

Examined and certified by:



Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to
this Act this 31st day of March, 2014




Queen's Representative

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An Act to amend the Value Added Tax Act 1997.

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the Value Added Tax Amendment Act 2014.

2 Commencement

This Act comes into force on 1 April 2014.

3 Principal Act amended

This Act amends the Value Added Tax Act 1997.

4 Application

This Act applies to supplies and importations made on or after 1 April 2014.

5 Application date

In this Act, **application date** means 1 April 2014.

6 Section 3 amended (Extended meaning of term “supply”)

(1) Section 3 is amended by inserting the following subsection after subsection (2)—

“(2A) If a foreign government, or an international organisation or other non-government organisation makes a payment in the nature of a grant or subsidy in respect of a person’s taxable activity, the payment is treated as consideration for the supply of goods or services by the person in the Cook Islands in the course of the person’s taxable activity.”

(2) Section 3 is amended by adding the following subsection after subsection (7)—

“(8) In this section, international organisation means an organisation, the members of which are sovereign powers or governments of sovereign powers.”

7 New section 4A inserted

The following section is inserted after section 4—

“4A. Meaning of the term “supply of imported services”

“(1) A supply of imported services is a supply of services that satisfies the following conditions—

“(a) the supply is made to a registered person; and

“(b) a person who is not a registered person makes the supply; and

“(c) the supply is not a taxable supply because the supply is not made in the Cook Islands; and

“(d) the supply would have been a taxable supply if it had been made in the Cook Islands; and

“(e) the registered person receiving the supply would not have been entitled to a deduction for the full amount of value added tax payable in respect of the supply if the services had been acquired by the person in a taxable supply.

“(2) For the purposes of subsection (1), if a registered person carries on a taxable activity both in and outside the Cook Islands—

“(a) that part of the taxable activity carried on outside the Cook Islands is treated as if it were a taxable activity carried on by a person (referred to as the “overseas person”) separate from the registered person and both persons are treated as related to each other:

“(b) the overseas person is not a registered person; and

- “(c) the internal provision of services from the overseas person to the registered person is treated as a supply of services made by the overseas person in the course of carrying on a taxable activity outside the Cook Islands.”

8 Section 5 amended (Time of supply)

Section 5(1) is amended by inserting “, including a supply of imported services,” after “services” where first mentioned in the subsection.

9 Section 6 amended (Value of supply)

Section 6 is amended by inserting the following subsections after subsection (9)—

“(9A) Subject to subsection (9B), the value of a supply of imported services must be—

“(a) if the supplier and recipient are related (by blood, marriage or ownership), the open market value of the supply at the time of supply; or

“(b) in any other case, the consideration for the supply as determined under subsection (1).

“(9B) If a registered person liable for value added tax under section 10(2)(c) in respect of a supply of imported services received by the person would have been entitled to a deduction under section 16 for part of the amount of value added tax payable if the person had acquired the services in a taxable supply, the value of the supply under subsection (9A) is reduced by an amount equal to the proportion of the value added tax that would have been deductible.”

10 Section 7 amended (Place of supply)

Section 7 is amended by inserting the following subsections after subsection (4)—

“(5) Despite subsection (4), a supply of services occurs in the Cook Islands if the recipient of the supply is not a registered person and—

“(a) the services are physically performed in the Cook Islands by a person who is in the Cook Islands at the time of supply; or

“(b) the services are directly related to immovable property in the Cook Islands; or

“(c) the services are radio or television broadcasting services received at an address in the Cook Islands; or

“(d) the services are consulting, engineering, legal, architectural, accounting or similar services, supplied to a person in the Cook Islands at the time of supply; or

“(e) the services are electronic services delivered to a person in the Cook Islands at the time of supply; or

“(f) the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark, or similar right in the Cook Islands; or

“(g) the services are telecommunications services and the supply is initiated by a person in the Cook Islands at the time of supply, other than a supply initiated by—

“(i) a supplier of telecommunications services; or

- “(ii) a person who is global roaming while temporarily in the Cook Islands.
- “(6) For the purposes of subsection (5)(g), the person who initiates a supply of telecommunications services is the person who appears first in the following paragraphs—
- “(a) the person who—
- “(i) controls the commencement of the supply;
- “(ii) pays for the services;
- “(iii) contracts for the supply; or
- “(b) the person to whom the invoice for the supply is sent.
- “(7) In this section—
- electronic services** means the development or maintenance of, or access to, any of the following when provided or delivered on or through a telecommunications network—
- “(a) websites, web-hosting, or remote maintenance of programs and equipment;
- “(b) software and the updating;
- “(c) images, text, and information;
- “(d) databases;
- “(e) self-education packages;
- “(f) music, films, and games, including games of chance;
- “(g) political, cultural, artistic, sporting, scientific and other broadcasts, and events including broadcast television; and
- telecommunications services** means the transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by wire, radio, optical, or other electromagnetic systems, and includes—
- “(a) the related transfer or assignment of the right to use capacity for such transmission, emission, or reception; or
- “(b) the provision of access to global or local information networks—
- but does not include the supply of the underlying writing, images, sounds, or information.”

11 Section 10 amended (Imposition of value added tax)

- (1) Section 10(2) is amended by—
- (a) deleting “and” at the end of paragraph (a); and
- (b) deleting the “.” at the end of paragraph (b) and substituting “; and”; and
- (c) adding the following paragraph after paragraph (b)—
- “(c) a registered person in respect of a supply of imported services made to the person by reference to the value of the supply as determined under section 6(9A) and (9B).”
- (2) Section 10(4) is amended by—
- (a) deleting “section 19(2)(b)” and substituting “subsection (2)(b)”; and
- (b) deleting “subject to subsection (5)”; and
- (c) inserting “assessed,” before “collected”.
- (3) Section 10 is amended by repealing subsection (5).

12 Section 11 amended (Rates of tax)

- (1) Section 11(1) is amended by deleting “12.5%” and substituting “15%”.
- (2) Section 11 is amended by inserting the following subsection after subsection (2) as subsection (3)—
 - “(3) The rate of value added tax applicable to a supply or importation is the rate of value added tax in force at the time of the supply or importation.”

13 Section 12 amended (Registration of persons making taxable supplies)

- (1) Section 12(1)(a) is amended by deleting “\$30,000” and substituting “\$40,000”.
- (2) Section 12(4)(c) is amended by deleting “\$15,000” and substituting “\$20,000”.
- (3) Section 12 is amended by adding the following subsection after subsection (7)—
 - “(8) The value of supplies of imported services received by a person is taken into account in determining whether the person exceeds the registration threshold and, for this purpose, the requirement in section 4A(1)(a) is ignored.”

14 Section 16 amended (Calculation of tax payable or refund due)

- (1) Section 16(3) is amended—
 - (a) in paragraph (a), by deleting “and”;
 - (b) in paragraph (b), by deleting “.” at the end of the paragraph and substituting “; and”; and
 - (c) by adding the following paragraph after paragraph (b)—
 - “(c) all amounts of value added tax payable in respect of supplies of imported services received by the registered person during the month.”
- (2) Section 16(4)(c) and (e) are amended by deleting “one-ninth” and substituting “ $\frac{3}{23}$ ” respectively.
- (3) The amendment in subsection (2) to section 16(4)(c) applies only to second hand goods acquired by the registered person on or after the application date.

15 Section 17A amended (Adjustments for changes of use)

- (1) Section 17A(2) and (4) are amended by deleting “one-ninth” and substituting “ $\frac{3}{23}$ ” respectively.
- (2) The amendment in subsection (1) to section 17A(2) and (4) applies only in respect of goods or services acquired by the registered person on or after the application date.

16 Section 18 amended (Tax invoices)

- Section 18 is amended by inserting the following subsection after subsection (7) —
- “(8) A registered person liable for value added tax under section 10(2)(c) in respect of a supply of imported services must prepare a recipient-created tax invoice in the form approved by the Collector in respect of the supply.”

17 Section 24 amended (Additional taxes for non-compliance or evasion)

- (1) Section 24 is amended in the heading to the section, by deleting “or evasion”.
- (2) Section 24 is amended by repealing paragraph (b).

18 Repeal of section 37 and new section inserted

- (1) Section 37 is repealed and the following section inserted as section 37—

“37. Agents in the case of absentees and value added tax representatives

- “(1) If any person acts or assumes to act as the agent of any other person who is outside the Cook Islands or does not have place of business in the Cook Islands, the agent will be liable to the same value added tax and all obligations imposed by this Act as if the agent were the principal for whom the agent so acts or assumes to act.
- “(2) A non-resident who is required to apply for registration under section 12 but who does not carry on a taxable activity through a fixed establishment in the Cook Islands must—
 - “(a) appoint a value added tax representative in the Cook Islands; and
 - “(b) if required to do so by the Collector by notice in writing, lodge such security for the payment of value added tax with the Collector as the Collector may determine.
- “(3) The value added tax representative of a non-resident is responsible for doing all things required of the non-resident under this Act, including applying for registration, the filing of value added tax returns, and the payment of value added tax.
- “(4) The registration of a value added tax representative is to be made in the name of the non-resident they represent.
- “(5) A person may be a value added tax representative for more than one non-resident but must have a separate registration for each non-resident they represent.
- “(6) The Collector may prescribe the mode, manner, and requirements for appointment of a value added tax representative and the responsibilities of the representative.
- “(7) In this section, **non-resident** means a person who is not resident of the Cook Islands.”

19 Section 39 amended (Offences)

Section 39(1) is amended—

- (a) by deleting the “.” at the end of paragraph (l) and substituting “; or”; and
- (b) by inserting the following paragraph—
 - “(m) fails to appoint a value added tax representative or provide security as required under section 37(2).”

20 New section 41B inserted

The following section is inserted after section 41A—

“41B Penal tax

- “(1) A person is liable for penal tax if the person, without reasonable excuse, fails—
 - “(a) to apply for registration as required under section 12:

- “(b) to keep, retain, or maintain any records or documents as required under the Act; or
- “(c) to submit a return or other document as required under the Act.
- “(2) The amount of penal tax payable by a person to whom subsection (1) applies is an amount not exceeding treble the amount of value added tax payable—
 - “(a) when subsection (1)(a) applies, payable for the period commencing on the day on which the person was first required to apply for registration and ending on the earlier of the day the person files an application for registration or the person is registered by the Collector on the Collector’s own motion;
 - “(b) when subsection (1)(c) applies, payable for the period for which the records or documents were not kept, retained or maintained; or
 - “(c) when subsection (1)(b) applies, payable under the return.
- “(3) When section 24(a) applies to a person, in addition to the additional tax imposed under section 24(a), the person is liable for an amount of penal tax not exceeding—
 - “(a) if the underpayment is due to fraud or evasion, treble the amount of underpaid value added tax; or
 - “(b) in any other case unless the underpayment was due to reasonable excuse, 20% of the underpaid value added tax.
- “(4) Sections 210 to 216 of the Income Tax Act 1997 apply, with the necessary changes made, in relation to penal tax imposed under this section.”

21 Section 42 amended (Keeping of records)

Section 42(3) is amended by inserting “in English and in New Zealand currency” after “Cook Islands” where second mentioned.

22 Section 43 amended (Avoidance)

(1) Section 43(5) is amended—

- (a) in the definition of **arrangement**, by deleting “and” at the end of the definition;
- (b) in the definition of **tax avoidance** by—
 - (i) deleting the “.” at the end of paragraph (e) and substituting “;”;
 - (ii) adding the following paragraph after paragraph (e) as paragraph (f)—
 - “(f) anything that causes a taxable supply, taxable import, or supply of imported services not to be a taxable supply, taxable import, or supply of imported services, as the case may be.”
- (c) by adding the following definition after the definition of **tax avoidance**—
 - “**Taxable import** means an import of goods liable to value added tax under section 10(1)(b).”

23 Repeal of sections 48, 49, 50, 51 and 52 and new sections inserted

Sections 48, 49, 50, 51 and 52 are repealed and the following sections inserted as section 48 and 49—

“48 Variation of Price on a Change in Rate of Value Added Tax**“(1) If—**

“(a) a registered person (referred to as the “supplier”) has entered into an agreement for the supply of goods or services to another person (referred to as the “recipient”); and

“(b) subsequent to entering into the agreement, value added tax is imposed on the supply, or the rate of value added tax applicable to the supply is increased—

the supplier may, despite anything to the contrary in any agreement or law, recover from the recipient, in addition to the amounts payable by the recipient under the agreement, an amount equal to the amount of value added tax imposed or an amount equal to the amount by which value added tax was increased on the supply, as the case may be.

“(2) If—

“(a) a registered person (referred to as the supplier”) has entered into an agreement for the supply of goods or services to another person (referred to as the “recipient”); and

“(b) subsequent to entering into the agreement, value added tax on the supply is withdrawn or the rate of value added tax applicable to the supply is decreased—

the supplier must, despite anything to the contrary in any agreement or law, reduce the amount payable by the recipient by an amount equal to the amount of value added tax withdrawn or the amount by which value added tax was decreased, as the case may be.

“(3) Subject to subsections (4) and (5), when 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 force of law, that fee, charge, or other amount may be increased or must be decreased, as the case may be, by the amount of value added tax or further value added tax payable, or the amount of value added tax no longer payable.

“(4) Subsection (3) does not apply when the fee, charge, or other amount has been altered in any Act, regulation, or measure having force of law to take account of any imposition, increase, decrease, or withdrawal of value added tax.

“(5) Nothing in subsection (3) is to 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 when the fee, charge, or other amount is calculated as a percentage or fraction of another amount that represents the price in money for a taxable supply.

“49 Application of Increased or Reduced Value Added Tax Rate

“(1) When a supply of services is treated as a successive supply under sections 5(5) or (6) for a period beginning and ending before the date (referred to as the “change date”) on which a change in the rate of value added tax levied becomes effective in respect of the supply or the date on which VAT is imposed or withdrawn in respect of the supply and the supply is treated under section 5 as having been made on or after that date, then—

- “(a) in the case of a change in the value added tax rate on the change date, the rate of value added tax applicable to the supply is the rate applicable immediately before the change date; or
 - “(b) in the case of the imposition of value added tax on the change date, the supply is treated as not being subject to value added tax; or
 - “(c) in the case of withdrawal of the value added tax on the change date, the supply is treated as being subject to value added tax as if the value added tax had not been withdrawn.
- “(2) When a supply of services is treated as a successive supply under sections 5(5) or (6) during a period beginning before and ending on or after the date (referred to as the “change date”) on which a change in the rate of value added tax levied becomes effective in respect of the supply or the date on which the value added tax is imposed or withdrawn in respect of the supply and the supply is treated under section 5 as having been made on or after the change date, the price of the supply must, on the basis of a fair and reasonable apportionment, be treated as consisting of a part (referred to as the “first part”) relating to the performance of services before the said date and a part (referred to as the “second part”) relating to the performance of services on or after the said date and—
- “(a) in the case of a change in the rate on the change date, the value added tax payable in respect of the first part is determined at the rate applicable before the change date and the tax payable in respect of the second part is determined at the rate or percentage applicable on the change date; or
 - “(b) in the case of the imposition of value added tax on the change date, the first part is not subject to value added tax; or
 - “(c) in the case of the withdrawal of the value added tax, the first part is subject to value added tax as if the value added tax had not been withdrawn.”

24 First Schedule amended (Exempt supplies)

The First Schedule is amended by inserting the following paragraph after paragraph 4—

“5. A supply referred to in section 3(2A).”

25 Second Schedule amended (Exempt importations)

The Second Schedule is amended in paragraph 2. by deleting “Bonded Warehouse” and substituting “Controlled Area”.

26 Application of increased rate of value added tax to tourism services

(1) A registered person who makes taxable supplies of tourism services during the period 1 April 2014 – 30 September 2014—

- (a) must charge value added tax at the rate of 15% in respect of the supplies; and
- (b) for the purposes of section 16(2)(b) of the Principal Act is entitled to a deduction of an amount determined under subsection (2) in relation to such supplies but only if—

- (i) the Collector is satisfied that the supply of the services was booked and confirmed as at 30 November 2013; and
 - (ii) despite section 48(1) of the Principal Act, under the contract of service, the registered person is entitled to receive, and has received, only value added tax at the rate of 12.5% in respect of the supply.
- (2) The amount of the deduction is one-sixth of the value added tax charged in respect of the supply in accordance with subsection (1)(a) and is allowed for the month in which the value added tax in respect of the supply is taken into account under section 16(3) of the Principal Act.
- (3) In this section—
- non-resident** means a person who is not resident of the Cook Islands; and
- tourism services** means accommodation, meals, transportation, or tours supplied to non-residents.

This Act is administered by the Revenue Management Division
of the Ministry of Finance and Economic Management.
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