

Act, the liability for the doing of that thing is reverted to the first person.

(6) Despite subsection (1) to (5) and for the purposes of sections 15 and 19, this section is deemed not to have applied, and any placement or direction made under sections 15 and 19 for the first person, for the purposes of this Act, applies equally to each branch or division separately registered pursuant to this section.

50. Currency translation - (1) An amount taken into account under this Act must be expressed in tala.

(2) If any amount is expressed or paid in a currency other than tala:

- (a) for import of goods, the amount is converted into tala at the exchange rate applicable under the Customs Act for the purposes of computing the import duty payable on the import; or
- (b) in any other case, the amount is converted into tala at the Central Bank of Samoa mid-exchange rate applying between the foreign currency and tala on the date of the supply.

51. Regulations and approved forms - (1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular to make the following regulations:

- (a) to prescribe rules for particular types of supplies and for input tax credits;
- (b) to prescribe fees for the purposes of this Act, subject to the approval of the Revenue Board established under the Public Finance Management Act 2001;
- (c) to provide matters required under this Act to be prescribed;
- (d) to amend a Schedule.

(2) The Commissioner may approve forms for the purposes of this Act.

52. Repeal, transition and savings - (1) The Value Added Goods and Services Tax Act 1993, and any subordinate legislation made under that Act are repealed (“repealed legislation”).

(2) At the commencement of this Act:

- (a) the repealed legislation continues to apply to the supply in Samoa of goods and services, and to the importation of goods into Samoa, prior to the commencement of this Act;
- (b) a person registered under the repealed legislation continues and is treated as if the person is registered under section 9, with the same GST period as the taxable period allocated under the repealed legislation;
- (c) any forms and documents used in relation to the repealed legislation may continue to be used under this Act and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act;
- (d) if the period of a successive supply referred to in section 15 begins before and ends after the commencement of this Act, the supply is treated as having been made continuously and uniformly throughout that period and the price for that supply is apportioned accordingly.

(3) Subsection (2)(d) does not apply to the supply of a warranty in relation to goods or a service if the value of the warranty has been included in the price of the goods or service.

(4) Subject to subsection (5), in calculating the amount of the net GST payable for a GST period which contains the commencement date, the registered person may claim an input tax credit on VAGST paid for a creditable acquisition.

(5) A registered person is not allowed an input tax credit under subsection (4) on VAGST paid for a creditable acquisition if the person would not have been allowed an input tax credit if the creditable acquisition had occurred after the commencement date.

(6) Regulations may be made under section 50, within 6 months after the commencement of this Act, to provide for saving or transitional matters relating to this Act, and the regulations may apply retrospectively from the commencement of this Act.

(7) In this section, "VAGST" means value added goods and services tax imposed by section 9 or 13 of the Value Added Goods and Services Tax Act 1993.

SCHEDULE 1

(Section 2)

EXEMPT IMPORTS

1. The following are exempt imports:
 - (a) an import by a passenger or a member of a crew of a ship or aircraft of the following –
 - (i) goods of a non-commercial nature of an aggregate value of up to two hundred dollars (AUD \$200);
 - (ii) not more than 200 cigarettes or 250 grams of other tobacco products provided the total tobacco does not exceed 250 grams;
 - (iii) a combination of the goods set out in sub-paragraph (ii) with a total weight of 250 grams;
 - (iv) spirituous liquor exempted pursuant to section 36(3) of the Liquor Act 2011;
 - (v) other goods not exceeding \$500 tala in value;
 - (b) an import of goods as stores of a ship or aircraft, being goods required for the use of the passengers and crew of the ship or aircraft when on board and while the ship or aircraft is in international traffic in such quantities as approved by the Commissioner;
 - (c) an import of goods in a single consignment on which the total GST and other taxes payable do not exceed two hundred dollars (AUD \$200);
 - (d) an import of goods to the extent GST is exempted by the Diplomatic Privileges and Immunities Act 1978;
 - (e) an import of goods under an international aid project, subject to a Memorandum of Understanding;
 - (f) an import of services under any international aid project or donated from overseas for the purposes of international aid, if the Minister has made a determination to exempt such imports from GST;
 - (g) an import of goods, if a supply of those goods in Samoa would be an exempt or zero-rated supply; and

- (h) any aircraft that does not exceed 15,000kg in weight and falls under code items 8802.4010 and 8802.4090 of the First Schedule of the Customs Tariff Act 1975.
- (i) an import of goods by Yazaki Samoa Enterprise under section 6 of the Yazaki Samoa Enterprise Act 2016.

2. In this Schedule:

“international aid”:

- (a) means any assistance in the form of goods or services provided to the Government of Samoa by any foreign state, organisation or person; and
- (b) includes any assistance for any government project, or any other project or purpose approved by the Minister;

“international traffic”, in relation to a ship or aircraft, means any operation of the ship or aircraft except as between two (2) places in Samoa.

SCHEDULE 2

(section 2)

EXEMPT SUPPLIES

1. The following are exempt supplies:

- (a) a supply of financial services;
- (b) a supply of donated goods or services by a non-profit body;
- (c) the supply to passengers of transport services by buses and taxis, but excluding any arrangements to hire buses or taxis for the exclusive use of a customer or customers for a determined period of time or for an agreed journey;
- (d) the charge imposed for departing from Samoa under the Civil Aviation Act 1998;
- (e) the interconnection fees between resident suppliers of telecommunication services;
- (f) the carriage of passengers by ships within Samoa;
- (g) supplies of goods and services for an overseas funded aid project if an agreement or Memorandum of Understanding expressly provides that the supplies

be exempt, excluding supplies to or by subcontractors or other suppliers to the head contractor.

2. A supply that is both a zero-rated supply under Schedule 3 and an exempt supply under this Schedule is treated only as a zero-rated supply for the purposes of this Act.
3. In this Schedule:
 - “donated goods or services” in relation to a non-profit body, means goods or services that are gifted to the body and that are intended for use in carrying out the purposes of the body;
 - “financial services” means:
 - (a) the granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor;
 - (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, excluding debt collection and factoring;
 - (c) transactions relating to financial derivatives, forward contracts (except forward commodities contracts), options to acquire financial instruments, and similar arrangements;
 - (d) transactions relating to shares, stocks, bonds, and other securities, other than custody services;
 - (e) the management of investment funds;
 - (f) the provision or transfer of ownership of a life insurance contract or the provision of re-insurance of the insurance contract;
 - (g) the provision, or transfer of ownership, of an interest in a scheme for the payment or granting of benefits by a benefit fund, provident fund, pension fund, superannuation fund, retirement annuity fund, or preservation fund;
 - (h) a supply of credit under a hire purchase agreement, if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods; or

- (i) the arranging of any of the services in paragraphs (a) to (h).
- “non-profit body” means a society, association, or organisation, whether or not incorporated, that is carried on for charitable or religious purposes and none of the income or assets of which confers, or may confer, a private benefit on any person.

SCHEDULE 3
(section 2)

ZERO-RATED SUPPLIES

PART 1 - EXPORTS

1. Subject to clause 2, the following are zero-rated supplies:
 - (a) an export of goods;
 - (b) a supply of goods as consumable stores for use outside Samoa on an aircraft or ship going to a destination outside Samoa;
 - (c) a supply of goods in the course of repairing, renovating, modifying, or treating temporarily imported goods if the goods are -
 - (i) wrought into, affixed to, attached to, or otherwise form part of the temporarily imported goods; or
 - (ii) consumable stores that become unusable or worthless as a direct result of being used in the repair, renovation, modification, or treatment process;
 - (d) a supply of services directly in connection with temporarily imported goods;
 - (e) a supply of services for use or consumption outside Samoa as evidenced by documentary proof acceptable to the Commissioner;
 - (f) a supply of telecommunications services if -
 - (i) the supply is made by a resident telecommunications supplier to a non-resident telecommunications supplier; or

- (ii) the person who initiates the supply (including when the person initiates the supply on behalf of another person) does so while physically located outside Samoa;
 - (g) a supply of international transport services, including the insurance and arranging of insurance and transport of passengers and goods;
 - (h) a supply of goods or services for and to the Head of State;
 - (i) a supply of goods to the Gambling Control Authority established under the Casino and Gambling Control Act 2010;
 - (j) a supply of educational services;
 - (k) a supply of medical goods or services provided in hospitals;
 - (l) a supply of water;
 - (m) a supply of totalisator betting facilities; and
 - (n) the licensing of casinos;
 - (o) the supply of electricity under the Electric Power Corporation Act 1980.
2. A supply of goods is not a zero-rated supply under clause 1(a) or (b) if:
- (a) the goods have been or will be re-imported into Samoa;
 - or
 - (b) the goods are not exported within 28 days from the date of supply or a longer period determined by the Commissioner.
3. A supply of goods is not a zero-rated supply under clause 1(a) if the goods have been supplied under the Customs approved secure export scheme and there is no evidence as required by the Comptroller that the goods have been exported within 28 days of the time of supply.
4. Section 16(3) of the Act applies for the purposes of clause 1(f) in determining the person who has initiated a supply of telecommunications services.
5. In this Part:
“ancillary transport services”:

- (a) means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and the storage of transported goods or goods to be transported; but
- (b) does not include any services supplied directly in connection with an aircraft or ship that is temporarily imported goods.

“consumable stores” means:

- (a) goods for consumption by passengers or crew on board an aircraft or ship; or
- (b) goods that are necessary to operate or maintain an aircraft or ship, including fuel and lubricants, but excluding spare parts or equipment.

“educational services” means those services provided by primary schools, secondary schools or colleges and tertiary institutions approved by the Minister;

“export” in relation to goods:

- (a) means the delivery of the goods to, or the making available of the goods at, an address outside Samoa as evidenced by documentary proof acceptable to the Commissioner; and
- (b) includes the supply of goods under the Customs approved secure exports scheme by a supplier licensed under the Customs Act to operate a Customs approved secure exports scheme.

“hospital”:

- (a) means any hospital or institution administered by the Ministry of Health pursuant to the Ministry of Health Act 2006 in which any medical, dental, pharmaceutical or nursing services is provided; and
- (b) includes all clinics, dispensaries, outpatient departments, services, offices and undertakings maintained in connection with or incidental to that hospital or institution.

“international transport services” means the services (excluding ancillary transport services) of transporting goods or passengers by sea or air:

- (a) from a place outside Samoa to another place outside Samoa, including, if relevant, any part of the

transport that takes place across the territory of Samoa;

(b) from a place outside Samoa to a place within Samoa as the final destination for the transportation; or

(c) from a place within Samoa as the place where the transportation commenced to a place outside Samoa.

“non-resident telecommunications supplier” means a supplier of telecommunications services who is a non-resident;

“resident telecommunications supplier” means a supplier of telecommunications services who is a resident;

“temporarily imported goods” means goods temporarily imported into Samoa under the Customs Act;

“totalisator betting facilities” means:

(a) betting services on races held whether within or outside of Samoa;

(b) the carrying on of the business or occupation of bookmaking;

(c) conducting the game of lotto or any other similar services provided by the Totalisator Agency Board under the Betting (Totalisator Agency) Act 1990.

“water” means the supply of water by the Water Authority under the Samoa Water Authority Act 2003 excluding provision of services by the Water Authority under private contract, such as the drilling of bores or the installation of pipes.

PART 2 - OTHER ZERO-RATED SUPPLIES

The following supply is a zero-rated supply:

(1) A supply of goods or services as part of the transfer of a taxable activity, or a part of a taxable activity, as a going concern by a registered person to another registered person if:

(a) all the goods or services necessary for the continued operation of the taxable activity or part of the taxable activity are supplied to the transferee;

(b) the transferor carries on the taxable activity until the date of transfer;

(c) the transferee will not carry on the taxable activity to make exempt supplies and will not use the goods or services for private use; and

(d) the transferor and transferee agree in writing, on or before the date of the transfer, that the transfer will be treated as a transfer of a taxable activity or part of a taxable activity as a going concern for the purposes of this Act.

REVISION NOTES 2016 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division in 2016 – 2019 under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following amendments were made since its enactment:

By the Yazaki Samoa Enterprise Act 2016 (No.2) commenced on 9 February 2016:

Schedule 1 New paragraph (i) inserted after paragraph (h).



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry for Revenue.*