



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 173

1994

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 13 of 1994: Sales Tax Amendment Act, 1994.

EXPLANATORY NOTE:

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Sales Tax Act, 1992, so as to provide for a further exemption from sales tax in respect of the sale or importation of petrol and distillate fuels; to authorize the Permanent Secretary: Finance to issue sales tax exemption certificates to organizations and governments who have entered into technical assistance agreements with Namibia; to amend the Sales Tax Amendment Act, 1992, and the Sales Tax Amendment Act, 1993, to effect certain textual changes; to validate a certain exemption from sales tax purported to have been given under the Sales Tax Proclamation, 1978; and to provide for incidental matters.

(Signed by the President on 14 September 1994)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 5 of 1992, as amended by section 1 of Act 31 of 1992.

1. Section 1 of the Sales Tax Act, 1992 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "free-on-board value" of the following definition:

"fuel" does not include petrol or distillate fuels;

Amendment of section 6 of Act 5 of 1992, as amended by section 2 of Act 12 of 1993.

2. Section 6 of the principal Act is hereby amended -

(a) by the addition to subsection (1) of the following paragraph:

"(aj) the sale, importation or application in terms of section 5(1)(h) of petrol or distillate fuels;

(ak) subject to compliance with the provisions of section 39A -

- (i) the sale of goods to any organization or government to which an exemption certificate has been issued under that section;
- (ii) any leased property delivered to such organization or government as lessee;
- (iii) any rental consideration payable by such organization or government in respect of goods;
- (iv) any taxable service rendered or to be rendered to such organization or government,

for the purpose contemplated in that section.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) Where an exemption applies under subsection (1)(b), (c), (f), (m), (o), (p), (u), (x), (ab), (ah) [or] (ai), (aj) or (ak) in respect of a sale of goods or financial lease or rental consideration or the rendering of a taxable service or goods imported, the purchaser in relation to such sale or financial lease or rental consideration or service or the importer of the goods imported shall, subject to the provisions of sections 15 and 16, be entitled to purchase the goods which are the subject of such sale or to conclude such financial lease or to pay such rental consideration or to have such service rendered to him or her or to import the goods, as the case may be, free of tax.”.

Amendment of section 39A of Act 5 of 1992, as inserted by section 2 of Act 31 of 1992.

3. The following section is hereby substituted for section 39A of the principal Act:

“Tax relief allowable in respect of certain technical assistance agreements.

39A. (1) The Minister, in consultation with the Minister whose Ministry benefits from any technical assistance agreement entered into between the government of Namibia and any organization or the government of any country, may authorize -

- (a) the granting of relief, by way of a refund, in respect of tax paid or borne by such organization or government; or
- (b) the issue of an exemption certificate to such organization or government to claim, subject to subsection (3), an exemption from the payment of tax,

in relation to -

- (i) any goods acquired under a sale;
- (ii) any leased property delivered under a financial lease;
- (iii) any rental consideration paid under a rental agreement; or
- (iv) any taxable service rendered,

in Namibia by or to such organization or government in terms of, and for the purpose of attaining the objects of, such technical assistance agreement entered into between the government of Namibia and such organization or government.

(2) Subsections (3) and (4) of section 39 shall apply *mutatis mutandis* to any relief granted under subsection (1)(a).

(3) Where an organization or government referred to in subsection (1), in relation to any sale of goods, financial lease, rental consideration or taxable service claims that it is in terms of the provisions of that subsection exempt from the payment of tax in respect of such sale, financial lease, rental consideration or taxable service -

(a) the seller in relation to such sale, financial lease, rental consideration or taxable service, shall satisfy himself or herself that the organization or government holds a valid exemption certificate issued in terms of that subsection; and

(b) such seller shall give the purchaser an invoice or other document -

(i) naming, describing or identifying the goods, financial lease, rental consideration or taxable service; and

(ii) stating the price charged or amount subject to tax and the name, address and the exemption certificate number of the organization or government,

and the seller shall retain a copy of such invoice or other document.

(4) Where any such organization or government claims any exemption in terms of subsection (1), it shall satisfy the seller that it holds a valid exemption certificate issued in terms of that subsection -

(a) by producing such exemption certificate; or

(b) by giving to such seller -

(i) a photocopy of such exemption certificate; or

(ii) a declaration, in such form as the Permanent Secretary may prescribe, relating to such exemption certificate.

(5) In relation to any sale by auction or out of hand by an auctioneer on behalf of any other person, the reference to seller in subsections (3) and (4) shall be construed as a reference to such auctioneer.”.

(6) Any person purporting to act on behalf of any organization or government referred to in subsection (1), who, with wrongful intent to avoid bearing tax payable in respect of goods which are or may be purchased by the organization or government or services which have been or may be rendered to it, utilizes in the manner referred to in paragraph (a) or (b) of subsection (4) any exemption certificate issued to the organization or government for any purpose other than the purpose referred to in subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.”.

Amendment of section 4 of Act 31 of 1992.

4. The following section is hereby substituted for section 4 of the Sales Tax Amendment Act, 1992:

“Short title and commencement.

[3]4. This Act shall be called the Sales Tax Amendment Act, 1992, and shall be deemed to have come into operation on 4 April 1992.”.

Amendment of section 13 of Act 12 of 1993.

5. Section 13 of the Sales Tax Amendment Act, 1993, is hereby amended by the deletion of paragraph (b) of subsection (2).

Validation of certain exemption purported to have been granted under repealed law.

6. Any exemption from sales tax on or after 1 July 1987 purported to have been given under the provisions of the Sales Tax Proclamation, 1978 (Proclamation AG. 40 of 1978), (which was repealed by section 56 of the principal Act) in respect of the sale, importation or application in terms of section 5(1)(h) of that Proclamation of any goods being fuel levy goods as defined at the relevant time in section 1 of the Customs and Excise Act, 1964 (Act 91 of 1964), is hereby validated as if the provisions of that Proclamation had authorised such exemption.

Short title and commencement.

7. (1) This Act shall be called the Sales Tax Amendment Act, 1994.

(2) The amendments effected by -

(a) sections 1, 2, 3 and 4 shall be deemed to have come into operation on 4 April 1992;

(b) section 5 shall be deemed to have come into operation on 24 August 1993.
