



Tonga

CONSUMPTION TAX ACT

Chapter 26.02

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CONSUMPTION TAX ACT

Arrangement of Sections

Section

PART I - PRELIMINARY	5
1 Short title	5
2 Interpretation	5
3 Fair market value	7
4 Supplies	8
PART II - IMPOSITION OF CONSUMPTION TAX	8
5 Imposition of Consumption Tax	8
PART III - REGISTRATION	9
6 Compulsory and voluntary registration	9
7 Registration.....	10
8 Cancellation of registration	11
PART IV - PROCEDURES RELATING TO SUPPLIES AND IMPORTS	12
9 Time of supply	12
10 Place of supply.....	13
11 Value of a supply	13
12 Post sale adjustments.....	14
13 Time of import.....	15
14 Value of import.....	15
14A Alternate means of valuation of import.....	15
15 Reverse charge on supply of foreign services	15

PART V - COMPUTATION OF CONSUMPTION TAX PAYABLE		16
16	Consumption Tax in a Consumption Tax period.....	16
17	Input tax credits	16
PART VI - CONSUMPTION TAX DOCUMENTATION		18
18	Consumption Tax invoices	18
19	Consumption Tax credit and debit notes	18
20	Consumption Tax documentation	19
PART VII - CONSUMPTION TAX RETURNS AND PAYMENT		20
21	Consumption Tax returns	20
22	Consumption Tax payment	21
23	Consumption Tax payable on imports	21
PART VIII - CONSUMPTION TAX REFUNDS		21
24	Refunds	21
PART IX - ASSESSMENTS		22
25	Consumption Tax assessments	22
26	Assessment of recipient	24
PART X - POWERS OF MINISTER		25
27	Power to require security	25
28	Power to seize goods.....	25
29	Delegation	26
PART XI - ADMINISTRATIVE PENALTIES AND OFFENCES		26
ADMINISTRATIVE PENALTIES.....		26
30	Penalty for failure to apply for Consumption Tax registration.....	26
OFFENCES		27
31	Offences	27
32	Offences related to Consumption Tax documentation.....	27
PART XII - MISCELLANEOUS		27
33	Branches and divisions.....	27
34	Currency.....	28
35	Regulations.....	28
36	Transitional.....	28



Tonga

CONSUMPTION TAX ACT

AN ACT TO PROVIDE FOR CONSUMPTION TAX AND MATTERS INCIDENTAL THERETO¹

Commencement [see endnotes²]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Consumption Tax Act.

2 Interpretation³

In this Act, unless the context requires otherwise —

“**approved form**” means any form approved under this Act;

“**associate**”, in relation to a person, means any other person who acts or may act in accordance with the directions, requests, suggestions, or wishes of the first mentioned person; and the second mentioned person shall be an associate of the first mentioned person;

“**company**” means a body or association of persons whether or not incorporated, created, or formed under the law of Tonga or elsewhere but does not include a partnership or trust;

“**consideration**”, in relation to a supply, means the total of the following amounts —

- (a) the amount in money paid or payable by any person, directly or indirectly, for the supply;
- (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly, for the supply to the extent that the money is not paid under (a); and
- (c) any duties, excise tax, levies, fees, and charges (other than tax imposed under this Act) paid or payable on, or by reason of the supply,

reduced by any price discounts or rebates allowed and accounted for at the time of the supply;

“Consumption Tax” means the consumption tax imposed under section 5(1);

“Consumption Tax period” means a period of two calendar months commencing on the first day of the month of February, April, June, August, October, or December and as from 1 October 2005, means a period of a month commencing on the first day of each month;⁴

“enterprise” means —

- (a) any independent economic activity whether or not undertaken for pecuniary profit, including any business, trade, manufacture, commerce, or adventure in the nature of trade;⁵ or
- (b) the activity of a licensing authority in issuing a license, permit, certificate, concession, authorisation, or other document for a fee,

but not including —

- (i) any employment;
- (ii) any hobby or leisure activity of an individual; or
- (iii) any activity of a person other than an individual that if carried on by an individual would come within clause (ii);

“excise tax” means the excise tax imposed by the Excise Tax Act;⁶

“exempt use” means the use of goods or services to make an exempt supply;

“financial lease” means —

- (a) a hire purchase agreement; or
- (b) any lease other than lease of land that is treated under international accounting standards as a financial lease;

“goods” means any tangible or personal property, but not money;

“government entity” means —

- (a) a department or agency of Government; or
- (b) a public enterprise;

“import” has the same meaning as in the Customs and Excise Act;⁷

“importer” has the same meaning as in the Customs and Excise Act;

“**input tax**” means the tax imposed under this Act payable in respect of a taxable supply to, or a taxable import by, a person;

“**invoice**” means any document notifying an obligation to make a payment;

“**licensing authority**” means any person that has the responsibility to issue any licence, permit, certificate, concession, authorisation, or other document for a fee under any law;

“**Minister**” means the Minister responsible for revenue and customs;⁸

“**money**” means —

- (a) any coin or paper currency issued by the National Reserve Bank of Tonga as legal tender, other than a coin or paper currency that is a collector’s piece; or
- (b) a bill of exchange, promissory note, bank draft, or postal or money order;

“**output tax**” means the tax imposed under this Act payable in respect of a taxable supply made or treated as having been made by a taxable person;

“**partnership**” means two or more persons carrying on business for joint profit;

“**person**” means an individual, partnership, trust, company or government entity;

“**registered person**” means a person who is registered under this Act;

“**services**” means the provision of work or facilities or anything that is not goods or money;

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

“**taxable person**” means a registered person or a person treated as registered under this Act;

“**taxable supply**” means the supply in Tonga by a person in connection with the carrying on of an enterprise including a supply in connection with the commencement or termination of an enterprise, but excluding an exempt supply; and

“**Taxpayer Identification Number**”, in relation to a registered person, means the Taxpayer Identification Number issued to the person under section 24 of the Revenue Services Administration Act.⁹

3 Fair market value

- (1) The fair market value of a supply at a particular time shall be the ordinary open market value of the supply in Tonga at that time.
- (2) If the fair market value of a supply cannot be determined under subsection (1), the fair market value shall be the amount determined by the Minister.

- (3) The fair market value of consideration in kind or of an asset shall be determined in the same manner as the fair market value of a supply, with any necessary modifications made.

4 Supplies

- (1) A sale, exchange, or other transfer of the right to dispose of goods as owner shall be a supply of goods.
- (2) An application of goods by a taxable person to a private or exempt use shall be a taxable supply of the goods, but only if the taxable person has been allowed an input tax credit in respect of the acquisition of the goods.
- (3) The lease or hire of goods under a financial lease shall be a supply of the goods.
- (4) Anything done that is not a supply of goods or money shall be a supply of services, including the —
 - (a) grant, assignment, or surrender of any right;
 - (b) making available of any facility or advantage;
 - (c) toleration of any situation;
 - (d) refraining from the doing of any act; or
 - (e) issuing of any licence, permit, certificate, concession, authorisation, or other document by a licensing authority.
- (5) A supply of goods incidental to a supply of services shall be treated as part of the supply of services.
- (6) A supply of services incidental to an import of goods shall be treated as part of the supply of goods.
- (7) A supply of services incidental to an import of goods shall be treated as part of the import.
- (8) Subject to subsections (5) and (6), if a supply is a supply of goods and a supply of services, the Minister may determine the extent to which the supply shall be treated as a supply of goods or a supply of services.

PART II - IMPOSITION OF CONSUMPTION TAX

5 Imposition of Consumption Tax

- (1) Consumption Tax shall be levied on —
 - (a) a taxable supply by a taxable person; and
 - (b) a taxable import.

- (2) The amount of Consumption Tax payable in respect of a taxable supply or taxable import shall be computed by applying the rate specified in subsection (3) to the value of the taxable supply or taxable import.
- (3)
 - (a) The rate of Consumption Tax shall be 15 per cent provided that the Minister with the consent of Cabinet may by Order direct what shall be an exempt import, exempt supply or a zero rated supply for the purposes of this Act.¹⁰
 - (b) Supplies and imports of goods and services for His Majesty the King shall be exempt from Consumption Tax.
- (4) The Consumption Tax payable —
 - (a) on a taxable supply, shall be accounted for to the Minister by the taxable person making the supply; or
 - (b) on a taxable import, shall be payable by the importer.
- (5) Notwithstanding anything contained in any law, the Consumption Tax payable by a taxable person under subsection (4)(a) shall be recoverable from the recipient of the supply.

PART III - REGISTRATION

6 Compulsory and voluntary registration

- (1) A person shall apply to the Minister for registration for Consumption Tax —
 - (a) at the beginning of any 12 month period, if there are reasonable grounds to expect that the total value of taxable supplies to be made by the person in the person's enterprise in that period will be \$100,000 or more; or
 - (b) at the end of any 12 month or less period, if in that period the total value of taxable supplies made by the person in the person's enterprise is \$100,000 or more.
- (2) The Minister shall in determining whether a person is to apply for registration under subsection (1), have regard to the value of taxable supplies made by an associate.
- (2A)¹¹ A person in receipt of a supply of services to which section 15 applies and who is not required to apply for registration under subsection (1) shall apply for registration, if —
 - (a) at the beginning of any 12 month period there are reasonable grounds to expect that the total value of the services received by the person including any other taxable supplies he makes in that period will be \$100,000 or more; or

- (b) at the end of any 12 month period the total value of services received by the person, including any other taxable supplies he makes is \$100,000 or more.
- (3) A licensing authority involved in the activity of issuing licences, permits, certificates, concessions, authorisations, or other documents shall apply for registration when this Act comes into effect or from the date it commences such activity.
- (4) A person making taxable supplies who is not required to apply for registration under subsection (1) may apply for registration.
- (5) An application for registration shall be in the approved form and, in the case of an application under subsection (1), (2A) or (3), shall be lodged with the Minister within 7 days of becoming obliged to apply for registration.
- (6) A person who fails to apply for registration as required under this section shall be treated as registered from the beginning of the first Consumption Tax period after the person became obliged to apply for registration or such later time as the Minister may notify in writing.

7 Registration

- (1) The Minister shall register a person who has applied for registration under section 6(1) or (3) if satisfied that the person is making, or will make taxable supplies.
- (2) If the Minister is not satisfied under subsection (1) he may refuse to register and shall serve an applicant under this section with written notice of a decision to refuse to register the person within 7 days of making the decision.
- (3) The Minister shall register a person who has applied for registration under section 6(4) if satisfied that —
 - (a) the person is making, or will make taxable supplies;
 - (b) the person has a fixed place of business;
 - (c) if the person has commenced carrying on business, the person —
 - (i) has kept proper records of its business; and
 - (ii) complied with its obligations under other revenue laws; and
 - (d) there are reasonable grounds to believe that the person will keep proper records and lodge regular and reliable Consumption Tax returns.
- (4) The Minister shall issue a person registered under this section with a Consumption Tax registration certificate in the approved form.
- (5) Registration shall take effect —
 - (a) in the case of an application under section 6(1) and (3), from the beginning of the first Consumption Tax period after the person became

- obliged to apply for registration or such later time as set out in the Consumption Tax registration certificate; or
- (b) in the case of an application under section 6(4), from the date set out in the Consumption Tax registration certificate; or
 - (c) in the case of an application required under section 6(2A) on the date the provisions of section 15 first apply to the person or from the date set out in the Consumption Tax registration certificate.¹²
- (6) A registered person shall display the person's Consumption Tax registration certificate at a conspicuous place at every place of business of the person.
- (7) A registered person shall notify the Minister, in writing, of any change in the name (including business name), address, place of business, or nature of the business of the person within 21 days of the change occurring.

8 Cancellation of registration

- (1) A registered person —
- (a) shall apply for cancellation of the person's registration if the person has ceased to make taxable supplies; or
 - (b) subject to subsection (2), may apply for cancellation of the person's registration if the person's taxable supplies do not exceed the registration threshold in section 6(1).
- (2) In the case of a registered person who applied for registration under section 6(4), an application under subsection (1)(b) may be made only after the expiration of 2 years from the date of registration.
- (3) A licensing authority shall apply for cancellation of registration only in the circumstances specified in subsection (1)(a).
- (4) An application under subsection (1) shall be in the approved form and, in the case of an application under subsection (1)(a), shall be lodged with the Minister within 7 days of ceasing to make taxable supplies.
- (5) The Minister shall, by notice in writing to the registered person, cancel the registration of a person who has applied under subsection (1) if satisfied that the person is required or permitted to apply for cancellation of registration.
- (6) The Minister shall, by notice in writing to the registered person, cancel the registration of any person who has not applied under subsection (1) if the Minister is satisfied that the person has ceased to make taxable supplies.
- (7) The cancellation of a person's registration shall take effect from the date set out in the notice of cancellation.
- (8) A person whose registration is cancelled under this section shall be treated as having made a taxable supply of any goods (including raw materials) on hand at the time the registration is cancelled but only if the person was allowed an input tax credit on acquisition of the goods.

- (9) The taxable supply referred to in subsection (8) shall be treated as having been made —
- (a) immediately before cancellation of the person's registration; and
 - (b) for a value equal to the consideration paid or payable on acquisition of the goods.
- (10) If a person's registration is cancelled under this section, the person shall —
- (a) immediately cease to hold out that the person is a registered person, including in any documentation used by the person;
 - (b) lodge a final Consumption Tax return and pay all Consumption Tax due, including the Consumption Tax due as a result of subsection (8) within 28 days after the date of cancellation of the person's registration;¹³ and
 - (c) immediately return the person's Consumption Tax registration certificate to the Minister.

PART IV - PROCEDURES RELATING TO SUPPLIES AND IMPORTS

9 Time of supply¹⁴

- (1) Subject to this section, a supply of goods or services shall occur on the earlier of —
- (a) the date on which the invoice for the supply is issued; or
 - (b) the date on which any payment (including part payment) for the supply is made.
- (2) A supply by way of a gift shall occur —
- (a) in the case of goods, on the date the goods are delivered; or
 - (b) in the case of services, on the date the services are complete.
- (3) A supply of goods by way of an application of the goods to a private or exempt use shall occur on the date the goods are first applied to such use.
- (4) If services are supplied —
- (a) by way of a lease of goods (including a financial lease); or
 - (b) progressively under an agreement or law that provides for periodic payments,

the services shall be treated as successively supplied for successive parts of the period of the lease, or agreement or as determined by law, and each successive supply shall occur on the earlier of the date on which the payment for the supply is due or received.¹⁵

10 Place of supply

- (1) A supply of goods shall occur at the place where the goods are delivered or made available by the supplier or, if the delivery or making available involves transportation, the place where the goods are when the transportation commences.
- (2) Subject to subsection (3), (4) and (5), a supply of services shall occur at the place of business from which the services are supplied.
- (3) The supply of the following services shall occur in Tonga if the recipient uses or obtains the advantage of the services in Tonga of —
 - (a) a transfer, assignment of, or grant of a right to use, a copyright, patent, trademark;
 - (b) accountants, architects, consultants, engineers, or law practitioners;
 - (c) the processing of data or supplying information or any similar service;
 - (d) an advertising service;
 - (e) the toleration of any situation or the refraining from the doing of any act;
 - (f) the supply of personnel; or
 - (g) the service of an agent in procuring a service described in this subsection.
- (4) A supply of services in connection with real property shall occur in Tonga if the real property is in Tonga.
- (5) A supply of services by a licencing authority shall be deemed to have occurred in Tonga regardless of where the licence, permit, certificate, concession, authorisation, or other document is issued.

11 Value of a supply¹⁶

- (1) In this section, “tax fraction”, in relation to a taxable supply, means the fraction calculated in accordance with the following formula —

$$r/(100+r)$$

where r is the rate of Consumption Tax applicable to the supply as determined under section 5(3).

- (2) Subject to this section, the value of a supply of goods or services shall be the consideration for the supply.
- (3) The value of a supply of goods being the application of goods to a private or exempt use shall be —

- (a) if section 17(5) applied to the acquisition of the goods, the consideration paid or payable on acquisition of the goods to the extent to which an input tax credit was allowed on acquisition; or
 - (b) in any other case, the consideration paid or payable on acquisition of the goods.
- (4) The value of a supply of goods or services made by a taxable person to an associate who is not a taxable person for no consideration or for a consideration that is less than the fair market value of the supply, shall be the fair market value of the supply at the time of the supply.
- (5) Except as provided in subsection (3) or (5), the value of a supply of goods or services for no consideration shall be zero.
- (6) If a taxable supply is made without a separate amount of the price being identified as Consumption Tax, the value of the supply shall be the price reduced by an amount equal to the price multiplied by the tax fraction.

12 Post sale adjustments

- (1) This section applies if —
- (a) a taxable supply is cancelled;
 - (b) the nature of a taxable supply is fundamentally varied or altered;
 - (c) the consideration for a taxable supply is altered; or
 - (d) the goods (or part thereof) the subject of a taxable supply are returned to the supplier.
- (2) If this section applies and the Consumption Tax properly chargeable in respect of the supply exceeds the Consumption Tax actually accounted for by the supplier, the amount of the excess shall be treated as output tax payable by the supplier for a taxable supply made in the Consumption Tax period in which the event referred to in subsection (1) occurred.
- (3) If subsection (2) applies and the supplier has issued a Consumption Tax debit note to the recipient of the supply in accordance with section 19(3), the recipient of the supply shall treat the additional Consumption Tax specified in a debit note issued herein as input tax payable by the recipient in the Consumption Tax period in which the debit note is received.
- (4) Subject to subsection (6), if this section applies and the Consumption Tax actually accounted for by the supplier exceeds the Consumption Tax properly chargeable in respect of the supply, the supplier shall be allowed an input tax credit for the amount of the excess in the Consumption Tax period in which the event referred to in subsection (1) occurred.
- (5) If subsection (4) applies and the supplier has issued a Consumption Tax credit note to the recipient of the supply in accordance with section 19(1), the recipient shall treat the additional Consumption Tax specified in the credit

note as output tax payable by the recipient in the Consumption Tax period in which the credit note is received.

- (6) If the recipient of a supply to which subsection (4) applies is unregistered, no input tax credit shall be allowed under that subsection until the supplier has repaid the excess Consumption Tax to the recipient of the supply, whether in cash or as a credit against any amount owing to the supplier by the recipient.

13 Time of import

An import of goods shall occur —

- (a) if the goods are entered under the Customs and Excise Act, Customs and Excise Management Act, the Customs Act or the Excise Tax Act as the case may be on the date on which they are so entered;¹⁷ or
- (b) in any other case, on the date the goods are brought into Tonga.

14 Value of import

The value of an import of goods shall be the sum of —

- (a) the value of the goods ascertained for the purposes of customs duty under the Customs and Excise Act, Customs and Excise Management Act, the Customs Act or the Excise Tax Act as the case may be whether or not any duty is payable on the import;¹⁸
- (b) the amount of customs duty, excise tax, and any other fiscal charge (other than Consumption Tax) payable on the import;¹⁹ and
- (c) the value of any services referred to in section 4(7) not included in the value under paragraph (a).

14A Alternate means of valuation of import

The Minister may, if the value of an import of goods cannot be determined under section 14(a) or if he is satisfied that the value of an import of goods ascertained under section 14(a) is not the correct value of the goods, treat the import of goods as a supply of goods made in Tonga at the relevant time and the value shall be determined in accordance with section 3.²⁰

15 Reverse charge on supply of foreign services

- (1) If a person makes a supply of services to a taxable person in Tonga and the supply is not a taxable supply because the supply is not made in Tonga but would have been a taxable supply had it been made in Tonga, to the extent the recipient will use the supply —
 - (a) to make exempt supplies;

- (b) for personal or domestic use; or
- (c) to provide entertainment to —
 - (i) an associate or employee; or
 - (ii) any other person other than in the course of a business of providing entertainment,

the supply shall be treated as a taxable supply made by the recipient at the same time and for the same consideration as the actual supply.

- (2) Where the supplier of the service is the taxable person receiving the service in Tonga, such supplier shall be treated as a person other than the taxable person receiving the service and the supply shall be taken to have occurred between two separate independent persons.²¹

PART V - COMPUTATION OF CONSUMPTION TAX PAYABLE

16 Consumption Tax in a Consumption Tax period

The Consumption Tax payable by a taxable person in respect of taxable supplies made or treated as having been made by the person in a Consumption Tax period shall be computed according to the following formula —

$$\mathbf{A - B}$$

Where —

- A is the total output tax payable in respect of taxable supplies made or treated as having been made by the person in the period; and
- B is the total input tax credit allowed to the person under sections 12, 17, 24, and 36(2) for the period.

17 Input tax credits

- (1) In this section —
 - “**entertainment**” means the provision of food, beverages, tobacco, accommodation, amusement, recreation, or hospitality of any kind; and
 - “**passenger vehicle**” means a road vehicle designed or adapted for the transport of 9 or fewer seated passengers.
- (2) Subject to this section, a taxable person shall be allowed a tax credit for input tax payable by the person.

- (3) Subject to this section a person may claim a credit for the input tax paid in respect of trading stock if held at the date of registration —
- (a) the person is registered under section 6;
 - (b) at the end of the last day before the date of the person's registration, the person held goods as trading stock;
 - (c) the trading stock was acquired by the person in a taxable supply to, or a taxable import by the person;
 - (d) the supply or import occurred no more than 4 months prior to the date of registration; and
 - (e) the person can provide documentary evidence satisfactory to the Minister that input tax has been paid on the supply or import.
- (4) No credit shall be allowed under subsection (2) or (3) for input tax payable in respect of a taxable supply to, or taxable import by, a person —
- (a) of a passenger vehicle, or spare parts or repair and maintenance services for such vehicle, unless the person is in the business of dealing in, or hiring of, such vehicles and the vehicle was acquired for such business;
 - (b) of petroleum products, unless those products are wholly for use in the business of the person; or
 - (c) to the extent that the supply or import is used to provide entertainment, unless the person is in the business of providing entertainment and the entertainment was provided in the ordinary course of the business other than as a supply to an associate or employee.
- (5) Notwithstanding anything contained in this section, no input tax credit shall be allowed in respect of a taxable supply to, or taxable import by a taxable person to the extent that the supply or import is used by the person to make exempt supplies or for private purposes.
- (6) An input tax credit —
- (a) in the case referred to in subsection (2), shall be allowed at the time of the supply or import; or
 - (b) in the case referred to in subsection (3), shall be allowed on the date of registration.
- (7) Notwithstanding subsection (6)(a), an input tax credit allowed under subsection (2) cannot be claimed by a taxable person except for the Consumption Tax period in which the person has —
- (a) in the case of a taxable supply, a Consumption Tax invoice for the supply; or
 - (b) in the case of a taxable import, a bill of entry or other document prescribed under the Customs and Excise Act, Customs and Excise Management Act, the Customs Act or the Excise Tax Act as the case may be for the import.²²

PART VI - CONSUMPTION TAX DOCUMENTATION

18 Consumption Tax invoices

- (1) A registered person making a taxable supply to another registered person shall, at the time of the supply, issue that other person with the original Consumption Tax invoice for the supply.
- (2) A Consumption Tax invoice shall contain the following particulars —
 - (a) the words “CONSUMPTION TAX INVOICE” in a prominent place;
 - (b) the name, address, and Taxpayer Identification Number of the supplier;
 - (c) the name, address, and Taxpayer Identification Number of the recipient;
 - (d) the individualised serial number and the date on which the Consumption Tax invoice is issued;
 - (e) the description of the goods supplied (including quantity or volume) or services provided and the date on which the supply was made; and
 - (f) the consideration for the supply and the amount of Consumption Tax charged.

19 Consumption Tax credit and debit notes

- (1) If —
 - (a) a registered person (known as “the supplier”) has made a taxable supply to another registered person (known as “the recipient”);
 - (b) at the time of the supply, the supplier has issued an original Consumption Tax invoice to the recipient;
 - (c) section 12(1) applies to the supply; and
 - (d) the amount shown on the invoice as the Consumption Tax charged exceeds the Consumption Tax properly chargeable in respect of the supply,

the supplier shall provide the recipient with an original Consumption Tax credit note.

- (2) A Consumption Tax credit note shall contain the following particulars —
 - (a) the words “CONSUMPTION TAX CREDIT NOTE” in a prominent place;
 - (b) the name, address, and Taxpayer Identification Number of the supplier;
 - (c) the name, address, and Taxpayer Identification Number of the recipient;
 - (d) the individualised serial number and the date on which the Consumption Tax credit note is issued;

- (e) a brief description of the circumstances giving rise to the issuing of the Consumption Tax credit note, including information sufficient to identify the taxable supply to which the Consumption Tax credit note relates; and
 - (f) the consideration shown on the Consumption Tax invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of Consumption Tax that relates to the difference.
- (3) If —
- (a) a registered person (known as “the supplier”) has made a taxable supply to another registered person (known as “the recipient”);
 - (b) at the time of the supply, the supplier has issued an original Consumption Tax invoice to the recipient;
 - (c) section 12(1) applies to the supply; and
 - (d) the Consumption Tax properly chargeable in respect of the supply exceeds the amount shown on the invoice as the Consumption Tax charged,

the supplier shall provide the recipient with an original Consumption Tax debit note.

- (4) A Consumption Tax debit note shall contain the following particulars —
- (a) the words “CONSUMPTION TAX DEBIT NOTE” in a prominent place;
 - (b) the name, address, and Taxpayer Identification Number of the supplier;
 - (c) the name, address, and Taxpayer Identification Number of the recipient;
 - (d) the individualised serial number and the date on which the Consumption Tax debit note is issued;
 - (e) a brief description of the circumstances giving rise to the issuing of the Consumption Tax debit note, including information sufficient to identify the taxable supply to which the Consumption Tax debit note relates; and
 - (f) the consideration shown on the Consumption Tax invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of Consumption Tax that relates to the difference.

20 Consumption Tax documentation

- (1) A taxable person who for any reason does not have a Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note as required under this Part may make a written request to the supplier to issue a

Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note, as the case may be.

- (2) A request under subsection (1) shall be made —
 - (a) in the case of Consumption Tax invoice, within 60 days of the date of the supply; or
 - (b) in the case of a Consumption Tax credit note or Consumption Tax debit note, within 60 days of the event under section 12 to which the Consumption Tax credit note or Consumption Tax debit note relates.
- (3) A registered person receiving a request under subsection (1) shall comply with the request within 14 days of receiving the request.
- (4) A registered person shall issue only one original Consumption Tax invoice for a taxable supply, or one original Consumption Tax credit note or Consumption Tax debit note for an event under section 12, but a copy clearly marked as such may be provided to a registered person who claims to have lost the original.
- (5) The following documents shall be maintained in respect of a registered person for the purposes of section 20 of the Revenue Services Administration Act²³ —
 - (a) original Consumption Tax invoices, Consumption Tax credit notes, and Consumption Tax debit notes received by the person;
 - (b) a copy of all Consumption Tax invoices, Consumption Tax credit notes, and Consumption Tax debit notes issued by the person; and
 - (c) customs documentation relating to imports and exports of goods by the person.
- (6) The documents referred to in subsection (5)(b) shall be maintained in chronological order.
- (7) A person shall not issue a Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note other than in the circumstances specified in this Part.

PART VII - CONSUMPTION TAX RETURNS AND PAYMENT

21 Consumption Tax returns

- (1) A taxable person shall lodge a Consumption Tax return for each Consumption Tax period within 28 days after the end of the period.²⁴
- (2) A Consumption Tax return shall be in the approved form.

22 Consumption Tax payment

- (1) The Consumption Tax payable by a taxable person for a Consumption Tax period computed under section 16 shall be due and payable by the due date for lodging the Consumption Tax return for that period.
- (2) The Consumption Tax payable by an importer in respect of a taxable import shall be due and payable at the time of the import.
- (3) The liability for Consumption Tax arises by operation of this section and is not dependent on the Minister making an assessment of Consumption Tax due.
- (4) Notwithstanding section 16 of the Supreme Court Act,²⁵ any Consumption Tax that has not been paid by a taxable person within 5 years after the due date for payment (together with any penalty imposed under section 32 of the Revenue Services Administration Act in respect of the unpaid Consumption Tax) ceases to be payable at the end of that period unless —
 - (a) the person has failed to file a Consumption Tax return for the Consumption Tax period to which the unpaid Consumption Tax relates;
 - (b) the Minister has within the 5 years period required payment of the amount by notice in writing; or
 - (c) the failure to pay was due to fraud, or gross or wilful neglect.

23 Consumption Tax payable on imports²⁶

- (1) Except where the contrary intention appears, the provisions of the Customs and Excise Act, Customs and Excise Management Act, the Customs Act or the Excise Tax Act as the case may be on imported goods shall, in so far as relevant and with such exceptions and modifications as necessary, apply in relation to Consumption Tax payable on a taxable import.
- (2) The Minister may, by virtue of subsection (1), exercise any power conferred on the Minister by the Customs and Excise Act, Customs and Excise Management Act, the Customs Act or the Excise Tax Act as the case may be as if the reference to customs duty or excise tax as the case may be in those Acts included a reference to Consumption Tax payable on imported goods under this Act.

PART VIII - CONSUMPTION TAX REFUNDS

24 Refunds

- (1) Subject to subsection (3), if, for any Consumption Tax period, the total input tax credit allowed to a taxable person exceeds the person's total output tax for that period —

- (a) the excess shall be carried forward and allowed as an input tax credit in the following Consumption Tax period and any amount of the excess not credited in that period shall be carried forward to the next following Consumption Tax period; and
 - (b) any amount of the excess not credited under paragraph (a) shall, upon written application by the person, be refunded to the person within 45 days after the date of lodgement of the application.
- (2) If a taxable person has an excess input tax credit carried forward under this section for more than one Consumption Tax period, the excess credit of the earliest Consumption Tax period shall be allowed first.
- (3) If the excess referred to in subsection (1) is due to excess input tax credits that are a regular feature of the taxable person's business, the Minister shall, upon application in writing, refund the excess within 45 days after lodgement of the Consumption Tax return for the period.
- (4) A taxable person who has erroneously overpaid Consumption Tax for a Consumption Tax period may apply, in writing, to the Minister for an input tax credit in the amount of the overpayment.
- (5) If the Minister is satisfied that an application has been properly made by a taxable person under subsection (4), the Minister shall allow the person an input tax credit in the Consumption Tax period specified by the Minister for the amount of the overpayment.
- (6) An application under subsection (4) shall be made within 5 years from the date of the overpayment.

PART IX - ASSESSMENTS

25 Consumption Tax assessments

- (1) In this section —
“**objection decision**” means the decision of the Minister under section 8(6) of the Revenue Services Administration Act; and
“**Tax Tribunal**” means the Tax Tribunal established under section 58 of the Revenue Services Administration Act.²⁷
- (2) The Minister may make an assessment of the Consumption Tax payable by a taxable person if —
 - (a) the person fails to lodge a Consumption Tax return as required under this Act or the Revenue Services Administration Act;
 - (b) the Minister is not satisfied with a Consumption Tax return lodged by the person; or

- (c) the person has been paid a refund under section 24 to which the person is not entitled.
- (3) The Minister may make an assessment —
 - (a) under subsection (2)(a) or (c), at any time; or
 - (b) under subsection (2)(b) —
 - (i) if the default was due to fraud, or gross or wilful neglect, at any time, or
 - (ii) in any other case, within the time specified in section 22(4) for recovery of Consumption Tax.
- (4) The Minister may, based on the information available, estimate the Consumption Tax payable by a person for the purposes of making an assessment under subsection (2).
- (5) The Minister shall serve a notice of the assessment made under subsection (2) on the taxable person assessed stating —
 - (a) the reason for the assessment as provided for in subsection (2);
 - (b) the Consumption Tax payable under the assessment;
 - (c) if the assessment is issued under subsection (2)(a) or (b), the original due date for payment as determined under section 22;
 - (d) if the assessment is issued under paragraph (2)(a), the due date for payment as determined under subsection (6); and
 - (e) the time, place, and manner of objecting to the assessment as provided under the Revenue Services Administration Act.
- (6) The Consumption Tax payable by a taxable person under an assessment issued under subsection (2)(c) shall be due 30 days after the person was served with the notice of assessment.
- (7) The Minister may, within 5 years after serving a notice of assessment on a taxable person, amend the assessment by making such alterations or additions to the assessment as the Minister considers necessary, and a notice of the amended assessment shall be served on the person.
- (8) Nothing in subsection (7) shall prevent the amendment of an assessment to give effect to an objection decision, or a decision of the Tax Tribunal or Supreme Court.
- (9) An amended assessment shall be deemed as an assessment for all purposes of this Act.
- (10) Nothing in this section prevents any interest and penalty payable —
 - (a) in respect of Consumption Tax assessed under subsection (2)(a) and (b), from being computed from the original due date for payment of the Consumption Tax as determined under section 22; or

- (b) in respect of Consumption Tax assessed under subsection (2)(c) in the case of an application for a refund made fraudulently or negligently, from being computed from the date on which the refund was paid.

26 Assessment of recipient

- (1) If a taxable person who is the supplier has, in consequence of misrepresentation or fraud by the recipient of a supply, incorrectly treated the supply as —
 - (a) an exempt supply; or
 - (b) a supply subject to a zero rate of Consumption Tax under section 5(3)(a),the Minister may assess the recipient of the supply for payment of the Consumption Tax due in respect of the supply and any interest and penalty imposed as a result of the late payment of the Consumption Tax.
- (2) The Minister shall serve notice of an assessment under subsection (1) on the recipient specifying —
 - (a) the reason for the assessment as provided for in subsection (1);
 - (b) the Consumption Tax payable;
 - (c) the due date for payment of the Consumption Tax; and
 - (d) the time, place, and manner of objecting to the assessment as provided under the Revenue Services Administration Act.
- (3) Subsection (1) does not preclude the Minister from recovering the Consumption Tax due in respect of the supply together with any interest and penalty from the supplier and —
 - (a) any amount recovered from the recipient of the supply shall be credited against the liability of the supplier in respect of the supply; and
 - (b) any amount recovered from the supplier shall be credited against the liability of the recipient of the supply.
- (4) Any supplier who pays Consumption Tax, interest, or penalty referred to in subsection (1) may recover the amount from the recipient of the supply.
- (5) An assessment made under subsection (1) shall be deemed as an assessment of Consumption Tax for all purposes of this Act.

PART X - POWERS OF MINISTER²⁸

27 Power to require security

The Minister may, for the purposes of securing payment of any Consumption Tax that is or may become due, require a person to give security in such amount and in such manner as the Minister thinks fit.

28 Power to seize goods

- (1) The Minister may enter any place and seize any goods in respect of which the Minister has reasonable grounds to believe that the Consumption Tax that is, or will become, payable in respect of the supply or import of the goods has not been, or will not be, paid.
- (2) Goods that have been seized under this section shall be stored in a place approved by the Minister for the storage of such goods.
- (3) If goods have been seized under subsection (1), the Minister shall, as soon as practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing —
 - (a) identifying the goods;
 - (b) stating that the goods have been seized under this section and the reason for seizure; and
 - (c) setting out the terms of subsections (6), (7), and (8).
- (4) The Minister shall not be required to serve a notice under subsection (3) if, after making reasonable enquiries, the Minister does not have sufficient information to identify the person on whom the notice should be served.
- (5) If subsection (4) applies, the Minister may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Minister sufficient information to enable such a notice to be served.
- (6) The Minister may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an arrangement to pay security or payment by instalment to the satisfaction of the Minister for payment of the Consumption Tax due or may become payable in respect of the supply or import of the goods.
- (7) If subsection (6) does not apply, the Minister shall detain the goods seized under subsection (1) —
 - (a) in the case of perishable goods, for such period as the Minister considers reasonable having regard to the condition of the goods; or
 - (b) in any other case, for 21 days after the seizure of the goods.

- (8) If the detention period in subsection (7) has expired, the Minister may sell the goods by public auction or such other manner as the Minister may determine.
- (9) The proceeds of disposal under subsection (8) shall be applied as follows —
 - (a) first toward the cost of seizing, keeping and selling the goods;
 - (b) then towards payment of the Consumption Tax due in respect of the supply or import of the goods seized; and
 - (c) the balance, if any, shall be paid to the owner of the goods.
- (10) Nothing in this section precludes the Minister from proceeding under Part V of the Revenue Services Administration Act, with respect to any balance owed if the proceeds of disposal are not sufficient to meet the costs referred to in subsection (9)(a) and the Consumption Tax due.

29 Delegation

- (1) The Minister may delegate in writing any duty, power, or function conferred on him under this Act.
- (2) The Minister may, at any time, revoke in writing any delegation under this section.

PART XI - ADMINISTRATIVE PENALTIES AND OFFENCES

DIVISION I

ADMINISTRATIVE PENALTIES

30 Penalty for failure to apply for Consumption Tax registration

- (1) A person who fails to apply for registration as required by section 6(1) or (3) shall be liable to a penalty equal to double the amount of Consumption Tax payable during the period commencing on the day on which the person was required to apply for registration until either the person files an application for registration or the person is registered by the Minister on his own motion.
- (2) Section 35(3) to (5) of the Revenue Services Administration Act ²⁹ shall apply to any penalty imposed under this section.

DIVISION II
OFFENCES

31 Offences

- (1) A person who fails —
 - (a) to apply for registration as required by section 6(1) or (3);
 - (b) to notify the Minister of a change in circumstances as required by section 7(7);
 - (c) to apply for cancellation of registration as required by section 8(1); or
 - (d) to comply with section 8(10)(a) or (c),commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years, or both.
- (2) If a penalty has been imposed under section 30 for a failure to apply for registration as required by section 6(1) or (3) and the Minister commences a prosecution under this section for the same failure, the penalty shall be refunded and shall not be payable unless the prosecution is withdrawn.

32 Offences related to Consumption Tax documentation

- (1) A registered person who fails to provide a Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note as required in Part VI commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or both.
- (2) A taxable person who issues a Consumption Tax invoice, Consumption Tax credit note, or Consumption Tax debit note otherwise than as provided for in Part VI commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or both.

PART XII - MISCELLANEOUS

33 Branches and divisions

- (1) An enterprise conducted by a taxable person in branches or divisions shall be deemed to be a single enterprise for the purposes of this Act.
- (2) A person who conducts an enterprise in branches or divisions shall be registered in the name of the person and not in the names of the branches and divisions.

34 Currency

- (1) An amount taken into account under this Act shall be expressed in Tongan pa'anga.
- (2) If any amount is expressed in a currency other than Tongan pa'anga, the amount —
 - (a) in the case of an import of goods, shall be converted into Tongan pa'anga at the exchange rate applicable under the Customs and Excise Act for the purposes of computing the customs duty payable on the import; or
 - (b) in any other case, shall be converted to Tongan pa'anga at the National Reserve Bank of Tonga mid exchange rate applying between the foreign currency and Tongan pa'anga on the date the amount is taken into account for the purposes of this Act.

35 Regulations

The Minister may, with the consent of Cabinet, make regulations —

- (a) prescribing forms and fees required under this Act; and
- (b) for the proper and efficient administration of this Act.

36 Transitional

- (1) In this section, “sales tax” means sales tax imposed by the Sales Tax Act and fuel sales tax imposed by the Fuel Sales Tax Act.
- (2) Subject to subsection (3), if —
 - (a) at the end of the last business day before the beginning of the first Consumption Tax period after commencement of this Act, a registered person held goods as trading stock;
 - (b) the goods were acquired not more than 4 months before the beginning of the first Consumption Tax period after commencement of this Act; and
 - (c) the Minister is satisfied that sales tax has been paid on the acquisition or import of those goods,the person may claim an input tax credit for the sales tax paid in the first Consumption Tax period after the commencement of this Act.
- (3) No input tax credit shall be allowed under subsection (2) for any sales tax paid in respect of the acquisition of any goods if Consumption Tax imposed on a supply or import in acquisition of those goods after the commencement of this Act would not qualify for a full input tax credit because of the application of section 17(4) or (5).

- (4) A person claiming an input tax credit under subsection (2) in respect of trading stock on hand at the beginning of the first Consumption Tax period after commencement of this Act shall submit a list of the trading stock with the person's first Consumption Tax return, supported by documentary evidence of the payment of sales tax.
- (5) A registered vendor for sales tax who —
- (a) is not liable to be registered under section 6(1) and who does not apply for registration under section 6(4); and
 - (b) holds goods as trading stock at the beginning of the first Consumption Tax period after commencement of this Act,
- shall report the goods referred to in paragraph (b) as taxable sales in the vendor's last sales tax return with a taxable amount equal to the consideration paid or payable by such vendor for those goods.
- (6) If a registered person concluded a contract before the commencement of this Act, the person shall recover any Consumption Tax payable on taxable supplies made by the person under the contract after the commencement of the Act and such Consumption Tax shall be recovered notwithstanding that the contract contained no provision relating to the recovery of Consumption Tax.

ENDNOTES¹ **Act 29 of 2003**

Amending Acts	Commencement
Act 3 of 2005	18 July 2005
Act 8 of 2007	1 February 2008 (G.4/2008)
Act 42 of 2010	24 November 2010
Act 5 of 2012	30 July 2012
Act 8 of 2013	1 July 2013

² Commencements by GS 3A/2005 —

1. Parts III and XII on 4 March, 2005
2. Parts I, II, IV, V, VI, VII, VIII, IX, X, and XI on 1 April, 2005

³ Amended by Act 8 of 2007⁴ Amended by Act 3 of 2005⁵ Amended by Act 3 of 2005⁶ Inserted by Act 8 of 2007⁷ Cap. 26.04⁸ Inserted by Act 5 of 2012 and Amended by Act 8 of 2013⁹ Cap. 26.14¹⁰ Amended by Act 42 of 2010¹¹ Inserted by Act 3 of 2005¹² Inserted by Act 3 of 2005¹³ Amended by Act 8 of 2007¹⁴ Amended by Act 3 of 2005¹⁵ Amended by Act 3 of 2005¹⁶ Amended by Act 3 of 2005¹⁷ Amended by Act 8 of 2007¹⁸ Amended by Act 8 of 2007¹⁹ Amended by Act 8 of 2007²⁰ Inserted by Act 3 of 2005²¹ Inserted by Act 3 of 2005²² Amended by Act 8 of 2007

[23](#) Cap. 26.14

[24](#) Amended by Act 8 of 2007

[25](#) Cap. 07.45

[26](#) Amended by Act 8 of 2007

[27](#) Cap. 26.14

[28](#) Amended by Act 5 of 2012

[29](#) Cap. 26.14