

Value-Added Tax Act 10 of 2000

(13) The obligations and liabilities under this Act (including the furnishing of returns) of any person in respect of anything done, or omitted to be done, by that person while that person is a registered person shall not be affected by the cancellation of that person's registration.

**PART VI
CALCULATION OF TAX PAYABLE**

Calculation of tax payable by registered person for a tax period

18. (1) The tax payable by a registered person for a tax period shall be the total amount of output tax payable by the registered person in respect of taxable supplies made by the registered person during the tax period less -

- (a) subject to this section and section 19, the total amount of input tax -
 - (i) payable in respect of taxable supplies made to the registered person during the tax period, or during the preceding tax periods (and has not been claimed under this subparagraph in those periods): Provided that no deduction in relation to that supply shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction; and

**[subparagraph (i) amended by Act 2 of 2007 to add the proviso;
not all of the changes are indicated by amendment markings]**
 - (ii) paid in respect of any import of goods by the registered person during the tax period, or during the preceding tax periods (and has not been claimed under this subparagraph in those periods), in the course or furtherance of a taxable activity carried on by the registered person: Provided that no deduction in relation to that importation shall be made in respect of any tax period which ends more than three years after the end of the tax period during which the registered person for the first time becomes entitled to such deduction; and

**[subparagraph (ii) amended by Act 2 of 2007 to add the proviso;
not all of the changes are indicated by amendment markings]**
 - (iii) allowed under section 20 for the tax period; and
- (b) any input tax to which subsection (3) applies for the tax period; and
- (c) an amount equal to the tax fraction of any amount paid during the tax period by the registered person as a prize or winnings to the recipient of services contemplated in section 3(10); and
- (d) an amount equal to the tax fraction of any amount paid during the tax period by the registered person to indemnify another person under any short-term insurance contract, provided -
 - (i) the supply of the short-term insurance contract is a taxable supply; and
 - (ii) the payment is not in respect of the supply of goods or services to the registered person or the importation of goods or services by the registered person; and

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- (iii) the supply of the short-term insurance contract is not a supply charged with tax at the rate of zero per cent under section 9 and, at the time the amount was paid, the other person was not a resident person and not a registered person; and
- (iv) the payment does not result from a supply of goods or services to that other person where those goods are situated outside Namibia or those services are physically performed elsewhere than in Namibia at the time of the supply; and
- (e) an amount equal to the tax fraction of any amount paid during the tax period by the registered person to a supplier in respect of the redemption of a token, voucher or stamp contemplated in section 8(11) by the supplier and
- (f) an amount equal to the tax fraction of any amount paid during the tax period by the registered person for used goods (excluding immovable property) acquired from any person who at the time of acquisition was not entitled to claim input tax on those used goods: Provided that a signed receipt reflecting that other person's name and address, the description (including, where available, serial or other identifying numbers) of the used goods so acquired and the consideration received for those used goods, is obtained from that other person; and

[paragraph (f) inserted by Act 34 of 2000, with the accompanying addition of "and" after paragraph (e), and amended by Act 6 of 2002 and Act 2 of 2007]

- (g) an amount equal to the tax fraction of the value of the supply of any goods repossessed by a creditor.

[paragraph (g) inserted by Act 34 of 2000]

- (1A) (a) Where a registered person -
 - (i) has made a taxable supply for consideration in money; and
 - (ii) has furnished a return in respect of the tax period for which the output tax on that supply was payable and has properly accounted for the output tax on that supply as required under this Act; and
 - (iii) has written off so much of the said consideration as has become irrecoverable,

the registered person may, subject to paragraph (b), make a deduction in respect of that portion of the amount of tax charged in relation to that supply as bears to the full amount of such tax the same ratio as the amount of consideration so written off as irrecoverable bears to the total consideration for the supply, and the deduction so made shall be deemed to be input tax for the purposes of section 19.

- (aA) Where a registered person who has complied with paragraph (a)(i) and (ii) has transferred the account receivable to another registered person (hereinafter referred to as the recipient) on a non-recourse basis and any amount of such account receivable has been written off as irrecoverable by such recipient, such recipient may make a deduction in respect of that portion of the amount of tax charged in relation to that supply as bears to the full amount of such tax the same ratio as the amount of consideration so written off as irrecoverable bears to the total

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consideration for the supply, and the deduction so made is deemed to be input tax for the purposes of section 19:

Provided that a registered person who has transferred an account receivable on -

- (a) a non-recourse basis to any other person, may not make any deduction in respect of such transfer in terms of this subsection; or
- (b) a recourse basis to any other person, may make a deduction in terms of this subsection only when such account receivable is transferred back to him or her and he or she has written off so much of the consideration as has become irrecoverable.

[Paragraph (aA) is inserted by Act 4 of 2010, with spacing and subparagraph lettering reproduced above as in the Government Gazette.]

- (b) Where any amount in respect of which a deduction has been made in accordance with paragraph (a) is at any time wholly or partly recovered by the registered person, that portion of the amount of such deduction as bears to the full amount of such deduction the same ratio as the amount of the irrecoverable debt recovered bears to the debt written off shall be deemed to be tax charged in relation to a taxable supply made during the tax period in which the debt is wholly or partly recovered.

[subsection (1A) inserted by Act 34 of 2000]

(2) Notwithstanding anything in this Act, no deduction of input tax shall be made in respect of a supply or an import, unless -

- (a) a tax invoice or tax debit note or tax credit note, in relation to that supply, has been provided in accordance with section 21 or 22, as the case may be, or such other documentation as the Commissioner may allow, and is held by the registered person making the deduction at the time any return in respect of that supply is furnished, other than when a tax invoice is in terms of this Act not required to be provided; or
- (b) a bill of entry as defined in section 1(1) of the Customs and Excise Act, in relation to that import, has been delivered in accordance with the said Act and is held by the registered person making the deduction at the time any return in respect of that import is furnished.

(3) A deduction shall be allowed to a registered person in the first tax period in which such person is registered for input tax paid or payable by such person in respect of -

- (a) any taxable supplies of goods (other than capital goods) made to such person; and
- (b) any imports of goods (other than capital goods) made by such person,

before becoming registered, to the extent that the goods are for use or resupply in a taxable activity carried on by such person after registration, provided -

- (i) the supply or import occurred not more than four months before the date of registration; and
- (ii) the goods are on hand at the date of registration.

(4) Where the total amount deductible by a registered person under subsection (1) for a tax period exceeds the total amount of output tax payable by the registered person for that period, the amount of the excess shall be dealt with in accordance with section 38.

Rules relating to input tax

19. (1) In this section -

“entertainment” means the provision of food, beverages, tobacco, accommodation, amusement, recreation or hospitality of any kind by a registered person, whether directly or indirectly, to any person in connection with a taxable activity carried on by the registered person;

“passenger vehicle” means a motor vehicle principally designed or adapted for the transport of nine or fewer seated persons and includes a double cab vehicle, but does not include an ambulance or a motorcycle.

[definition of “passenger vehicle” amended by Act 34 of 2000 and Act 2 of 2007]

(2) No amount may be deducted under section 18(1) by a registered person for input tax paid in respect of -

(a) a taxable supply to, or import by, the registered person of a passenger vehicle, unless -

(i) such person is in the business of -

(aa) dealing in, or hiring of, passenger vehicles; or

(bb) a tour operator,

and that vehicle was acquired for the purposes of such business; or

(ii) that vehicle was acquired by a short-term insurer to indemnify an insured person under a short-term insurance contract; or

(iii) that vehicle was acquired by any charitable organisation, children's home, old-age home or orphanage: Provided that the subsequent sale of that vehicle shall be subject to tax; or

[subparagraph (iii) inserted by Act 6 of 2002]

(b) a taxable supply to, or import by, the registered person of goods or services acquired for the purposes of entertainment or providing entertainment, unless -

(i) the registered person is in the business of a tour operator or of providing entertainment and the taxable supply or import relates to the provision of taxable supplies of entertainment in the ordinary course of such business; or

(ii) the registered person is in the business of providing taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service; or

(c) a taxable supply to, or import by, the registered person of petroleum products, unless those products are wholly for use in the business of such person; or

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- (d) any fees or subscriptions paid by the registered person in respect of membership of any club, association, or society of a sporting, social or recreational nature; or

(e)

[paragraph (e) amended by Act 34 of 2000 and deleted by Act 6 of 2002]

(3) Subject to subsection (4), where only a part of the supplies made by a registered person during a tax period are taxable supplies, the amount of the input tax to be allowed as a deduction under section 18(1)(a)(i) and (ii) for the tax period shall be determined as follows, namely -

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

$$A \times B/C,$$

in which formula -

“A” is the total amount of input tax payable in respect of supplies and imports received during the tax period in respect of which a deduction is allowed under section 18(1); and

“B” is the total amount of taxable supplies made by the registered person, in the case where such person is registered for income tax during the preceding year of assessment for income tax or, in any other case, during the preceding financial year of the registered person; and

“C” is the total amount of all supplies made by the registered person, in the case where such person is registered for income tax, during the preceding year of assessment for income tax or, in any other case, during the preceding financial year of the registered person: Provided that where the registered person is a financial institution, a supply with regard to interest shall be the net interest earned by such institution.

[paragraph (c) amended by Act 34 of 2000;
not all of the changes are indicated by amendment markings]

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

- (5) For purposes of the fraction “B/C” in subsection (3) -

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- (a) in the case where a registered person is registered for income tax, for the remainder of the year of assessment for income tax; or
- (b) in any other case, for the remainder of the financial year of the registered person,

during which the registered person is first registered for tax, the period referred to in “B” and “C” shall be the first tax period in which the registered person is registered and thereafter the total number of tax periods, including the current tax period, during which the registered person has been registered.

[subsection (5) amended by Act 34 of 2000 and substituted by Act 6 of 2002]

(6) Notwithstanding anything in subsection (3), the Commissioner may, on such other basis as the Commissioner considers reasonable, determine the amount of input tax to be allowed as a deduction for a tax period where a registered person makes both taxable and exempt supplies during the tax period.

(7) A person dissatisfied with a decision of the Commissioner under subsection (6) may challenge the decision only under Part VIII of this Act.

(8) Notwithstanding anything in this Act, input tax may only be claimed as a deduction under section 18(1) by a registered person who paid or is liable to pay the input tax.

[subsection (8) amended by Act 34 of 2000]

Post-sale adjustments

- 20.** (1) This section shall apply where, in relation to a supply by a registered person -
- (a) the supply is cancelled; or
 - (b) the taxation of the supply changes because the nature of the supply is fundamentally varied or altered; or
 - (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, and the registered person making the supply has -
 - (i) provided a tax invoice in relation to the supply and the amount shown therein as the tax charged on the supply is incorrect as a result of the occurrence of one or more of the events mentioned in paragraphs (a), (b), (c) and (d); or
 - (ii) furnished a return for the tax period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply as a result of the occurrence of one or more of the events mentioned in paragraphs (a), (b), (c) and (d).

(2) Where subsection (1) is applicable, the registered person making the supply shall make an adjustment in accordance with subsection (3) or (5), as the case may be.

(3) Where the output tax properly chargeable in respect of a supply exceeds the output tax actually accounted for by the supplier, the amount of the excess shall be deemed to be output

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tax charged by the supplier in relation to a taxable supply made in the tax period in which any of the events mentioned in subsection (1)(a), (b), (c) and (d) occurred.

(4) Where a supplier issues a tax debit note to rectify the output tax charged to a recipient in the circumstances contemplated in subsection (3), the recipient, if a registered person, shall for the purposes of section 18(1)(a)(iii) treat the additional tax specified in the tax debit note as tax payable by the recipient in the tax period in which the tax debit note is received.

(5) Subject to subsection (7), where the output tax actually accounted for by a supplier exceeds the output tax properly chargeable in respect of a supply, the supplier shall be allowed an input tax deduction for the amount of the excess in the tax period in which any of the events mentioned in subsection (1)(a), (b), (c) and (d) occurred.

(6) Where a supplier issues a tax credit note to rectify the output tax charged to a recipient in the circumstances contemplated in subsection (5), the recipient, if a registered person, shall treat the additional tax specified in the tax credit note as output tax payable by such person in respect of a taxable supply made by such person in the tax period in which the tax credit note is received.

(7) No deduction shall be allowed under subsection (5) where the supply has been made to a person who is not a registered person, 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.

Tax invoices

21. (1) Subject to subsections (2) and (9), a registered person (hereinafter in this section referred to as a registered supplier) making a supply to another person shall, on request, provide such other person with a tax invoice for the supply containing such particulars as are specified in paragraph 1 of Schedule VI.

[subsection (1) amended by Act 34 of 2000]

(2) A registered supplier shall not be required to provide a tax invoice if the total consideration for the taxable supply is in cash and does not exceed N\$100.

[subsection (2) amended by Act 34 of 2000]

(3) A tax invoice shall not be provided by any person in any circumstances other than those contemplated in this section.

(4) A registered supplier shall issue only one tax invoice for each taxable supply.

(5) A registered recipient who has not received a tax invoice as required by subsection (1) may in writing request the registered supplier concerned to provide a tax invoice in respect of the taxable supply.

(6) A request for a tax invoice under subsection (5) shall be made within 60 days after the date of the supply.

(7) A registered supplier who receives a request under subsection (5) shall comply with the request within 14 days after receiving that request.

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(8) Notwithstanding anything in subsection (4), where a registered recipient claims to have lost the original tax invoice for a taxable supply, the registered supplier concerned may provide a copy thereof clearly marked “copy”.

(9) A recipient, being a registered person, may issue a tax invoice, containing such particulars as are specified in paragraph 1 of Schedule VI, in respect of a supply of goods or services made to the recipient by a supplier, being a registered person, provided -

- (a) the Commissioner has granted prior written approval for the issue of such tax invoices by a recipient or recipients of a specific class in relation to the taxable supplies or taxable supplies of a specific category to which the tax invoices relate; and
- (b) the recipient and the supplier have agreed that the supplier shall not issue a tax invoice in respect of any taxable supply to which this subsection applies; and
- (c) such tax invoice is provided to the supplier, and a copy thereof retained by the recipient:

Provided that where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this Act.

Tax credit notes and tax debit notes

22. (1) Where a tax invoice has been issued in the circumstances contemplated in section 20(1)(i) 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 the recipient of the supply with a tax credit note containing such particulars as are specified in paragraph 2 of Schedule VI.

(2) A tax credit note shall not be provided by any person in any circumstances other than those contemplated in subsection (1).

(3) Where a tax invoice has been issued in the circumstances contemplated in section 20(1)(i) 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 the recipient of the supply with a tax debit note containing such particulars as are specified in paragraph 3 of Schedule VI.

(4) A tax debit note shall not be provided by any person in any circumstances other than those contemplated in subsection (3).

(5) A registered person shall issue only one tax credit note or tax debit note for the amount of an excess referred to in subsections (1) and (3), respectively.

(6) Notwithstanding anything in 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 thereof clearly marked “copy”.

**PART VII
TAX PERIOD, RETURNS AND ASSESSMENTS****Tax period**