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I assent,

CUTHBERT M SEBASTIAN  
*Governor-General.*

24<sup>th</sup> August, 2010.

## SAINT CHRISTOPHER AND NEVIS

### No. 3 of 2010

AN ACT to make provision for the imposition and collection of value added tax; and to provide for related or incidental matters.

*[Published 24<sup>th</sup> August 2010 - Extra-Ordinary Gazette No. 41 of 2010]*

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

#### PART I – PRELIMINARY MATTERS

##### 1. Short title and commencement.

- (1) This Act may be cited as the Value Added Tax Act, 2010.
- (2) Subject to the provisions of subsection (3), this Act shall come into force on such date as the Minister may, by Order, appoint.
- (3) The Minister may, by Order, fix different dates for the coming into force of different Parts or different sections of this Act.

##### 2. Interpretation.

- (1) In this Act, unless the context otherwise requires,
  - “agency of the State” includes a statutory body, and a public company as defined in the Finance Administration Act, No. 13 of 2007;
  - “approved charitable organisation” means an organisation designated as such in regulations made by the Minister under this Act;
  - “approved religious organisation” means an organisation designated as such in regulations made by the Minister under this Act;
  - “association not for gain” means an institution of religious worship, society, association, or organisation, whether incorporated or not, which

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- (a) is carried on otherwise than for the purposes of profit or gain to any proprietor, member, or shareholder; and
- (b) is, in terms of its memorandum, articles of association, written rules, or other document constituting or governing its activities,
  - (i) required to utilize any assets or income solely in the furtherance of its aims and objects;
  - (ii) prohibited from transferring any portion of its assets or income, directly or indirectly, so as to profit any person other than by way of the provision of charitable assistance, or the payment in good faith of reasonable remuneration to any of its officers or employees for any service actually rendered to it; and
  - (iii) obliged, upon its winding-up or liquidation, to give or transfer its assets remaining after the satisfaction of its liabilities to another institution of religious worship, society, association or organisation having similar objects;

“auctioneer” means a person who is engaged in a taxable activity which includes the supply of goods by auction as an auctioneer or agent for or on behalf of another person;

“business” includes any business, profession, trade, venture or undertaking, provision of personal services or technical and managerial skills, and any adventure or concern in the nature of trade, but does not include employment;

“capital goods” mean assets, or components of assets, which are of a character subject to an allowance for depreciation or comparable deduction for income tax purposes and which are used in the course or furtherance of taxable activity;

“cash value”, in relation to a supply of goods under a credit agreement, means,

- (a) where the seller or lessor is a bank or other financial institution, an amount equal to the sum of
  - (i) the consideration paid by the bank or other financial institution for the goods or the fair market value of the supply of the goods to the bank or other financial institution, whichever is the greater; and
  - (ii) any consideration for erection, construction, assembly, or installation of the goods borne by the bank or other financial institution; or

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- (b) where the seller or lessor is a dealer, an amount equal to the sum of
  - (i) the consideration at which the goods are normally sold by the dealer for cash; and
  - (ii) any consideration for erection, construction, assembly, or installation of the goods borne by the dealer;

“Comptroller” means the Comptroller of Inland Revenue appointed under section 46.(1) of the Tax Administration and Procedures Act No. 12/2003;

“company” means an association or body, whether

- (a) corporate or unincorporate,
- (b) created or recognized under any law in force in Saint Christopher and Nevis or elsewhere; and
- (c) created for profit or non-profit purposes; but does not include a partnership or trust;

“consideration”, in relation to a supply or importation of goods or services, includes

- (a) the total amount in money or kind paid or payable;
- (b) a deposit on a returnable container for the supply or importation of goods by any person, directly or indirectly;
- (c) duties, levies, fees, and charges, other than tax payable under this Act paid or payable on, or by reason of, the supply or importation of goods or services; and
- (d) compulsory charges, such as those imposed on hotel and similar services and added to the bill;

reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import of the goods, but does not include:

- (i) a cash payment made by any person as an unconditional gift to an association not for gain; or
- (ii) a deposit, other than a deposit on a returnable container, whether refundable or not, given in connection with a supply of goods or services unless the supplier applies the deposit as consideration for the supply or such deposit is forfeited; or

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- (iii) voluntary payment by a guest or customer, such as a voluntary tip by a hotel or restaurant guest or customer;

“Court” means the High Court;

“credit agreement” means a hire-purchase agreement or a finance lease;

“documents” include electronic documents;

“entry”, in relation to imported goods, shall be construed within the meaning of “entered” in the Customs (Control and Management) Act, Cap. 20.40;

“exempt import” has the meaning assigned to it by section 30 and 31 of this Act;

“exempt supply” means the supply of goods and services to which section 34 of this Act applies;

“fair market value” has the meaning assigned to it by section 3 of this Act;

“finance lease”, in relation to goods, means a lease of goods where

- (a) the lease term exceeds 75% of the expected life of the goods;
- (b) the lease provides for transfer of ownership at the end of the lease term or where the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease;
- (c) the estimated residual value of the goods to the lessor at the expiration of the lease term, including the period of any option to renew, is less than twenty percent of its fair market value at the commencement of the lease; or
- (d) the goods that are leased are custom-made for the lessee and at the end of the term of the lease are not to be usable by anyone other than the lessee;

“game of chance” includes a raffle or lottery, horse racing, or the playing of a table game or gaming machine;

“general insurance contract” means a general insurance contract under the Insurance Act No. 8 of 2009, including reinsurance, or guarantee against loss, damage, injury, or risk of any kind, whether pursuant to any contract or law, and includes a renewal of such contract, but does not include a long term insurance contract;

“goods” means real or tangible personal property, thermal or electrical energy, heat, gas, refrigeration, air conditioning, and water, but does not include money;

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“hire purchase agreement” means a transaction which takes the form of a lease and intended to transfer ownership of goods at the end of a specified term under which the periodic payments are credited against the purchase price, but the ownership of the goods remains with the seller, or financial institution acting as seller, until the purchase price is paid;

“immovable property” includes any estate, right, interest, or servitude on or over any land, and things attached to land or permanently fastened to anything attached to land, and any other right in such property;

“import” means,

- (a) in the case of goods, bringing or causing to be brought into St. Christopher and Nevis; or
- (b) in the case of services, a supply of services to a resident
  - (i) by a non-resident; or
  - (ii) by a resident from a business carried on by the resident outside St. Christopher and Nevis;

to the extent that such services are not to be utilized or consumed by a registered person in making taxable supplies in St. Christopher and Nevis;

“import declaration” means the declaration documents required for the entry of goods into Saint Christopher and Nevis;

“importer”,

- (a) in relation to an importer of goods, has the meaning assigned to it by section 2 of the Customs (Control and Management) Act, Cap. 20.40; and
- (b) in relation to an importer of services, means the person who made arrangements for the importation of the services or any other person who is to have the beneficial use or enjoyment of the services;

“input tax” means tax paid or payable under this Act in respect of a taxable supply to, or an importation of goods by, a taxable person;

“invoice” means a document which notifies an obligation to make a payment;

“long term insurance” or “long term insurance contract” means life insurance as defined by the Insurance Act;

“Minister” means the Minister responsible for the subject of Finance;

“money” means

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- (a) a coin or paper currency recognized in Saint Christopher and Nevis as legal tender;
- (b) a coin or paper currency of a foreign country which is used or circulated as currency; or
- (c) a bill of exchange, promissory note, bank draft, postal order, money order, or similar instrument other than an item of numismatic interest;

“non-resident” means a person who is not a resident and a person referred to in paragraph (b) of the definition of “resident” to the extent that the person is not a resident;

“other tax” means any tax other than VAT, provided for under legislation in St. Christopher and Nevis

“output tax”, in relation to a taxable person, means the tax charged under section 26.(1)(a) and 26.(1)(d) on a taxable supply made by the person;

“person” includes the Federal Government, an agency of the Federal Government, the Nevis Island Administration, a natural person, trust, company, and partnership;

“pre-primary school” means a school registered and licensed to conduct early childhood education under the Education Act, No. 9 of 2005;

“principal” means the person on whose behalf an agent acts;

“promoter of public entertainment” means a person who arranges the staging of public entertainment, but does not include entertainment organized by any of the following:

- (a) an approved educational institution;
- (b) the board of management or a parent teacher association of an approved educational institution;
- (c) a person who provides entertainment on a daily or weekly basis;
- (d) a church incorporated by an Act of Parliament; or
- (e) an approved charitable organisation;

“public authority” includes any entity

- (a) established by or under the Constitution;
- (b) established by statute;
- (c) which forms part of any level or branch of Government;

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(d) owned, controlled or substantially financed by funds provided by the Federal Government or the Nevis Island Administration; or

(e) carrying out a statutory or public authority function;

for the purposes of this Act, except that an entity referred to in paragraph (e) shall be a public authority only to the extent of its statutory or public functions;

“public entertainment” means any musical entertainment, theatrical performance, comedy show, dance performance, circus show, any show connected with a festival, or any similar event to which the public is invited;

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

“registered person” means a person registered in accordance with the provisions of sections 12, 14 and 18;

“registered recipient” means a registered person who is a recipient;

“registered supplier” means a registered person who is a supplier;

“regulations” mean regulations made under this Act;

“related persons” mean

- (a) a natural person and a relative of that natural person;
- (b) a trust and a person who is or may be a beneficiary in respect of that trust or whose relative is or may be a beneficiary;
- (c) a partnership or company limited by shares and a member thereof who, together with shares or other membership interests held by persons who are related to such member under another paragraph of this definition, owns 25% or more of the rights to income or capital of the partnership or company;
- (d) a shareholder in a company limited by shares if the shareholder, together with shares held by persons who are related to such shareholder under another paragraph of this definition
  - (i) controls 25% or more of the voting power in the company limited by shares; or
  - (ii) owns 25% or more of the rights to dividends or of the rights to capital; or
- (e) two companies, if a person, either alone or together with a person or persons who are related to such person under another paragraph of this definition

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- (i) controls 25% or more of the voting power in both companies; or
- (ii) owns 25% or more of the rights to dividends or of the rights to capital in both companies; and

for purposes of paragraphs (c), (d), and (e) of this definition, a person shall be treated as owning, on a *pro rata* basis, shares or other membership interests which are owned or controlled by such person indirectly through one or more interposed persons;

“relative”, in relation to a natural person, means

- (a) the spouse of the person; or
- (b) an ancestor, lineal descendant of the person’s grandparents, stepfather, stepmother, or stepchild; or
- (c) a spouse of a person referred to in paragraph (b) of this definition; and for the purposes of this definition, an adopted child shall be treated as a natural child of the adopter;

“rental agreement” means an agreement for the letting of goods other than a hire-purchase agreement or a finance lease;

“resident” means

- (a) a person who is resident in Saint Christopher and Nevis for the year in question for purposes of the Income Tax Act; or
- (b) any other person to the extent that such person carries on a taxable or other activity in Saint Christopher and Nevis;

“returnable container” means a container

- (a) belonging to a class of containers specified in regulations made under this Act;
- (b) for which a deposit is charged by the supplier; and
- (c) the deposit for which is required by law or agreement to be refunded or allowed as credit to the person returning it;

“sale” means an agreement of purchase and sale, and any other transaction whereby ownership of goods passes or is to pass from one person to another;

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

“short term insurance contract” means a contract of insurance, including reinsurance, or guarantee against loss, damage, injury, or risk of any kind, whether pursuant to any contract or law, and includes a renewal of such contract, but does not include a life insurance contract;

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- “supplier”, in relation to a supply, means the person making the supply;
- “supply” has the meaning assigned to it by section 4;
- “tax” means value added tax;
- “taxable activity” has the meaning assigned to it under section 6;
- “tax period” has the meaning in section 45;
- “taxable person” means a person who is registered or is required to register under Section 12 of this Act or a regulation made pursuant to this Act.
- “taxable supply” means a supply of goods or services in Saint Christopher and Nevis in the course of, or furtherance of, a taxable activity, other than an exempt supply;
- “taxation officer” means the Comptroller and any other person in the service of the Government who is acting on behalf of the Comptroller;
- “tax credit note” has the meaning assigned to it by section 44;
- “tax debit note” has the meaning assigned to it by section 44;
- “tax fraction”, in relation to a taxable supply, means the fraction calculated in accordance with the formula  $R/(1+R)$  where “R” is the rate of VAT (expressed as a percentage) applicable to the taxable supply;
- “tax invoice” means a document provided in accordance with the provisions of section 43;
- “taxpayer identification number” means the number issued by the Comptroller, for tax purposes, to a person registered under this Act;
- “trust” means a relationship where property is under the control or management of a trustee;
- “trustee” means a person appointed or constituted a trustee by the act of parties, by order or declaration of a court, or by operation of law, or a person having or taking upon himself or herself the administration or control of property subject to a trust;
- “value added tax (VAT)” or “tax” means the tax imposed under this Act and includes any amount to the extent that it is treated as tax for the purposes of this Act;
- “value of imported goods” has the meaning assigned to it by section 28;
- “value of a supply” has the meaning assigned to it by section 37.

### **3. Definition of fair market value.**

(1) For the purposes of this Act, the fair market value of a supply or importation of goods or services at a given date is the consideration in money which the supply or importation, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Saint Christopher and Nevis, being a supply or importation freely offered and made between persons who are not related persons.

(2) Where the fair market value of a supply or importation of goods or services at a given date cannot be determined under subsection (1), the fair market value is the consideration in money which a similar supply or similar importation, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Saint Christopher and Nevis, being a supply or importation freely offered and made between persons who are not related persons.

(3) Where the fair market value of a supply or importation of goods or services cannot be determined under subsection (1) or (2), the fair market value shall be determined in accordance with any method approved by the Comptroller, which method shall provide a sufficiently objective approximation of the consideration in money which could be obtained for that supply or importation had the supply or importation been freely offered and made between persons who are not related persons.

(4) The fair market value of a supply or importation shall be determined at the time of the supply or importation as determined in this Act.

(5) In this section,

“similar importation”, in relation to goods or services, means goods or services produced in the same country which, although not alike in all respects, have the characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable; and

“similar supply”, in relation to a supply of goods or services, means any other supply of goods or services which, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services.

### **4. Definition of supply.**

(1) Subject to this Act, a supply of goods means

(a) a sale of goods;

(b) a grant of the use or right to use goods, whether with or without a driver, pilot, crew, or operator, under a rental agreement, credit agreement, freight contract, agreement for charter, or other agreement under which such use or right to use is granted; or

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- (c) a transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water.
- (2) Subject to this Act, a supply of services means anything done which is not a supply of goods or money, including
- (a) the granting, assignment, cessation, or surrender of a right;
  - (b) making available a facility or advantage; or
  - (c) refraining from or tolerating an activity.
- (3) The disposition of a taxable activity as a going concern, or a part of a taxable activity that is capable of separate operation, is a supply of goods made in the course or furtherance of such taxable activity.
- (4) For the purposes of subsection (3), a taxable activity or a part of a taxable activity capable of separate operation is disposed of as a going concern where
- (a) all the goods and services necessary for the continued operation of the taxable activity or the part of a taxable activity are supplied to the transferee; and
  - (b) the transferor carries on, or is carrying on, that taxable activity or that part of a taxable activity up to the time of its transfer to the transferee.
- (5) A supply of goods for goods or services is a supply of goods.
- (6) A supply of services for goods or services is a supply of services.
- (7) Subject to subsections (18) and (22), the application by a taxable person of goods or services acquired for use in a taxable activity to a different use, including the provision of goods or services to an employee for personal use, is a supply of those goods or services by the taxable person in the course or furtherance of that taxable activity.
- (8) Where goods are repossessed under a credit agreement, the repossession is a supply of goods by the debtor under the credit agreement to the person exercising the right of repossession, and where such debtor is a registered person the supply is made in the course or furtherance of the debtor's taxable activity unless such goods did not form part of the assets held or used by the debtor in connection with that taxable activity.
- (9) Where a lay-way agreement terminates or is cancelled and the seller retains an amount paid by the purchaser or recovers an amount the purchaser owes under the agreement, the cancellation or termination is a supply of services by the seller in respect of the agreement.
- (10) The placing of a bet by a person with another person operating a game of chance is a supply of services by the person operating the game of chance to the first-mentioned person.
- (11) A supply of services incidental to a supply of goods is part of the supply of goods.

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(12) A supply of goods incidental to a supply of services is part of the supply of services.

(13) A supply or importation of services incidental to an importation of goods is part of the importation of goods.

(14) Regulations made under section 117 of this Act may provide that a supply of goods and services is a supply of goods or services.

(15) Where a supply consists of both a supply that is charged with a tax at a positive rate and

- (a) a supply charged with a tax at a different positive rate;
- (b) a supply charged with tax at zero rate; or
- (c) an exempt supply;

each part of the supply shall be treated as a separate supply if reasonably capable of being supplied separately.

(16) A supply of services by an employee to an employer by reason of employment is not a supply.

(17) The transfer of goods to a person acting in a representative capacity to the transferor is not a supply.

(18) Where a taxable person supplies goods or services and that person is not entitled to claim a deduction for input tax imposed and paid on the acquisition of such goods or services, the supply by the taxable person is a supply of goods or services otherwise than in the course or furtherance of a taxable activity.

(19) Where a supply described in subsection (3) is charged with tax at the rate of zero percent in accordance with the provisions of paragraph 5(1) of the Second Schedule, the acquisition of the taxable activity is a supply by the recipient in the course or furtherance of a taxable activity carried on by the recipient to the extent that the goods and services comprising the taxable activity were acquired for a purpose other than consumption, use, or supply in the course of making taxable supplies, unless this purpose relates to less than 10% of the total taxable activity.

(20) Subject to subsection (21), where a right to receive goods or services for a monetary value stated on a token, voucher, gift certificate, or stamp, other than a postage stamp authorized under the Post office Act, Cap. 16.03, is granted for a consideration in money, the issue of such token, voucher, gift certificate, or stamp is not a supply, except to the extent, if any, that such consideration exceeds that monetary value.

(21) The issuance of a phone card, prepayment on a cellular phone, or a similar scheme of advance payment for the supply of goods or the rendering of services is a supply for VAT purposes.

(22) A person whose registration is cancelled pursuant to the provisions of section 23 shall be deemed to have made a taxable supply in Saint Christopher and Nevis of

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- (a) except as provided in paragraph (b), the value of goods or services on hand; and
- (b) for capital goods, the value of those goods for income tax purposes;

on the date the registration is cancelled, but only if an input tax deduction was claimed with respect to the goods or services.

(23) Notwithstanding subsections (11) and (13), a supply of real property shall not include the supply of services incidental to that supply or the importation of services incidental to that supply.

(24) Where a registered person receives a payment of a claim or is otherwise indemnified under a general insurance contract for a loss incurred in connection with the conduct of a taxable activity, the receipt of such payment or indemnity is a supply of services by a registered person in the course or furtherance of a taxable activity, but only if the supply of that general insurance contract was taxable under section 25, other than a supply charged to tax at a zero rate under section 32 or 33.

(25) The Minister may, by regulations, prescribe rules to determine whether a transaction constitutes a supply for the purposes of this section.

#### **5. Supply by agent or auction.**

- (1) Subject to this section, a supply of goods or services made
  - (a) by a person as agent for another person, “the principal”, is a supply by the principal; or
  - (b) to a person as agent for a principal is a supply to the principal.
- (2) The provisions of subsection (1) shall not apply to services supplied by an agent to the agent’s principal.
- (3) Except for an exempt supply, a supply of goods by auction shall be treated as a supply of goods for consideration by the auctioneer as supplies made in the course or furtherance of a taxable activity carried on by the auctioneer.
- (4) The provisions of subsection (1) shall not apply where the principal is a non-resident.

#### **6. Taxable activity.**

(1) For the purposes of this Act, “taxable activity” means an activity which is carried on continuously or regularly by any person in Saint Christopher and Nevis or partly in Saint Christopher and Nevis whether or not for profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to another person for consideration.

- (2) A taxable activity shall not include
  - (a) an activity carried on by

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- (i) a natural person essentially as a private recreational pursuit or hobby; or
  - (ii) a person, other than a natural person, which would, if carried on by a natural person, be carried on essentially as a private recreational pursuit or hobby;
- (b) an activity to the extent that the activity involves the making of exempt supplies; or
- (c) an activity of the Federal Government or the Nevis Island Administration or a public authority, except where the Federal Government or the Nevis Island Administration or a public authority
- (i) conducts auctions;
  - (ii) hires equipment;
  - (iii) rents space;
  - (iv) leases land; or
  - (v) engages in an activity commonly conducted for profit.
- (3) Anything done in connection with the commencement or termination of a taxable activity shall be treated as being carried out in the course or furtherance of that taxable activity.
- (4) Subject to the provisions of subsection (5), a supply is made for consideration if the supplier directly or indirectly receives a payment for the supply from the recipient or any other person, including a payment wholly or partly in money or kind.
- (5) A supply made for consideration includes
- (a) a supply made between related persons for no consideration;
  - (b) a supply of goods for use only as trade samples; or
  - (c) a supply referred to in section 4(7) or 4(19).
- (6) A taxable activity includes a supply of public entertainment.

**PART II – ADMINISTRATION****7. Duties of the Comptroller.**

- (1) The Comptroller shall be responsible for implementing or carrying out the provisions of this Act.
- (2) The Comptroller may, in relation to any matter or class of matter, delegate, to a taxation officer, or any other person who is employed for the purpose of assisting in carrying out the provisions of this Act, any duty, function, or power conferred upon the Comptroller by this Act, other than

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- (a) the power of delegation conferred by this subsection; and
- (b) the power to sanction prosecution conferred by section 84.

(3) A delegation made pursuant to the provisions of subsection (2) may be revoked at any time by the Comptroller, and such delegation shall not, during the time it is in force, prevent the Comptroller himself or herself from exercising such duties, functions or powers.

(4) Subject to subsections (5) and (6), a decision made and a notice or communication issued or signed by the Comptroller or his or her delegatee may be withdrawn or amended at any time.

(5) Where the Comptroller, knowing all the material facts at the time, makes a decision that a person is required to or not required to register, and the person accepts the Comptroller's decision, and subsequently the Comptroller withdraws his or her decision, then the Comptroller's earlier decision shall govern the liability or non-liability of the person in respect of the payment of tax on any transaction concluded or event which occurred before the withdrawal of the decision.

(6) Where the Comptroller, knowing all the material facts at the time, makes a decision as to the nature of the transaction concluded by a person, and the person accepts the Comptroller's decision, and subsequently the Comptroller withdraws his or her decision, then the Comptroller's decision shall govern the liability or non-liability of the person in respect of the payment of tax on any transaction concluded before the withdrawal of the decision.

## **8. Secrecy.**

(1) Subject to the provisions of this section, a taxation officer or other person carrying out the provisions of this Act shall not

- (a) disclose to any other person any matter in respect of any other person, which matter may come to their knowledge during the exercise of their duties, functions and powers under the provisions of this Act; or
- (b) permit any person to have access to any records in the possession of the Comptroller, except in the course of the exercise of their duties, functions or powers under the provisions of this Act or by an order of a court.

(2) Nothing in this section shall prevent the Comptroller from disclosing

- (a) any documents or information to
  - (i) a person where the disclosure is necessary for the purposes of this Act or any other law in force in Saint Christopher and Nevis which the Comptroller or the Comptroller of Customs has the power, duty or function to administer;

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- (ii) a person authorized by any enactment to receive such information; or
  - (iii) the competent authority of the Government of another country with which Saint Christopher and Nevis has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under the agreement or any law in force in Saint Christopher and Nevis; or
- (b) information which does not identify a specific person to a person in the service of Saint Christopher and Nevis in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties.

(3) A person who receives any document or information pursuant to the provisions of subsection (2) shall keep the document or information secret until the purpose for which the disclosure was made is achieved.

(4) Documents or information obtained by the Comptroller in the performance of his or her duties under this Act may be used by the Comptroller for the purposes of any other law administered by the Minister, Comptroller or the Comptroller of Customs.

(5) If a person consents, in writing, information regarding that person may be disclosed to another person.

(6) The Comptroller may disclose information concerning a taxpayer's affairs to a person claiming to be the taxpayer or the taxpayer's authorized representative only after obtaining reasonable assurance of the authenticity of the claim.

(7) Nothing in this section shall prevent the Comptroller and the Comptroller of Customs from exchanging information in order to perform their duties under any enactment in force in Saint Christopher and Nevis that they administer.

(8) The obligation as to secrecy imposed by this section shall continue to apply in respect of any person even if that person ceases to have any official duty under this Act, or to be employed in carrying out the provisions of this Act.

(9) A person who contravenes this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding one year or both.

## **9. Collection of tax on imported goods.**

(1) The Comptroller of Customs shall, on behalf of the Comptroller, be responsible for the collection of the tax imposed on imported goods by the provisions of this Act.

(2) Tax on imported goods shall be charged and payable under this Act, but, for the purposes of collecting and enforcing the payment of this tax, the Customs (Control and Management) Act, Cap. 20.40 shall apply with the necessary modifications or changes in the same manner as if the collection and enforcement of the payment of the tax were a duty of customs.

(3) The Comptroller of Customs may, by virtue of the provisions of subsection (4), exercise any power conferred on the Comptroller of Customs by any customs legislation as if the reference to duty in that legislation included a reference to tax charged on imported goods under this Act.

(4) Unless a contrary intention appears, the provisions of the Customs (Control and Management) Act relating to the importation, transit, coastwise carriage, clearance of goods, and payment and recovery of duty apply, so far as relevant, to the tax charged under this Act on the imported goods, with such exceptions, modifications, and adaptations as the Minister may, by regulations made under this Act, prescribe.

#### **10. Import declaration and payment of tax on imported goods.**

(1) The Comptroller of Customs

- (a) shall, on behalf of the Comptroller, collect, at the time of importation of any goods, any tax due under this Act on the imported goods;
- (b) shall, at the time of collection of the tax, obtain the name and the taxpayer's identification number, if any, of the importer, the import declaration, and the invoice values in respect of the imported goods; and
- (c) may make arrangements with the Postmaster General to perform, on behalf of the Comptroller of Customs, functions in respect of the collection of tax on imported goods that arrive through the postal services.

(2) Where tax is payable on any imported goods, the importer shall, upon the entry of the goods, furnish the Comptroller of Customs with an import declaration and pay the tax due on the imported goods in accordance with the arrangements referred to in section 9.(4).

(3) An import declaration referred to in subsection (2) shall

- (a) be in the form prescribed by the Comptroller of Customs;
- (b) contain the information necessary to calculate the tax payable in respect of the imported goods; and
- (c) be furnished in the manner prescribed by the Comptroller of Customs.

**11. Import declaration and payment of tax on imported services.**

- (1) Where tax is payable on imported services, other than where section 4.(13) applies, the person who is liable to pay the tax under section 25.(2)(c) shall
- (a) furnish the Comptroller with an import declaration; and
  - (b) pay the tax due in respect of the imported services within a period of fifteen calendar days after the tax period in which the services were imported.
- (2) An import declaration referred in subsection (1) shall
- (a) be in such form as may be prescribed by the Comptroller;
  - (b) contain the information necessary to calculate the tax payable in respect of the imported services; and
  - (c) be furnished in the manner prescribed by the Comptroller.

**PART III – REGISTRATION****12. Criteria for registration.**

- (1) Subject to the provisions of subsection (2), a person shall not, on or after the coming into force of this Part, supply goods or services for consideration unless that person is duly registered in accordance with the provisions of this Part.
- (2) The provisions of subsection (1) shall not apply to a person who
- (a) has, in accordance with the provisions of section 16, made an application to be registered which has not yet been dealt with by the Comptroller; or
  - (b) makes a supply in the circumstances referred to in section 15.
- (3) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on summary conviction, to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding two years or both.
- (4) Subject to the provisions of subsections (9), (11), and (13), every person who carries on a taxable activity and is not registered, shall apply for registration within a period of fourteen calendar days
- (a) of the end of any period of twelve months or fewer months where, during that period, the person made taxable supplies the total value of which exceeded \$150,000; or
  - (b) of the beginning of any period of three hundred and sixty five calendar days, where there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed \$150,000.

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(5) Where a person who is required to register pursuant to the provisions of subsection (4) did not reside in Saint Christopher and Nevis for the year in question for purposes of the Income Tax Act, then any supply made by that person shall be taken into account, only where the supply is made or is to be made in Saint Christopher and Nevis.

(6) Notwithstanding the provisions of subsection (4), a person who carries on a taxable activity and is not registered shall apply for registration if

- (a) that person, during any period of three months, made taxable supplies which exceeded \$37,500; and
- (b) there are reasonable grounds to expect that the total value of taxable supplies to be made by that person during that period and the next consecutive nine months will exceed \$150,000.

(7) A person who is required to register pursuant to the provisions of subsection (6) shall, after his or her taxable supplies have exceeded \$37,500 as provided in paragraph (a) of that subsection, apply for registration within a period of fourteen calendar days of the end of the third month.

(8) Where a person applies for registration pursuant to the provisions of subsection (6) and that person did not reside in Saint Christopher and Nevis for the year in question for purposes of the Income Tax Act, Cap. 20.22, then any supply made by that person shall be taken into account, only where the supply is made or is to be made in Saint Christopher and Nevis.

(9) Notwithstanding the provisions of subsection (4), (6) and (13), and (16) the Federal Government or the Nevis Island Administration or a public authority shall apply for registration from the date the Federal Government or the Nevis Island Administration or a public authority starts a taxable activity.

(10) Pursuant to the provisions of subsection (9), the Federal Government or the Nevis Island Administration shall be a taxable person from the beginning of the three hundred and sixty-five day period, the date the Federal Government or the Nevis Island Administration starts a taxable activity.

(11) Notwithstanding the provisions of subsection (4) and (6), a person who is an auctioneer shall apply for registration on the date on which that person becomes an auctioneer.

(12) Pursuant to the provisions of subsection (11), a person who is an auctioneer shall become a taxable person from the date the person becomes an auctioneer.

(13) Notwithstanding the provisions of subsection (4) and (6), a promoter of public entertainment, a licensee and a proprietor of a place of public entertainment shall each apply for registration not later than seven calendar days before the public entertainment promoted by each of them starts if, within any period of twelve months or fewer months which includes the public entertainment which is about to be promoted, the total value of the promotion or the licensee's or proprietor's taxable supplies are reasonably expected to exceed \$150,000.

(14) Pursuant to the provisions of subsection (13), a promoter of public entertainment, a licensee, and a proprietor of a place of public entertainment shall be taxable persons from the date each of them begins making taxable supplies in connection with the public entertainment.

(15) Where the promoter of a public entertainment, licensee or proprietor of a place of public entertainment did not reside in Saint Christopher and Nevis for the year in question for purposes of the Income Tax Act, then any supply made by that person shall be taken into account, only where the supply is made or is to be made in Saint Christopher and Nevis.

(16) Where a person engages in the supply of

- (a) commercial and time-share property for lease; or
- (b) professional services as may be prescribed by regulations made under this Act;

the amount specified in subsections (4)(a) and (b) and (6)(b) as \$150,000 is \$96,000, and the amount specified in subsection (6)(a) as \$ 37,500 is \$24,000.

(17) A person shall be subject to the \$96,000 annual threshold, wherever that amount appears in this section, if the person renders services which are subject to the \$150,000 threshold and also makes supplies which are subject to the \$ 96,000.

(18) The Minister may, by Order, change the threshold specified in subsections (4), (6) and (16) and an Order made pursuant to the provisions of this subsection shall be subject to affirmative resolution of the National Assembly.

### **13. Determination of value based on related persons.**

(1) The Comptroller may, in determining whether a person is required to register pursuant to the provisions of subsections (4), (6), (13) or (16) of section 12, have regard to the value of taxable supplies made by another person where both persons are related persons or are acting in concert in making the taxable supplies.

(2) For the purposes of subsections (4), (6), (13) and (16) of section 12, the value of the person's supplies shall be determined in accordance with the provisions of section 37.

### **14. Registration of person upon his or her request.**

(1) A person who makes or intends to make taxable supplies, but is not required to register under section 12, may apply to the Comptroller for registration under this Act.

(2) The Comptroller shall not accept an application made pursuant to the provisions of subsection (1) if

- (a) the applicant has no fixed place of abode or business;
- (b) the applicant does not keep proper records;

- (c) the Comptroller has reasonable grounds to believe that the applicant
  - (i) will not keep proper records; or
  - (ii) will not submit regular and reliable tax returns; or
- (d) the applicant has not complied with his or her obligations under the laws relating to tax, including any laws relating to customs; as required under this Act.

#### **15. When registration may not be required.**

A person shall not be required to register under the provisions of subsections (4), (6), or (13) of section 12 if the Comptroller is satisfied that the value of taxable supplies exceeded the amount specified in subsection (4) of section 12 solely as a result of

- (a) cessation of a taxable activity carried on by the person;
- (b) substantial and permanent reduction in the size and scale of a taxable activity carried on by the person; or
- (c) replacement of old capital goods used in connection with the person's taxable activity.

#### **16. Form of application.**

(1) Subject to the provisions of section 17, an application for registration under this Part shall be in such form as may be prescribed by the Comptroller.

(2) The Comptroller shall, within twenty – one days of receipt of an application under subsection (1), inform the applicant, in writing, of the decision taken by the Comptroller in respect of the application.

(3) Subject to the provisions of section 18.(1), where the Comptroller does not inform the applicant as provided by subsection (2), then the Comptroller shall be deemed to have made a decision to register the applicant.

(4) A person who is dissatisfied with a decision of the Comptroller given pursuant to the provisions of subsection (2) may challenge the decision in accordance with the provisions of Part X of this Act.

#### **17. Consideration of application.**

(1) The Comptroller may, upon receipt of an application for registration, request the applicant to submit additional information in addition to the information the applicant is required to give in the application referred to in section 16, if the Comptroller deems it necessary for considering the application.

(2) Where the Comptroller requests for additional information for the purposes of subsection (1), the applicant shall submit the requested information, in the form

prescribed by the Comptroller, within fourteen days from the date the request is made or within such further period as the Comptroller may, in writing, grant to the applicant.

(3) Where the Comptroller requests for additional information pursuant to the provisions of subsection (1), the application shall, for the purposes of this Part, be treated as having been submitted on the date when the information requested from the applicant is received by the Comptroller.

### **18. Registration of applicants etc.**

(1) Subject to subsection (10), the Comptroller shall, unless he or she is satisfied that an applicant is not required to apply for registration under section 12, register the applicant within twenty-one days of receipt of the application.

(2) Notwithstanding the provisions of subsection (1), where an application for registration is made pursuant to the provisions of section 14 the decision to register or not shall be at the discretion of the Comptroller and the Comptroller shall inform the applicant of the decision taken by the Comptroller within a period of thirty calendar days of receipt of the application.

(3) Where an application is made pursuant to the provisions of section 12.(4)(a), registration shall take effect from the beginning of the tax period immediately following the end of twelve months or fewer months.

(4) Where an application is made pursuant to the provisions of section 12.(4)(b), registration shall take effect from the beginning of the three hundred and sixty-five day period.

(5) Where an application is made pursuant to the provisions of section 12.(9), registration shall take effect from the date the Federal Government or the Nevis Island Administration starts a taxable activity.

(6) Where an application is made pursuant to the provisions of section 12.(11), registration shall take effect from the date the person becomes an auctioneer.

(7) Where an application is made pursuant to section 12.(13), registration shall take effect from the date the promoter, licensee or proprietor begins making taxable supplies in connection with the public entertainment..

(8) Where an application is made pursuant to the provisions of section 14.(1) registration shall take effect on the date prescribed by the Comptroller.

(9) Where an application is made pursuant to the provisions of section 12.(6), registration shall take effect from the beginning of the tax period immediately following the end of the three month.

(10) Where a person who is required to register fails to apply for registration as provided by section 12, the Comptroller may register that person, and that person's date of registration shall take effect on the date prescribed by the Comptroller.

**19. Certificate of registration.**

(1) The Comptroller shall issue to each person who is registered in accordance with the provisions of this Act a certificate of registration.

(2) The certificate of registration shall contain the following information:

- (a) the name and other relevant particulars of the registered person;
- (b) the date on which the registration takes effect; and
- (c) the person's taxpayer identification number.

**20. Display of certificate of registration.**

A person who is issued a certificate of registration in accordance with the provisions of section 19 shall display the certificate in a conspicuous place at each place or location at which that person carries on or engages in a taxable activity.

**21. Register.**

(1) The Comptroller shall establish and maintain a register containing the relevant details of all persons who are registered pursuant to the provisions of this Part.

(2) The Comptroller shall make publicly available the names of the persons who are registered, their taxpayer identification numbers, and contact details.

**22. Change of information.**

A person who is registered pursuant to the provisions of this Part shall, in writing, notify the Comptroller within a period of twenty – one calendar days of any change

- (a) in the name, address, place of business, constitution, or nature of the principal taxable activity or activities of the person;
- (b) of address from which, or name in which, any taxable activity is carried on by the person; or
- (c) in circumstances where the person ceases to operate or closes his or her taxable activity on a temporary basis in a situation not covered by the provisions of section 23.(1).

**23. Cancellation of registration**

(1) Subject to subsection (12), a taxable person who ceases to carry on a taxable activity shall notify the Comptroller of that fact within a period of seven calendar days from the date the person ceases to carry on the taxable activity.

(2) A notification required to be given pursuant to the provisions of subsection (1) shall be made in writing and shall contain the following information:

- (a) the date upon which that person ceased to carry on a taxable activity; and

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- (b) whether or not that person intends to carry on any taxable activity within a period of twelve months from the date of the cessation of the taxable activity.

(3) Subject to subsection (11), the Comptroller shall, upon receipt of the notification referred to in subsection (1), cancel the registration of that person, which cancellation shall take effect from the last calendar day of the tax period during which any such taxable activity ceased or from such date as the Comptroller may determine.

- (4) If the Comptroller is satisfied that a taxable person
  - (a) is not carrying on a taxable activity; or
  - (b) was not required or entitled to apply for registration; and
    - (i) has no fixed place of abode or business;
    - (ii) has not kept proper accounting records relating to any business activity carried on by that person;
    - (iii) has not submitted regular and reliable tax returns as required by section 46; or
    - (iv) has not complied with his or her obligations under the laws relating to tax, including any laws relating to customs;
  - (c) was required to register under section 12.(4) or (6) and ceases to satisfy the provisions of section 12 relating to the registration requirements;

the Comptroller may cancel the registration of that person, and the cancellation shall take effect from the last day of the tax period during which the Comptroller becomes so satisfied or from such other date as the Comptroller may determine, and the Comptroller shall, in writing, inform or notify the taxable person of the date on which the cancellation shall take effect.

(5) A date determined by the Comptroller for the cancellation of registration pursuant to the provisions of subsection (4) may be made retrospective to a date not earlier than

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

(6) Subject to the provisions of subsection (7), and except for an auctioneer, the Federal Government or a public authority or the Nevis Island Administration, a taxable person may, in writing, apply to the Comptroller to have his or her registration cancelled where, at any time, the value of that person's taxable supplies

- (a) in the past twelve months has not been; or

(b) in the period of twelve months then beginning will not be; more than the amount specified in section 12.(4) and (16).

(7) A person who is

- (a) required to register pursuant to the provisions of section 12.(4) or (6) but ceases to satisfy the criteria required for registration; or
- (b) registered as a result of an application made under section 14.(1);

may apply for cancellation of registration only after the expiration of two years from the date the registration took effect.

(8) Where the Comptroller is satisfied that a taxable person who has made an application under subsection (6) or (7) is entitled to have his or her registration cancelled, the Comptroller shall cancel the person's registration, and remove the person's name and details referred to in section 21.(1) and the cancellation shall take effect from the end of the tax period unless the Comptroller orders the cancellation to take effect at an earlier date.

(9) Any obligation or liability imposed by this Act, including the obligation to pay tax and to file returns, on any person in respect of anything done or omitted to be done by that person while the person is a taxable person shall not be affected by the cancellation of that person's registration.

(10) A person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of this section may challenge the decision in accordance with the provisions of Part X of this Act.

(11) The Comptroller may not cancel the registration of a taxable person under subsection (3) where the Comptroller has reasonable grounds to believe that the taxable person will be carrying on a taxable activity at any time within a period of twelve months from the date of the cessation of the taxable activity.

(12) A taxable person who sells a going concern or engages in a similar transaction shall, in writing, notify the Comptroller of the fact seven calendar days before the earliest of the date

- (a) the sale closes;
- (b) the purchaser acquires any legal interest in the assets to be acquired; or
- (c) the assets of the going concern are transferred.

#### **24. Return of certificate of registration.**

(1) Where the Comptroller cancels the registration of a person in accordance with the provisions of section 23 and issues a notice of cancellation pursuant to that section, the person shall return the certificate to the Comptroller within a period of seven days from the date that person receives the notice of cancellation.

(2) A person who fails to comply with the provisions of subsection (1) by refusing or failing to return the certificate commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.

#### **PART IV - IMPOSITION OF TAX AND TAXABLE PERSONS ETC.**

##### **25. Imposition of Tax and Taxable persons.**

(1) Subject to the provisions of this Act, a tax to be known as value added tax shall be charged upon

- (a) every taxable supply by a taxable person in Saint Christopher and Nevis, including a supply described in section 26(1)(c);
- (b) every import of good and import of services, other than an exempt import.

(2) Unless otherwise provided in this Act, the tax payable under the provisions of subsection (1) shall,

- (a) in the case of a supply to which section 26.(1)(a) applies, be accounted for by the taxable person making the supply;
- (b) in the case of an importation of goods, be paid by the importer of the goods; or
- (c) in the case of an importation of services, be paid by the recipient of the services.

(3) A transaction which is chargeable with tax under the provisions of subsection (1)(a) as well as subsection (1)(b) shall be treated as a supply chargeable under subsection (1)(a).

##### **26. Rate of tax.**

(1) The rate of tax payable under the provisions of this Act shall be calculated in accordance with the provisions of this Act at the rate of

- (a) 17 percent of the value of every taxable supply by a taxable person in Saint Christopher and Nevis;
- (b) 17 percent of the value of every imported goods or imported services, other than an exempt imported goods or imported services;
- (c) 17 percent of the value of supply of goods by a registered or unregistered person, mission, organisation, or government that obtained an exemption from tax or a refund of the tax on the import or domestic acquisition of such goods if the supply occurs within a period of five years after the goods are acquired;

- (d) to the extent provided in regulations, 10 percent of the value of a taxable supply by a taxable person in Saint Christopher and Nevis of
  - (i) accommodation services by a hotel, guest house, inn, or similar establishment; and
  - (ii) accommodation services in an apartment or room with utilities and furnishings provided by the lessor, but not including services to a renter in a private home;
  - (iii) the value of supply by a tour operator as defined in regulations made under this Act;
  - (iv) the value of supply by a restaurant as defined in regulations made under this Act.

(2) Notwithstanding subsection (1), the rates of tax referred to in subsection (1) may be calculated in accordance with the provisions of this Act at such other rate as the Minister may, by Order, specify, except in the case of a supply that is zero rated, and an Order made pursuant to the provisions of this subsection shall be subject to affirmative resolution of the National Assembly.

#### **27. Calculation of tax on imported goods.**

Tax charged on imported goods shall be an amount calculated by multiplying the rate of tax applicable under this Act by the value of the goods imported.

#### **28. Value of imported goods and services.**

(1) For the purposes of this Act, the value of goods imported into Saint Christopher and Nevis shall be an amount equal to the sum of

- (a) the value of the goods for the purposes of customs duty under the Customs (Control and Management) Act and any Act that may replace it;
- (b) the cost of insurance and freight which is not included in the customs value under paragraph (a);
- (c) the amount of any customs duty, excise tax, environmental surcharge, or any other fiscal charge, other than tax, payable on the importation of such goods; and
- (d) the amount of customs service charge payable on the importation of such goods.

(2) Subject to the provisions of subsection (3), the value of services imported into Saint Christopher and Nevis shall be the amount of the consideration for the services which are imported.

(3) Where the services which are imported are made for no consideration or for a consideration which is less than the fair market value of the services, and if the

supplier and the recipient are related persons, then the value of the imported services shall be the fair market value of the imported services.

(4) Where a portion of the price of the imported services represents tax imposed by this Act which is not accounted for separately, the value of the imported services shall be the price reduced by an amount equal to the tax fraction multiplied by that price.

**29. Time of importation of goods and services.**

(1) Except as provided by subsection (2), the importation of goods into Saint Christopher and Nevis occurs when the goods are entered for purposes of the Customs (Control and Management) Act, Cap. 20.40.

(2) For the purposes of subsection (1), the importation of goods destined for a duty – free shop occurs at the time when the goods arrive in Saint Christopher and Nevis.

(3) For the purposes of this Act, the importation of services occurs at the time determined by applying the provisions of section 35 to the services imported on the basis that the imported services are a supply of services.

**Exempt Imports and Zero rated Imports**

**30. Exempt imported goods.**

(1) Subject to the provisions of subsection (2), the goods specified in Part 1 of the First Schedule shall be exempt from the payment of tax imposed by this Act.

(2) Notwithstanding subsection (1), the import of goods shall be exempt from the payment of tax where such goods would constitute zero-rated supplies under the provisions of section 33 and Part II of the Second Schedule or constitute an exempt supply under the provisions of section 34 and Paragraph 3 of the Third Schedule if they were a supply of goods in Saint Christopher and Nevis.

**31. Exempt imported services.**

Parliament may make provision relating to imported services that may be exempted from payment of tax for purposes of this Act.

**32. Zero-rated imports.**

Parliament may make provision relating to imported imports that may be zero rated for purposes of this Act.

**PART V - RULES RELATING TO SUPPLIES**

**33. Zero rated supplies.**

(1) For the purposes of this Act, the supply of goods or services specified in the Second Schedule to this Act shall be zero rated.

(2) Where a taxable person applies the rate of zero percent to a supply under this section, that person shall obtain and retain such documentary proof, as may be acceptable to the Comptroller, to substantiate that person's entitlement to apply the zero rate to the supply.

(3) The Minister may, by Order, amend the Second Schedule, and such Order shall be subject to affirmative resolution of the National Assembly.

#### **34. Exempt supplies**

(1) Subject to subsection (2), a supply of goods or services specified in the Third Schedule shall, for the purposes of this Act, be an exempt supply:

(2) Where a supply is specified in the Third Schedule as an exempt supply and as zero-rated under section 33, the zero-rating under section 33 takes priority.

#### **35. Time of supply.**

(1) Subject to the provisions of this Act, a supply of goods or services occurs on the earliest of the date on which

- (a) the goods are delivered or made available or the performance of services is completed;
- (b) an invoice for the supply is issued by the supplier; or
- (c) any consideration for the supply is received.

(2) A supply of goods under a credit agreement occurs on the date of the commencement of the agreement.

(3) A supply of goods pursuant to a lay-away agreement occurs when the goods are delivered to the purchaser.

(4) A supply of goods or services referred to in section 4.(7) occurs when the goods or services are applied to a different use.

(5) A supply of goods referred to in section 4.(8) occurs when the goods are repossessed, or where the debtor may under any law be reinstated in his or her rights and obligations under the credit agreement, the day after the last day of any period during which the debtor may under such law be reinstated.

(6) A supply of services referred to in section 4.(9) occurs when the seller obtains the right to retain any amount paid by the purchaser or when the seller recovers any amount owing by the purchaser under the agreement.

(7) A supply for consideration in money received by the supplier by means of a machine, meter, or other device operated by coin, note, or token occurs when the coin, note or token is taken from the machine, meter, or other device by or on behalf of the supplier.

(8) Goods supplied under a rental agreement or services supplied under an agreement which provides for periodic payments shall be treated as successively supplied for successive parts of the period of the agreement, and each of the successive supplies occur when a payment becomes due or is received, whichever is earlier.

- (9) Where
- (a) goods described under section 4.(1)(c) are supplied; or
  - (b) goods or services are supplied directly in the construction, major reconstruction, manufacture, or extension of a building or engineering work;

and the consideration becomes due and payable in installments or periodically, the goods or services shall be treated as successively supplied for each period to which a payment for the goods or services relates, and each successive supply occurs when payment in respect of the supply becomes due or is received, or any invoice relating only to that payment is issued, whichever is the earliest.

(10) A supply referred to in section 4.(19) occurs when the supply referred to in section 4.(3), to which it relates, occurs.

(11) To the extent that the issuance of a token, voucher, gift certificate, or stamp is a supply referred to in section 4.(20), the supply occurs when the token, voucher, gift certificate, or stamp is issued.

(12) The supply of a phone card, prepayment on a cellular phone, or similar scheme of advance payment for goods or services referred to in section 4.(21) occurs when the card is issued or the advance payment is made.

(13) The forfeit of a deposit, other than a deposit on a returnable container, is a supply of services when the deposit is forfeited.

(14) A supply referred to in section 4.(22) occurs at the time the registration of a taxpayer is cancelled.

(15) The Minister may, by regulations, prescribe rules to determine the time of supply of particular goods or services which are not provided for by this section.

### **36. Place of supply.**

(1) Subject to the provisions of this Act, a supply of goods takes place where the goods are delivered by the supplier to the recipient or made available by the supplier to the recipient or, if the delivery or making available involves the goods being transported, the place where the goods are when the transportation commences.

(2) A supply of thermal or electrical energy, heating, gas, refrigeration, air conditioning, or water takes place where the supply is received by the recipient.

(3) Subject to this section and regulations made under this Act, a supply of a service takes place at the location of the place of business of the supplier from which the services are supplied.

(4) The supply of the following goods or services takes place where the recipient uses or obtains the advantage of the goods or services:

- (a) a transfer or assignment of a copyright, patent, license, trademark, or similar right;

- (b) the services of a consultant, engineer, lawyer, architect, or accountant, the processing of data or supplying information, or any similar service;
- (c) an advertising service;
- (d) the supply of personnel;
- (e) the service of an agent in procuring for the agent's principal a service described in this subsection;
- (f) the leasing of tangible personal property, other than transport property;
- (g) the supply of goods via electronic commerce and the supply of internet access or similar services;
- (h) telecommunications services; or
- (i) the obligation to refrain from pursuing or exercising taxable activity, employment, or a right described in this subsection.

(5) The supply of public entertainment or any cultural, artistic, sporting, educational, or similar activities, or services connected with tangible personal property, takes place where the activity or service is physically carried out, unless the service is described in subsection (4).

(6) The supply of services connected with immovable property takes place where the property is located, unless the service is described in subsection (4).

(7) A supply of services of, or incidental to, transport takes place where the transport occurs, unless the service is described in subsection (4).

(8) Services supplied from a place of business in Saint Christopher and Nevis which would be treated as supplied outside Saint Christopher and Nevis under subsections (4) to (7) shall be considered as supplied in Saint Christopher and Nevis and shall be considered as exported from Saint Christopher and Nevis for purposes of the Second Schedule.

(9) A supply of a kind not provided for in this section shall be considered to take place in Saint Christopher and Nevis.

(10) The Minister may, by regulations, prescribe rules to determine the place of supply of particular goods or services which are not provided for by this section.

### **37. Value of supply**

(1) Subject to the provisions of this Act, the value of a supply of goods or services shall be the amount of the consideration for the supply.

(2) Where a portion of the price of a supply represents tax imposed by this Act which is not accounted for separately, the value of the supply shall be the price reduced by an amount equal to the tax fraction multiplied by that price.

(3) Where the supply is made by a taxable person for no consideration or for a consideration which is less than the fair market value of that supply and the supplier and the recipient are related persons, or the recipient is an approved charitable organisation, then the value of the supply shall be the fair market value of the supply.

(4) Subject to subsection (20), where a taxable person supplies goods or services referred to in section 4.(7), the value of the supply shall be the lesser of the consideration paid or payable by the taxable person for the goods or services, or the fair market value of the supply.

(5) The value of a supply of goods under a credit agreement shall be the cash value of the goods supplied.

(6) Where a debtor supplies goods as a result of the repossession of those goods from the debtor under a credit agreement, the value of the supply shall be an amount equal to the balance of the cash value of the supply of those goods to the debtor which has not been recovered at the time of the supply.

(7) For the purposes of subsection (6), the balance of the cash value of the supply of goods shall be the amount remaining after deducting from that cash value so much of the sum of payments made by the debtor under the credit agreement as, on the basis of an apportionment made in accordance with the rights and obligations of the parties to the agreement, may properly be regarded as having been made in respect of the cash value of the supply of goods.

(8) The value of a supply of services referred to in section 4.(9) shall be an amount equal to the amount referred to in that subsection, that is retained or recoverable.

(9) Where the grant of any right to receive goods or services for a monetary value stated on any token, voucher, gift certificate, or stamp is a supply referred to in section 4.(20), the value of the supply shall be an amount equal to the amount by which the consideration exceeds the monetary value of the token, voucher, gift certificate, or stamp.

(10) Where the holder of a token, voucher, gift certificate, or stamp issued by a taxable person (the issuer) for no consideration surrenders the token, voucher, gift certificate, or stamp to a supplier of goods or services (other than the issuer) in return for a price discount on a taxable supply, the supplier shall include in the value of the supply of such goods or services the monetary value stated on the token, voucher, gift certificate, or stamp, less the tax fraction of the monetary value.

(11) For the purposes of subsection (10), the monetary value is inclusive of tax.

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

(13) Except as otherwise provided in this section, if a supply is made for no consideration the value of the supply shall be nil.

(14) The value of a supply of services referred to in section 4.(10) shall be the amount received in respect of the bet, reduced by an amount equal to the tax fraction multiplied by the amount received in respect of the bet.

(15) The value of a supply referred to in section 4.(19) shall be the consideration for the acquisition of the taxable activity reduced by an amount which bears to the amount of such consideration the same ratio as the intended use or application of the taxable activity for making taxable supplies bears to the total intended use or application of the taxable activity.

(16) The value of supply referred to in section 4.(22) shall be equal to,

- (a) except as provided in paragraph (b), the fair market value of the goods or services deemed to be supplied; and
- (b) in the case of capital goods which are subject to the capital allowance for depreciation under the Income Tax Act, the undepreciated cost of the goods deemed to be supplied.

(17) Notwithstanding what is provided for in this section, the value of services consisting of a hotel accommodation or tour package in Saint Christopher and Nevis arranged by a non-resident, unregistered travel agent or a non-resident, unregistered tour operator shall be the consideration charged by the registered supplier for those services, less the commission or fee paid to the travel agent or tour operator for those services.

(18) For the purposes of subsection (17),

- (a) the deduction for the commission or fee paid shall not exceed 20% of the registered supplier's published rates for those services; and
- (b) the output tax reported on hotel accommodation or tour package specified in subsection (17) shall not be less than the tax the registered supplier charged the foreign travel agent or tour operator for the covered services.

(19) The Minister may, by regulations, prescribe rules to determine the value of supply of particular goods or services which are not provided for by this section.

(20) Where a taxable person applies less than the entire goods or services referred to in section 4.(7) to a different use, the Minister may, by regulations, prescribe rules to determine the value of the supply.

## **PART VI – CALCULATION OF TAX PAYABLE**

### **38. Tax payable for period.**

(1) The tax payable by a taxable person for a tax period in respect of taxable supplies shall be the total amount of output tax payable by the person in respect of taxable supplies made by the person during the period, less the total input tax deduction allowed to the person under the provisions of section 39 for the tax period.

(2) Where the total amount of input tax deduction allowed to a taxable person for a period referred to in subsection (1) exceeds the total amount of output tax payable by the person for that period, the amount of the excess shall be dealt with in accordance with the provisions of section 61.

### **39. Input tax deduction**

(1) Subject to the provisions of this section, the total amount of input tax allowed as a deduction for purposes of section 38 shall be the sum of

- (a) the input tax payable in respect of taxable supplies made to the person during the tax period, and the input tax paid in respect of any importation of goods by the person during the tax period, where the supply or importation is for use in a taxable activity carried on by the person;
- (b) any input tax deduction allowed under section 41 for the tax period;
- (c) an amount equal to the tax fraction of any amount paid during the tax period by the taxable person as a prize or winnings to the recipient of services under section 4.(10);
- (d) an amount equal to the tax fraction of any amount paid during the tax period by the taxable person to a supplier in respect of the redemption of a token, voucher, gift certificate, or stamp referred to in section 37.(10) by the supplier for the tax period; and
- (e) any amount carried forward under sections 61.(2) and 61.(7).

(2) Subject to this section, no deduction of input tax shall be allowed in respect of a supply or importation unless

- (a) a tax invoice, or tax debit note or tax credit note, as the case may be, in relation to the supply, has been provided in accordance with the provisions of section 43 or 44 and is held by the taxable person taking the deduction at the time a return in respect of the supply is filed, other than when a tax invoice is not required to be provided;
- (b) an import declaration, or a document issued by the Comptroller of Customs or the Comptroller evidencing payment of tax in relation to an importation that has been delivered in accordance with the Customs (Control and Management) Act, Cap. 20.40 or this Act and is held by the taxable person taking the deduction at the time a return in respect of the importation is filed; and
- (c) for the purposes of subsection (1)(e), with respect to the acquisition, the taxable person is in possession of documents required by the Comptroller.

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(3) Where a taxable person does not have a tax invoice evidencing the input tax paid, the Comptroller may allow an input tax deduction in the tax period in which the deduction arises where the Comptroller is satisfied

- (a) that the taxable person took all reasonable steps to acquire a tax invoice;
- (b) that the failure to acquire a tax invoice was not the fault of the taxable person; and
- (c) that the amount of input tax claimed by the taxable person is correct.

(4) Subject to the provisions of this section, a dealer in second hand goods shall be allowed an input tax credit for an acquisition of second hand goods if

- (a) the supply of goods to the dealer was not a taxable supply; and
- (b) the dealer sells the second hand goods in a taxable supply on which tax is charged at the standard rate.

(5) The provisions of subsection (4) shall not apply if

- (a) the supply of the goods to the dealer would have been a zero – rated supply if it had been made by a registered person;
- (b) the dealer imported the goods;
- (c) the supply of the goods to the dealer was made otherwise than by way of sale; or
- (d) the supply of the goods to the dealer was exempt under the provisions of this Act.

(6) The tax period in which an input tax credit is allowed under subsection (4) is the tax period in which the dealer sells the goods.

(7) The amount of input tax credit allowed under subsection (4) is the tax fraction of 70% of the price for which the dealer sold the second hand goods.

(8) For the purposes of this section,

“dealer” means a registered person who deals in second hand goods;

“second hand goods” mean goods which have been previously used except the following:

- (a) precious metals or goods made of precious metals being
  - (i) gold (in an investment form) at least 99.5% fineness;
  - (ii) silver (in an investment form) at least 99.9% fineness;
  - (iii) platinum (in an investment form) at least 99% fineness;
  - (iv) goods to the extent that they would fall within (i), (ii), or (iii) if they were of the required fineness;

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- (b) diamonds, rubies, emeralds, or sapphires that are not mounted, set, or strung;
- (c) animals or plants;
- (d) real property;
- (e) goods valued for \$10,000 and less.

(9) The exceptions listed in the definition of second hand goods shall not be entitled to input tax credit.

**40. Input tax deduction allocation and disallowance rules.**

(1) In this section,

“entertainment” means the provision of food, beverages, tobacco, accommodation, amusement, recreation, or other hospitality by a taxable person, whether directly or indirectly, to any person; and

“passenger vehicles” include motorcars and other motor vehicles principally designed for the transportation of people including station wagons and sport utility vehicles, except pickup trucks exclusively used for commercial purposes.

(2) A taxable person shall not, under section 39, deduct any amount of input tax paid or payable in respect of

- (a) a passenger vehicle supplied to, or a passenger vehicle imported by, the person, unless the person is in the business of dealing in, or hiring of, passenger vehicles, and the passenger vehicle is acquired for the purposes of such business;
- (b) goods or services supplied to, or imported by, the person for the purposes of entertainment, unless
  - (i) the person is in the business of providing entertainment and the taxable supply or importation relates to the provision of taxable supplies of entertainment in the ordinary course of that business; or
  - (ii) the person is in the business of providing taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation services;
- (c) any fees or subscriptions paid by the person in respect of membership of any person in a club, association, or society of a sporting, social, or recreational nature; or
- (d) taxable goods or services supplied to, or imported by, the person for the purpose of repair or maintenance of a passenger vehicle, unless the person is in the business of refurbishing for resale or of hiring of such vehicles, and the repair or maintenance is

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directly related to the provision of taxable supplies in the ordinary course of that refurbishing or hiring business.

(3) Subject to the provisions of subsections (4) and (5), where only a part of the supplies made by a taxable person during a tax period are taxable supplies, the amount of the input tax allowed as a deduction under section 39.(1)(a) for that period shall be determined as follows:

- (a) in respect of a supply or importation received which is directly allocable to the making of taxable supplies, the full amount of input tax payable in respect of the supply or importation shall be allowed as a deduction;
- (b) in respect of a supply or importation received which is directly allocable to the making of exempt supplies, no amount of input tax payable in respect of the supply or importation shall be allowed as a deduction; or
- (c) in respect of a supply or importation received which is used for the making of both taxable and exempt supplies, shall be the amount calculated according to the following formula:

A x B/C where

- (i) A is the total amount of input tax payable in respect of supplies and imports received during the period for which a deduction is allowed under section 39.(1)(a), less the input tax accounted for under paragraphs (a) and (b);
- (ii) B is the total value of the amount of taxable supplies made by the taxable person during the period; and
- (iii) C is the total value of the amount of all supplies made by the taxable person during the period.

(4) Where the fraction B/C referred to in subsection (3)(c) is more than 0.90, the taxable person may deduct the total amount of input tax on supplies and imports described in that paragraph.

(5) In the case of a bank or other financial institution making both exempt and taxable supplies for a tax period, the provisions of subsection (3) shall not apply, and the amount of the input tax allowed as a deduction under section 39.(1)(a) for that period shall be the amount of input tax payable in respect of supplies or imports received which are directly allocable to the making of taxable supplies.

(6) Notwithstanding the provisions of subsection (3), where a taxable person makes both taxable and exempt supplies during a tax period, the Comptroller may determine the amount of input tax allowed for the tax period on such other basis as the Comptroller may consider reasonable.

(7) A taxable person who is dissatisfied with a decision made by the Comptroller pursuant to the provisions of subsection (6) may challenge the decision of the Comptroller in accordance with the provisions of Part X of this Act.

(8) Notwithstanding the provisions of this section, a taxable person who makes supplies which are subject to the tax rate under the provisions of section 26.(1)(d), may deduct as input tax attributable to those supplies which is not more than the output tax reportable on those supplies in that tax period.

**41. Post- sale adjustments and bad debts.**

(1) This section applies where, in relation to a supply by a registered person,

- (a) the supply is cancelled;
- (b) the taxation of the supply changes because the nature of the supply is fundamentally varied or altered;
- (c) the previously agreed consideration for the supply is altered, whether due to an offer of a discount or for any other reason; or
- (d) the goods or services or part thereof are returned to the supplier.

(2) Subsection (1) applies only where the registered person who makes the supply

- (a) provides a tax invoice in relation to the supply and the amount shown on the invoice as the tax charged on the supply is incorrect as a result of the occurrence of one or more of the events described under subsection (1)(a) to (d); or
- (b) files a return for the tax period in which the supply is made and accounts for the incorrect amount of output tax on that supply as a result of the occurrence of one or more of the events described under subsection (1)(a) to d.

(3) Where subsection (1) applies, the registered person making the supply shall make an adjustment as specified under subsection (4) or (6).

(4) Where the output tax properly chargeable in respect of the supply exceeds the output tax actually accounted for by the registered supplier the amount of the excess shall be deemed to be output tax charged by the registered supplier in relation to a taxable supply made in the tax period in which the event referred to in subsection (1) occurred.

(5) For the purposes of section 38, where a registered person issues a tax debit note to rectify the output tax charged to a registered recipient in the circumstances specified under subsection (4), the additional tax specified in the tax debit note shall be deemed to be input tax payable by the registered recipient and deductible to the extent allowable under section 39 in the tax period in which the tax debit note is received.

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(6) Subject to the provisions of subsections (7) and (8), where the output tax actually accounted for by the registered person exceeds the output tax properly chargeable in relation to the supply, the registered supplier shall issue a credit note and shall be allowed an input tax deduction under section 39 in the tax period in which the event referred to in subsection (1) occurred.

(7) If subsection (6) applies and the recipient is a registered supplier, the following amount shall be reported as output tax of the recipient in the tax period in which the credit note is received:

- (a) if the recipient were entitled to a credit for all of the input tax in relation to the acquisition before the adjustment, the amount of additional tax specified in the tax credit note;
- (b) if the recipient were entitled to a credit for only a proportion of the input tax in relation to the acquisition before the adjustment, the same proportion of the amount of additional tax specified in the tax credit note;
- (c) if the recipient were not entitled to a credit for the input tax in relation to the acquisition before the adjustment, nil.

(8) Where the supply is made to a person who is not a registered person, a deduction under subsection (6) shall not be allowed, unless the amount of the excess tax has been repaid to the recipient of the supply, whether in cash or as a credit against an amount owing to the registered person by the recipient.

(9) Subject to the provisions of subsection (13), a registered person shall be allowed an input tax deduction under section 39 for tax paid in respect of a taxable supply made by the registered person where the whole or part of the consideration for the supply is subsequently treated as a bad debt.

(10) The amount of the deduction allowed under subsection (9) is the amount of the tax paid in respect of the taxable supply which corresponds to the amount of the debt treated as bad.

(11) The deduction referred to in subsection (9) arises on the date on which the bad debt was written off in the accounts of the registered person, and if the registered person satisfies the Comptroller that reasonable efforts have been made to recover the amounts due and payable.

(12) Where any amount in respect of which a deduction is allowed in accordance with the provisions of subsection (9) is at any time wholly or partly recovered by the registered person, the registered person shall be treated as having charged tax in respect of a taxable supply made during the tax period in which the bad debt is wholly or partly recovered, being an amount of tax calculated according to the following formula:

A x B/C where

- (a) A is the amount allowed as a deduction under subsection (9);
- (b) B is the amount of the bad debt recovered; and

- (c) C is the amount of the bad debt previously written off.
- (13) A deduction shall be allowed under the provisions of subsection (9) only if
- (a) the taxable supply is made to a person other than a registered person; or
  - (b) the taxable supply is made to a registered person and the person claiming the deduction under that subsection issued a tax credit note to the registered purchaser listing the amount claimed under the formula referred to in subsection (12).

#### **42. Interest on unpaid tax.**

(1) Tax payable under this Act which is not paid by the date upon which it becomes due and payable shall bear interest at the rate of 1.25 per cent per month or part thereof for the period during which it remains unpaid.

(2) The rate of interest under this section may be altered from time to time by Order made by the Minister, and such alteration shall be subject to affirmative resolution of the National Assembly.

(3) Interest paid by a person under subsection (1) shall be refunded to the person to the extent that the tax or penalty to which it relates is subsequently determined not to have been due and payable.

(4) The provisions of this Act relating to the payment, collection and recovery of tax shall apply to any interest charged under this section as if the interest were tax due under this Act.

#### **43. Tax invoices and sales receipts.**

(1) Subject to subsection (2), a registered supplier, making a taxable supply to a registered recipient, shall provide the registered recipient with an original tax invoice for the taxable supply in the form and containing the information prescribed by regulations made under this Act.

(2) A registered supplier who makes a taxable supply to a registered recipient may issue a sales receipt in lieu of a tax invoice if the total consideration for the taxable supply is in cash and does not exceed the amount specified in regulations made under this Act.

(3) A person shall not provide a tax invoice in circumstances other than those specified under this section.

(4) Subject to subsection (6), a registered supplier shall not issue more than one tax invoice for each taxable supply.

(5) Where a registered recipient has not received a tax invoice as required by subsection (1), the recipient, no later than sixty calendar days after the date of a supply,

can request the registered supplier, in writing, to provide a tax invoice in respect of the taxable supply, and the supplier shall comply with the request within fourteen calendar days after receiving it.

(6) Where a registered recipient claims to have lost the original tax invoice for a taxable supply, the registered supplier may provide a copy clearly marked “copy”.

(7) A registered supplier who makes a taxable supply to a person who is not registered, shall provide that person with a sales receipt for the taxable supply in the form, and containing the information, prescribed by regulations made under this Act.

(8) Notwithstanding the provisions of this section,

(a) a registered supplier who makes a taxable supply to a person, mission, organization, or government specified in section 63.(1) may issue an original tax invoice covering that supply to the person, mission, organization, or government in the form, and containing the information, specified by regulations made under this Act; and

(b) if a recipient referred to in paragraph (a) claims to have lost the original tax invoice issued in respect of a taxable supply, the registered supplier may provide a copy clearly marked “copy”.

(9) A person shall not

(a) issue a false invoice or false sales receipt;

(b) use a false taxpayer identification number; or

(c) fail to provide to a recipient, an invoice or a sales receipt.

(10) A registered person who, within sixty days after the date he or she makes a taxable supply, or, where applicable, within fourteen calendar days period specified in subsection (5), fails to issue any invoice or sales receipt in respect of a supply as required under this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding one year or both.

#### **44. Tax credits and debit notes**

(1) Where a tax invoice is issued in the circumstances specified under section 41.(2)(a) and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the registered person making the supply shall provide a registered recipient of the supply with a tax credit note containing the particulars prescribed by regulations made under this Act.

(2) A person shall not provide a tax credit note in any circumstances other than the circumstances specified under subsection (1).

(3) Where a tax invoice is issued in the circumstances specified under section 41.(2)(a) and the tax properly chargeable in respect of the supply exceeds the amount

shown as tax charged in that tax invoice, the registered person making the supply shall provide a registered recipient of the supply with a tax debit note containing the particulars prescribed by regulations made under this Act.

(4) A person shall not provide a tax debit note in any circumstances other than the circumstances specified under subsection (3).

(5) A registered person may issue only one tax credit note or tax debit note for the amount of the excess stated in subsection (1) or (3), respectively.

(6) Notwithstanding the provisions of this section, where a registered person claims to have lost the original tax credit note or tax debit note, the registered person who made the supply may provide a copy clearly marked “copy”.

(7) A person shall not knowingly or recklessly issue a false tax credit note or a false tax debit note or fail to provide a tax invoice.

(8) A person who contravenes any provision of this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding one year or both.

## **PART VII – TAX PERIOD, RETURNS AND ASSESSMENTS**

### **45. Tax period.**

The tax period applicable to a taxable person under this Act is the calendar month.

### **46. Returns**

(1) Every taxable person shall file a tax return for each tax period with the Comptroller within fifteen calendar days after the end of the tax period, whether or not tax is payable in respect of that period.

(2) A tax return shall

- (a) be in such form as may be prescribed by the Comptroller;
- (b) contain such information as is necessary to calculate the tax payable in accordance with section 38 for the tax period; and
- (c) be filed in such manner as may be prescribed by the Comptroller.

(3) In addition to or instead of any return required under this Act, the Comptroller may, by notice in writing, require a person, whether or not a taxable person, to file with the Comptroller, whether on that person’s own behalf or as agent or trustee of another person, such fewer, additional, or other returns in the prescribed form as and when required by the Comptroller for the purposes of this Act.

(4) A person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of subsection (3) may challenge the decision of the Comptroller in accordance with the provisions of Part X of this Act.

(5) A tax return or other return made under this Act shall be deemed to be an assessment unless section 48 applies.

(6) A person who, for two or more consecutive or non-consecutive tax periods, fails to file returns within the time and in the manner prescribed under this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or both.

#### **47. Extension of time.**

(1) Upon application, made in writing by a taxable person, the Comptroller may, where good cause is shown by the taxable person, extend the period within which any return required under section 46 is to be filed.

(2) The granting of an extension of time under subsection (1) shall not alter the due date for the payment of tax under section 50.

(3) A person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of subsection (1) may challenge that decision in accordance with the provisions of Part X of this Act.

#### **48. Assessments**

(1) Where

- (a) a taxable person fails to file a return as required by section 46 or fails to furnish an import declaration as required by section 10 or 11;
- (b) the Comptroller is not satisfied with a return or import declaration furnished by a person;
- (c) the Comptroller has reason to believe that a person will become liable for the payment of an amount of tax but is unlikely to pay such amount;
- (d) a person, other than a taxable person, supplies goods or services and represents that tax is charged on the supply;
- (e) a taxable person supplies goods or services and the supply is not a taxable supply or is a taxable supply charged with tax at the rate of zero percent and, in either case, the taxable person represents that a positive rate of tax is charged on the supply;
- (f) the Comptroller has determined the liability of any person in terms of section 112.(2); or
- (g) a taxable person supplies goods or services and the supply is a taxable supply charged with tax at the rate referred to in section 26.(1) and the taxable person represents that a lower positive rate referred to in section 26 is charged on the supply;

the Comptroller may make an assessment of the amount of tax payable by the person or of the amount of tax represented by the person as payable in respect of the supply.

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- (2) A person who is assessed in accordance with the provisions of subsection (1),
- (a) in the case of an assessment referred to in subsection (1)(d),(e) or (g), is the person who makes the supply; or
  - (b) in the case of an assessment referred to in subsection (1) (f), is the person whose liability has been determined under section 112(2);or
  - (c) in any other case, is the person required to account for the tax under this Act.
- (3) An assessment referred to in subsection (1)(a), (c), (d), (e), (f) or (g) may be made by the Comptroller at any time.
- (4) An assessment referred to in subsection (1) (b),
- (a) where the default was due to fraud or willful default committed by, or on behalf of, the person who furnished the return or import declaration, may be made by the Comptroller at any time; or
  - (b) in any other case, may be made within six years after the date the return or import declaration was furnished.
- (5) The Comptroller may, on the basis of the information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).
- (6) Where a person is not satisfied with a return filed by him or her under this Act, he or she may apply to the Comptroller to make an addition or alteration to that return.
- (7) An application referred to in subsection (6) shall be in writing, and the applicant shall specify in detail the grounds upon which his or her application is made.
- (8) An application referred to in subsection (6) shall be made within a period of three years after the date the return was filed by the applicant or, in the event an assessment is made by the Comptroller after the three-year period, may be made within sixty calendar days after the date on which notice of such assessment is served on the applicant.
- (9) After considering an application made under subsection (6), the Comptroller may make an assessment of the amount that, in the Comptroller's opinion, is the amount of tax payable under this Act.
- (10) Where an assessment is made under this section, the Comptroller shall serve a notice of the assessment on the person assessed, in which notice the Comptroller shall indicate
- (a) the tax payable;
  - (b) the date the tax is due and payable; and
  - (c) the time, place and manner of objecting to the assessment.

(11) The Comptroller may, within three years after service of the notice of assessment, or in the case of assessments described in subsection (4), within the deadline specified in that subsection, amend an assessment as the Comptroller considers necessary, in which case the Comptroller shall serve notice of the amended assessment on the person assessed.

(12) An amended assessment shall be treated in all respects as an assessment made under this Act.

(13) An amount assessed in accordance with the provisions of subsection (1)(d), (e), (f), or (g) shall be treated, for all purposes of this Act, as tax charged under this Act.

#### **49. General provisions relating to assessments.**

(1) The original or a certified copy of a notice of assessment shall be receivable in any proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings under Part X of this Act relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued or executed under this Act shall be quashed or deemed to be void or voidable for want of form or by reason of mistake, defect or omission if it is in substance and effect, in conformity with the provisions of this Act and the person assessed or intended to be assessed or affected by the document is identified in it.

### **PART VIII – PAYMENT AND RECOVERY OF TAX**

#### **50. Due date for payment of tax.**

(1) Tax payable under this Act is due and payable,

- (a) by a taxable person for a tax period, by the due date for the return for the tax period;
- (b) by a person who is assessed under an assessment made under this Act, by the date specified in the notice of assessment;
- (c) by an importer of goods or a recipient of imported services, by the due date specified under sections 10 and 11 in respect of the importation; or
- (d) by any other person, by the date the taxable transaction occurs as determined under this Act.

(2) Subject to section 64.(5), where an objection to, or a notice of appeal against an assessment is lodged, the due date of the tax payable under the assessment shall remain as specified under subsection (1).

(3) Upon an application, made in writing by a person liable for tax, the Comptroller may, where good cause is shown, extend the time for payment of tax by the person beyond the date on which it is due and payable under this section, or make such

other arrangements as are appropriate to ensure the payment of the tax due, and any such extension shall not alter the due date for purposes of section 42.

(4) A person who fails to pay tax, being the whole or part of the remainder of any tax due or payable under this Act, by the due date shall be liable to a penalty equal to 10% of the amount of tax due.

(5) A person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of subsection (3) may challenge that decision in accordance with the provisions of Part X of this Act.

### **51. Allocation of payments.**

Where, in addition to any amount of tax which is due and payable by any person under this Act, any amount of interest or penalty is payable, any payment made by the person in respect of such tax, interest, or penalty which is less than the total amount due shall be deemed to be made

- (a) first, in respect of such interest;
- (b) to the extent that the payment exceeds the amount of the interest, then in respect of penalty; and
- (c) to the extent that such payment exceeds the sum of the penalty and interest, then in respect of the tax.

### **52. Recovery of tax as debt due.**

(1) Tax that is due and payable under this Act is a debt due to the Crown and payable to the Comptroller, and may be recovered in the manner provided by Part VI of the Tax Administration and Procedures Act, No.12/2003 where

- (a) the tax is shown on a return and remains unpaid; or
- (b) the tax is shown in a notice of assessment served on the taxpayer and the taxpayer has failed to pay it within the deadline specified in the notice.

(2) The provisions of subsection (1) shall not apply to any tax collected by the Comptroller of Customs, which is recovered under the procedures that relate to the recovery of customs duty.

(3) A portion of the tax due and payable to the Comptroller under this Act shall be paid into a Special Fund established in accordance with section 9 of the Finance Administration Act, No. 13/2007 to pay the refunds required to be paid under this Act.

### **53. Recovery of tax from persons leaving Saint Christopher and Nevis.**

(1) Where the Comptroller has reasonable grounds to believe that a person may leave Saint Christopher and Nevis without paying all tax due under this Act, the Comptroller may obtain an order from a judicial officer, or issue a certificate in such form as the Comptroller may prescribe, directing the Chief Immigration officer to take the necessary

steps to prevent the person from leaving Saint Christopher and Nevis until the person makes payment in full or that person makes an arrangement that is satisfactory to the Comptroller for the payment of the tax.

(2) The Comptroller shall serve a copy of the court order or certificate referred to under subsection (1) on the person named in the court order or certificate if it is practicable to do so.

#### **54. Security.**

(1) The Comptroller may, by notice in writing, require a person to give security for the payment of tax which is, or which may become, payable by the person under this Act where it is reasonable to do so for the protection of the revenue or where it is provided for in this Act.

(2) A person who fails to comply with a notice given to him or her pursuant to the provisions of subsection (1) commits an offence and shall be liable, on summary conviction, to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding two years or both.

(3) The security required by virtue of the provisions of subsection (1), including security required from a promoter of public entertainment, shall be for such amount, in such form, and furnished within such period as the Comptroller may specify in the notice.

(4) Where security required by virtue of the provisions of subsection (1) is in cash and the Comptroller is satisfied that the security is no longer required, the Comptroller shall apply the amount of the security as specified under section 61(4).

(5) A person who is dissatisfied with a decision of the Comptroller given pursuant to the provisions of subsection (1) may challenge that decision in accordance with the provisions of Part X of this Act.

(6) A promoter of public entertainment shall not allow the public entertainment to take place unless the promoter has paid the amount required under subsection (3) and has received the Comptroller's written approval.

(7) A promoter of public entertainment who contravenes the provisions of subsection (6) commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars, plus 15% of the value of the tickets printed for the entertainment, or to imprisonment for a term not exceeding two years or both.

#### **55. Preferential claim to assets**

(1) From the date on which tax becomes due and payable under this Act and until the tax is paid, the Comptroller shall have a lien upon the assets of the person liable to pay the tax, and any asset of a related person, where, in respect to the asset of the related person, the Comptroller reasonably believes that the person liable to pay the tax legally owns the asset and transferred the asset to the related person in order to avoid the payment of tax.

(2) The lien described in subsection (1) shall not be valid against the interest of a person who is a purchaser from the taxpayer or a holder of a security interest in the property, if the person's ownership of or other interest in the property arises before the person has had actual knowledge of the lien, and before notice of the lien has been duly registered by the Registrar.

(3) Where a person is in default of paying tax, the Comptroller may, by notice in writing, apply to the Registrar of the Court to register a security interest in any fixed assets (including capital goods), which are owned by that person, to cover any unpaid tax in default, together with any expense incurred in recovery proceedings.

(4) Where the Comptroller makes an application under subsection (3), the Registrar shall register the notice of security without fee, as if the notice were an instrument of mortgage over, or charge on, as the case may be, such asset, and the registration shall operate while it subsists, subject to any prior mortgage, or charge on, the asset, in all respects as a legal mortgage over the asset or charge on the asset to secure the amount due.

(5) Where the Registrar registers a security interest referred to in subsection (3) he or she shall notify the owner of the property, within fifteen days of such registration, that the security interest has been registered.

(6) The Comptroller shall serve a copy of the notice referred to in subsection (3) to the person who is in default, and that person may pay the tax in default and have the notice removed.

#### **56. Seizure of goods and vehicles.**

(1) Where the Comptroller has reasonable grounds to believe that tax on a supply or importation of goods has not been or will not be paid, the Comptroller may seize the goods, and such goods shall be stored in such place as may be approved by the Comptroller for the storage of such goods.

(2) The Comptroller may seize any vehicle used in the removal or carriage of goods referred to under subsection (1) unless it is shown that such vehicle was so used without the consent or knowledge of the owner of that vehicle or other person lawfully in possession or charge of the vehicle or that the owner or person in possession had no reason to believe that the vehicle was used to remove or carry goods in respect of which the tax had not been paid.

(3) The Comptroller may sell the vehicle seized pursuant to the provisions of subsection (2) by public auction or deal with the vehicle in such other manner as the Comptroller may direct, subject to the conditions specified under subsection (4).

(4) Where goods or vehicles are seized pursuant to the provisions of subsection (1) or (2), as the case may be, the Comptroller shall serve on the owners of the goods or vehicles or the persons who had custody or control of the goods or vehicles immediately before seizure, a notice in writing, within fourteen days after the seizure,

- (a) identifying the goods or vehicle;

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- (b) stating that the goods or vehicles have been seized under this section and the reason for the seizure; and
- (c) setting out the terms of subsections (7), (8), and (9).

(5) The Comptroller shall not be required to serve a notice under subsection (4) if, after making reasonable enquiries, the Comptroller does not have sufficient information to identify the person on whom the notice should be served, and in that event the Comptroller shall post a notice of the seizure in a conspicuous place in the premises from where the goods were seized.

(6) The Comptroller may serve a notice pursuant to the provisions of subsection (4) on any person claiming the goods, provided that the person has given the Comptroller sufficient information to enable such a notice to be served.

(7) Subject to the provisions of subsection (8), the Comptroller may authorize the delivery of goods seized pursuant to the provisions of subsection (1) to the person on whom a notice under subsection (4) has been served, where that person pays or gives security, in accordance with the provisions of section 54, for the payment of tax due and payable or that will become due and payable in respect of the supply or importation of the goods.

(8) The Comptroller shall detain goods seized under subsection (1),

- (a) in the case of perishable goods, only for such period as the Comptroller considers reasonable having regard to the condition of the goods; or
- (b) in any other case, until the later of
  - (i) ten working days after the seizure of the goods; or
  - (ii) ten working days after the due date for payment of the tax on the supply or importation of the goods.

(9) Where the detention period specified in subsection (8) expires, the Comptroller may sell the goods in the manner specified under section 57.(4) and apply the proceeds of sale as set out in section 57.(5).

(10) Before the Comptroller sells a vehicle seized pursuant to the provisions of this section he or she shall obtain an order from the High Court authorizing him or her to sell the vehicle.

(11) The Judge shall not grant an order pursuant to the provisions of subsection (10), unless the judge is satisfied that the seizure was done in compliance with the provisions of this Act.

(12) Notwithstanding the provisions of this section, the Comptroller may proceed under section 52 with respect to any balance owed if the proceeds of sale are not sufficient to meet the costs of the sale and tax due.

(13) For the purpose of this section, “vehicle” means the method of carriage or conveyance and includes any cart, wagon, or vessel and any trailer attached to such vehicle.

### **57. Distress proceedings**

(1) The Comptroller may recover unpaid tax by distress proceedings against the personal property of the person liable to pay the tax, referred to as the “person liable”, by obtaining an order from the Magistrate’s Court, specifying the person who is liable, the location of the property, and the tax liability to which the proceedings relate.

(2) For the purposes of executing distress under subsection (1), the Comptroller may, at any time, enter any house or premises, and may require a police officer to be present while the distress is being executed.

(3) Property upon which distress is levied under this section, other than perishable goods, shall be kept for ten working days either at the premises where the distress was levied or at such other place as the Comptroller may consider appropriate, at the cost of the person liable.

(4) Where the person who is liable does not pay the tax due, together with the costs of the distress,

(a) in the case of perishable goods, within such period as the Comptroller considers reasonable having regard to the condition of the goods; or

(b) in any other case, after the ten working days period specified in subsection (3);

the property distrained upon may be sold by public auction, or in such other manner as may be provided in the regulations made under this Act.

(5) The proceeds of a disposal received pursuant to the provisions of subsection (4) shall be applied by the Comptroller, first, towards the cost of taking, keeping, and selling the property distrained upon, then towards the tax due and payable and, subject to section 61, the remainder of the proceeds, if any, shall be paid to the person who is liable.

(6) Nothing in this section precludes the Comptroller from proceeding under section 52 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the tax due.

(7) All costs incurred by the Comptroller in respect of a distress may be recovered by the Comptroller from the person who is liable as tax due under this Act.

(8) Distress may not be levied pursuant to the provisions of this section upon tools of trade.

**58. Recovery of tax from recipient of supply.**

(1) Where, in respect of a taxable supply by a supplier who is a taxable person, the supplier has, in consequence of a fraudulent action or misrepresentation by the recipient of the supply, incorrectly treated the supply as an exempt or zero-rated supply, the Comptroller may raise an assessment upon the recipient for the amount of unpaid tax in respect of the supply, together with any interest or penalty that has become payable under section 42 and 50.

(2) The Comptroller shall serve a notice of an assessment under subsection (1) on the recipient of the supply specifying

- (a) the tax payable;
- (b) the date the tax is due and payable; and
- (c) the time, place, and manner of objection to the assessment.

(3) An assessment raised pursuant to the provisions of subsection (1) shall be treated as an assessment for all purposes of this Act.

(4) The provisions of subsection (1) shall not preclude the Comptroller from recovering the tax, interest, or penalty from the supplier.

(5) For purposes of subsection (4),

- (a) any amount recovered from the recipient is to be credited against the liability of the taxable person; and
- (b) any amount recovered from the taxable person is to be credited against the liability of the recipient.

(6) Where an amount of tax, interest, or penalty referred to in subsection (1) is paid by the supplier, the supplier may recover the amount from the recipient.

(7) An amount assessed under this section shall be treated, for all purposes of this Act, as tax charged under this Act.

**59. Recovery of tax from third parties**

(1) Where a person liable to pay tax under this Act, referred to as the “person liable”, fails to do so by the due date, the Comptroller may, by notice in writing, require any other person

- (a) owing or who may owe money to the Person liable;
- (b) holding or who may subsequently hold money for, or on account of, the person liable;
- (c) having authority from some other person to pay money to the person liable; or
- (d) having in possession the property of the taxable person notwithstanding any other law;

to be the agent of that taxable person and to pay the money or deliver the property to the Comptroller as provided in subsection(2).

(2) The agent referred to in subsection (1) shall pay the money or deliver the property to the Comptroller

- (a) within fifteen calendar days of the date of service of the notice; or
- (b) within fifteen calendar days of the date on which money becomes due or is held in any of the circumstances referred to in subsection (1), that is, if on the date of service of notice no money is due or held to which subsection (1) and this subsection applies.

(3) A copy of a notice issued pursuant to the provisions of subsection (1) shall be served by the Comptroller on the person liable.

(4) A person who makes a payment pursuant to a notice issued under subsection (1) shall be deemed to have acted under the authority of the person who is liable to pay the tax, and of all other persons concerned and shall be indemnified in respect of the payment.

(5) The provisions of this Act relating to the payment, collection and recovery of tax shall apply to any amount due under this section as if the amount were tax due under this Act.

(6) A person who fails to comply with a notice issued under the provisions of this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months, and, in addition, he or she shall be liable for the amount of the tax to which the notice applies.

## **60. Duties of receivers**

(1) In this section,

“receiver” means a person who, with respect to an asset in Saint Christopher and Nevis, is

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee for a bankrupt person;
- (d) a mortgagee in possession;
- (e) an executor of the estate of a deceased person; or
- (f) any other person conducting business on behalf of a person legally incapacitated.

(2) A receiver shall, in writing, notify the Comptroller within fourteen calendar days after being appointed to the position or taking possession of an asset of a person liable to tax in Saint Christopher and Nevis, whichever first occurs.

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(3) The Comptroller may, in writing, notify a receiver of the amount which appears to the Comptroller to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver

(a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Comptroller under subsection (3), or such lesser amount as is subsequently agreed on by the Comptroller;

(b) shall be liable to the extent of the amount set aside for the tax of the person who owned the asset; and

(c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(5) A receiver shall be personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (3) if, and to the extent that, the receiver fails to comply with the requirements of this section.

**PART IX - CARRY FORWARDS, REFUNDS  
AND INTEREST**

**60. Carry forward of excess credits and refund of tax**

(1) Where

(a) the total amount of input tax deductible by a taxable person under section 39 for a tax period exceeds the person's output tax for that period; or

(b) the amount of tax paid by a taxable person, other than in circumstances specified under paragraph (a), exceeds the amount properly charged to tax under this Act;

the amount of the excess shall be treated in the manner provided in this section.

(2) Except as provided in subsections (5), (14), and (16), the excess described in subsection (1) (a) shall be carried forward to the next tax period and treated as input tax deductible in that period.

(3) Subject to the provisions of this section, if any of the excess referred to in subsection (1) (a) for a tax period remains, after being carried forward and used as an input tax deductible in four consecutive tax periods, the taxable person may file with the Comptroller a claim for refund for the amount remaining, in the form, and with the documentation, specified by the Comptroller.

(4) Where the Comptroller is satisfied, within three calendar months following the date a claim for refund specified in subsection (3) is filed or, if later, within ten working days after the conclusion of the audit where the Comptroller orders an audit of the claim for refund specified in subsection (3), that a taxable person is entitled to the amount of the refund claimed

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- (a) may apply the amount of the refund claimed under subsection (3) in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, other taxes collected by the Comptroller, and any unpaid amounts under the Acts repealed by section 123; and
- (b) shall refund any excess remaining to the taxable person.

(5) Where, at least 50% of the amount of the taxable supplies of a taxable person for the taxable period is taxed at a zero rate, and the taxable person reports an excess specified in subsection (1) (a) for the taxable period, the taxable person may file with the Comptroller a claim for refund for the excess deductions attributable to the zero-rated supplies in the form, and with the documentation, specified by the Comptroller.

(6) Where the Comptroller is satisfied, within one calendar month following the date in which a claim for refund specified in subsection (5) is filed or, if later, within ten working days after the conclusion of the audit where the Comptroller orders an audit of the claim for refund specified in subsection (5), that a taxable person is entitled to the amount of the refund claimed

- (a) may apply the amount of the refund claimed under subsection (5) in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, other taxes collected by the Comptroller, and any unpaid amounts under the Acts repealed by section 123; and
- (b) shall refund any excess remaining to the taxable person.

(7) Notwithstanding the provisions of subsection (4)(b) or (6) (b), if the amount of the excess to be refunded is not more than one hundred dollars, the excess shall be carried forward to the next succeeding tax period and be accounted for as provided in section 39.(1)(e).

(8) Where a person overpays tax in the circumstances specified under subsection (1)(b), the person may file with the Comptroller a claim for refund of the excess, accompanied by documentary proof of payment of the excess amount as is prescribed by regulations made under this Act.

(9) For purposes of subsection (8), if the claim for refund is filed by a taxable person

- (a) the Comptroller shall deal with the claim as if it were a claim under subsection (3); and
- (b) to the extent that any output tax claimed to be refundable is an amount borne by a recipient who is not a registered person, the output tax shall be refundable only to the extent that it will be repaid by the taxable person to that recipient, whether in cash or as a credit against an amount owing to the taxable person by the recipient.

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(10) Where a taxable person fails to file a return for any tax period as required under this Act, the Comptroller may withhold payment of any amount refundable under this section until the taxable person files such return as required.

(11) A claim for a refund specified in subsection (3), (5) or (8) shall be made within a period of three years after the date the person has the right to apply for the refund under this section.

(12) The Comptroller shall serve on a person claiming a refund a notice, in writing, of the decision in respect of the claim within thirty calendar days after receipt of the claim.

(13) A person who claims a refund under this section and is dissatisfied with a decision made by the Comptroller pursuant to the provisions of subsection (12) may challenge that decision in accordance with the provisions of Part X of this Act.

(14) Notwithstanding anything in this section, the Comptroller may first apply the amount of any excess specified in subsection (1) in reduction of any tax, levy, interest or penalty payable by the person in terms of this Act, other taxes collected by the Comptroller under any other Acts, and any unpaid amounts under the Acts repealed by section 124.

(15) For purposes of this section, subsection (1)(b) shall apply to a person who is entitled to a refund of tax pursuant to the provisions of subsections (1) and (3) of section 63.

(16) For purposes of subsection (3), the Comptroller may, on the terms and conditions imposed, authorize a taxable person to file a claim for refund as if subsection (3) required the excess referred to in subsection (1)(a) to be carried forward and used as an input tax deductible in one instead of four consecutive tax periods.

(17) The Comptroller may make an authorization pursuant to subsection (16) only where

- (a) the taxable person has kept proper records;
- (b) the taxable person has submitted regular and reliable tax returns;
- (c) the taxable person has complied with all of his or her obligations under the laws relating to tax including any laws relating to customs as required under this Act, and
- (d) the taxable person has complied with all of his or her obligations under the Acts repealed by section 123 of this Act.

(18) A person shall not improperly claim a refund under subsection (3), (5), or (8), and a person who contravenes the provisions of this subsection commits an offence and shall be liable, on summary conviction, to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding two years or both.

**62. Interest on overpayment.**

(1) Where the Comptroller fails to pay a refund of tax relating to an excess under section 61 within a period of one month of the date specified under that section, the Comptroller shall pay the taxable person who is entitled to the refund an additional amount as interest commencing one month after such date and ending on the date the payment of the refund is made.

(2) Where the Comptroller is required to refund an amount of tax to a person as a result of

- (a) an objection made to a decision pursuant to the provisions of section 64; or
- (b) a decision of the Appeal Commissioners under section 65;
- (c) a decision of the High Court under section 66; or
- (d) a decision of the Court of Appeal under section 67;

the Comptroller shall pay interest on the amount of the refund for the period commencing from the date the person paid the tax refundable and ending on the date the refund is made.

(3) The rate of interest payable on a refund under this section shall be at the rate of 1.25 % per month or part thereof.

(4) The rate of interest payable under this section may be altered from time to time by Order made by the Minister, and such Order shall be subject to affirmative resolution of the National Assembly.

**63. Others eligible for tax refund**

(1) The Minister may make an Order authorizing the Comptroller to refund tax paid or borne on a supply to

- (a) a person to the extent provided under the Diplomatic and Consular Services (Immunities and Privileges) Act and any international convention having force of law in Saint Christopher and Nevis, or the recognized principles of international law;
- (b) a diplomatic or consular mission of a foreign country established in Saint Christopher and Nevis, relating to transactions concluded for the official purposes of such mission; or
- (c) an organisation or government to the extent provided under a technical assistance or humanitarian assistance agreement entered into with the Government of Saint Christopher and Nevis.

(2) The refund provided for in subsection (1)(a) shall not be available to

- (a) any citizen; or
- (b) a permanent resident of Saint Christopher and Nevis within the meaning of the Immigration Act, Cap. 6.02.

(3) The Minister may, by Order, authorize the grant of refund of tax paid on a supply of an unconditional gift of goods or services to an approved charitable organization for use in connection with the organization's charitable purposes other than for resale.

(4) For purposes of this section, "technical assistance agreement" includes an agreement that provides assistance by grant, loan, direct payment by the Government, or a combination of funding options.

## **PART X – OBJECTIONS AND APPEALS**

### **64. Objections.**

(1) In this section, "appealable decision" means an assessment, or a decision specified in sections 16(4), 23(10), 40(7), 46(4), 47(3), 50(5), 54(5), 61(13), 64(8), 65(8), 70(2), and 95(3).

(2) A person who is dissatisfied with an appealable decision may lodge an objection to the decision with the Comptroller within thirty calendar days after the service of the notice of the decision.

(3) The Comptroller may, where he or she is satisfied that owing to absence from Saint Christopher and Nevis, sickness, or other reasonable cause, the person was prevented from lodging an objection within the time specified under subsection (2), and that there has been no unreasonable delay by the person in lodging the objection, accept an objection lodged after the time specified under subsection (2).

(4) An objection to an appealable decision shall be in writing and shall contain in detail the grounds upon which it is made and shall be accompanied by payment of all of the tax not in dispute and fifty percent of the amount of tax in dispute.

(5) An objection that is lodged in time or that is accepted under subsection (3) shall suspend the taxpayer's obligation to pay 50% of the amount of tax in dispute until the notice of the Comptroller's decision on the objection is served on the taxpayer under subsection (7), or until an appeal is lodged under section 65.(4), but shall not suspend the running of interest on the balance payable.

(6) The Comptroller may, after considering the objection, allow the objection in whole or part and amend the assessment or the decision objected to accordingly, or disallow the objection.

(7) The Comptroller shall serve on the person who is objecting a notice in writing of the decision of the Comptroller on the person's objection.

(8) A person who is dissatisfied with a decision of the Comptroller given pursuant to the provisions of subsection (3) may challenge that decision in accordance with the provisions of this Part.

(9) For the purposes of subsections (4) and (5), if an assessment is based solely on a calculation error in a filed return, an objection to the assessment shall not suspend the taxpayer's obligation to pay any of the amounts assessed.

#### **65. Appeals to Appeal Commissioners.**

(1) In this section, "Appeal Commissioners" mean the Commissioners who are appointed under section 41.(1) of the Tax Administration and Procedures Act.

(2) A person who is dissatisfied with a decision of the Comptroller given pursuant to the provisions of section 64.(6) may, within thirty calendar days after being served with notice of the decision,

- (a) lodge a notice of appeal with the Appeal Commissioners; and
- (b) if lodged shall serve a copy of the notice of Appeal on the Comptroller.

(3) Upon an application made in writing by a person who is dissatisfied with a decision made by the Comptroller pursuant to the provisions of section 64.(6), the Appeal Commissioners may, where they are satisfied that owing to absence from Saint Christopher and Nevis, sickness, or other reasonable cause, the person was prevented from lodging a notice of appeal within the time specified under subsection (2) and there has been no unreasonable delay by the person in lodging the notice, accept a notice of appeal lodged after the time specified under subsection (2).

(4) Where the Comptroller does not, after ninety calendar days have passed since the lodging of the objection, make a decision on the objection, an appeal may be made under the provisions of subsection (2), at any time, as if the Comptroller had made a decision to disallow the objection.

(5) The Appeal Commissioners may, in an appeal made to them against a decision of the Comptroller to an objection on the decision, consider the objection if the Comptroller certifies that

- (a) the person assessed has paid the full amount of the tax due under the assessment; or
- (b) the Comptroller is satisfied that the person who is objecting is unable to pay the full amount of tax due and has given sufficient security for the amount of tax unpaid and any penalty and interest that may become payable.

(6) In an appeal to the Appeal Commissioners against a decision of the Comptroller on the objection, the person shall be limited to the grounds set out in the person's objection, unless the Appeal Commissioners grant the person leave to add new grounds.

(7) In deciding an appeal, the Appeal Commissioners may make an order

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- (a) affirming, reducing, increasing, or otherwise varying the assessment under appeal; or
- (b) remitting the assessment for reconsideration by the Comptroller in accordance with the directions of the Appeal Commissioners.

(8) A person who is dissatisfied with a decision of the Appeal Commissioners made pursuant to the provisions of subsection (3) may challenge the decision in accordance with the provisions of this Part.

(9) Sections 41, 42, 43, and 44 of the Tax Administration and Procedures Act, No. 12/2003 shall apply to appeals provided for under this Act to the extent that the sections are not inconsistent with the provisions of this Act.

**66. Appeals to High Court.**

(1) A party who is dissatisfied with a decision of the Appeal Commissioners may, within thirty calendar days after being notified of the decision, lodge a notice of appeal with the High Court, and the party making the appeal shall serve a copy of the notice of appeal on the other party to the proceeding before the Appeal Commissioners.

(2) Where the Appeal Commissioners do not, after one hundred and eighty calendar days have passed since the lodging of the notice of appeal, make a decision on the appeal, an appeal may be made under the provisions of subsection (1), at anytime, as if the Appeal Commissioners had made a decision to disallow the appeal.

(3) An appeal to the High Court made in accordance with the provisions of subsection (1) shall be made only on questions of law, including questions of mixed fact and law, and it shall be stated in the notice of appeal the questions of law that will be raised on the appeal.

(4) An appeal to the High Court made pursuant to the provisions of subsection (2) may be made on questions of fact or law.

- (5) On an appeal made under this section the High Court may
- (a) confirm, increase or order the reduction of any assessment;
  - (b) make such other order as it thinks fit; and
  - (c) make such order as to costs as it thinks fit.

**67. Appeals to the Court of Appeal.**

(1) A party which is dissatisfied with a decision of the High Court may appeal to the Court of Appeal, and the Court of Appeal may

- (a) confirm, increase or order the reduction of any assessment;
- (b) make such other order as it thinks fit; and
- (c) make such order as to costs as it thinks fit.

(2) An appeal to the Court of Appeal may be made only on questions of law including questions of mixed fact and law, and it shall be stated in the notice of appeal the questions of law that will be raised on the appeal.

**68. Burden of proof.**

The burden of proving that an assessment is excessive or that a decision of the Comptroller is wrong shall be on the person who is objecting to the assessment or decision.

**PART XI - REPRESENTATIVES AND  
SPECIAL CASES OF TAXABLE PERSONS**

**69. Persons acting in a representative capacity.**

- (1) In this section, “representative,” in relation to a taxable person, means
- (a) the financial controller or the designated officer, in the case of a company (other than a company in liquidation);
  - (b) any member of the committee of management, in the case of unincorporated association or body;
  - (c) any person who is responsible for accounting for the receipt and payment of money or funds on behalf of the company, in any other case;
  - (d) the liquidator, in the case of a company in liquidation;
  - (e) any person responsible for accounting for the receipt and payment of money under the provisions of any law or for the receipt and payment of public funds or of funds voted by Parliament, in the case of the Federal Government or the Nevis Island Legislature, in the case of the Nevis Island Administration;
  - (f) any partner, in the case of a partnership;
  - (g) any trustee, in the case of a trust; or
  - (h) any person who is controlling the non-resident’s affairs in Saint Christopher and Nevis, including any manager of a taxable activity of the non-resident in the case of a non-resident or a person referred to in paragraph (b) of the definition of “resident” in section 2.

(2) Every representative of a taxable person shall be responsible for performing any duties, including the payment of tax, imposed by this Act on the taxable person.

(3) Every representative shall be personally liable for the payment of any tax payable in his or her representative capacity where, while the amount remains unpaid, the representative

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- (a) alienates, charges, or disposes of any money received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any funds or money belonging to the taxable person which is in the possession of the representative or which comes to the representative after the tax is payable if such tax could legally have been paid from or out of such funds or money.

(4) Nothing in this section shall be construed as relieving a taxable person from performing any duties imposed by this Act on the taxable person which the representative of the person has failed to perform.

**70. Power to appoint representatives.**

(1) The Comptroller may, if he or she considers it necessary to do so, declare a person to be a representative of a taxable person for the purposes of section 69.

(2) A person who is dissatisfied with a decision made by the Comptroller pursuant to the provisions of subsection (1) may challenge the decision in accordance with the provisions of Part X of this Act.

**71. Directors of Corporations.**

(1) Where a corporation fails to pay an amount of tax required to be paid by this Act, every person who was a director or similar officer of the corporation at the time the corporation was required to pay the amount of tax shall be jointly and severally liable, together with the corporation, to pay the tax and any interest thereon and penalties relating thereto.

(2) A director of a corporation shall not be liable for the failure by the corporation to pay the tax where the director proves that he or she exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) A director of a corporation shall not be assessed for an amount payable by him or her under this section more than five years after the filing of the tax return, or in the case where an assessment had been made under section 48.(1) not more than five years after the date of assessment relating to that amount.

(4) A director who satisfies a claim under this section shall be entitled to a contribution from the other directors who were also liable for the claim.

**72. Officers of unincorporated bodies.**

(1) In this section,

“officer of an unincorporated body” means

- (a) in the case of a partnership, a partner of the partnership;
- (b) in the case of a joint venture, a participant in the joint venture;
- (c) in the case of a trust, a trustee of the trust; and

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- (d) in the case of any unincorporated body, other than a body referred to in paragraph (a), (b) or (c),
- (i) a person who holds office as chairperson, president, treasurer or secretary of the body or any similar office,
  - (ii) where there is no such officer of the body, a member of any committee that has management of the affairs of the body, or
  - (iii) where there is no such officer as referred to in subparagraph (i), or committee referred to in subparagraph (ii), a member of the body.

“unincorporated body” includes unincorporated association”.

(2) Where any liability or obligation is imposed by or under this Act or the Regulations on an unincorporated body, the body and each of the persons who are officers of the body at the time the liability or obligation is imposed shall be jointly and severally liable and responsible to satisfy the liability or obligation.

(3) A supply of goods or services made or received in the course or furtherance of a taxable activity carried on by an unincorporated body shall be regarded as being made or received by the body and not by any member or officer thereof, and any such activity engaged in by a person in his or her capacity as a member or officer of the body shall be deemed to be an activity of the body and not an activity of the person.

(4) For the purposes of this Act, the existence of an unincorporated body and any taxable activity of an unincorporated body shall be deemed not to be affected by any change in the members or officers thereof.

(5) Any document which is served on an unincorporated body pursuant to the provisions of this Act or the regulations made under this Act shall be deemed to have also been served on the officers thereof.

(6) An offence committed by an unincorporated body under this Act shall be taken to have been committed by the officers of the unincorporated body.

### **73. Partnerships or unincorporated associations.**

Where

- (a) a partnership, or unincorporated association or body is dissolved, referred to as the “dissolved entity”, in consequence of
  - (i) the retirement or withdrawal of one or more, but not all of its partners or members; or
  - (ii) the admission of a new partner or member;
- (b) a new partnership, or unincorporated association or body comes into existence, referred to as the “new entity”, consisting of the remaining members and one or more new members; and

- (c) the new entity continues to carry on the taxable activity of the dissolved entity as a going concern;

the dissolved entity and the new entity shall, for the purposes of this Act, be deemed to be one and the same, unless the Comptroller, having regard to the circumstances of the case, otherwise directs.

#### **74. Death or insolvency of taxable persons.**

Where, after the death of a taxable person or the sequestration of a taxable person's estate, any taxable activity previously carried on by the taxable person is carried on by or on behalf of the executor, administrator or trustee of the person's estate or anything is done in connection with the termination of the taxable activity, the estate of the taxable person, as represented by the executor, administrator or trustee, shall be deemed to be the taxable person in respect of the taxable activity for the purposes of this Act.

#### **75. Mortgagee in possession.**

Where a mortgagee is in possession of land or other property previously mortgaged by a mortgagor who is a taxable person, and the mortgagee carries on any taxable activity in relation to the land or other property, the mortgagee shall be deemed, from the date the mortgagee took possession of that land or property until such time as the mortgagee ceases to be in possession of the land or property, to be the taxable person carrying on the taxable activity.

#### **76. Trustee.**

A person who is a trustee in more than one capacity shall, for the purposes of this Act, be treated as a separate person in relation to each of those capacities.

#### **77. Branches**

Where a taxable activity is conducted by a taxable person in branches or divisions, the taxable person shall be deemed to be a single person conducting the taxable activity for purposes of this Act and no separate registration of branches or divisions shall be allowed.

### **PART XII - RECORDS AND INVESTIGATIONS**

#### **78. Meaning of records.**

In this Part, "records" means accounting records, accounts, books, computer-stored information, or any other relevant documents.

#### **79. Record-keeping.**

(1) A taxable person or any other person who is liable for tax under this Act shall maintain, in English, in Saint Christopher and Nevis

- (a) original tax invoices, tax credit notes, and tax debit notes received by the person;

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- (b) a copy of all tax invoices, tax credit notes, and tax debit notes issued by the person;
- (c) customs documentation relating to imports and exports by the person;
- (d) accounting records relating to taxable activities and any other related business activities carried on in Saint Christopher and Nevis;
- (e) accounting records relating to taxable activities and any other related business activities carried on outside of Saint Christopher and Nevis but effectively connected to the person's taxable activities in Saint Christopher and Nevis; and
- (f) any other records as may be prescribed under regulations made under this Act.

(2) Records required to be maintained pursuant to the provisions of subsection (1) shall be retained for a period of six years after the end of the tax period to which they relate.

(3) A taxpayer may, in writing, apply to the Comptroller for permission to dispose of records required to be maintained under this Act prior to the expiration of the period up to which records are required to be kept, and the Comptroller may grant permission, in writing, if he or she is satisfied that the records may not be required for any tax purposes.

(4) A person who contravenes any provision of this section commits an offence, and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

**80. Records not in English.**

Where a record is not otherwise required to be in the English language by virtue of section 79, the Comptroller may, by notice in writing, require the person keeping the record to provide, at that person's expense, a translation into the English language by a translator approved by the Comptroller for that purpose.

**81. Notice to obtain information or evidence.**

(1) The Comptroller may, by notice in writing, require any person, whether or not a taxable person under this Act, to furnish at such time and place as may be specified in the notice, for examination by the Comptroller or for retention for a reasonable period, any accounts, books of account, statement of supplies and purchases, computers or other documents concerning that person or any other person whom the Comptroller considers necessary for the administration and enforcement of this Act.

(2) The Comptroller may, by notice in writing, require any person, whether or not a taxable person under this Act, to attend at the time and place designated in the notice for the purpose of being examined on oath before the Comptroller or any taxation officer

authorized by the Comptroller for this purpose concerning the assessable or chargeable tax or any transaction or matters appearing to the Comptroller to be relevant thereto for that person or any other person, and for that purpose the Comptroller or the authorized officer may require the person examined to produce any record or computer in the control of the person.

(3) The Comptroller may, by notice in writing, require any person, whether or not a taxable person under this Act, to provide access to the premises where any business is carried on by that person or where records or books of account are kept in relation to that business in order to

- (a) examine the records or books of account and any other document that relate to the activities of the business;
- (b) inspect any raw materials, trading stock or other assets;
- (c) inspect the process of that person, including the method adopted in recording the supplies, or observe and examine any process relating to the generation of records including computer or electronically generated records; and

require the owner of the business, or any employee or agent of the business, to give the Comptroller such reasonable assistance in connection with the examination or inspection as may be necessary and to answer orally or in writing any questions relating thereto.

(4) Where the notice requires the production of a record or computer, it shall be sufficient if such record or computer is described in the notice with reasonable certainty.

(5) Where, during the course of any examination or inspection, it appears to the Comptroller or a taxation officer authorized by the Comptroller that there may not have been a correct disclosure of liability to tax, he or she may take possession of any books of account or other documents for further examination, and may, after examination, retain or make copies of or take extracts from the books or documents for any of the purposes of this Act.

(6) Without prejudice to the generality of subsection (1), (2) and (3), the Comptroller may require

- (a) a bank or other financial institution to furnish the Comptroller with details of any banking accounts or other assets which may be held on behalf of any person, or to furnish a copy of bank statements or statements of assets of any such banking account or other assets;
- (b) a bank or other financial institution to permit the Comptroller or any taxation officer authorized by the Comptroller to inspect the records of the bank or other financial institution with respect to the banking account of any person;

- (c) the attendance of an officer of a bank or other financial institution before the Comptroller to give evidence respecting bank accounts or other assets which may be held by the bank or other financial institution on behalf of any person;

(7) This section shall have effect notwithstanding any rule of law relating to privilege or the public interest in relation to the furnishing of information or the production of records or documents.

(8) A person who fails to comply with a notice given to him or her pursuant to the provisions of subsections (1), (2), (3), or (6) commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

(9) The provisions of this Act, relating to accessibility and divulging of information, shall, in relation to persons or entities specified in paragraphs 23 and 25 of the Third Schedule, be subject to the provisions of the Confidential Relationships Act, Cap.21.02.

## **82. Liability to cost**

A taxable person shall bear the cost of an examination carried out pursuant to the provisions of section 81 that is determined by the Comptroller to be excessive because of the inadequacy of the taxable person's records or the difficulty in obtaining records or access to the records or premises.

## **83. Access to records, computers and goods.**

(1) Where the Comptroller has reasonable grounds to believe that an offence in connection with the tax is being or is about to be committed on any premises, or that evidence of the commission of such an offence is to be found on the premises, he or she shall apply to the Magistrate for a warrant to allow a taxation officer

- (a) without prior notice and at any time, to enter any premises or place where records are kept on such premises and search for any records;
- (b) in carrying out a search referred to in paragraph (a) and in any manner, to open or cause to be opened or removed and opened any article in which the taxation officer suspects that any records are being kept;
- (c) to seize any records which, in the taxation officer's opinion, may afford evidence that may be material in determining the liability of any person for tax payable under this Act;
- (d) to retain any records seized under paragraph (c) for as long as they may be required for determining a person's tax liability under this Act or for any proceedings under this Act;
- (e) to examine and make extracts from, and copies of, any records and require from any person access to records, computers, or goods or an explanation of any entry in a record or computer;

- (f) to observe and examine any process relating to the generation of records including computer or electronically generated records;
  - (g) where a hard copy or computer disk of computer or electronically stored information is not provided, to seize and retain the computer or other device in which the information is stored for as long as it is reasonable to copy the information required.
- (2) A taxation officer shall not exercise a power referred to in subsection (1) without a warrant, and he or she shall, upon being requested by the occupier of the premises or place, produce the warrant before exercising the power.
- (3) A person who is the owner, manager, or any other person lawfully on the premises referred to in subsection (1) in respect of which a warrant is issued for the purposes of subsection (1) shall provide all reasonable facilities and assistance for the effective implementation of the provisions of subsection (1).
- (4) A person whose records or computers have been removed and retained pursuant to the provisions of subsection (1) may examine such records and computers and make copies or extracts from them during regular office hours under such supervision as the Comptroller may determine.
- (5) A taxation officer who is exercising the power referred in subsection (1) may request the assistance of a customs officer or police officer as the taxation officer may consider reasonably necessary and any such customs officer or police officer shall render such assistance as may be required by the taxation officer.
- (6) A person referred to in subsection (3) who refuses to comply with the provisions of that subsection commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

### **PART XIII – OFFENCES AND PENALTIES**

#### **Criminal proceedings**

##### **84. Sanction for prosecution.**

(1) Subject to the powers conferred on the Director of Public Prosecutions by the Constitution and any other law, no criminal proceedings in respect of any offence under this Act shall be commenced except with the sanction of the Comptroller.

(2) Criminal proceedings under this Act shall be commenced in the name of Saint Christopher and Nevis.

##### **85. Time limit for proceedings to be taken.**

Criminal proceedings instituted pursuant to the provisions of this Part may only be commenced,

- (a) where the offence alleged involves the doing of any act, within three years after the discovery of the act;

- (b) where the offence alleged involves the failure to do any act, within three years after the Comptroller has become aware of such failure;
- (c) where the offence alleged involves the non-disclosure or incorrect disclosure by any person of information relating to that person's liability to tax for a tax period, within three years after his or her correct liability to tax has become final for that tax period.

**86. Tax evasion.**

(1) A person shall not willfully evade, or attempt to evade the assessment, payment, or collection of tax.

(2) Any person who willfully evades, or attempts to evade the assessment, payment, or collection of tax commits an offence and shall be liable, on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or both.

**87. Impeding tax administration.**

(1) A person shall not willfully impede or attempt to impede the Comptroller in his or her administration of this Act.

(2) Any person who willfully impedes or attempts to impede the Comptroller in his or her administration of this Act commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

(3) For the purposes of this section, a person impedes the administration of this Act if the person

- (a) fails to comply with a lawful request by a taxation officer to examine documents, records, or data within the control of the person;
- (b) fails to comply with a lawful request by the Comptroller to have the person appear before a taxation officer authorized by the Comptroller;
- (c) interferes with the lawful right of a taxation officer to enter onto a business premises or a dwelling unit; or
- (d) otherwise impedes the determination, assessment, or collection of any tax.

**88. Offences by taxation officers.**

- (1) A taxation officer shall not, in carrying out the provisions of this Act,
  - (a) directly or indirectly ask for, or take in connection with any of the tax officer's duties, payment or reward, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the tax officer is lawfully entitled to receive; or
  - (b) enter into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at any act or thing whereby the tax

revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the tax officer's duty.

(2) A taxation officer who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding two years, or both, and the Court may, in addition to imposing a fine, order the convicted taxation officer to pay to the Comptroller any amount of tax that has not been paid as a result of the taxation officer's wrongdoing and which cannot be recovered from the person liable for the tax.

#### **89. Offences by companies.**

(1) Where a company commits an offence under this Act, every person who, at the time of the commission of the offence, was a director or other similar officer of the company, or was acting or purporting to act in such capacity, shall be deemed to have committed the offence.

(2) The provisions of subsection (1) shall not apply where the offence was committed without that person's consent or knowledge, and if the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

#### **90. Offences by Aiders and abettors.**

A person who aids and abets the commission of an offence under this Act commits that offence and shall be liable to the same penalties as the person who commits the offence.

#### **91. Collection of tax by non-registered person.**

(1) A non-registered person shall not collect tax on a supply.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or both.

#### **92. False or misleading statements.**

(1) A person shall not knowingly or recklessly make a statement to a taxation officer which is false or misleading in a material particular or omit from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular, and the tax properly payable by the person exceeds the tax that would be payable if the person were assessed on the basis that the statement is true.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or both.

(3) Notwithstanding the provisions of subsection (2), a person shall pay to the Comptroller the tax payable, which shall include,

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- (a) in a case where an amount of tax payable by the person would be reduced if it were determined on the basis of the information provided in the statement, the amount by which that tax would have been so reduced; and
- (b) in a case where the amount of a refund that the person applied for would be increased if it were determined on the basis of the information provided in the statement, the amount by which that amount would have been so increased.

(4) A reference in this section to a statement made to a taxation officer is a reference to a statement made orally, in writing, or in any other form to that taxation officer acting in the performance of the taxation officer's duties under this Act, and includes a statement made under this Act

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to taxation officer otherwise than pursuant to this Act;
- (d) in an answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

(5) It shall be a defence to any criminal proceedings instituted pursuant to the provisions of subsection (1) that the person did not know and could not reasonably be expected to have known that the statement to which the proceedings relate was false or misleading.

### **93. General penalty.**

A person who commits an offence under this Act in respect of which no penalty is prescribed shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

### **94. Compounding of offences.**

(1) Where a person commits an offence under this Part, other than an offence committed under section 8 or 88 of this Act, the Comptroller may, at any time prior to the commencement of the hearing by any court of the proceedings relating thereto, compound such offence and order the person to pay such sum of money as may be specified by the Comptroller, not exceeding the maximum amount of the fine prescribed for the offence.

(2) The Comptroller may compound an offence under this section only if the person concerned requests the Comptroller, in writing, to deal with the offence in that manner.

(3) Where the Comptroller compounds an offence under this section, the order referred to in subsection (1)

- (a) shall be in writing and shall have attached to it the written request described in subsection (2);
  - (b) shall contain the following information:
    - (i) the offence committed;
    - (ii) the sum of money to be paid; and
    - (iii) the due date for the payment;
  - (c) shall be served on the person who committed the offence; and
  - (d) shall be final and not subject to appeal.
- (4) The powers of the Comptroller under this section shall be subject to the powers conferred on the Director of Public Prosecutions by the Constitution, and the Comptroller shall give the Director of Public Prosecutions a copy of the order specified in subsection (3) before it is served on the taxpayer.
- (5) The amount ordered to be paid pursuant to the provisions of subsection (1) shall be recoverable as if it was a tax due and payable.

### **Civil Penalties**

#### **95. General provisions.**

- (1) No penalty shall be payable where, in respect of the same act or omission, the person has been convicted of an offence in criminal proceedings instituted under this Act or where an offence has been compounded under the provisions of section 94.
- (2) Where a civil penalty is paid in accordance with the provisions of this Part and the Comptroller decides to institute criminal proceedings under this Part in respect of the same act or omission, then the Comptroller shall refund the amount of the civil penalty paid, and that civil penalty shall not be payable unless the criminal proceedings are withdrawn.
- (3) Where a person who is liable to pay a civil penalty shows, in writing, good cause why he or she should not pay the civil penalty, the Comptroller may mitigate in whole or in part any civil penalty payable, and a person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of this subsection may challenge that decision in accordance with the provisions of Part X of this Act.
- (4) Civil penalties shall be assessed and collected following the same procedure used for tax as if the amount of penalty is tax due under this Act, and the penalties specified in subsection (5) shall be assessed together with the tax to which they relate.
- (5) Where the amount of civil penalty is, or may be, calculated by reference to the tax payable for a tax period, the time limit for assessing the penalty shall be the same as the limit for assessing the tax to which the penalty relates.
- (6) In the case of civil penalties specified under this Part, other than those specified in subsection (5), the time limit for assessing a civil penalty under this Part shall be determined in accordance with the provisions of section 85.

**96. Failure to register or to display certificate.**

(1) A person who fails to apply for registration as required by subsections (4), (6), (9), (11), and (13) of section 12 shall be liable to pay a civil penalty equal to double the amount of output tax payable from the time the person is required to apply for registration until the person files an application for registration with the Comptroller.

(2) A person who fails to display the certificate of registration issued by the Comptroller as required by section 20 shall be liable to pay a civil penalty of \$50 per day in respect of each day or portion thereof that the failure continues.

**97. Failure to notify Comptroller.**

A person who fails to notify the Comptroller as required by section 22 or 23.(1) and (12) shall be liable to pay a civil penalty not exceeding one thousand dollars.

**98. Tax invoice.**

A person who

- (a) issues a false invoice or false sales receipt;
- (b) uses a false taxpayer's identification number;
- (c) fails to provide a tax invoice, sales receipt, tax credit note, or tax debit note, or provides one otherwise than as provided for in section 43 or 44;

shall be liable to pay a civil penalty not exceeding twenty-five thousand dollars.

**99. Failure to file return.**

A person who fails to file a return within the time required under this Act shall be liable to pay a civil penalty of one hundred dollars per month, or part thereof, for the period during which the return remains unfiled.

**100. Failure to comply with notice for recovery of tax.**

A person who fails to comply with a notice issued pursuant to the provisions of section 59 shall be liable to pay a civil penalty not exceeding twenty-five percent of the amount sought to be recovered from the person.

**101. Failure to keep records.**

A person who fails to maintain proper records as required by section 79 shall be liable to pay a civil penalty of fifty dollars per day in respect of each day or portion thereof during which the failure continues

**102. Failure to provide facilities.**

A person who fails to provide a taxation officer with reasonable facilities and assistance as required by section 83.(3) shall be liable to pay a civil penalty not exceeding one thousand, five hundred dollars.

**103. Failure to comply with notice under section 81.**

A person who fails, within the specified time, to comply with a notice issued under section 81 shall be liable to pay a civil penalty not exceeding ten thousand dollars.

**104. Non-compliance with price quotation requirements.**

A person who contravenes the provisions of subsection (2) or (4) of section 111 shall be liable to pay to the Comptroller a penalty of five hundred dollars, and a further penalty of fifty dollars per day in respect of each day or part thereof during which the breach continues after receiving a written warning from the Comptroller to correct the breach.

**105. Penalty for making false or misleading statements.**

(1) Where a person knowingly or recklessly makes a statement to a taxation officer which is false or misleading in a material particular or omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular, and the tax properly payable by the person exceeds the tax that would be payable if the person were assessed on the basis that the statement is true, the person shall be liable to pay to the Comptroller a civil penalty equal to the greater of twenty thousand dollars.

(2) In a case where the amount of tax payable by the person would be reduced if it were determined on the basis of the false or misleading information provided in the statement, the person shall be liable to pay a civil penalty equal to the amount by which that tax would have been so reduced.

(3) In a case where the amount of a refund that the person applied for would be increased if it were determined on the basis of the false or misleading information provided in the statement, the person shall be liable to pay a civil penalty equal to the amount by which that amount would have been so increased.

(4) A reference in this section to a statement made to a taxation officer is a reference to a statement made orally, in writing, or in any other form to the officer acting in the performance of the officer's duties under this Act, and without prejudice to the generality of the foregoing such a statement includes a statement made

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to a taxation officer otherwise than pursuant to the provisions of this Act;
- (d) in an answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

(5) It is a defence in any civil proceedings instituted pursuant to the provisions of subsection (1) that the person did not know and could not reasonably be

expected to have known that the statement to which the prosecution relates was false or misleading.

**106. Temporary closure of business premises.**

- (1) Where a person is convicted of repeatedly violating
  - (a) section 43 in relation to tax invoices;
  - (b) section 44 in relation to tax debit notes or tax credit notes;
  - (c) section 46 by failing to file returns;
  - (d) section 50 by failing to pay tax when due;
  - (e) section 61 by improperly claiming tax refunds; or
  - (f) section 87 by impeding tax administration;

after obtaining an order of a competent court, the Comptroller may forcibly close one or more business premises of the person for a period of between three to thirty calendar days.

(2) For the purposes of subsection (1), the Comptroller may use reasonable force and police assistance necessary to close all or any of the premises of the person, barring access with locks, fencing, boarding, or other appropriate methods.

(3) For the purposes of this section, a repeated violation means a violation that is committed within one year of receipt by the person of a written warning

- (a) that a violation of such kind has been committed more than once within the year preceding the warning; and
- (b) that repetition may result in closure under this section.

**107. Publication of names of defaulters.**

Notwithstanding anything in any other law in force in Saint Christopher and Nevis, where a person

- (a) fails to file returns in accordance with section 46;
- (b) being liable to pay the tax, fails to pay the tax on three occasions;
- (c) violates any other rule made under this Act which is designated as a serious delinquency by regulations made under this Act;
- (d) is convicted of an offence under this Act,

the Comptroller may publish, in a newspaper circulating in Saint Christopher and Nevis, the name of the person or the name of the business of that person, or both.

**PART XIV – MISCELLANEOUS PROVISIONS**

**108. Inclusion of taxpayer's identification number in returns etc.**

A taxpayer shall include his or her taxpayer's identification number issued to him or her by the Comptroller in any return, notice, or other document prescribed or used for the purposes of this Act.

**109. Forms, notices and authentication of documents.**

(1) Forms, notices, returns, and other documents prescribed or published by the Comptroller may be in such form as the Comptroller may determine for the efficient administration of this Act, and shall be valid whether or not published in the *Gazette*.

(2) The Comptroller shall make the documents referred to in subsection (1) available to the public at the offices of the Inland Revenue Department and any other locations, or by any other means, as the Comptroller may determine.

(3) A notice or other document issued, served, or given by the Comptroller under this Act shall be sufficiently authenticated if the name or title of the Comptroller or the taxation officer authorized by the Comptroller is printed, stamped, or written on the document, and if the document is signed by the Comptroller or the taxation officer authorized by the Comptroller, and for this purpose, the signature may be a computer or electronically generated signature.

**110. Service of notice.**

(1) Unless otherwise provided in this Act, a notice required by this Act to be in writing shall be served on the recipient of the notice.

(2) A notice specified in subsection (1) shall be considered sufficiently served on the recipient if it is

- (a) personally served on that person;
- (b) personally served on the representative of that person in accordance with the provisions of section 69;
- (c) left at the person's usual or last known place of abode, office, or place of business in Saint Christopher and Nevis; or
- (d) sent by post to such place of abode, office or place of business, or to the person's usual or last known address in Saint Christopher and Nevis.

**111. Tax-inclusive pricing.**

(1) A price charged by a taxable person in respect of a taxable supply shall be deemed to include, for the purposes of this Act, the tax charged on the supply pursuant to the provisions of paragraphs (a) or (d) of section 26.(1), whether or not the taxable person has included tax in such price.

(2) Subject to the provisions of subsection (3), a price which is advertised or quoted by a taxable person in respect of a taxable supply shall include tax and this shall be stated in the advertisement or quotation.

(3) A taxable person may advertise or quote a price in respect of a taxable supply as exclusive of tax, provided that it is also stated in the advertisement or quotation the amount of tax charged on the supply, or that the price is inclusive of tax, and that the amount of tax or the price which is inclusive of the tax is displayed no less prominently than the price exclusive of tax.

(4) Subject to the provisions of subsection (5), price tickets on goods supplied by a taxable person need not state that the price includes tax if this is stated by way of a notice prominently displayed at the premises in which the taxable person carries on a taxable activity, including the places in such premises where payments are effected.

(5) The Comptroller may, in the case of a taxable person or class of taxable persons, approve any other method of displaying prices of goods or services by such persons.

(6) A person who contravenes the provisions of subsection (2) or (4) commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

### **112. Schemes for obtaining tax benefits.**

(1) In this section,

“scheme” includes any agreement, arrangement, promise, or undertaking, whether express or implied and whether or not legally enforceable, and any plan, proposal, or course of action; and

“tax benefit” includes

- (a) a reduction in the liability of a person to pay value added tax;
- (b) an increase in the entitlement of a person to a deduction or refund;
- (c) a postponement of liability for the payment of value added tax;
- (d) an acceleration of entitlement to a deduction for input tax; or
- (e) any other avoidance or benefit from the delay in payment of tax or acceleration of entitlement to a deduction for input tax.

(2) Notwithstanding anything in this Act, if the Comptroller is satisfied that a scheme has been entered into or carried out where

- (a) a person obtains a tax benefit in connection with the scheme in a manner that constitutes a misuse of the provisions of this Act; and
- (b) having regard to the substance of the scheme, it would be concluded that the 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 to obtain the tax benefit;

the Comptroller may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Comptroller considers appropriate for the prevention or reduction of the tax benefit.

### **113. Currency conversion.**

(1) For the purposes of this Act, all amounts of money are to be expressed in Eastern Caribbean Dollars, (EC\$ or XCD\$).

- (2) Where an amount is expressed in a currency other than Eastern Caribbean Dollar, (EC\$, XCD\$),
- (a) in the case of imports, the amount shall be converted at the exchange rate as determined for the purposes of the Customs (Control and Management) Act;
  - (b) in all other cases, the amount shall be converted at the exchange rate applying between the currency and the Eastern Caribbean Dollar (EC\$) at the time the amount is taken into account under this Act.

#### **114. International agreements.**

(1) In this section, “international agreement” means an existing agreement or any agreement that may subsequently be approved by Cabinet between Saint Christopher and Nevis and a foreign government or an international organization providing humanitarian or technical assistance.

(2) To the extent that the terms of a treaty or other international agreement to which Saint Christopher and Nevis is a party are inconsistent with the provisions of this Act, apart from section 112, the terms of the treaty or international agreement shall prevail over the provisions of this Act.

#### **115. Registration of certain goods prohibited in certain circumstances.**

(1) For purposes of this section,

“registering authority” means a person appointed under any law to issue a licence, permit, certificate, concession, or other authorizations;

“registrable goods” means an aircraft, boat, fishing vessel, ship, yacht, motor cycle, motor vehicle, tractor, caravan, firearms or trailer.

(2) Where any form of registration is required under any law in respect of registrable goods, a registering authority responsible for such registration under such law shall not effect such registration upon a change of ownership or importation into Saint Christopher and Nevis of registrable goods unless the person applying for registration produces to such registering authority,

(a) in the case of registrable goods which are imported into Saint Christopher and Nevis, a receipt or customs document issued by the Comptroller of Customs showing that tax which is payable under this Act has been paid in respect of such importation into Saint Christopher and Nevis, or a receipt or certificate showing that no tax is payable under this Act in respect of such importation of the registrable goods in consequence of which the registration is required;

(b) a declaration, in such form as the Comptroller may prescribe, issued by a registered person who, in carrying on a taxable activity in the ordinary course of which registrable goods are dealt in, supplied such goods in consequence of which the registration is required,

certifying that the tax payable under this Act has been, or will be, paid by such person;

- (c) a certificate issued by the Comptroller, or other documentation acceptable to the Comptroller, to the effect that the supply or import of the registrable goods was an exempt supply or exempt import, as the case may be; or
- (d) in the case of registered goods supplied by an unregistered person for which a refund or exemption had been granted under section 63 or under international agreements, as defined under section 114, a receipt or certificate issued by the Comptroller or the Comptroller of Customs that payment of tax has been made.

#### **116. Auctioneer and agent.**

(1) Where a taxable supply is made in the circumstances specified under section 5(1)(a), the agent may issue a tax invoice in accordance with this Act in relation to the supply as if the agent had made the supply, in which case the principal may not also issue a tax invoice in relation to the supply.

(2) Where a taxable supply is made in the circumstances specified under section 5(1)(b) at the request of the agent, a tax invoice in relation to the supply may be issued to the agent, in which case the supplier may not issue a tax invoice to the principal in relation to the supply.

(3) Where tax is payable by an auctioneer in respect of the supply of goods specified under section 5(3), the auctioneer shall charge the purchaser the amount of tax payable in respect of the sale by adding the tax to the amount of a successful bid or, in the case of sales out-of-hand, to the purchase price, and shall recover that tax from the purchaser.

#### **117. Regulations.**

(1) The Minister may make regulations for the better carrying into effect the purposes of this Act, and for any matter which under this Act is to be prescribed by regulations.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for

- (a) provisions of a saving or transitional nature consequent to the coming into force of this Act;
- (b) specific offences and penalties not exceeding five thousand dollars for breach of the regulations; or
- (c) the application of terms used in this Act and ancillary rules that facilitate the application of provisions in the Act, including the determination of the value, time, and place of transactions for purposes of applying the Act to those transactions.

**118. Variation of consideration on a change in rate of tax.**

(1) Where an agreement for a supply of goods or services by a registered person is entered into, and if subsequent to entering into the agreement, tax is imposed on the supply or the rate of tax applicable to the supply is increased, then the registered supplier may, unless explicitly provided to the contrary in the agreement, recover from the recipient, in addition to the amounts payable by the recipient, an amount equal to the amount of tax imposed or the amount by which the tax was increased, as the case may be.

(2) Where an agreement for a supply of goods or services by a registered person is entered into, and if subsequent to entering into the agreement, tax on the supply is withdrawn or the rate of tax applicable to the supply is decreased, then the registered supplier shall, unless explicitly provided to the contrary in the agreement, reduce the amount payable by the recipient by an amount equal to the amount of tax withdrawn or the amount by which the tax was decreased, as the case may be.

(3) Subject to the provisions of subsections (4) and (5), where the provisions of subsection (1) or (2) applies in respect of a supply of goods or services subject to any fee, charge, or other amount, whether a fixed, maximum, or minimum fee, charge, or other amount, prescribed by or determined pursuant to, any Act, regulation, or measure having the force of law, that fee, charge, or other amount may be increased or shall be decreased, as the case may be, by the amount of tax or additional tax chargeable, or the amount of tax no longer chargeable.

(4) The provisions of subsection (3) shall not apply where the fee, charge, or other amount has been altered in any Act, regulation, or measure having the force of law to take account of any imposition, increase, decrease, or withdrawal of tax.

(5) Nothing in subsection (3) shall be construed so as to permit any further increase or require any further decrease, as the case may be, in a fee, charge, or other amount where the fee, charge, or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money of taxable supply.

**119. Application of increased or reduced rate.**

(1) Where services are performed or goods are provided in respect of a successive supply contemplated in section 35.(8) or (9) during a period beginning

- (a) before and ending on or after the date on which a change in the rate of tax levied under section 26.(1) (a) or (d) becomes effective in respect of the supply of the goods or services; or
- (b) on the date on which the tax is imposed or withdrawn in respect of the supply; and
- (c) the supply is deemed under section 35 to have been made on or after the date specified in paragraphs (a) and (b);

the value of the supply shall, on the basis of a fair and reasonable apportionment, be deemed to consist of a part, referred to as the “first part”, relating to the performance of services or provision of goods before the date specified in paragraphs (a) and (b), and a part

referred to as the “second part”, relating to the performance of services or provision of goods on or after the date specified in paragraphs (a) and (b).

- (2) For the purposes of subsection (1),
  - (a) in the case of a change in the rate of tax on the date specified in paragraph (a) of subsection (1), the tax payable in respect of the first part shall be determined at the rate applicable before the said date, and the tax payable in respect of the second part shall be determined at the rate applicable on the said date;
  - (b) in the case of the imposition of tax on the date specified in paragraph (b), the first part shall not be subject to tax;
  - (c) in the case of the withdrawal of the tax, the first part shall be subject to tax as if the tax had not been withdrawn;
  - (d) goods are deemed to be provided by the supplier of the goods when the goods are delivered to the recipient, and goods supplied under a rental agreement shall be deemed to be provided to the recipient when the recipient takes possession or occupation of the goods.

#### **120. Orders to amend Schedules etc.**

- (1) Subject to the provisions of subsection (2), the Minister may, by Order,
  - (a) amend any Schedule to this Act;
  - (b) increase or decrease any monetary amount set out in this Act;
  - (c) increase or decrease any rate of tax specified in section 26.
- (2) An Order made pursuant to the provisions of subsection (1) shall be subject to affirmative resolution of the National Assembly.

#### **121. Remission of tax.**

(1) Where the Comptroller takes all steps which are permissible under this Act in order to recover tax and the Comptroller is unable to recover the tax, penalty and interest due and payable under this Act by a person for a specified period, the Comptroller shall advise the Minister accordingly.

(2) The Minister may, upon being advised by the Comptroller in accordance with the provisions of subsection (1), refer the matter back to the Comptroller requiring him or her to retake the steps referred to in subsection (1) or may, subject to the provisions of subsection (4), order the extinguishment of the liability as a debt due to the Crown.

(3) An order made pursuant to the provisions of subsection (2) shall be subject to the approval of the Cabinet.

(4) If the Comptroller determines that a person who is subject to an order made pursuant to the provisions of subsection (2) has assets which may be attached for the purpose of recovering the unpaid tax, penalty and interest specified in the order, then, with the approval of the Cabinet, the order may be revoked and the liability reinstated.

**122. Exemption in another law.**

A provision in another law which grants an exemption under section 30, 31, or 34 or zero rate under section 32 or 33 for purposes of this Act shall not come into effect for the purposes of this Act until a corresponding amendment is made to this Act.

**123. Repeals and Saving.**

(1) The following Acts are hereby repealed with effect from the date of the coming into force of this Act:

- (a) Consumption Tax Act, Cap. 20.02;
- (b) Self Drive Motor Vehicles (Rentals) (Tax) Act, Cap. 20.37;
- (c) Telecommunications Tax Act;
- (d) Hotel Accommodation and Restaurant Tax Act, Cap. 20.20;
- (e) Parcels Tax Act, Cap. 20.30;
- (f) Public Entertainment and lotteries Tax Act, Cap. 20.34;
- (g) Traders Tax Act, Cap. 20.46;
- (h) Gaming Machine Tax Act;
- (i) Cable TV Tax Act;
- (j) Export Duty Act, Cap. 20.12

(2) Notwithstanding subsection 1, a repealed Act, including the rules governing the levy, payment, assessment, reporting, and recovery of tax imposed under that Act, shall continue to apply to a supply or importation taking place prior to the date on which this Act comes into force.

**PART XV – TRANSITIONAL PROVISIONS****124. General.**

(1) In this Part, “repealed Acts” means the Acts which are repealed pursuant to the provisions of section 123 of this Act.

(2) Any appointment made under any repealed Act and subsisting at the date of the coming into force of this Act shall be treated as an appointment made under this Act, and an oath of secrecy taken under the repealed Act shall be treated as having been taken under this Act.

(3) Any form or document used in relation to a repealed Act may continue to be used under this Act, and all references in such forms or documents to provisions of and expressions appropriate to the repealed Act shall be taken to refer to the corresponding provisions and expressions of this Act.

(4) Where a contract was concluded between two or more parties before the coming into force of this Act, and no provision relating to tax was made in the contract, the

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supplier shall charge and recover from the recipient tax due on any taxable supplies made under the contract after the date on which this Act comes into force.

(5) Where a contract concluded after a date on which this Act came into force does not include a provision relating to tax, the contract price shall be deemed to include the tax, and the supplier under the contract shall account for the tax due and payable.

(6) Subject to the provisions of subsection (8), if, in connection with a supply of goods or services title to goods passes, and delivery of goods is made, or services are rendered after the date on which this Act came into force, but where payment was received or an invoice was issued within a period of nine months before the date on which this Act came into force, then, for the purposes of determining the tax period in which the supply occurs or an input tax deduction is allowable, the payment shall be treated as having been made or the invoice shall be treated as having been issued on the date on which this Act came into force.

(7) If goods or services which are subject to taxes repealed under section 123.(1)(b), (c), (d), and (i) were supplied or rendered before the date on which this Act came into force and payment for the goods or services is made within a period of four months after the coming into force of this Act, value added tax shall not be imposed on the goods supplied or services rendered.

(8) Tax under this Act shall, where

- (a) goods were supplied successively or services rendered successively as provided in section 35.(8) or (9); or
- (b) services subject to taxes repealed under section 123.(1)(b), (c), (d), and (i) were rendered during a period that began before and ended after this Act came into force;

be imposed on the portion of the consideration for the goods supplied and services rendered after the coming into force of this Act, except that to the extent that the consideration for the goods supplied and services rendered before the coming into force of this Act is paid more than four months after the coming into force of this Act, the consideration shall be treated as consideration for the supply of goods or services rendered on the day after the end of the four month period.

(9) Notwithstanding the provisions of subsection (8), if construction, reconstruction, manufacture or extension of a building or civil engineering work is performed under a written agreement executed before the coming into force of this Act and the property is made available to the recipient after that date, tax shall be imposed only on the value of the work performed after that date if the value of the work on the day before the coming into force of this Act is determined in a manner approved by the Comptroller and is submitted to the Comptroller by the end of the supplier's first tax period after the tax becomes effective.

(10) Where immovable property is provided under a rental agreement for a period that starts before and ends after the date on which this Act comes into force, the

consideration for the rental shall not include the amount attributable to the portion of the period that ends before the date on which this Act comes into force.

(11) For the purposes of section 39.(1)(c), an amount paid as a prize or winnings shall not include an amount attributable to obligations or contingent obligations that existed immediately prior to the coming into force of this Act.

(12) The Minister may make Regulations for other transitional measures relating to the end of consumption tax, hotel and restaurant tax, the start of value added tax, or the transition from consumption tax, and hotel and restaurant to value added tax.

#### **125. Transitional requirement for registration.**

(1) In order to issue tax invoices on the date that this Act comes into force, a person who is required to register shall apply for registration before the date of coming into force of this Act.

(2) Any person who, before the coming into force of this Act, was registered for any tax pursuant to the provisions of the repealed legislation, shall apply for registration pursuant to the provisions of this Act not less than thirty calendar days before the date on which this Act comes into force, unless the person satisfies the Comptroller that he or she is not required to apply for registration.

(3) Any person who is registered for any tax specified in subsection (2) may satisfy the Comptroller that he or she is not required to register under the provisions of subsection (2) by filing a form with the Comptroller within a period of not less than thirty calendar days before the date on which this Act comes into force declaring or affirming the facts specified in subsection (4).

(4) The facts to be set out in the form that is to be filed pursuant to the provisions of subsection (3) are the following:

- (a) that the person has not, in the last twelve months ending on the date on which this Act comes into force, made supplies under the repealed Act exceeding the threshold required for registration pursuant to the provisions of section 12; and
- (b) that the person will not, in the next twelve months beginning on the date on which this Act comes into force, make supplies under this Act exceeding the threshold required for registration pursuant to the provisions of section 12.

(5) The Minister may make regulations for other transitional measures relating to the end of any tax imposed under any repealed Act in relation to the commencement of value added tax.

(6) A person who fails or refuses to register pursuant to the provisions of this section shall be liable to a civil penalty of fifty dollars per day or a portion thereof during which the failure or refusal continues.

**126. Other transitional requirements.**

(1) Any person who was not registered under any of the repealed Acts before the coming into force of this Act shall apply for registration within a period of not less than thirty calendar days before the date on which the tax imposed by this Act comes into effect if the person is required to register by virtue of the provisions of section 12.

(2) A person who fails or refuses to register pursuant to the provisions of this section shall be liable to a civil penalty of fifty dollars per day or a portion thereof during which the failure or refusal continues.

(3) For the purposes of this section, the Comptroller shall serve a notice, in writing, of his or her decision on an application made for registration within a period of thirty days of receipt of the application, and any failure by the Comptroller to serve the notice shall be treated as a decision by the Comptroller to register the applicant.

**127. Prevention of price exploitation on introduction of VAT.**

(1) Subject to the provisions of subsection (3), any person who makes a taxable supply for a price that is excessive having regard to any of the following, that is to say,

- (a) the introduction of value added tax;
- (b) the person's costs;
- (c) whether the person is a taxable person;
- (d) supply and demand conditions relevant to the supply; or
- (e) any other relevant matter;

commits a civil offence and is liable to pay a civil penalty of \$2,000 in respect of the first offence, and \$5,000 in respect of each subsequent offence.

- (2) A person shall not be liable under the provisions of subsection (1) if
  - (a) in the opinion of the Comptroller, the contravention was due to a genuine mistake; and
  - (b) the person took reasonable precautions and exercised due diligence to avoid contravention of the provisions of subsection (1).

(3) The Comptroller shall publish in the Gazette guidelines for determining whether prices for supplies are in contravention of the provisions of subsection (1).

**FIRST SCHEDULE***(Section 30)***EXEMPT IMPORTED GOODS**

1. The goods specified in Paragraphs 2 to 21, shall be exempt imported goods pursuant to the provisions of section 30 of this Act to the extent provided in regulations.

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2. (1) Subject to sub-paragraph (2), imported goods, including packing containers, which are exported and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or adaptation and without a permanent change of ownership.
- (2) The goods specified in sub-paragraph (1) do not include goods which were, at the time of export,
  - (a) a supply of goods charged with tax at the rate of zero percent under the provisions of section 33; or
  - (b) a supply of goods made before the coming into force of value added tax and where that supply would have been charged with tax at the rate of zero percent under the provisions of section 33 if the supply had taken place on or after the coming into force of value added tax.
3. (1) Goods, including packing containers, produced or manufactured in Saint Christopher and Nevis, and exported from Saint Christopher and Nevis and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or adaptation.
- (2) The goods specified in sub-paragraph (1) do not include goods which were, at the time of export,
  - (a) a supply of goods charged with tax at the rate of zero percent under the provisions of section 33; or
  - (b) a supply of goods made before the coming into force of value added tax and where that supply would have been charged with tax at the rate of zero percent under the provisions of section 33 if the supply had taken place on or after the coming into force of value added tax.
4. *Bona fide* unsolicited gifts of food which do not exceed 45 kilograms, and this exemption does not apply to
  - (a) goods contained in passengers' baggage; or
  - (b) wine, spirits or manufactured tobacco.
5. Passenger allowance of:
  - (a) 1.5 litres of spirits or wine or proportionate mixes and 250 grams of manufactured tobacco or 200 cigarettes or 100 cigarillos or 50 cigars;
  - (b) residents of St Christopher and Nevis who were abroad for a period exceeding seven days are entitled to an allowance of EC\$400.00 on items, excluding firearms and or ammunitions, acquired overseas;pursuant to a Customs Declaration Form issued and approved by the Comptroller of Customs in accordance with the Customs (Control and Management) Act, Cap. 20.40 or any Act that may replace it.
6. Goods which are shipped or conveyed into Saint Christopher and Nevis for transshipment or conveyance to any other country, but not entered into Saint Christopher and Nevis for Customs purposes.

7. Goods imported by Saint Christopher and Nevis nationals returning home for permanent residence as may be provided in regulations made under this Act.
8. Containers temporarily imported under Customs Tariff Heading 8609.00.
9. To the extent provided in paragraphs (a), (b), and (c), but only if the imported items are covered by paragraph 10 of the List of Conditional Duty Exemptions of the Common External Tariff of the Caribbean Common Market issued under Schedule 4 of the Customs Duties Act, (Dumping and Subsidies) Act, Cap. 20.05 to facilitate the movements of persons
  - (a) personal and house hold effects of a passenger and instruments and tools of trade for use by the passenger, accompanying the passenger, or imported by that passenger within three months before, or after the arrival of the passenger, or such further period as the Comptroller of Customs may allow;
  - (b) souvenirs and gifts imported by a passenger; as the Comptroller of Customs may allow;
  - (c) personal effects, not being merchandise, of a citizen of the importing Member State or persons ordinarily domiciled abroad.
10. (1) Goods temporarily imported into Saint Christopher and Nevis to the extent provided as follows and in regulations made under this Act:
  - (a) goods temporarily admitted for processing that do not become the property of the importer;
  - (b) Goods temporarily admitted for repair, cleaning or reconditioning.(2) Goods are temporarily admitted for repair, cleaning or reconditioning, including parts associated with that work.
  - (3) The Comptroller of Customs and Excise may demand a deposit upon an importation as security to guarantee that the repaired or reconditioned machines are exported.
  - (4) Subject to sub-paragraph (5), equipment temporarily admitted for specific economic development purposes, except that the exemption does not apply unless, before the goods are entered for Customs purposes, the Comptroller of Customs has written notification from the Financial Secretary that the goods are to be exempt from tax.
  - (5) For the purposes of sub-paragraph (4), the Comptroller of Customs and Excise shall demand a deposit of one-half of the value of the equipment upon an importation as security to guarantee that the equipment will be removed from Saint Christopher and Nevis on the completion of the project.
11. An importation of goods if the Comptroller is satisfied that VAT has previously been paid on the sale or importation of such goods.
12. An importation of used goods, not including merchandise, owned by a citizen of Saint Christopher and Nevis who has died abroad.

13. The human remains of a person who has died abroad.
14. Currency notes and coins imported under the Eastern Caribbean Central Bank Agreement.
15. Unconditional gift of goods without consideration to an approved charitable organization and not for sale to the extent provided as follows:
  - (a) the exemption does not apply to goods acquired for re-sale;
  - (b) the approved charitable organization is defined in Regulations made under this Act;
  - (c) the exemption does not apply unless, before the goods are entered for customs purposes, the Comptroller of Customs has written notification from the Financial Secretary that the goods are to be exempt from tax.
16. Challenge Cups and other trophies presented to participants in an event outside of the Federation.
17. An unconditional gift of goods other than goods for re-sale consigned to the State if the Comptroller of Customs has written notification from the Financial Secretary before entry that the goods are to be exempt from tax.
18. Unconditional gift of goods without consideration to an approved religious organization and not for sale to the extent provided as follows:
  - (a) the exemption does not apply to goods acquired for re-sale;
  - (b) the approved religious organization as defined in regulations made pursuant to the provisions of this Act;
  - (c) the exemption does not apply unless, before the goods are entered for customs purposes, the Comptroller of Customs has written notification from the Financial Secretary that the goods are to be exempt from tax.
19. Imports by approved religious organizations of articles of religious worship to the extent provided in regulations made under this Act and to the extent provided as follows:
  - (a) articles of religious worship if, before entry, the Financial Secretary notifies the Comptroller of Customs, in writing, that the articles are to be exempt;
  - (b) to qualify for the exemption, the approved religious organizations must be registered at the Registry;
  - (c) the items covered by the exemption include bells, pews, rosaries, candles used in the church or for religious services, candle holders for church use, sculptures, stations of the cross, crucifixes, chalices, and communion wafers;
  - (d) the items do not include items such as wine, office supplies, chairs and other furniture, and other imports not directly associated with religious worship.
20. Goods imported by a taxable person qualifying for incentives as an ‘Enclave Industry’ under section 2 of the Fiscal Incentives Act, Cap. 20:14 if, before import, the following conditions are satisfied:

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- (a) the person has a valid licence as an ‘Enclave Industry’ under the Fiscal Incentives Act, Cap. 20.14;
  - (b) the goods are consigned directly to the person;
  - (c) the goods eligible to be exempted for importation are goods to be used in a taxable activity that, if taxable, would qualify under section 40;
  - (d) the person has complied with his or her obligations under the laws relating to tax, and any other tax administered by the Minister of Finance; and
  - (e) the person agrees to pay the amount of tax otherwise payable
    - (i) to the extent determined by the Comptroller, on goods imported under this section if the person violates the terms of the licence agreement,
    - (ii) on goods on hand when the person’s registration is cancelled, if the cancellation results from the expiration of the licence or a violation of its terms;
    - (iii) on imports of goods exempt under this section if the person fails to hold documentary evidence that those goods have been exported from Saint Christopher and Nevis and
    - (iv) on the exempt imports that were sold within in Saint Christopher and Nevis.
21. Imports of approved goods (referred to in this paragraph as approved imports) by an importer qualified as a licensed duty free operator to the extent provided in this paragraph and by regulations made under this Act:
- (a) the importer is a registered person at the time of import;
  - (b) the importer has a valid licence as a Duty Free Operator;
  - (c) the approved imports are consigned directly to the qualified importer;
  - (d) the approved imports are to be used in a taxable activity and, if they were taxable, they would qualify for a deduction under section 40 of this Act;
  - (e) the approved imports exempt under this paragraph are limited to those listed in regulations made under this Act;
  - (f) the importer has complied with his or her obligations under the laws relating to tax, and any other tax administered by the Minister of Finance, and
  - (g) the importer agrees to pay the amount of tax otherwise payable on the import of the approved goods if the importer
    - (i) violates the terms of the licence agreement,
    - (ii) registration is cancelled under this Act or under an Act regulating duty free vendors or operators, or
    - (iii) fails to hold documentary evidence, collected at the time of the supply, that establishes that the goods were sold to a non-resident and such goods were removed from Saint Christopher and Nevis, without being effectively used or enjoyed in Saint Christopher and Nevis.

**SECOND SCHEDULE***(Section 33)***ZERO-RATED SUPPLIES***Part I – Preliminary*

1. In this Schedule, unless the context otherwise requires,

“export country” means

- (a) any country, other than Saint Christopher and Nevis;
- (b) any place which is not situated in Saint Christopher and Nevis;

except a specific country or territory that the Minister may, by Order, designate as a country or territory that is not an export country;

“exported from Saint Christopher and Nevis”, in relation to any movable goods supplied by a registered person under a sale or a credit agreement, means, subject to paragraph 5.(2) of this Schedule,

- (a) consigned or delivered by the registered person to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Comptroller; or
- (b) delivered by the registered person to the owner or charterer of a foreign-going aircraft or foreign-going vessel when such aircraft or vessel is going to a destination in an export country and such goods are for use or consumption in such aircraft or vessel, as the case may be;

“foreign - going aircraft” means an aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in Saint Christopher and Nevis and airports in export countries or between airports in export countries;

“foreign - going vessel” means a vessel engaged in the transportation, for reward, of passengers or goods wholly or mainly on voyages between seaports in Saint Christopher and Nevis and seaports in export countries or between seaports in export countries;

“intellectual property right” means any patent, design, trade mark, copyright, know-how, confidential information, trade secret, or similar rights;

2. The classification and description of goods specified in this Schedule which bear the heading numbers as designated in the Customs Tariff are to be interpreted in accordance with the rules of interpretation set out in Part I of the Customs Tariff.

*Part II – Zero Rated Supply of Goods*

3. (1) The supply of goods specified in sub-paragraphs (2) to (12) of this paragraph shall, to the extent provided in regulations made under this Act, be zero rated supplies for the purposes of section 34 of this Act.
- (2) A supply of the following basic foods classified under Customs Tariff Headings: 1006.20, 1006.30, 1006.40 Rice

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1701.11.1701.999 Sugar

1101. Flour

0401,0402.10, 0402.20, 0402.21,0402.29, 0402.91 Milk

1901.10 Infant formula

1004.00 Oats

- (3) A supply of infant and adult disposable diapers classified under Customs Tariff Headings:
- 4818.402 Baby disposable diapers  
4818.40910 Adult disposable diapers
- (4) A supply of bread produced within Saint Christopher and Nevis if the bread does not contain any sweeteners, icing, fruit, or chocolate, or chicken, meat, fish, or vegetables added on top or inside the product.
- (5) A supply of fuel classified under Customs Tariff Headings:
- 2710.10 Motor Spirit (Gasoline) and other light oils and preparations  
2710.20 Kerosene and other medium oils (not including Gas Oils)  
2710.30 Gas Oils (including Diesel)  
2710.40 Fuel Oils, not elsewhere specified or included  
2711.10 Petroleum gases and other gaseous hydrocarbons (including LPG).
- (6) Except for exports governed by paragraph 14.(5)(c) of the Third Schedule, a supply of goods where the supplier enters the goods for export pursuant to the provisions of the Customs (Control and Management) Act, Cap. 20.40, and the goods are exported from Saint Christopher and Nevis by the supplier.
- (7) A supply of goods where the Comptroller is satisfied that the goods have been exported from Saint Christopher and Nevis by the supplier without having been used in Saint Christopher and Nevis after the supply was entered, except as is necessary for or incidental to, the export of the goods.
- (8) A sale of commercial real property that is subject to Stamp Duty where the transfer is from one registered person of commercial real property to another registered person, but only to the extent that the property was used by the initial registrant in making taxable supplies.
- (9) A supply of goods where the goods are not situated in Saint Christopher and Nevis at the time of supply and are not to be entered into Saint Christopher and Nevis for home consumption pursuant to the provisions of the Customs (Control and Management) Act, Cap. 20.40 by the supplier of the goods.
- (10) A supply of goods under a rental agreement, charter party, or agreement for chartering, where the goods are used exclusively in an export country.
- (11) A supply of goods in the course of repairing, renovating, modifying, or treating goods to which paragraph 4.(3) (b) or (d) of Part III of this Schedule applies and the goods supplied are brought into, affixed to, attached to, or otherwise form part of those other goods, or being consumable goods, become unusable or worthless as

a direct result of being used in that repair, renovation, modification, or treatment process.

- (12) A supply of goods by a licensed duty-free shop or vendor to
  - (a) a non-resident and;
  - (b) the supplier holds documentary evidence, collected at the time of the supply, that establishes that the goods are to be removed from Saint Christopher and Nevis without being effectively used or enjoyed in Saint Christopher and Nevis.

*Part III – Zero Rated Supply of Services*

- 4. (1) The supply of services specified in sub-paragraphs (2) to (9) of this paragraph shall, to the extent provided in regulations made under this Act, be zero rated supplies for the purposes of section 34 of this Act.
- (2) A supply of services directly in connection with land, or any improvement to the land, situated outside Saint Christopher and Nevis.
- (3) A supply of services directly in respect of
  - (a) personal property situated outside Saint Christopher and Nevis at the time the services are rendered;
  - (b) goods temporarily imported into Saint Christopher and Nevis under the special regime for temporary imports specified in the Customs (Control and Management) Act, Cap. 20.40;
  - (c) a supply of goods referred to in paragraphs (a) or (b) of the definition of “exported from Saint Christopher and Nevis”; or
  - (d) the repair, maintenance, cleaning, outfitting, refurbishing or improving a foreign-going aircraft or foreign-going vessel.
- (4) A supply of services directly to a non-resident who is not a taxable person, otherwise than through an agent or other person comprising the storage, repair, maintenance, cleaning, management, or arranging the provision of a container temporarily imported under the special regime for temporary imports specified in the Customs (Control and Management) Act, Cap. 20.40 or the arranging of such services.
- (5) A supply of services
  - (a) by the Saint Christopher Air and Sea Ports Authority or the Nevis Air and Sea Ports Authority to a ship; or
  - (b) by the Saint Christopher Air and Sea Ports Authority or the Nevis Air and Sea Ports Authority to an unregistered non-resident who is the owner or operator of the ship or aircraft, as the case may be, used by that person in international commercial services, for consumption or use in connection with that ship or aircraft.

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- (6) A supply of services to a non-resident who is not a taxable person comprising the arranging for the person of
  - (a) a supply of goods referred to in paragraphs (a) and (b) of the definition of “exported from Saint Christopher and Nevis”; or
  - (b) a supply of services to which paragraph 4.(3)(d) of this Part applies.
- (7) A supply of services comprising of
  - (a) the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of any intellectual property right for use outside Saint Christopher and Nevis;
  - (b) incidental services necessary for the supply of services referred to in paragraph (a); or
  - (c) the acceptance by a person of an obligation to refrain from pursuing or exercising in whole or in part any intellectual property right for use outside Saint Christopher and Nevis.
- (8) A supply made to a telecommunication carrier not conducting business in Saint Christopher and Nevis that involves the transmission of calls and other telecommunication services through Saint Christopher and Nevis which have their origin and destination outside Saint Christopher and Nevis, but are not for the consumption or use of persons in Saint Christopher and Nevis, but if the telecommunication carrier charges an interconnection fee for providing this service then the interconnection fee shall be taxable.
- (9) A supply of services rendered to an unregistered, non-resident person, other than an individual or a non-resident individual who is outside St Christopher and Nevis,
  - (a) where the services are not for consumption, use or enjoyment in St Christopher and Nevis by any person, or
  - (b) where the beneficiary of the services whether directly or indirectly, is outside St Christopher and Nevis at the time the service is performed; and
  - (c) where the services are for a consideration payable in currency other than Eastern Caribbean Dollars to a registrant as a fee, commission or income for performing the services.

*Part IV – Miscellaneous Provisions*

- 5. (1) A supply made by a registered person to another registered person of a taxable activity, or part of a taxable activity, as a going concern, where
  - (a) sections 4.(3) and 23.(12) of this Act are satisfied;
  - (b) a notice in writing signed by the transferor and transferee is furnished to the Comptroller within a period of twenty-one calendar days after the supply takes place; and
  - (c) the notice referred to in paragraph (b) contains the details of the supply as required by the Comptroller.

- (2) A supply of goods shall not be considered to be exported from Saint Christopher and Nevis, for purposes of this Schedule, unless
- (a) immediately before being put on board, by the exporting ship or aircraft, as the case may be, the goods are produced to the Comptroller of Customs for examination;
  - (b) upon demand by the Comptroller of Customs such samples of the goods as he or she may require for testing or any other purpose are made available;
  - (c) the master or commander of the exporting ship or aircraft, or such other person as the master or commander may authorize for the purpose, certifies on the document on which the goods are entered that the goods have been received on board; and
  - (d) particulars of the goods are included in the cargo manifest of the ship or aircraft.
- (3) For the purposes of this Schedule, a supply of goods shall not be considered to be exported from Saint Christopher and Nevis if the supply has been or will be re-imported to Saint Christopher and Nevis by the supplier.

### **THIRD SCHEDULE**

*(Section 34)*

#### **EXEMPT SUPPLIES**

1. In this Schedule, unless the context otherwise requires,

“ancillary transport services” mean stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and storage of transported goods or goods to be transported;

“commercial rental establishment” means

- (a) accommodation in a hotel, motel, inn, boarding house, hostel, or similar establishment in which lodging is regularly or normally provided to five or more persons at a daily, weekly, monthly, or other periodic charge;
- (b) accommodation in a house, flat, apartment, or room, other than accommodation in respect of which the provisions of paragraph (a) or (c) of this definition apply
  - (i) which is regularly or systematically leased or held for lease as residential accommodation for continuous periods not exceeding forty-five calendar days in the case of each occupant of such house, flat, apartment, or room, or
  - (ii) which is leased with furnishings provided by the lessor;
- (c) accommodation in a house, flat, apartment, room, caravan, houseboat, tent, or caravan or camping site which constitutes an asset, including a leased asset,

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of a business undertaking or a separately identifiable part of a business undertaking carried on by any person who

- (i) leases or holds for leasing as residential accommodation, a house, flat, apartment, room, caravan, houseboat, or caravan or camping sites in the course of such business undertaking; and
  - (ii) regularly or normally leases or holds for lease as residential accommodation such house, flat, apartment, room, caravan, houseboat, or caravan or camping sites for continuous periods not exceeding forty-five calendar days in the case of each occupant; or
- (d) any other accommodation designated by the Minister in regulations made under this Act to be a commercial rental establishment, but does not include, unless within paragraph (d),
- (i) accommodation in a boarding establishment or hostel operated by any employer solely or mainly for the benefit of the employees of such employer or of a related person of such employer or their dependents, provided such establishment or hostel is not operated for the purpose of making profits from such establishment or hostel for the employer or such related person;
  - (ii) accommodation in a boarding establishment or hostel operated by a local authority otherwise than for the purpose of making profits from such establishment; or
  - (iii) accommodation in a registered hospital, maternity home, nursing home, convalescent home, or clinic;

“dwelling” means any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of a natural person or which is intended for use as a place of residence or abode of a natural person, together with any appurtenances belonging thereto and enjoyed therewith, but does not include a commercial rental establishment or a time-share arrangement;

“education services” means tuition, instruction, and other services as part of an educational programme for students provided by an educational institution

- (a) operating under a permit issued by the Minister of Education under the Education Act, being
  - (i) a school providing early childhood, primary, or secondary education;
  - (ii) a teacher’s college, technical college, community college, or university;
  - (iii) an educational institution established for the promotion of adult education, vocational training, or tertiary education;
  - (iv) an institution established for the education or training of physically or mentally handicapped persons; or
  - (v) an institution established for the training of sports persons for national and other teams as provided by regulations made under this Act;
- (b) operating in the Federation as an offshore education institution under a licence granted by the Government;

“financial services” mean

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- (a) 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, other than debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, and other securities, other than custody services;
- (e) management of investment funds;
- (f) long term insurance, general insurance and reinsurance transactions as contemplated by the Insurance Act, including related services performed by long term and general insurance brokers and long term and general insurance agents; or
- (g) other financial services provided by banks within the scope of their banking business;

“international transport services” means the services, including ancillary transport services, of transporting passengers or goods by road, water, or air

- (a) from a place outside Saint Christopher and Nevis to another place outside Saint Christopher and Nevis where the transport or part of the transport is across the territory of Saint Christopher and Nevis;
  - (b) from a place outside Saint Christopher and Nevis to a place in Saint Christopher and Nevis; or
  - (c) from a place in Saint Christopher and Nevis to a place outside Saint Christopher and Nevis;
2. To the extent provided in regulations made under this Act, the supplies specified in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of this Schedule shall be exempt supplies for the purposes of section 34 of this Act.
3. (1) For the purposes of this paragraph,
- (a) “cheque” includes a postal order, money order, traveller’s cheque, or any order or authorization (whether in writing, by electronic means or otherwise) to a financial institution to credit or debit any account;
  - (b) “currency” means any banknote or other currency of any country, other than when used as a collector’s piece, investment article, item of numismatic interest, or otherwise than as a medium of exchange;
  - (c) “insurance policy” means insurance cover under a policy treated as long term and general insurance business under the Insurance Act;
- (2) A supply of financial services, that is to say,

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- (a) the provision, or transfer of ownership, of an insurance policy, or the provision of reinsurance in respect of any such policy, whether the services are performed by long term and general insurance brokers or long term and general insurance agents;
  - (b) the management of investment funds, including transactions involving an interest in a benefit fund, provident fund, pension fund, retirement annuity fund, or preservation fund approved by the Ministry of Finance;
  - (c) financial services rendered by businesses that are not registered as banks or financial institutions pursuant to the provisions of the Money services Businesses Act, No.2 of 2008, and financial services that are listed as exempt under this paragraph are exempt, whether or not they are rendered by a registered bank or financial institution or by any other person.
- (3) The following services, even if associated with financial services and whether or not they are rendered in connection with an exempt financial service, shall not be exempt services:
- (a) legal, accounting and record package services, actuarial, notary, and tax agency services (including advisory services) when rendered to a supplier of financial services or to a customer of that supplier of financial services;
  - (b) safe custody for cash, documents, or other items;
  - (c) data processing and payroll services;
  - (d) debt collection or factoring services;
  - (e) trustee, financial advisory, and estate planning services; and
  - (f) leases, licenses, and similar arrangements relating to property other than a financial instrument.
- (4) For the purposes of sub-paragraph (3), accounting and record package services are services provided to a financial institution rendering exempt financial services, including
- (a) services related to a financial clearing system that may be part of the settlement process;
  - (b) the posting of financial transactions to or the maintenance of the accounts of the financial institution's customers; and
  - (c) the rendering of services ancillary to the services under paragraph (a) and (b).
- (5) For the purposes of sub-paragraph (3), a supply of the following 'financial services' or 'money services businesses' provided for an explicit fee shall be taxable:
- (a) the transmission of money or monetary value in any form;
  - (b) the issuance, sale or redemption of money orders or traveler's cheques;
  - (c) cheque cashing;
  - (d) currency exchange issuance, sale or redemption of money orders or traveler's cheques; and

- (e) currency exchange and pay day advances.
  - (6) The mere acquisition of a debt shall not be a taxable transaction, including a debt acquired by a factor, except that the services related to debt recovery, litigation, and the management of the recovery of the amount due from debtors shall be taxable, including sales accounting services under a factoring arrangement and other services related to factoring.
  - (7) A supply of financial services, within the meaning of this Schedule, to a non-resident that constitutes offshore banking by an offshore financial institution operating under the Nevis Offshore Banking Ordinance, No.1 of 1996 shall be exempt.
  - (8) For the purposes of sub-paragraph (7), offshore banking is
    - (a) receiving foreign funds through
      - (i) the acceptance of foreign money deposits payable upon receipt demand or after a fixed period or after notice;
      - (ii) the sale or placement of foreign bonds, certificates, notes or other debt obligations or other securities; or
      - (iii) any other similar activities involving foreign money or foreign securities; and
    - (b) either in whole or in part using foreign funds so acquired for loans, advances and investments whether in Nevis or elsewhere.
  - (9) Offshore banking also includes any other activity, which the responsible Minister of Nevis may, by regulations, declare to be an activity related or ancillary to an activity described in sub-paragraph (8).
4. (1) Subject to the provisions of this paragraph, a supply of education services shall be exempt if the services are provided to students by a qualified educational institution.
- (2) Qualified charges for education services shall be exempt if the services are provided to students by a qualified educational institution.
  - (3) An educational institution is qualified, regardless of whether it is a private school operating on a profit basis, or a non-profit organization, church, charity, or a department of government.
  - (4) An educational institution is a qualified institution only if the institution is registered or is being evaluated for registration by the accrediting or licensing agency at the time the services are rendered.
  - (5) The following categories of services shall qualify as exempt education services:
    - (a) courses of instruction provided to students at a qualified educational institution;
    - (b) qualified meal plans, and other associated goods or services provided in kind without a separate charge by a qualified educational institution as part of the education program of a qualified provider of education services;

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- (c) the administration of examinations, if provided by the educational institution or the State; and
  - (d) charges for tuition, school facilities, and curriculum-related activities and instruction.
- (6) Charges for school bus transportation shall come within the exemption for domestic transportation.
- (7) For the purposes of this paragraph,  
 “qualified charges for tuition, facilities, and curriculum-related activities and instruction” are:
- (a) instruction or tutoring related to a qualified course;
  - (b) compulsory levies for facilities as part of a supply of exempt educational services;
  - (c) student council fees, athletic fees, and other mandatory fees related to course registration;
  - (d) charges for reports, library services, identity cards, record keeping and other administrative services provided by the educational institution and directly related to the supply of education courses; and
  - (e) charges for course materials, the rental of curriculum-related goods by the supplier of the education (e.g., the rental of musical instruments), field trips directly related to the curriculum if not predominantly recreational.
- “qualified facility charges” are charges for buildings, grounds, libraries, and computer, science and other laboratories.
- (8) The exemption for education services shall not cover the following education courses unless the courses are part of a structured education program or approved by the Ministry of Education, that is to say,
- (a) courses in video recording or photography or other hobbies, unless they are part of a certification, degree- or diploma-granting programme;
  - (b) courses, such as picture framing, cooking, and personal investment, that are designed to improve knowledge for personal purposes; and
  - (c) music lessons that are not part of a school curriculum.
- (9) In addition to the exempt services referred to in this paragraph, exempt education services rendered by a pre-primary, primary, or secondary school shall include the following:
- (a) basic instruction, including special education courses;
  - (b) fees or charges for a program before or after school that is operated by the school to the extent exempt as after-school care;
  - (c) charges for the use of school musical instruments or sports equipment;

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- (d) services rendered by students or their teachers as part of the instructional program; and
  - (e) charges for students to attend a school play, dance, field trip, or other school-sanctioned activity primarily for the students.
- (10) Exempt education services rendered by a university, community college, or technical college include in class and correspondence courses that qualify for credit toward a degree or diploma, whether or not the student is pursuing a degree or diploma program.
  - (11) The education exemption for adult education, vocational training, technical education, and for the education or training of physically or mentally handicapped persons shall covers charges for
    - (a) adult education courses leading to a degree or diploma course or courses that are likely to enhance employment-related skills of the students enrolled in the courses;
    - (b) courses of study at a vocational school that develop or enhance a student's occupational skills;
    - (c) courses leading to, or to maintain or upgrade, a professional or trade accreditation or designation recognized by the appropriate government accrediting agency; and
    - (d) a certificate or examination in a course or program for accreditation or designation.
  - (12) For the purposes of sub-paragraph (11), courses enhance employment-related skills if the course objectives specify those skills that students will acquire, and there is a reasonable expectation that the skills taught will be used by the students in their employment, businesses, professions or trades, rather than for recreational, hobby, artistic, or cultural purposes.
  - (13) For the purposes of this paragraph, religious workers receiving education shall be treated as students.
  - (14) The exemption for education services shall not include the following, that is to say,
    - (a) the rental of facilities by an educational institution to an outside group;
    - (b) commissions and other fees received from the placement of coin-operated machines on the institution's property.
5. A sale of real property, including land, attributable to a dwelling subject to stamp duty as may be provided in regulations made under this Act.
  6. A supply of an accommodation in a dwelling
    - (a) under a lease or rental of the accommodation;
    - (b) under a lease of land to the extent that the land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land; or

- (c) where the supplier is the employer of the recipient, and if the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment and his or her right thereto is limited to the tenure of his or her employment or the term of his or her office or a period agreed upon by the supplier and the recipient.
7. A supply of any goods or services by the Federal Government or the Nevis Island Administration, if the consideration for the supply is nominal in amount or not intended to recover cost as determined by the Comptroller.
  8. A supply of any goods or services by an approved charitable organization, or an association not for gain in connection with a taxable activity, where the consideration for the goods or services is nominal in amount or not intended to recover the cost of such goods or services as determined by the Comptroller.
  9. A supply of water provided to a residential dwelling for domestic use by the Nevis Island Administration Water Department or the Saint Christopher and Nevis Water Services Department.
  10. A supply of religious services by an institution of religious worship.
  11. (1) Subject to sub-paragraph (2), a supply of the transportation of goods and passengers within Saint Christopher and Nevis.
    - (2) The exemption referred to in sub-paragraph (2) above applies when the major element of a supply is transport from one place to another
      - (a) if the transportation represents an incidental component of the main supply and is not an aim in itself, the supply is classified on the basis of the main supply;
      - (b) if the domestic transport portion of a domestic sightseeing tour is provided by a transport company or taxi association or a certified taxi operator, the exempt domestic transport component of the tour is no more than the negotiated transport charge;
      - (c) if the domestic transport is provided by the person providing the sightseeing tour or activity, then an amount equal to the fixed taxi fare for travel to the site or sites included in the tour package, or the negotiated transport charge, if less than the fixed taxi fare, is exempt from tax;
      - (d) the domestic transportation of goods is exempt from tax only when the transportation constitutes a supply independent of the supply of the goods. If a seller supplies goods and includes in the price the service of transporting the goods to a location selected by the purchaser (such as a sale of f.o.b. destination), no portion of the consideration for the supply is exempt;
      - (e) if a seller supplies goods and charges the same consideration for the goods, whether the seller, the purchaser, or an independent transport company transports the goods from the location of the goods to a location selected by the purchaser, no portion of the consideration is exempt;

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- (f) if the seller supplies goods for a consideration that does not include transportation, the purchaser is responsible for the transportation service, and the seller adds a separately-stated fair value as transportation charge to the selling price of the goods, the transportation charge is exempt;
  - (g) if goods are imported and the domestic transportation of the goods is included in the value of the goods for VAT purposes, no part of the value of the import is exempt transportation;
  - (h) the cost of freight added to the value of an import of goods does not include separately- stated charges for the domestic transportation of imported goods. Such separately-stated charges imposed on the purchaser for the domestic transportation of imported goods are exempt from tax, except to the extent such charges are included in the value of the goods for VAT purposes.
12. A supply of services rendered by a day care business, including after school care and by summer camp for children under age 18;
13. A supply of the following medically-related goods, that is to say,
- (a) artificial limbs, invalid carriages and wheel chairs for the disabled;
  - (b) hearing aids;
  - (c) goods designed specifically for orthodontic use as approved by the Chief Medical Officer;
  - (d) collars, splints, braces, corsets, and prescribed shoe inserts designed for orthopedic use; and
  - (e) books, publications and documents in raised (Braille) characters for the blind, “talking books” for the blind, and, as provided in regulations made under this Act, phones designed for the blind that are not suitable for general use.
14. (1) A supply of locally produced agricultural products by the producer, to the extent provided in this paragraph.
- (2) The supply of locally produced agricultural products shall be exempt if the products are grown in Saint Christopher and Nevis.
- (3) The products referred to in sub-paragraph (2) include
- (a) cover plants, trees, vines, and their produce;
  - (b) flowers, fruits, and vegetables;
  - (c) locally-raised poultry;
  - (d) fish;
  - (e) pigs, goats, cows, or other animals and their related products, whether supplied live or not.
- (4) For the purposes of this paragraph, supplies of the following locally agricultural products shall not be exempt, that is to say,

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- (a) supplies made by a person further down the supply chain, such as supplies by a wholesaler, distributor, or retailer;
  - (b) supplies of products that were subject to further processing after removal from the land, plant, tree, or vine, and if the basic nature of the agricultural product has been changed;
  - (c) an export of unprocessed agricultural products.
15. A supply of electricity to the extent provided in regulations made under this Act.
16. A supply of medicines for chronic disease (HIV/AIDS, diabetes, Hypertension/ Cardiovascular diseases, Asthma, Renal disease, Cancer and Mental Illness) approved by the Chief Medical Officer and as described in regulations made under this Act.
17. (1) A supply of medical services to the extent specified in this paragraph.
- (2) Medical services shall be exempt, whether provided with or without charge, and whether paid by the patient or resident or any third party, if the medical services meet the following two conditions, that is to say,
- (a) they are rendered in a qualified medical facility or by a qualified medical practitioner, or both; and
  - (b) they qualify as exempt medical services.
- (3) For a service rendered in a facility to be an exempt medical service, the service must be rendered in a qualified medical facility.
- (4) For the purposes of this paragraph, a qualified medical facility is
- (a) the office of a qualified medical practitioner;
  - (b) a licensed hospital;
  - (c) a maternity home;
  - (d) a nursing home;
  - (e) a convalescent home; or
  - (f) a clinic.
- (5) A qualified medical service shall be exempt if it is provided by a qualified medical practitioner or under the supervision and control of a qualified medical practitioner.
- (6) For the purposes of sub-paragraph (5), a qualified medical practitioner is a person who is registered as being qualified under the Medical Act, Cap. 9.15, Ancillary Dental Workers Act, Cap. 9.02 and Veterinary Act, Cap. 9.28, the Nurses and Midwives (Registration) Act, Cap. 9.17 to perform medical, dental, nursing, convalescent, rehabilitation, midwifery, paramedical, and other services.
- (7) To qualify for the exemption, medical services shall consist of
- (a) qualified services (including meals and accommodations) in a qualified medical facility;

- (b) medical services rendered by a qualified medical practitioner; or
  - (c) both services referred to in (a) and (b); and
- such medical services must involve the diagnosis, treatment, prevention, or amelioration of a disease, promotion of mental health, and services for cosmetic required in connection with a disease, trauma, or congenital deformity.
- (8) For purposes of this paragraph, qualified services in a qualified medical facility include the services provided to a dweller or patient by a qualified medical practitioner in a qualified facility, as well as meals and accommodations, nursing and personal care, and assistance with daily living activities to meet the needs of the resident or patient.
  - (9) Exempt medical services include the following:
    - (a) medicines and drugs that are administered in a hospital, maternity, nursing, or convalescent home, or clinic, for which there is no separate charge
    - (b) laboratory, x-ray, or other diagnostic services;
    - (c) the use of operating rooms, case rooms, or anesthetic facilities, including necessary equipment or supplies;
    - (d) the use of radiotherapy, physiotherapy, or occupational therapy facilities in rendering exempt medical services;
    - (e) accommodation and meals, except in a restaurant or cafeteria available to persons other than patients or residents, provided to patients or residents in the course of receiving exempt medical services;
    - (f) services rendered by the medical facility staff, including orderlies or technicians in connection with exempt medical services;
    - (g) dental, periodontal, and endodontic services rendered in connection with a disease, trauma, or congenital deformity, but not dentistry for cosmetic reasons;
    - (h) ambulance services; and
    - (i) psychoanalytic services.
  - (10) Except as otherwise provided in this Schedule, prescription drugs and other medicines shall be taxable if supplied for a separate charge, whether supplied by a medical practitioner, in a medical facility, by a pharmacy, or otherwise.
18. A supply of printed matter, articles and materials classified under Customs Tariff Heading 4901, 4902 and 4903, which items include books, newspapers and pamphlets.
19. A supply of services directly to a non-resident who is not a taxable person, otherwise than through an agent or other person
- (a) comprising the handling, pilotage, salvage, or towage of any foreign-going aircraft while situated in Saint Christopher and Nevis; or
  - (b) provided in connection with the operation or management of any foreign-going aircraft or foreign going vessel.

20. A supply of services to a non-resident who is not a taxable person comprising the arranging for the person of services ancillary to the transportation of goods within Saint Christopher and Nevis.
21. A supply of international transport services.
22. A supply of services by a Trade Union, non-government organisation, community based organisation to a member or to another Trade Union, non-government organisation, community based organisation, where the supply is made in the ordinary course of its objectives as a Trade Union, non-government organisation, community based organisation.
23. (1) A supply of services to a non-resident by
  - (a) a person operating under the Captive Insurance Companies Act, No. 12/2006;
  - (b) a person operating under the Financial Services Regulations;
  - (c) a person operating under the Nevis Offshore Banking Ordinance, No. 1 of 1996;
  - (d) a person operating under the Nevis International Insurance Ordinance, No. 1 of 2004.
- (2) For the purposes of this paragraph, the term ‘services’ means any of the services a person operating under the laws mentioned in paragraphs (a) to (d) is authorised to provide thereunder.
- (3) The Minister may, by regulations, declare any other activity to be an activity related or ancillary to any activity carried out under the laws mentioned in paragraphs (a) to (d).
24. (1) A supply of basic construction services on a dwelling subject to the conditions set out in this paragraph.
- (2) Construction services covered under this paragraph are exempt only if all of the following conditions are satisfied:
  - (a) the services are basic construction services;
  - (b) the services are performed on the homeowner’s dwelling;
  - (c) the services are rendered directly to the homeowner;
  - (d) the services are rendered by a person in the home construction business; and
  - (e) the services are attributable to construction of that person’s dwelling.
- (3) Basic construction services are services limited to the basic structure of the dwelling and garage as defined in regulations made under this Act.
- (4) Services are rendered directly to the homeowner only if the contract for construction of the dwelling is with the person who owns and will occupy the building as a dwelling, and the exemption applies only for basic construction services attributable to the construction, expansion, or substantial modification of the dwelling for the homeowner.

- (5) The exemption applies to the construction of a basement or foundation for the dwelling, the driveway, garage, the walls, windows, and the roof. It applies to structural services rendered to the homeowner that make the dwelling equipped for electrical and plumbing service, and also covers the toilet, bath, and shower in the bathroom, and the permanently affixed sink.

Thus, the exemption applies to the installation of standpipes, wiring within its walls, and electrical fixtures to be permanently installed on ceilings or walls.

- (6) Services that are not covered by the exemption are:
- (a) the exemption does not apply to construction services rendered to a homeowner for a dwelling to be held for investment or for rental purposes and not as the person's principal place of abode;
  - (b) the exemption does not extend to the installation of refrigerators, stoves, and other appliances, nor to a pool, and decorative additions;
  - (c) the exemption does not extend to services of a subcontractor that are supplied to the home construction business as part of the basic construction services that the latter provides to the homeowner;
  - (d) the exemption does not apply to services rendered directly to a homeowner by a person other than the home construction business contractor who contracted with the homeowner for the construction.

25. (1) A supply of goods and services to the following entities or by the following entities when goods and services are supplied by them to a non-resident:
- (a) in the case of the Island of Saint Christopher,
    - (i) companies exempt from taxation under section 206.(1) of the Companies Act, Cap. 21.03;
    - (ii) foundations exempt from taxation under section 64.(1) of the Foundation Act, No. 8/2003;
    - (iii) limited partnerships exempt from taxation under section 62. (1) of the Limited Partnership Cap. 21.12;
    - (iv) trusts exempt from taxation under section 95 (1) of the Trusts Act, Cap. 5.19;

provided always that such entities have not lost their tax exemption under the above mentioned section of the Act by which they are governed;
  - (b) in the case of the Island of Nevis.
    - (i) companies governed by the Nevis Business Corporation Ordinance, 1984;
    - (ii) companies governed by the Nevis Limited Liability Company Ordinance, 1995;
    - (iii) entities governed by the Nevis Multi Form Foundation Ordinance, 2005.
    - (iv) trusts governed by the Nevis International Exempt Trust Ordinance, 1994.

- (2) For the purposes of this Schedule, entities listed in sub-paragraph (1) of this paragraph are non-resident.
- (3) Supplies of goods to any entity listed in sub-paragraph (a) or (b) are not exempt supplies under this Schedule if the goods are delivered to such entity at a place located in Saint Christopher or Nevis unless such goods are exempt imported goods under Part I of the First Schedule, or zero-rated supply of goods under Part II of the Second Schedule.
26. A supply of the following agricultural inputs:
- (a) seeds, seedlings, cuttings and fertilizers;
  - (b) pesticides, insecticides, and other treatments approved for use in agriculture by the Minister of Agriculture;
  - (c) herbicides, fungicides and nematicides approved for use in agriculture by the Minister of Agriculture;
  - (d) animal feed other than food for domesticated animals generally held as pets;
  - (e) ventilated boxes and packing films specifically designed for use in transporting unprocessed agriculture products;
  - (f) machinery and equipment specifically designed for agricultural or horticultural use, fishing or poultry;
  - (g) vehicles, tractors, ploughs, tillers, cultivators as approved by the Minister of Agriculture for use by bona fide farmers;
  - (h) plant propagation bags;
  - (i) poultry spectacles, waterers, feeders;
  - (j) a greenhouse specifically designed for horticultural use;
  - (k) inputs approved by the Minister for use by primate operations and control.
27. A supply of the following fishing inputs, that is to say, fibre-glass and wooden boats, anchors, grapnels, G.P. S, compass, V. H. F. Radio, fish finder, flare guns and flares, life vests, life ring, buoys and floats, mono-filament fishing lines, gaff, harpoons, outboard and inboard engines up to as defined in regulations made under this Act; winches, spools, line haulers, jigging reels and propellers.

CURTIS A MARTIN  
*Speaker*

Passed by the National Assembly this 11<sup>th</sup> day of August 2010.

JOSÉ LLOYD  
*Clerk of the National Assembly*



