

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

ACT No. 7 OF 2005

I assent

(SGD.) N. J. O. Liverpool
President

10th October, 2005.**AN ACT TO PROVIDE FOR THE IMPOSITION AND
COLLECTION OF VALUE ADDED TAX.**(Gazetted 20th October, 2005).

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica, as follows:-

**PART I
PRELIMINARY**

1. (1) This Act may be cited as the -

VALUE ADDED TAX ACT 2005.

Short title and
Commencement.

(2) This Act shall come into force on 1st day of March ,
2006.

Interpretation.

2. In this Act, unless the context requires otherwise -

“agency of the State” includes Dominica Export and Import Agency, National Development Corporation, Public Works Department, Dominica Port Authority, Dominica Water and Sewerage Company and a similar agency of the State.

“approved charitable organisation” means an organisation designated as such in regulations made by the Minister;

“association not for gain” means an institution of religious worship, society, association, or organisation, whether incorporated or not, which -

(a) is carried on otherwise than for the purposes of profit or gain to any proprietor, member, or shareholder; and

(b) is, in terms of its memorandum, articles of association, written rules, or other document constituting or governing its activities -

(i) required to utilize any assets or income solely in the furtherance of its aims and objects; and

(ii) prohibited from transferring any portion of its assets or income directly or indirectly so as to profit any person other than by way of (1) the provision of charitable assistance, or (2) the payment in good faith of reasonable remuneration to any of its officers or employees for any services actually rendered to it; and

(iii) upon its winding-up or liquidation, obliged to give or transfer its assets remaining after the satisfaction of its liabilities to another institution of religious worship, society, association or organisation having similar objects;

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

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

“capital goods” means an asset, or a component of an asset, which is of a character subject to an allowance for depreciation or comparable deduction for income tax purposes, and which is used in the course or furtherance of a taxable activity;

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

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

“Comptroller” means the Comptroller of Inland Revenue appointed under section 3 of the Income Tax Act;

“company” means an association or body corporate or unincorporate, whether created or recognized under a law in force in Dominica or elsewhere, and whether created for profit or non-profit purposes, but does not include a partnership or trust;

“consideration”, in relation to a supply or import of goods or services, means the total amount in money or kind paid or payable (including a deposit on a returnable container) for the supply or import by any person, directly or indirectly, including any duties, levies, fees, and charges (other than VAT) paid or payable on, or by reason of, the supply or import, reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import, but does not include:

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

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

“Customs Tariff Headings” or “Tariff Headings” means the headings in the Customs Import and Export Tariffs, as amended;

“days” when used in the plural, means working days, except as otherwise provided;

“Dominica,” means the Commonwealth of Dominica;

“exempt import” has the meaning in section 21;

“exempt supply” means a supply of goods or services to which section 18 applies;

“fair market value” has the meaning in section 3;

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

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

“foreign-going aircraft” means an aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in Dominica and airports in export countries or between airports in export countries;

“foreign-going vessel” means a vessel engaged in the transportation for reward of passengers or goods wholly or mainly on voyages between seaports in Dominica and seaports in export countries or between seaports in export countries.

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

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

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

“import” means -

- (a) in the case of goods, to bring or cause to be brought into Dominica; or
- (b) in the case of services, a supply of services to a resident-
 - (i) by a non-resident; or
 - (ii) by a resident from a business carried on by the resident outside Dominica,

to the extent that such services are not to be utilised or consumed by a registered person in making taxable supplies in Dominica;

“import declaration” means the declaration documents required for the entry of goods into Dominica;

“importer”, in relation to an import of goods, has the meaning assigned in the Customs (Control and Management) Act or any Act that may replace it;

“input tax” means VAT paid or payable in respect of a taxable supply to, or an import of goods by, a taxable person;

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

“local authority” means a city council, an urban council, a Carib Reserve Council, a village council, or a town council;

“Minister” means the Minister for Finance;

“money” means –

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

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

“output tax”, in relation to a taxable person, means the tax charged under section 9(1)(a) and (c) on a taxable supply made by the person;

“person” includes the State, an agency of the State, a local authority, a natural person, trust, company, and partnership;

“pre-primary school” is a registered and licensed Early Childhood Education Facility;

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

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

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

“real property” includes -

- (a) any estate, right, interest, or servitude on or over any land, and things attached to land or permanently fastened to anything attached to land; or
- (b) any real right in any such property;

“recipient”, in relation to a supply or import, means the person to whom the supply or import is made or in the case of an import of goods, for whom the goods are intended;

“related persons” means -

- (a) a natural person and a relative of that natural person; or

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

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

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

- (a) the spouse of the person; or
- (b) an ancestor, lineal descendant of the person’s grand-parents, stepfather, stepmother, or stepchild; or

(c) a spouse of a person referred to in paragraph (b), and for the purposes of this definition, an adopted child is treated as a natural child of the adopter;

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

“resident” means -

(a) the State of Dominica, an agency of the State or a local authority; or a person resident in Dominica for the year in question for purposes of the Income Tax Act; or

(b) any other person to the extent that such person carries on in Dominica a taxable or other activity;

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

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

“State” means the Government of Dominica but does not include an agency of the State;

“supplier”, in relation to a supply, means the person making the supply;

“supply” has the meaning assigned to it under section 4;

“taxable activity” has the meaning assigned to it under section 6;

“taxable person” has the meaning assigned to it under section 10;

“taxable supply” means a supply of goods or services in Dominica in the course or furtherance of a taxable activity, other than an exempt supply;

“taxation officer” means the Comptroller and any other person in the service of the Government who is acting on behalf of the Comptroller;

“tax debit note” and “tax credit note” have the meaning in section 30;

“tax fraction”, in relation to a taxable supply, means the fraction calculated in accordance with the formula-

$$R/(1 + R)$$

where “R” is the rate of VAT (expressed as a percentage) applicable to the taxable supply;

“tax invoice” means a document provided as required under section 29;

“taxpayer account number” means the number issued for tax purposes by the Comptroller to a person registered under the Act;

“tax period” has the meaning in section 31;

“trust” means a relationship where property is under the control or management of a trustee;

“trustee” means a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law and includes a person having or taking upon himself the administration or control of property subject to a trust;

“value added tax” (VAT) or “tax” means the tax imposed under this Act, and includes any amount to the extent that it is treated as tax for the purposes of this Act;

“value of an import” has the meaning in section 20; and

“value of a supply” has the meaning in section 16.

Fair market value.

3. (1) In this section –

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

“similar supply”, in relation to a supply of goods or services, means any other supply of goods or services that, in respect of the characteristics, quality,

quantity, functional components, materials, and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services.

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

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

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

(5) The fair market value of a supply or import is determined at the time of the supply or import as determined under this Act.

4. (1) Subject to this Act -

Supply.

(a) a supply of goods means -

- (i) a sale of goods; or
- (ii) a grant of the use or right to use goods, whether with or without a driver, pilot,

crew, or operator, under a rental agreement, credit agreement, freight contract, agreement for charter, or other agreement under which such use or right to use is granted; or

(iii) a transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water; and

(b) a supply of services means anything done which is not a supply of goods or money, including -

(i) the granting, assignment, cessation, or surrender of a right;

(ii) making available a facility or advantage; or

(iii) refraining from or tolerating an activity.

(2) The disposition of a taxable activity as a going concern, or a part of a taxable activity that is capable of separate operation, is a supply of goods made in the course or furtherance of such taxable activity.

(3) For the purposes of subsection (2), a taxable activity or a part of a taxable activity capable of separate operation is disposed of as a going concern where –

(a) all the goods and services necessary for the continued operation of that taxable activity or that part of a taxable activity are supplied to the transferee; and

(b) the transferor carries on, or is carrying on, that taxable activity or that part of a taxable activity up to the time of its transfer to the transferee.

(4) A supply of goods for goods or services is a supply of goods.

(5) A supply of services for goods or services is a supply of services.

(6) Subject to subsections (17) and (21), the application by a taxable person of goods or services acquired for use in a taxable activity to a different use, including the provision of goods or services to an employee for personal use, is a supply of those goods or services by the taxable person in the course or furtherance of that taxable activity.

(7) Where goods are repossessed under a credit agreement, the repossession is a supply of the goods by the debtor under the credit agreement to the person exercising the right of repossession, and where such debtor is a registered person the supply is made in the course or furtherance of the debtor's taxable activity unless such goods did not form part of the assets held or used by the debtor in connection with that activity.

(8) Where a lay-away agreement terminates or is cancelled and the seller retains an amount paid by the purchaser or recovers an amount the purchaser owes under the agreement, the cancellation or termination is a supply of services by the seller in respect of the agreement.

(9) The placing of a bet by a person with another person operating a game of chance is a supply of services by the person operating the game of chance to the first-mentioned person.

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

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

(12) A supply or import of services incidental to an import of goods is part of the import of goods.

(13) Regulations made under section 102 may provide that a supply of goods and services is a supply of goods or a supply of services.

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

- (a) a supply charged with tax at a different positive rate; or

(b) a supply charged with tax at a zero rate; or

(c) an exempt supply,

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

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

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

(17) Where a taxable person supplies goods or services and a deduction for input tax paid on the acquisition of such goods or services was denied, the supply by the taxable person is a supply of goods or services otherwise than in the course or furtherance of a taxable activity.

(18) Where a supply described in subsection (2) was charged with tax at the rate of zero percent in terms of paragraph 3 (3) of Schedule I, the acquisition of the taxable activity is a supply by the recipient in the course or furtherance of a taxable activity carried on by the recipient to the extent that the goods and services comprising the taxable activity were acquired for a purpose other than consumption, use, or supply in the course of making taxable supplies, unless this purpose relates to less than 10 percent of the total taxable activity.

(19) Where a right to receive goods or services for a monetary value stated on a token, voucher, gift certificate, or stamp, other than a postage stamp authorised under the Post Office Ordinance, is granted for a consideration in money, the issue of such token, voucher, gift certificate, or stamp is not a supply, except to the extent (if any) that such consideration exceeds that monetary value.

(20) Subsection (19) does not apply to a phone card, prepayment on a cellular phone, or a similar scheme of advance payment for the rendering of services.

(21) A person whose registration is cancelled under section 13 is deemed to have made a taxable supply in Dominica of

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

(22) Notwithstanding subsections (10) and (12) a supply of real property does not include the supply of services incidental to that supply or the import of services incidental to that supply.

5. (1) Subject to this section, a supply of goods or services -

Supply by agent or auction.

- (a) made by a person as agent for another person (“the principal”) is a supply by the principal; or
- (b) made to a person as agent for a principal is a supply to the principal.

(2) Subsection (1) does not apply to services supplied by an agent to the agent’s principal.

(3) Except for an exempt supply, a supply of goods by auction is treated as a supply of goods for consideration by the auctioneer as supplies made in the course or furtherance of a taxable activity carried on by the auctioneer.

(4) Subsection (1) does not apply where the principal is a non-resident.

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

Taxable activity.

(2) Taxable activity does not include -

- (a) an activity carried on by a natural person essentially as a private recreational pursuit or hobby or an activity carried on by a person other than a natural person which would, if carried on by a natural person, be carried on essentially as a private recreational pursuit or hobby;
- (b) an activity to the extent that the activity involves the making of exempt supplies; or

(c) an activity of the State or local authority, except when it conducts auctions, hires equipment, rents space, sells medicine and drugs, or when it engages in activity commonly conducted for profit.

(3) Anything done in connection with the commencement or termination of a taxable activity is treated as carried out in the course or furtherance of that taxable activity.

(4) Subject to subsection (5), a supply is made for consideration if the supplier directly or indirectly receives a payment for the supply from the recipient or any other person, including a payment wholly or partly in money or kind.

(5) A supply made for consideration includes -

(a) a supply made between related persons for no consideration;

(b) a supply of goods for use only as trade samples; or

(c) a supply referred to in section 4(6) or (18).

(6) Taxable activity includes a supply of public entertainment.

PART II ADMINISTRATION

Powers and duties of
the Comptroller.

7. (1) The Comptroller has the responsibility for carrying out the provisions of this Act.

(2) The Comptroller may, in relation to any matter or class of matter, delegate in writing to any other person employed in carrying out the provisions of this Act any powers, functions or duties conferred or imposed on the Comptroller by this Act other than-

(a) the power of delegation conferred by this subsection; and

(b) the power to sanction prosecutions conferred by section 68.

(3) A delegation made under subsection (2) may be revoked at any time by the Comptroller and does not prevent the exercise of such powers, duties or functions by the Comptroller himself.

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

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

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

8. (1) Subject to this section, a taxation officer carrying out the provisions of this Act must not - Secrecy.

(a) disclose to any person any matter in respect of any other person that may in the exercise of the officer's powers or the performance of the officer's duties under the said provisions come to the officer's knowledge; or

(b) permit any person to have access to any records in the possession or custody of the Comptroller,

except in the exercise of the officer's powers or the performance of the officer's duties under this Act or by order of a court.

(2) Nothing in this section prevents the Comptroller from disclosing -

(a) any documents or information to -

- (i) a person where the disclosure is necessary for the purposes of this Act or any other fiscal law;
- (ii) a person authorised by any enactment to receive such information;
- (iii) the competent authority of the government of another country with which Dominica has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under the agreement or any law;

(b) information which does not identify a specific person to a person in the service of the State in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties.

(3) A person receiving documents and information under subsection (2) is required to keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure was made.

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

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

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

PART III
IMPOSITION OF TAX AND PERSONS LIABLE

9. (1) Subject to the provisions of this Act, there must be levied and paid a tax, to be known as the value added tax, at the rates of -

Imposition of tax and persons liable.

- (a) except as provided in subsection (1)(c), 15 percent of the value of every taxable supply by a taxable person in Dominica;
- (b) 15 percent of the value of every import of goods or import of services, other than an exempt import; and
- (c) to the extent provided in regulations, 10 percent of the value of a taxable supply of -
 - (i) accommodation services by a hotel, guest house, inn, or similar establishment; and
 - (ii) accommodation services in an apartment or room with utilities and furnishings provided by the lessor, but not including services to a renter in a private home.

(2) Except as otherwise provided in this Act, the tax payable under subsection (1) must -

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

(3) A transaction chargeable with tax under both subsections (1)(a) and (b) is treated as a supply chargeable under subsection (1)(a).

**PART IV
REGISTRATION**

Taxable person.

10. (1) A taxable person is a person who is registered or is required to register under section 11 of this Act or a Regulation made pursuant to section 108 of this Act.

(2) Where a person is required to register under section 11(1), 11(6), 11(7), or 11(9), that person is a taxable person from the date specified for that person under section 12(6)(a) and (b).

(3) Where a person who applies for registration under section 11(5) and is registered under section 12(2), that person is a taxable person from the date specified under section 12(6)(c).

Registration.

11. (1) Subject to this Act, every person who carries on a taxable activity and is not registered, is required to apply for registration within 21 calendar days of -

(a) the end of any period of 12 or fewer months where during that period the person made taxable supplies the total value of which exceeded \$60,000; or

(b) the beginning of any period of 365 calendar days, where there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed \$60,000.

(2) In determining whether a person is required to apply for registration under subsection (1), the Comptroller may have regard to the value of taxable supplies made by another person where both persons are related persons or are acting in concert in making the taxable supplies.

(3) For purposes of subsection (1), the value of a person's supplies is determined under section 16.

(4) A person is not required to apply for registration under subsection (1) where the Comptroller is satisfied that the value of taxable supplies exceeded the amount specified under

subsection (1) solely as a consequence of the cessation, or substantial and permanent reduction in the size or scale, of a taxable activity carried on by the person.

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

(6) Notwithstanding subsection (1), the State or a local authority is required to apply for registration from the date the State or local authority commences a taxable activity.

(7) Notwithstanding subsection (1), a person who is an auctioneer is required to apply for registration on the date on which the person becomes an auctioneer.

(8) In the case of a person who is not resident in Dominica for the year in question for purposes of the Income Tax Act, supplies made by that person are taken into account for purposes of subsection (1) only where the supply is made, or to be made in Dominica.

(9) Notwithstanding subsection (1), a promoter of public entertainment and a licensee and proprietor of a place of public entertainment are required to apply for registration at least forty-eight hours before the commencement of the public entertainment promoted by them if, within any period of 12 or fewer months that includes this public entertainment, the total value of the promoter or the licensee or proprietor's taxable supplies is reasonably expected to exceed \$60,000.

(10) Notwithstanding subsection (1), a person is required to apply for registration where, during any period of three months-

- (a) that person made taxable supplies which exceed \$15,000; and
- (b) there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period and the next consecutive nine months will exceed \$60,000.

(11) A person required to register under subsection (10) must apply for registration within 21 calendar days of the end of the third month after which the person's taxable supplies exceeded \$15,000.

Registration
procedure.

12. (1) An application for registration under section 11 must be in the form prescribed by the Comptroller and the applicant must provide such further information as the Comptroller may require.

(2) The Comptroller is required to register a person who applies for registration within 15 days of receipt of the application, unless the Comptroller is satisfied that the person is not eligible to apply for registration under section 11.

(3) Notwithstanding subsection (2) where an application for registration is made under section 11 (5) the decision to register or not shall be at the discretion of the Comptroller who must inform the applicant of the decision within 21 days of receiving the application.

(4) No application for registration under section 11(5) will be accepted where -

- (a) the person has no fixed place of abode or business; or
- (b) the Comptroller has reasonable grounds to believe that the person -
 - (i) will not keep proper records; or
 - (ii) will not submit regular and reliable tax returns, as required under this Act.

(5) Where a person required to register under this Act fails to apply for registration as required under section 11, the Comptroller may register the person from the date determined by the Comptroller.

(6) Registration takes effect, in the case of -

- (a) a person referred to in section 11(1)(a), from the beginning of the tax period immediately following the end of the period of 12 or fewer months;

-
- (b) a person referred to in section 11(1)(b), 11(6), 11(7), or 11(9), from the beginning of the 365-day period, the date the State or local authority commences a taxable activity, the date the person becomes an auctioneer, or the date the promoter, licensee or proprietor begins making taxable supplies in connection with public entertainment, respectively;
 - (c) an application under section 11(5), from the beginning of the tax period immediately following the period in which the person applied for registration; or
 - (d) an application under section 11(10), from the beginning of the tax period immediately following the end of the three-month period.

(7) The Comptroller must serve a notice in writing on an applicant for registration of the decision in respect of the application within 15 days of receipt of an application under subsection (2).

(8) An applicant dissatisfied with a decision referred to in subsection (7) may challenge the decision only under Part IX of this Act.

(9) The Comptroller must issue to each person registered a certificate of registration which states the name and other relevant details of the registered person, the date on which the registration takes effect, and the person's taxpayer account number.

(10) The Comptroller must establish and maintain a register containing the relevant details of all registered persons, and make publicly available the names of registered persons, their taxpayer account numbers, and contact details.

(11) Every person must display the certificate of registration issued to him under subsection (9) in a conspicuous place at each location at which he engages in taxable activities.

(12) A taxable person must notify the Comptroller, in writing, within 21 calendar days of -

- (a) any change in the name, address, place of business, constitution, or nature of the principal taxable activity or activities of the person; and
- (b) any change of address from which, or name in which, any taxable activity is carried on by the taxable person, or
- (c) any change in circumstances if the person ceases to operate or closes on a temporary basis in a situation not covered in section 13(1).

(13) Subject to subsection (2), where the Comptroller fails to serve a notice as required by subsection (7), the Comptroller is deemed to have made a decision to register the applicant.

Cancellation of registration.

13. (1) Subject to subsections (2) and (14), a taxable person who ceases to carry on taxable activities must notify the Comptroller of that fact within seven calendar days of the date of such cessation, and the Comptroller is required to cancel the registration of that person with effect from the last calendar day of the tax period during which all such taxable activities ceased, or from such other date as the Comptroller may determine.

(2) The Comptroller must not cancel the registration of a taxable person under subsection (1) where the Comptroller has reasonable grounds to believe that the person will carry on any taxable activity at any time within twelve months from the date of cessation.

(3) A notification pursuant to subsection (1) must be made in writing and state the date upon which that person ceased to carry on taxable activities, and whether or not that person intends to carry on any taxable activity within twelve months from that date.

(4) Where the Comptroller is satisfied that a taxable person is not carrying on a taxable activity or is neither required

nor entitled to apply for registration, the Comptroller may cancel that person's registration with effect from the last day of the tax period during which the Comptroller became so satisfied, or from such other date as the Comptroller may determine, and must notify that person in writing of the date on which the cancellation takes effect.

(5) The Comptroller may cancel the registration of a person who is not required to apply for registration under section 11 if the person –

- (a) has no fixed place of abode or business;
- (b) has not kept proper accounting records relating to any business activity carried on by that person; or
- (c) has not submitted regular and reliable tax returns as required by section 32.

(6) A date determined by the Comptroller for the cancellation of registration under subsection (4) or (5) may be retrospective to a date not earlier than -

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

(7) Subject to subsections (8) or (9), a taxable person may apply in writing to the Comptroller to have the person's registration cancelled where, at any time, the value of that person's taxable supplies –

- (a) in the past 12 months has not been, or
- (b) in the period of 12 months then beginning will not be

more than the amount specified under section 11(1).

(8) A person –

- (a) required to register under section 11(1) who ceases to satisfy the criteria thereunder, or

(b) registered as a result of an application under section 11(5),

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

(9) Subsection (7) does not apply to an auctioneer, the State, or a local authority.

(10) Where the Comptroller is satisfied that a taxable person who has made an application under subsection (7) or (8) is entitled to have a registration cancelled, the Comptroller is required to cancel the person's registration with effect from the end of the tax period unless the Comptroller orders the cancellation to take effect at an earlier date.

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

(12) Where the registration of a person is cancelled, the Comptroller is required to remove the person's name and details from the register described in section 12(10).

(13) A person dissatisfied with a decision of the Comptroller under this section to cancel or not to cancel the person's registration may challenge the decision only under Part IX of this Act.

(14) A taxable person who sells a going concern must notify the Comptroller of that fact at least three calendar days before the earliest of the date-

(a) the sale closes;

(b) the purchaser acquires any legal interest in the assets to be acquired; and

(c) the assets of the going concern are transferred.

PART V
RULES RELATING TO SUPPLIES

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

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

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

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

(4) A supply of goods or services under section 4(6) occurs when the goods or services are applied to a different use.

(5) A supply of goods under section 4(7) occurs when the goods are repossessed, or where the debtor may under any law be reinstated in his rights and obligations under the credit agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.

(6) A supply of services under section 4(8) occurs when the seller obtains the right to retain any amount paid by the purchaser or when the seller recovers any amount owing by the purchaser under the agreement.

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

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

(9) Where -

(a) goods described under section 4(1)(a)(iii) are supplied; or

(b) goods or services are supplied directly in the construction, major reconstruction, manufacture, or extension of a building or engineering work,

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

(10) A supply under section 4(18) occurs when the supply under section 4(2), to which it relates, occurs.

(11) To the extent that the issuance of a token, voucher, gift certificate, or stamp is a supply under section 4(19), the supply occurs when the token, voucher, gift certificate, or stamp is issued.

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

(13) A supply under subsection 4(21) occurs at the time the registration is cancelled.

Place of supply.

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

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

(3) Subject to this section, a supply of services takes place at the location of the supplier's place of business from which the services are supplied.

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

- (a) a transfer or assignment of a copyright, patent, license, trademark, or similar right;
- (b) the service of a consultant, engineer, lawyer, architect, or accountant, the processing of data or supplying information, or any similar service;
- (c) an advertising service;
- (d) the obligation to refrain from pursuing or exercising taxable activity, employment, or a right described in this subsection;
- (e) the supply of personnel;
- (f) the service of an agent in procuring for the agent's principal a service described in this subsection; or
- (g) the leasing of tangible personal property (other than transport property).

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

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

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

(8) Services supplied from a place of business in Dominica which would be treated as supplied outside Dominica under subsections (4) to (7) are considered as supplied in Dominica and are considered as exported from Dominica for purposes of Schedule I.

(9) A supply of a kind not described in subsections (1) to (7) is considered to take place in Dominica.

Value of supply.

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

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

(3) Where a supply is made by a taxable person for no consideration or for a consideration that is less than the fair market value of that supply and

(a) the supplier and the recipient are related persons;
or

(b) the recipient is an approved charitable organisation;

the value of the supply is the fair market value of the supply.

(4) Where a taxable person makes a supply of goods or services referred to in section 4(6), the value of the supply is the lesser of -

(a) the consideration paid or payable by the taxable person for those goods or services; or

(b) the fair market value of the supply.

(5) The Minister may by regulation prescribe rules to determine the value of a supply governed by subsection (4) where the taxable person applies less than the entire goods or services to a different use.

(6) The value of a supply of goods under a credit agreement is the cash value of the supply.

(7) Where a debtor makes a supply of goods as a result of the repossession of those goods from the debtor under a credit agreement, the value of the supply is an amount equal to the

balance of the cash value of the supply of those goods to the debtor that has not been recovered at the time of the supply.

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

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

(10) Where the grant of any right to receive goods or services for a monetary value stated on any token, voucher, gift certificate, or stamp is a supply under section 4(19), the value of the supply is an amount equal to the amount by which the consideration exceeds the monetary value of the token, voucher, gift certificate, or stamp.

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

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

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

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

(15) The value of a supply of services under section 4(9) is the amount received in respect of the bet, reduced by an amount equal to the tax fraction multiplied by the amount received in respect of the bet.

(16) The value of a supply referred to in section 4(18) is the consideration for the acquisition of the taxable activity reduced by an amount which bears to the amount of such consideration the same ratio as the intended use or application of the taxable activity for making taxable supplies bears to the total intended use or application of the taxable activity.

(17) The value of a supply referred to in section 4(21) is equal to -

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

Zero rating.

17. (1) Where, but for this section, a supply of goods or services would be charged with tax under section 9(1)(a), the supply is charged with tax at the rate of zero percent if it is specified in paragraph 3 of Schedule I.

Schedule I.

(2) Where a taxable person has applied the rate of zero percent to a supply under this section, the taxable person is required to obtain and retain such documentary proof as is acceptable to the Comptroller substantiating the person's entitlement to apply the zero rate to the supply.

Exempt supply.
Schedule II.

18. (1) Subject to subsection (2), a supply of goods or services is an exempt supply if it is specified in paragraph 2 of Schedule II.

(2) A supply of goods or services is not an exempt supply if, in the absence of subsection (1), the supply would be charged with tax at the rate of zero percent under section 17.

PART VI
IMPORTS

19. (1) An import of goods occurs when the goods are entered for purposes of the Customs (Control and Management) Act. Time of import.

(2) An import of services occurs at the time determined by applying section 14 to the import on the basis that the import is a supply of services.

20. (1) The value of an import of goods is an amount equal to the sum of - Value of import.

(a) the value of the goods for the purposes of customs duty under the Customs (Control and Management) Act;

(b) the cost of insurance and freight which is not included in the customs value under paragraph (a);

(c) the amount of any customs duty, excise tax, environmental surcharge, or any other fiscal charge (other than VAT) payable on the importation of such goods; and

(d) the amount of customs service charge payable on the importation of such goods.

(2) Subject to subsection (3), the value of an import of services is the amount of the consideration for the import.

(3) Where -

(a) an import of services is made for no consideration or for a consideration that is less than the fair market value of that import; and

(b) the supplier and the recipient are related persons, the value of the import is the fair market value of the import.

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

Exempt import.

21. An import of goods or services is an exempt import where -

Schedule III.

(a) the import is specified in Schedule III; or

Schedule I.

(b) the import would be a zero-rated supply under section 17 and paragraph 3 of Schedule I or an exempt supply under section 18 and paragraph 2 of Schedule II if it were a supply of goods or services in Dominica.

Import declaration and payment of tax for importation of goods.

22. (1) The Comptroller of Customs -

(a) is required to collect, at the time of import and on behalf of the Comptroller of Inland Revenue, any tax due under this Act on an import of goods and, at that time, obtain the name and the taxpayer account number, if any, of the importer, the import declaration, and the invoice values in respect of the import; and

(b) may make arrangements for such functions to be performed on his behalf in respect of imports through the postal services.

(2) Where tax is payable on an import of goods, the importer is required, upon such entry, to furnish the Comptroller of Customs with an import declaration and pay the tax due on the import in accordance with the arrangements referred to in subsection (4);

(3) An import declaration under subsection (2) is required to -

(a) be in the form prescribed by the Comptroller of Customs,

(b) state the information necessary to calculate the tax payable in respect of the import, and

(c) be furnished in the manner prescribed by the Comptroller of Customs.

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

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

23. (1) Where tax is payable on an import of services, other than where section 4(12) applies, the person liable for the tax under section 9(2)(c) is required to –

Import declaration and payment of tax for importation of services.

(a) furnish the Comptroller with an import declaration; and

(b) pay the tax due in respect of the import within 20 calendar days after the tax period in which the services were imported.

(2) An import declaration under subsection (1) is required to–

(a) be in the form prescribed by the Comptroller;

(b) state the information necessary to calculate the tax payable in respect of the import; and

(c) be furnished in the manner prescribed by the Comptroller.

PART VII**CALCULATION OF TAX PAYABLE**

Tax payable for tax period.

24. (1) The tax payable by a taxable person for a tax period in respect of taxable supplies is the total amount of output tax payable by the person in respect of taxable supplies made by the person during the period, less the total input tax deduction allowed to the person under section 25 for the period.

(2) Where the total amount of input tax deduction allowed to a taxable person for a tax period under subsection (1) exceeds the total amount of output tax payable by the person for that period, the amount of the excess is dealt with in accordance with section 52.

Input tax deduction.

25. (1) Subject to this section, the total amount of input tax allowed as a deduction for purposes of section 24 is the sum of-

- (a) the input tax payable in respect of taxable supplies made to the person during the tax period, and paid in respect of any import of goods by the person during the tax period, where the supply or import is for use in a taxable activity carried on by the person;
- (b) any input tax deduction allowed under section 27 for the tax period;
- (c) an amount equal to the tax fraction of any amount paid during the tax period by the taxable person as a prize or winnings to the recipient of services under section 4(9);
- (d) an amount equal to the tax fraction of any amount paid during the tax period by the taxable person to a supplier in respect of the redemption of a token, voucher, gift certificate, or stamp referred to in section 16(11) by the supplier;

-
- (e) an amount equal to the tax fraction of seventy percent of the selling price of second-hand goods (as defined in subsection (4)) supplied in the taxable period in a supply taxable at a positive rate under this Act, if the goods were acquired in Dominica in a transaction not subject to tax; and
 - (f) any amount carried forward under section 52(7).

(2) Subject to this section, no deduction of input tax is allowed in respect of a supply or import unless –

- (a) a tax invoice, or tax debit or tax credit note, as the case may be, in relation to the supply, has been provided in accordance with sections 29 or 30 and is held by the taxable person taking the deduction at the time a return in respect of the supply is filed, other than when a tax invoice is not required to be provided;
- (b) an import declaration, or a document issued by the Comptroller of Customs or the Comptroller of Inland Revenue evidencing payment of tax in relation to an import that has been delivered in accordance with the Customs (Control and Management) Act or this Act and is held by the taxable person taking the deduction at the time a return in respect of the import is filed; and
- (c) for the purposes of subsection (1)(e), with respect to the acquisition, the taxable person is in possession of documents required by the Comptroller.

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

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

(4) In this section, “second-hand goods” means goods which were previously owned and used, including real property, but not including livestock or plants.

Input tax deduction allocation and disallowance rules.

26. (1) In this section -

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

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

(2) No amount may be deducted under section 25 by a taxable person for input tax paid or payable in respect of -

- (a) a taxable supply to, or import by, the person of a passenger vehicle, unless the person is in the business of dealing in, or hiring of, such vehicles, and the vehicle was acquired for the purposes of such business;
- (b) a taxable supply to, or import by, the person of goods or services acquired for the purposes of entertainment, unless -
 - (i) the person is in the business of providing entertainment and the taxable supply or import relates to the provision of taxable supplies of entertainment in the ordinary course of that business; or

-
- (ii) the person is in the business of providing taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service; or
- (c) any fees or subscriptions paid by the person in respect of membership of any person in a club, association, or society of a sporting, social, or recreational nature.
- (3) Subject to subsections (4) and (5), where only a part of the supplies made by a taxable person during a tax period are taxable supplies, the amount of the input tax allowed as a deduction under section 25(1)(a) for that period is determined as follows-

- (a) in respect of a supply or import received which is directly allocable to 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;
- (b) in respect of a supply or import received which is directly allocable to 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 for the making of both taxable and exempt supplies, the amount calculated according to the following formula-

$$A \times B/C$$

where -

- A is the total amount of input tax payable in respect of supplies and imports received during the period for which a deduction is allowed under section 25(1)(a), less the input tax accounted for under (a) and (b);

B is the total amount of taxable supplies made by the taxable person during the period; and

C is the total amount of all supplies made by the taxable person during the period.

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

(5) In the case of a bank or other financial institution making both exempt and taxable supplies for a tax period, subsection (3) does not apply and the amount of the input tax allowed as a deduction under section 25(1)(a) for that period is the amount of input tax payable in respect of supplies or imports received which are directly allocable to the making of taxable supplies.

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

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

Post-sale adjustments
and bad debts.

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

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

(e) the whole or part of the consideration for the taxable supply was not received by the taxable person.

(2) Subsection (1) applies only where the registered person making the supply has-

(a) provided a tax invoice in relation to the supply and the amount shown on the invoice as the tax charged on the supply is incorrect as a result of the occurrence of one or more of the events described under subsection (1)(a) to (d); or

(b) filed 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 described under subsection (1)(a) to (d).

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

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

(5) For purposes of section 24, where a registered person issues a tax debit note to rectify the output tax charged to a registered recipient in the circumstances specified under subsection (4), the additional tax specified in the tax debit note is deemed to be input tax payable by the registered recipient in the tax period in which the tax debit note is received.

(6) Subject to subsection (8), where the output tax actually accounted for by the registered person exceeds the output tax properly chargeable in relation to the supply, the registered person is allowed an input tax deduction under section 25 for

the amount of the excess in the tax period in which the event referred to in subsection (1) occurred.

(7) Where a supplier issues a tax credit note to rectify the output tax charged to a recipient who is a registered person in the circumstances specified under subsection (6), the additional tax specified in the tax credit note is treated as output tax payable by the recipient in respect of a taxable supply made by the recipient in the tax period in which the tax credit note is received.

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

(9) Subject to subsections (5), (6) and (7), a registered person is allowed an input tax deduction under section 25 for tax paid in respect of a taxable supply made by the registered person where the whole or part of the consideration for the supply is subsequently treated as a bad debt.

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

(11) The deduction under subsection (9) arises on-

- (a) the date on which the bad debt was written off in the accounts of the registered person; and
- (b) the registered person satisfies the Comptroller that reasonable efforts have been made to recover the amounts due and payable.

(12) Where any amount in respect of which a deduction has been allowed in accordance with subsection (9) is at any time wholly or partly recovered by the registered person, the registered person is treated as having charged tax in respect of a

taxable supply made during the tax period in which the bad debt is wholly or partly recovered, being an amount of tax calculated according to the following formula-

$$A \times B/C$$

where,

- A is the amount allowed as a deduction under subsection (9);
- B is the amount of the bad debt recovered; and
- C is the amount of the bad debt previously written off.

(13) A deduction is allowed under subsection (9) only if-

- (a) the taxable supply was made to a person other than a registered person; or
- (b) the taxable supply was made to a registered person and the person claiming the deduction under subsection (9) issued a tax credit note to the registered purchaser listing the amount claimed under the formula in subsection (12).

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

Interest on unpaid tax.

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

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

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

Tax invoices and sales receipts.

29. (1) Subject to subsection (2), a registered person, referred to as the “registered supplier”, making a taxable supply to a registered person, referred to as the “registered recipient”, is required to provide the registered recipient with an original tax invoice for the taxable supply in the form and containing the information specified in regulations.

(2) A registered supplier making a taxable supply to a registered recipient is authorised to issue a sales receipt in lieu of a tax invoice if the total consideration for the taxable supply is in cash and does not exceed the amount specified in regulations.

(3) A person is prohibited from providing a tax invoice in circumstances other than those specified under this section.

(4) Subject to subsection (6), a registered supplier must issue only one tax invoice for each taxable supply.

(5) Where, within 60 calendar days after the date of a supply, a registered recipient who has not received a tax invoice as required by subsection (1) requests the registered supplier, in writing, to provide a tax invoice in respect of the taxable supply, the supplier is required to comply with the request within 14 calendar days after receiving it.

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

(7) A registered supplier making a taxable supply to a person who is not registered, referred to as the “unregistered recipient”, is required to provide the unregistered recipient with a sales receipt for the taxable supply in the form and containing the information specified in regulations issued by the Minister.

30. (1) Where a tax invoice has been issued in the circumstances specified under section 27(2)(a) and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the registered person making the supply is required to provide a registered recipient of the supply with a tax credit note containing the particulars specified in regulations.

Tax credit and debit notes.

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

(3) Where a tax invoice has been issued in the circumstances specified under section 27(2)(a) and the tax properly chargeable in respect of the supply exceeds the amount shown as tax charged in that tax invoice, the registered person making the supply is required to provide a registered recipient of the supply with a tax debit note containing the particulars specified in regulations.

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

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

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

PART VIII

TAX PERIOD, RETURNS, AND ASSESSMENTS

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

Tax period.

Returns.

32. (1) Every taxable person is required to file a tax return for each tax period with the Comptroller within 20 calendar days after the end of the period, whether or not tax is payable in respect of that period.

(2) A tax return is required to:-

- (a) be in the form prescribed by the Comptroller;
- (b) state the information necessary to calculate the tax payable in accordance with section 24 for the period; and
- (c) be filed in the manner prescribed by the Comptroller.

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

(4) A person dissatisfied with a decision of the Comptroller under subsection (3) may challenge the decision only under Part IX of this Act.

Extension of time.

33. (1) Upon application in writing by a person, the Comptroller may, where good cause is shown by the person, extend the period within which a return required under section 32 is to be filed.

(2) The granting of an extension of time under subsection (1) does not alter the due date for payment of tax under section 41.

(3) A person dissatisfied with a decision of the Comptroller under subsection (1) may challenge the decision only under Part IX of this Act.

34. (1) Where -

Assessments.

- (a) a person fails to file a return as required by section 32 or fails to furnish an import declaration as required by section 22 or 23;
- (b) the Comptroller is not satisfied with a return or import declaration furnished by a person;
- (c) the Comptroller has reason to believe that a person will become liable for the payment of an amount of tax but is unlikely to pay such amount;
- (d) a person, other than a taxable person, supplies goods or services and represents that tax is charged on the supply;
- (e) a taxable person supplies goods or services and the supply is not a taxable supply or is a taxable supply charged with tax at the rate of zero percent and, in either case, the taxable person represents that a positive rate of tax is charged on the supply;
- (f) the Comptroller has determined the liability of any person in terms of section 97(2); or
- (g) a taxable person supplies goods or services and the supply is a taxable supply charged with tax at the rate under section 9(1)(a) and the taxable person represents that the rate under section 9(1)(c) is charged on the supply;

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

- (2) The person assessed under subsection (1) -
 - (a) in the case of an assessment under subsection (1)(d),(e) or (g), is the person making the supply; or
 - (b) in the case of an assessment under subsection (1)(f), is the person whose liability has been determined under section 97(2); or

(c) in any other case, is the person required to account for the tax under this Act.

(3) An assessment under subsection (1)(a), (c), (d), (e), (f) or (g) may be made at any time.

(4) An assessment under subsection (1)(b) -

(a) where the default was due to fraud or wilful default committed by, or on behalf of, the person who furnished the return or import declaration, may be made at any time; or

(b) in any other case, may be made within six years after the date the return or import declaration was furnished.

(5) The Comptroller may, based on the information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).

(6) Where a taxable person is not satisfied with a return filed by that person under this Act, that person may apply to the Comptroller to make an addition or alteration to that return.

(7) An application under subsection (6) must be in writing and specify in detail the grounds upon which it is made and must be made within three years after the date the return was filed by the taxable person or, in the event an assessment is made by the Comptroller after such three-year period, may be made within 60 calendar days after the date that notice of such assessment is served on the taxpayer.

(8) After considering an application under subsection (6), the Comptroller may make an assessment of the amount that, in the Comptroller's opinion, is the amount of tax payable under this Act.

(9) Where an assessment has been made under this section, the Comptroller is required to serve a notice of the assessment on the person assessed, which notice must state -

(a) the tax payable;

(b) the date the tax is due and payable; and

(c) the time, place, and manner of objecting to the assessment.

(10) The Comptroller may, within three years after service of the notice of assessment, or in the case of assessments described in subsection (4), within the deadline specified therein, amend an assessment by making such alterations or additions to the assessment as the Comptroller considers necessary, in which case the Comptroller is required to serve notice of the amended assessment on the person assessed.

(11) An amended assessment is treated in all respects as an assessment under this Act.

(12) An amount assessed under subsection (1)(d), (e) or (f) is treated, for all purposes of this Act, as tax charged under this Act.

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

General provisions relating to assessments.

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

PART IX

OBJECTIONS AND APPEALS

36. (1) “appealable decision” means an assessment, or a decision described in sections 12(8), 13(13), 26(7), 32(4), 33(3), 36(8), 37(8), 41(3), 45(1), 52(13), 56(2) and 80(5).

Objections.

(2) A person dissatisfied with an appealable decision may lodge an objection to the decision with the Comptroller within 30 calendar days after the service of the notice of the decision.

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

(4) An objection to an appealable decision must be in writing and specify in detail the grounds upon which it is made and must be accompanied by payment referred to in subsection (5).

(5) An objection that is timely lodged or that is accepted under subsection (3) suspends the taxpayer's obligation to pay fifty percent of the amount assessed, until the notice of the Comptroller's decision on the objection is served on the taxpayer under subsection (7), or until an appeal is lodged under section 37(4), but does not suspend the running of interest on the balance payable.

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

(7) The Comptroller is required to serve the person objecting with notice in writing of the decision on the objection.

(8) A person dissatisfied with a decision of the Comptroller under subsection (3) may challenge the decision only under this Part of the Act.

Appeals to Appeal
Commissioner.

37. (1) In this section -

“Appeal Commissioners” means the appeal Commissioners appointed under section 89 of the Income Tax Act.

(2) A person dissatisfied with a decision on the objection under section 36(6) may, within 30 calendar days after being served with notice of the decision -

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

(3) Upon application in writing by a person dissatisfied with a decision under section 36(6), the Appeal Commissioners may, where satisfied that owing to absence from Dominica, sickness, or other reasonable cause, the person was prevented from lodging a notice of appeal within the time specified under subsection (2) and there has been no unreasonable delay by the person in lodging the notice, accept a notice of appeal lodged after the time specified under subsection (2).

(4) If the Comptroller has not made a decision on the objection, and 90 calendar days have passed since the objection was lodged, an appeal may be made under subsection (2) at any time, as if the Comptroller had made a decision to disallow the objection.

(5) In an appeal to the Appeal Commissioners against an objection decision the Appeal Commissioners may consider the objection only if the Comptroller certifies that-

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

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

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

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

(8) A person dissatisfied with a decision of the Appeal Commissioners under subsection (3) may challenge the decision only under this Part of the Act.

(9) Sections 88, 89, 90, and 91 of the Income Tax Act apply to appeals under this Act to the extent not inconsistent with the provisions of this Act.

Appeal to High Court.

38. (1) A party who is dissatisfied with a decision of the Appeal Commissioners may, within 30 calendar days after being notified of the decision, lodge a notice of appeal with the High Court; and the party so appealing must serve a copy of the notice of appeal on the other party to the proceeding before the Appeal Commissioners.

(2) If the Appeal Commissioners have not made a decision on the objection and 180 calendar days have passed since the objection was lodged, an appeal may be made under subsection (1) at anytime as if the Appeal Commissioners had made a decision to disallow the objection.

(3) An appeal to the High Court under subsection (1) may be made only on questions of law, including questions of mixed fact and law, and the notice of the appeal must state the questions of law that will be raised on the appeal.

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

- (5) On an appeal under this section the High Court may–
- (a) confirm, increase or order the reduction of any assessment;

- (b) make such other order as it thinks fit; and
- (c) make such order as to costs as it thinks fit.

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

Appeal to the Court of Appeal.

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

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

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

Burden of proof.

PART X PAYMENT, COLLECTION AND RECOVERY

41. (1) Tax payable under this Act is due and payable -

Due date for payment of tax.

- (a) by a taxable person for a tax period, by the due date for the return for the tax period;
- (b) by a person assessed under an assessment issued under this Act, by the date specified in the notice of assessment;
- (c) by an importer of goods or a recipient of an import of services, by the due date specified under section 22 and 23 in respect of the import; or
- (d) by any other person, by the date the taxable transaction occurs as determined under this Act.

(2) Subject to section 36(5), where an objection to, or a notice of appeal against an assessment has been lodged, the due date of the tax payable under the assessment remains as specified under subsection (1).

(3) Upon application in writing by a person liable for tax, the Comptroller may, where good cause is shown, extend the time for payment of tax by the person beyond the date on which it is due and payable under this section, or make such other arrangements as appropriate to ensure the payment of the tax due, and any such extension does not alter the due date for purposes of section 28.

(4) Any person who fails to pay tax, being the whole or part of the remainder of any tax due or payable under this Act, by the due date is liable to a penalty equal to ten percent of the amount of tax due.

(5) A person dissatisfied with a decision of the Comptroller under subsection (3) may challenge the decision only under Part IX of this Act.

Allocation of payments.

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

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

Recovery of tax as debt due.

43. (1) Tax that is due and payable under this Act is a debt due to the Government and payable to the Comptroller, and may be recovered in the manner provided by sections 100, 103, 104, 105, or 106 of the Income Tax Act, or by court action in the manner provided by section 99 of the Income Tax Act, as if it were income tax, where -

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

(2) Subsection (1) does not apply to tax collected by the Comptroller of Customs, which is recovered under procedures for recovery of customs duty.

44. (1) Where the Comptroller has reasonable grounds to believe that a person may leave Dominica without paying all tax due under this Act, the Comptroller may issue a certificate in such form as the Comptroller may prescribe to the Chief Immigration Officer requesting that the Chief Immigration Officer take the necessary steps to prevent the person from leaving Dominica until the person makes -

Recovery of tax from persons leaving Dominica.

- (a) payment in full; or
- (b) an arrangement satisfactory to the Comptroller for the payment of the tax.

(2) The Comptroller is required to serve a copy of the certificate issued under subsection (1) on the person named in the certificate if it is practicable to do so.

45. (1) Where it is reasonable to do so for the protection of the revenue or as provided for in this Act, the Comptroller, by notice in writing, may require a person to give security for the payment of tax that is due from the person under this Act.

Security.

(2) Security required under subsection (1), including security required from a promoter of public entertainment, must be for such amount, in such form, and furnished within such period as the Comptroller may specify in the notice.

(3) Where security under subsection (1) is in cash and the Comptroller is satisfied that the security is no longer required, the Comptroller is required to apply the amount of the security as specified under section 52(4).

(4) A person dissatisfied with a decision of the Comptroller under subsection (1) may challenge the decision only under Part IX of this Act.

(5) A promoter of public entertainment must not allow the public entertainment to take place unless the promoter paid the amount required under subsection (2) and received the Comptroller's written approval.

(6) A person who contravenes subsection (5) commits an offence and on summary conviction is liable to a fine of twenty five thousand dollars or imprisonment for one year or to such fine and imprisonment.

Preferential claim to assets.

46. (1) From the date on which tax becomes due and payable under this Act and until the tax is paid, the Comptroller has a lien upon the assets of the person liable to pay the tax and upon any asset of a related person which the Comptroller reasonably believes has been transferred or disposed of in order to avoid the payment of tax over which the taxpayer is the lawful owner.

(2) The lien described in subsection (1) is not valid against the interest of a person who is a purchaser from the taxpayer or a holder of a security interest in the property, if the person's ownership of or other interest in the property arises -

(a) before the person has actual knowledge of the lien; and

(b) before notice of the lien has been duly registered by the Registrar,

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

(4) Where the Comptroller has made an application under subsection (2), the Registrar is required to register the notice of security without fee, as if the notice were an instru-

ment of mortgage over or charge on, as the case may be, such asset, and such registration operates while it subsists, subject to any prior mortgage or charge, in all respects as a legal mortgage over or charge on the asset to secure the amount due.

(5) Where the Registrar registers a notice of security interest referred to in subsection (3) he shall give notice to the owner of the property notice of registration within fifteen days of such registration.

(6) The Comptroller must serve a copy of the notice referred to in subsection (3) to the person in default who may within 30 calendar days pay the tax in default and have the notice removed.

47. (1) Where the Comptroller has reasonable grounds to believe that tax on a supply or import of goods has not been or will not be paid, the Comptroller may apply to the Magistrate for an Order to authorise him to seize the goods and the Magistrate on being satisfied of the reasons for such application shall issue the Order.

Seizure of goods and vehicles.

(2) The Comptroller may seize any vehicle used in the removal or carriage of goods in respect of which an Order has been issued under subsection (1), unless it is shown that such vehicle was so used without the consent or knowledge of the owner of that vehicle or other person lawfully in possession or charge thereof or that the owner or person in possession had no reason to believe that the vehicle was used to remove or carry goods in respect of which the tax had not been paid; and at the discretion of the Comptroller, the vehicle may be sold by public auction or may be dealt with in such other manner as the Comptroller may direct subject to conditions specified under subsection (8)(b)(ii).

(3) Goods seized under subsection (1) must be stored in a place approved by the Comptroller for the storage of such goods.

(4) Where goods are seized under subsection (1), or a vehicle seized under subsection (2) the Comptroller is required to 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, within fourteen days after the seizure -

- (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 (7), (8), and (9).

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

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

(7) Subject to subsection (8) the Comptroller may authorise the delivery of goods seized under subsection (1) to the person on whom a notice under subsection (4) has been served, where that person pays or gives security, in accordance with section 45, for the payment of tax due and payable or that will become due and payable in respect of the supply or import of the goods.

(8) The Comptroller must detain goods seized under subsection (1) -

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

(ii) ten working days after the due date for payment of the tax on the supply or import of the goods.

(9) (a) Where the detention period in subsection (8) has expired, the Comptroller may sell the goods in the manner specified under section 48(4) and apply the proceeds of sale as set out in section 48(5).

(b) Before the Comptroller sells a vehicle seized under this section he shall obtain an Order from the High Court authorizing him to sell the vehicle. Before granting the Order the Judge shall satisfy himself that the seizure was in order.

(10) Notwithstanding the provisions of this section, the Comptroller may proceed under section 43 with respect to any balance owed if the proceeds of sale are not sufficient to meet the costs thereof and the tax due.

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

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

Distress proceedings.

(2) For the purposes of executing distress under subsection (1), the Comptroller may -

(a) at any time enter any house or premises described in the order authorising the distress proceedings; and

(b) require a police officer to be present while the distress is being executed.

(3) Property upon which a distress is levied under this section, other than perishable goods, must be kept for ten work-

ing days either at the premises where the distress was levied or at such other place as the Comptroller may consider appropriate, at the cost of the person liable.

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

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

(b) in any other case, within ten working days after the distress is levied,

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

(5) The proceeds of a disposal under subsection (4) must be applied by the Comptroller first towards the cost of taking, keeping, and selling the property distrained upon, then towards the tax due and payable and, subject to section 52, the remainder of the proceeds, if any, must be restored to the person liable.

(6) Nothing in this section precludes the Comptroller from proceeding under section 43 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the tax due.

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

(8) Distress may not be levied under this section upon tools of trade.

Recovery of tax from recipient of supply.

49. (1) Where, in respect of a taxable supply by a taxable person, the taxable person has, in consequence of a fraudulent action or misrepresentation by the recipient of the supply, incorrectly treated the supply as an exempt or zero-rated supply, the Comptroller may raise an assessment upon the recipient for the amount of unpaid tax in respect of the supply together with any interest or penalty that has become payable under sections 28 and 41.

(2) The Comptroller is required to serve notice of an assessment under subsection (1) on the recipient specifying -

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

(3) An assessment raised under subsection (1) is treated as an assessment for all purposes of this Act.

(4) Subsection (1) does not preclude the Comptroller from recovering the tax, interest, or penalty from the taxable person making the supply.

(5) For purposes of subsection (4),

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

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

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

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

- (a) owing or who may owe money to the person liable;
- (b) holding or who may subsequently hold money for, or on account of, the person liable;

Recovery of tax from third parties.

(c) having authority from some other person to pay money to the person liable; or

(d) having in possession the property of the person liable notwithstanding any other law,

to be the agent of that person to pay the money or deliver the property to the Comptroller within 15 calendar days of the date of service of the notice or if on such date no money is due or held to which this subsection applies, within 15 calendar days of the date on which money becomes due or is held in any of the circumstances referred to in this subsection, the amount specified in the notice or, if the money due or held is less than the amount specified, the whole amount of money due or held.

(2) A copy of a notice issued under subsection (1) must be served on the person liable.

(3) A person making a payment pursuant to a notice under subsection (1) is deemed to have acted under the authority of the person liable and of all other persons concerned and is indemnified in respect of the payment.

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

Duties of receivers.

51. (1) In this section, “receiver” means a person who, with respect to an asset in Dominica is -

(a) a liquidator of a company;

(b) a receiver appointed out of court or by a court;

(c) a trustee for a bankrupt person;

(d) a mortgagee in possession;

(e) an executor of the estate of a deceased person; or

(f) any other person conducting business on behalf of a person legally incapacitated.

(2) A receiver is required to notify the Comptroller in writing within 14 calendar days after being appointed to the position or taking possession of an asset of the person liable to tax in Dominica, whichever first occurs.

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

(4) A receiver -

- (a) is required to set aside, out of the proceeds of sale of an asset, the amount notified by the Comptroller under subsection (3), or such lesser amount as is subsequently agreed on by the Comptroller;
- (b) is liable to the extent of the amount set aside for the tax of the person who owned the asset; and
- (c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

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

PART XI

CARRYOVERS, REFUNDS AND INTEREST

52. (1) Where -

- (a) the total amount of input tax deductible by a taxable person under section 25 for a tax period exceeds the person's output tax for that period; or

Carry forward of
excess credits and
refund of tax.

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

the amount of the excess is treated in the manner provided in this section.

(2) Except as provided in subsection (8), the excess described in subsection (1)(a) is carried forward to the next tax period and treated as input tax deductible in that period.

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

(4) By the end of the third calendar month following the date the claim for refund described in subsection (3) is filed or, where the Comptroller orders an audit of the claim for refund described in subsection (3), within ten working days after conclusion of the audit, if later, the Comptroller, to the extent satisfied that the taxpayer is entitled to the amount of the refund claimed—

- (a) may apply the amount of the refund claimed under subsection (3) in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, other taxes collected by the Comptroller, and any unpaid amounts under the Acts repealed by section 107; and
- (b) is required to refund any excess remaining to the taxable person.

(5) Where at least fifty percent of the amount of the taxable supplies of a taxable person for the taxable period is taxed at a zero rate, and the person reports an excess described in subsection (1)(a) for the taxable period, the person may file with

the Comptroller a claim for refund for the excess deductions attributable to the zero-rated supplies in the form and with the documentation specified in regulations.

(6) By the end of the first calendar month following the date the claim for refund described in subsection (5) is filed or, where the Comptroller orders an audit of the claim for refund described in subsection (5), within ten working days after conclusion of the audit, if later, the Comptroller, to the extent satisfied that the taxpayer is entitled to the amount of the refund claimed—

- (a) may apply the amount of the refund claimed under subsection (5) in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, other taxes collected by the Comptroller, and any unpaid amounts under the Acts repealed by Section 106; and
- (b) is required to refund any excess remaining to the taxable person.

(7) Notwithstanding subsections (4)(b) or (6)(b), if the amount of the excess to be refunded is not more than \$100 the excess must be carried forward to the next succeeding tax period and be accounted for as provided in section 25(1)(f).

(8) Where a person has overpaid tax in the circumstances specified under subsection (1)(b), the person may file with the Comptroller a claim for refund of the excess, accompanied by documentary proof of payment of the excess amount as required in regulations.

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

- (a) the Comptroller is required to deal with the claim as if it were a claim under subsection (3); and
- (b) to the extent that any output tax claimed to be refundable is an amount borne by a recipient who is not a registered person, the output tax is

refundable only to the extent that it will be repaid by the taxable person to that recipient, whether in cash or as a credit against an amount owing to the taxable person by the recipient.

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

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

(12) The Comptroller is required to serve on a person claiming a refund, a notice in writing of the decision in respect of the claim within 30 calendar days of receiving the claim.

(13) A person claiming a refund under this section who is dissatisfied with a decision referred to in subsection (12) may challenge the decision only under Part IX of this Act.

Interest on
overpayment.

53. (1) Where the Comptroller fails to pay a refund of tax relating to an excess under section 52 within one month of the date specified under that section, the Comptroller is required to pay the taxable person entitled to the refund an additional amount as interest commencing one month after such date and ending on the date the payment of the refund is made.

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

- (a) an objection decision under section 36;
- (b) a decision of the Appeal Commissioners under section 37;
- (c) a decision of the High Court under section 38; or
- (d) a decision of the Court of Appeal under section 39,

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

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

(4) The rate of interest under this section may be altered from time to time by Order made by the Minister.

54. (1) The Minister, in consultation with the Minister responsible for Foreign Affairs, may issue regulations that authorise the grant of a refund of tax paid or borne on a supply to or import by-

Others eligible for tax refund.

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

(2) The refund provided for in subsection (1)(a) is not available to any citizen or a permanent resident of Dominica within the meaning of the Immigration Act.

(3) The Minister, in consultation with the Minister for Community Development, may issue regulations that authorise the grant of a refund of tax paid on a supply of an unconditional gift of goods or services to an approved charitable organisation for use in connection with the organisation's charitable purposes other than for resale.

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

PART XII**REPRESENTATIVES AND SPECIAL CASES OF
TAXABLE PERSONS**

Persons acting in a representative capacity.

55. (1) In this section,

“representative”, in relation to a taxable person, means -

- (a) the Financial Controller or the designated officer in the case of a company (other than a company in liquidation).
- (b) any member of the committee of management in the case of an unincorporated association or body.
- (c) any person who is responsible for accounting for the receipt and payment of money or funds on behalf of the company in any other case;
- (d) the liquidator in the case of a company in liquidation;
- (e) any person responsible for accounting for the receipt and payment of money under the provisions of any law or for the receipt and payment of public funds or of funds voted by Parliament in the case of the State or local authority;
- (f) any partner in the case of a partnership;
- (g) any trustee in the case of a trust; or
- (h) any person controlling the non-resident’s affairs in Dominica, including any manager of a taxable activity of the non-resident in Dominica in the case of a non-resident or a person referred to in paragraph (b) of the definition of “resident” in section 2.

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

(3) Every representative is personally liable for the payment of any tax payable in his representative capacity if, while the amount remains unpaid, the representative -

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

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

56. (1) The Comptroller may, if the Comptroller considers it necessary to do so, declare a person to be a representative of the taxable person for the purposes of section 55.

Power to appoint representatives.

(2) A person dissatisfied with a decision referred to in subsection (1) may challenge the decision only under Part IX of this Act.

57. (1) Where a corporation fails to pay an amount of tax required to be paid by this Act, the persons who were directors of the corporation at the time the corporation was required to pay the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest thereon and penalties relating thereto.

Directors of corporations.

(2) A director of a corporation is not liable for a failure under subsection (1), where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) A director of a corporation must not be assessed for an amount payable by him under this section more than five years after the filing of the tax return, or in the case where an assessment had been made under section 34(1) not more than five years after the date of assessment relating to that amount.

(4) A director who satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Officers of
unincorporated
bodies.

58. (1) In this section, “officer” of an unincorporated body means -

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

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

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

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

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

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

59. Where -

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

Partnerships or unincorporated associations.

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

Death or insolvency of taxable person; mortgagee in possession.

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

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

Trustee.

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

Branches.

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

PART XIII

RECORDS AND INVESTIGATION POWERS

Meaning of records

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

64. (1) Every taxable person or any other person liable for tax under this Act is required to maintain in Dominica -

Record-keeping.

- (a) original tax invoices, tax credit notes, and tax debit notes received by the person;
- (b) a copy of all tax invoices, tax credit notes, and tax debit notes issued by the person;
- (c) customs documentation relating to imports and exports by the person;
- (d) accounting records relating to taxable activities carried on in Dominica; and
- (e) any other records as may be prescribed by regulations.

(2) Records required to be maintained under subsection (1) are required to be retained for seven years after the end of the tax period to which they relate.

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

65. (1) The Comptroller may, by notice in writing, require any person, whether or not liable for tax under this Act -

Notice to obtain information or evidence.

- (a) to furnish such information concerning that person or any other person as may be required by the notice; or
- (b) to attend at the time and place designated in the notice for the purpose of being examined on oath before the Comptroller or any taxation officer authorised by the Comptroller for this purpose concerning the tax affairs of that person or any other person, and for that purpose the Comptroller or the authorised officer may require the person examined to produce any record or computer in the control of the person.

(c) to provide access to the premises where any business is carried on by that person or where records or books of account are kept in relation to that business in order to -

- (i) examine the records or books of account and any other documents that relate to the activities of the business; or
- (ii) inspect any raw materials, trading stock or other assets;

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

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

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

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

Access to records,
computers, and goods.

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

- (a) without prior notice and at any time, to enter any premises or place where records are kept and on such premises search for any records;

-
- (b) in carrying out a search referred to in paragraph (a) and in any manner, to open or cause to be opened or removed and opened, any article in which the officer suspects that any records are kept;
 - (c) to seize any records which in the officer's opinion may afford evidence that may be material in determining the liability of any person for tax payable under this Act;
 - (d) to retain any records seized under paragraph (c) for as long as they may be required for determining a person's liability under this Act or for any proceeding under this Act;
 - (e) to examine and make extracts from, and copies of, any records, and require from any person an explanation of any entry therein; and
 - (f) where a hard copy or computer disk of computer-stored information is not provided, to seize and retain the computer in which the information is stored for as long as is reasonable to copy the information required.

(2) A taxation officer who attempts to exercise a power under subsection (1) is not entitled to enter or remain on any premises or at any place if, upon being requested by the occupier of the premises or place, the taxation officer does not produce the warrant issued under subsection (1).

(3) The owner, manager, or any other person lawfully on the premises or at the place entered or proposed to be entered under this section is required to provide all reasonable facilities and assistance for the effective exercise of power under this section.

(4) A person whose records or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Comptroller may determine.

(5) A taxation officer exercising a power under subsection (1) may request the assistance of a Customs officer or police officer as the taxation officer may consider reasonably necessary and any such Customs officer or police officer must render such assistance as may be required by the taxation officer.

Records not in English language.

67. Where a record referred to in section 64 is not in the English language, the Comptroller may, by notice in writing, require the person keeping the record to provide at that person's expense a translation into the English language by a translator approved by the Comptroller for this purpose.

PART XIV

OFFENCES AND PENALTIES

Division I: Criminal Proceedings

Sanction for prosecution.

68. (1) Subject to the powers of the Director of Public Prosecutions under the Constitution no criminal proceedings in respect of any offence under this Act shall be commenced except with the sanction of the Comptroller.

(2) Criminal proceedings under this Act shall be commenced in the name of the Comptroller.

Time limit for proceedings to be taken.

69. Proceedings under this Division may be commenced-

- (a) where the offence alleged has involved the doing of any act, within three years after the discovery of the act;
- (b) where the offence alleged has involved the failure to do any act, within three years after the Comptroller has become aware of such failure;
- (c) where the offence alleged has involved the non-disclosure or incorrect disclosure by any person of information relating to that person's liability to tax

for a tax period, within three years after his correct liability to tax has become final for that tax period.

70. Any person who wilfully evades, or attempts to evade the assessment, payment, or collection of tax commits an offence and is liable on summary conviction to a fine of up to \$25,000, or to imprisonment for a term of two years, or both.

Tax evasion.

71. (1) Any person who wilfully impedes or attempts to impede the Comptroller in his administration of this Act commits an offence and is liable on summary conviction to a fine of \$10,000, or to imprisonment for a term of six months, or both.

Impeding tax administration.

(2). For the purposes of this section, a person impedes the administration of this Act if the person -

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

72. Any person who contravenes section 8 commits an offence and is liable on summary conviction to a fine of \$10,000, or to imprisonment for a term of six months, or both.

Failure to preserve secrecy.

73. A person who improperly claims a refund under section 52(3), (5), or (8) commits an offence and is liable on summary conviction to a fine of \$10,000, or to imprisonment for a term of six months, or both.

Improper claim for refund.

Offences by taxation officers.

74. A taxation officer in carrying out the provisions of this Act who -

- (a) directly or indirectly asks for, or takes in connection with any of the officer's duties any payment or reward, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or
- (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty,

commits an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding two years, or both, and the Court may, in addition to imposing a fine, order the convicted person to pay to the Comptroller any amount of tax that has not been paid as a result of the officer's wrongdoing and which cannot be recovered from the person liable for the tax.

Offences by companies, aiders and abettors.

75. (1) Where an offence under this Act has been committed by a company, every person who at the time of the commission of the offence -

- (a) was director or other similar officer of the company; or
- (b) was acting or purporting to act in such capacity,

shall be deemed to have committed the offence.

(2) Subsection (1) does not apply where -

- (a) the offence was committed without such person's consent or knowledge; and
- (b) the person exercised all such diligence to prevent the commission of the offence as ought to have

been exercised having regard to the nature of the person's functions and all the circumstances.

(3) A person aiding and abetting the commission of an offence under this Act commits that offence and is liable to the same penalties as the person committing the offence.

76. A promoter of a public entertainment who contravenes section 45(5) commits an offence and on summary conviction be liable to a fine of \$10,000 or imprisonment for two years or both and in addition to be liable to 15 percent of the value of the tickets printed for the entertainment

Failure to obtain approval from the Comptroller.

77. A person who is required to pay security under section 45(1) commits an offence if the security is not paid within the time allowed for payment and on summary conviction be liable to a fine of \$10,000 or imprisonment for two years or to both.

Failure to pay security.

78. A person who commits an offence under this Act for which no penalty is prescribed is liable on summary conviction to a fine of \$5,000 or imprisonment for a term of six months or both such fine and imprisonment.

General penalty.

79. (1) Where a person has committed an offence under this Division other than an offence under section 72 or 74, the Comptroller may, at any time prior to the commencement of the hearing by any court of the proceedings relating thereto, compound such offence and order the person to pay such sum of money as specified by the Comptroller, not exceeding the maximum amount of the fine prescribed for the offence.

Compounding of offences.

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

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

(a) must be in writing and must have attached the written request described in subsection (2);

(b) must specify –

- (i) the offence committed;
- (ii) the sum of money to be paid; and
- (iii) the due date for the payment;

(c) must be served on the person who committed the offence; and

(d) must be final and not subject to appeal.

(4) The Comptroller's power under this section is subject to the powers of the Director of Public Prosecutions under the Constitution, and the Comptroller must give the Director of Public Prosecutions a copy of the order described in subsection (3) at the time it is served on the taxpayer.

(5) The amount ordered to be paid under subsection (1) is recoverable as if it were tax due and payable.

Division II: Civil Penalties

General provisions.

80. (1) No penalty is payable under this Division where, in respect of the same act or omission, the person has been convicted of an offence under Division I, or an offence has been compounded under section 79.

(2) If a penalty under this Division has been paid and the Comptroller institutes a prosecution proceeding under Division I in respect of the same act or omission, the Comptroller must refund the amount of the penalty paid; and that penalty is not payable unless the prosecution is withdrawn.

(3) Where good cause is shown, in writing, by the person liable for a penalty, the Comptroller may mitigate in whole or part any penalty payable.

(4) Penalties are assessed and collected following the same procedure for tax, as if the amount of penalty is tax due

under this Act, and those penalties described in subsection (6) are assessed together with the tax to which they relate.

(5) A person dissatisfied with a decision of the Comptroller under subsection (3) may challenge the decision only under Part IX of this Act.

(6) In the case of a penalty which amount may be calculated by reference to the tax payable for a tax period, the time limit for assessing the penalty is the same as the limit for assessing the tax to which the penalty relates.

(7) In the case of penalties under this Division other than those described in subsection (6), the time limit for assessing a penalty under this Division is determined under section 69.

81. (1) A person who fails to apply for registration as required by section 11(8) is liable for a penalty equal to double the amount of output tax payable from the time the person is required to apply for registration until the person files an application for registration with the Comptroller.

Failure to register.

(2) A person who fails to display the certificate of registration issued by the Comptroller as required by section 12(11) is liable for a penalty of \$50 per day for each day or portion thereof that the failure continues.

82. A person who fails to notify the Comptroller as required by section 12(12) or 13(1) is liable for a penalty not exceeding \$1,000.

Failure to notify
Comptroller.

83. A person who issues a false invoice, uses a false taxpayer account number, or who provides, or fails to provide, a tax invoice, tax credit note, or tax debit note otherwise than as provided for in section 29 or 30 is liable for a penalty not exceeding \$25,000.

Tax invoice.

84. A person who fails to file a return within the time required under this Act is liable for a penalty of \$100.00 per month, or part thereof, for the period during which the return remains unfiled.

Failure to file return.

Failure to comply with notice for recovery of tax.

85. A person who fails to comply with a notice under section 50 is liable for a penalty not exceeding 25 percent of the amount sought to be recovered from the person.

Failure to keep records.

86. A person who fails to maintain proper records as required by section 64 is liable for a penalty of \$50 per day for each day or portion thereof that the failure continues.

Failure to provide facilities.

87. A person who fails to provide a taxation officer with reasonable facilities and assistance as required by section 66(3) is liable for a penalty not exceeding \$1,500.

Failure to comply with notice to give information.

88. A person who fails within the specified time to comply with a notice issued under section 65(1) is liable for a penalty not exceeding \$1,000.

Non-compliance with price quotation requirements.

89. A person who contravenes the requirements of subsection (2) or (4) of section 96 is liable to pay to the Comptroller a penalty of \$500 and a further penalty of \$50 for each day or part thereof that the breach continues after receiving a written warning from the Comptroller to correct the breach.

Penalty for making false or misleading statements.

90. (1) Where a person knowingly or recklessly makes a statement to a taxation officer that is false or misleading in a material particular or omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular, and the tax properly payable by the person exceeds the tax that would be payable if the person were assessed on the basis that the statement is true, the person is liable to pay to the Comptroller a penalty equal to the greater of \$250 and

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

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

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

(a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;

(b) in any information required to be furnished under this Act;

(c) in a document furnished to a taxation officer otherwise than pursuant to this Act;

(d) in an answer to a question asked of a person by a taxation officer; or

(e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

(3) It is a defence to a prosecution under subsection (1) that the person did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

91. (1) Where a person repeatedly violates -

(a) section 29 in relation to tax invoices;

(b) section 30 in relation to tax debit notes or tax credit notes;

(c) section 32 by failing to file returns;

Temporary closure of
business premises.

- (d) section 41 by failing to pay tax when due;
- (e) section 52 by improperly claiming tax refunds;
- (f) section 71 by impeding tax administration; or

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

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

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

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

Publication of names of defaulters.

92. Notwithstanding anything in any other law where a person liable to pay the tax fails to pay on three occasions the Comptroller may publish the names of that person and the name of the business of that person in a newspaper circulating in the State.

PART XV

MISCELLANEOUS

Taxpayer account number.

93. The Comptroller may require a person to include the taxpayer account number issued by the Comptroller to that person in any return, notice, or other document prescribed or used for the purposes of this Act.

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

Forms and notices;
authentication of
document .

(2) The Comptroller is required to make the documents referred to in subsection (1) available to the public at the offices of the Inland Revenue Division and any other locations, or by any other means, as the Comptroller determines.

(3) A notice or other document issued, served, or given by the Comptroller under this Act is sufficiently authenticated if the name or title of the Comptroller, or authorised taxation officer, is printed, stamped, or written on the document.

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

Service of notices.

(2) A notice described in subsection (1) is considered sufficiently served on a person if it is -

- (a) personally served on that person;
- (b) personally served on the representative of that person under section 55;
- (c) left at the person's usual or last known place of abode, office, or place of business in Dominica;
or
- (d) sent by post to such place of abode, office, or place of business, or to the person's usual or last known address in Dominica.

96. (1) A price charged by a taxable person in respect of a taxable supply is deemed to include, for the purposes of this Act, the tax charged on the supply under section 9(1)(a) or (c), whether or not the taxable person has included tax in such price.

Tax-inclusive pricing.

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

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

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

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

Schemes for obtaining tax benefits.

97. (1) In this section -

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

“tax benefit” includes -

- (a) a reduction in the liability of a person to pay value added tax;
- (b) an increase in the entitlement of a person to a deduction or refund;
- (c) a postponement of liability for the payment of value added tax;
- (d) an acceleration of entitlement to a deduction for input tax; or

(e) any other avoidance or benefit from the delay in payment of tax or acceleration of entitlement to a deduction for input tax.

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

(a) a person has obtained a tax benefit in connection with the scheme in a manner that constitutes a misuse of the provisions of this Act; and

(b) having regard to the substance of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,

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

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

(2) Where an amount is expressed in a currency other than Eastern Caribbean Dollars (EC\$) -

(a) in the case of imports, the amount must be converted at the exchange rate as determined for purposes of the Customs (Control and Management) Act; or

(b) in all other cases, the amount must be converted at the exchange rate applying between the currency and the Eastern Caribbean Dollar (EC\$) at the time the amount is taken into account under this Act.

99. (1) In this section, “international agreement” means an existing agreement or any agreement that may thereafter be International agreements.

approved by Cabinet between Dominica and a foreign government or an international organisation providing humanitarian or technical assistance.

(2) To the extent that the terms of a treaty or other international agreement to which Dominica is a party are inconsistent with the provisions of this Act (apart from section 97), the terms of the treaty or international agreement shall prevail over the provisions of this Act.

Registration of certain goods prohibited in certain circumstances.

100. (1) For purposes of this section, “registering authority” means a person appointed under any law to issue a licence, permit, certificate, concession, or other authorization.

(2) Where any form of registration is required under any law in respect of goods consisting of an aircraft, boat, fishing vessel, ship, yacht, motor cycle, motor vehicle, tractor, caravan, firearms or trailer, hereinafter referred to as “registrable goods”, no registering authority responsible for such registration under such law may effect such registration upon a change of ownership or importation into Dominica of registrable goods unless the person applying for registration produces to such registering authority -

- (a) in the case of registrable goods which are imported into Dominica, a receipt or customs document issued by the Comptroller of Customs showing that tax which is payable under this Act has been paid in respect of such importation into Dominica, or a receipt or certificate showing that no tax is payable under this Act in respect of such importation, of the registrable goods in consequence of which the registration is required;
- (b) a declaration, in such form as the Comptroller may prescribe, issued by a registered person who, in carrying on a taxable activity in the ordinary course of which registrable goods are dealt in, supplied such goods in consequence of

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

- (c) a certificate issued by the Comptroller, or other documentation acceptable to the Comptroller, to the effect that the supply or import of the registrable goods was an exempt supply or exempt import, as the case may be; or
- (d) in the case of registered goods supplied by an unregistered person for which a refund or exemption had been granted under section 54 or under international agreements, as defined under section 99, the tax due as if such supply were taxable.

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

Auctioneer and agent.

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

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

102. (1) The Minister may make regulations for the better carrying into effect of the purposes of this Act, and for any matter which under this Act is to be prescribed by regulations, and without prejudice to the generality of the foregoing, such regulations may provide for-

Regulations.

-
- (a) provisions of a saving or transitional nature consequent on the coming into force of this Act;
 - (b) specific offences and penalties not exceeding five thousand dollars for breach of the regulations;
 - (c) a change in the threshold provided in sections 11(1)(a) and (b), and 11(10); or
 - (d) the application of terms used in this Act and ancillary rules that facilitate the application of provisions in the Act, including the determination of the value, time, and place of transactions for purposes of applying the Act to those transactions.

(2) Regulations made under subsection (1) (c) shall be subject to affirmative resolution of Parliament.

Variation of consideration on a change in rate.

103. (1) Where -

- (a) an agreement for a supply of goods or services by a registered person has been entered into; and
- (b) subsequent to entering into the agreement, tax is imposed on the supply or the rate of tax applicable to the supply is increased,

the supplier may, unless explicitly provided to the contrary in the agreement, recover from the recipient, in addition to the amounts payable by the recipient, an amount equal to the amount of tax imposed or the amount by which tax was increased, as the case may be.

(2) Where -

- (a) an agreement for a supply of goods or services by a registered person has been entered into; and
- (b) subsequent to entering into the agreement, tax on the supply is withdrawn or the rate of tax applicable to the supply is decreased,

the supplier must, unless explicitly provided to the contrary in the agreement, reduce the amount payable by the recipient by an amount equal to the amount of tax withdrawn or the amount by which tax was decreased, as the case may be.

(3) Subject to subsections (4) and (5), where 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 tax or additional tax chargeable, or the amount of tax no longer chargeable.

(4) Subsection (3) does not apply where 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 tax.

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

104. (1) Where -

- (a) services are performed; or
- (b) goods are provided in respect of a successive supply contemplated in section 14(8) or (9),

during a period beginning before and ending on or after the date on which a change in the rate of tax levied under section 9(1)(a) or (c) becomes effective in respect of the supply of the goods or services, or the date on which the tax is imposed or withdrawn in respect of the supply, and the supply is deemed under section 14 to have been made on or after the said date, the value of the supply shall, on the basis of a fair and reasonable apportionment, be

Application of increased
or reduced rate.

deemed to consist of a part, referred to as the “first part”, relating to the performance of services or provision of goods before the said date and a part, referred to as the “second part”, relating to the performance of services or provision of goods on or after the said date.

(2) For purposes of subsection (1), in the case of -

(a) a change in the rate on the said date, the tax payable in respect of the first part must be determined at the rate applicable before the said date and the tax payable in respect of the second part must be determined at the rate applicable on the said date;

(b) the imposition of tax on the said date, the first part must not be subject to tax; or

(c) the withdrawal of the tax, the first part must be subject to tax as if the tax had not been withdrawn.

(3) For the purposes of subsection (1), goods are deemed to be provided by the supplier of the goods when the goods are delivered to the recipient and goods supplied under a rental agreement are deemed to be provided to the recipient when the recipient takes possession or occupation of the goods.

Orders to amend Schedules or change amounts or tax rate.

105. (1) The Minister may by order published in the *Gazette* -

(a) amend the Schedules to this Act; or

(b) increase or decrease any monetary amount set out in this Act; or

(c) increase or decrease a rate of tax under section 9(1).

(2) An order under subsection (1) must be subject to affirmative resolution of Parliament.

Remission of tax.

106 (1) Where after taking the action provided by regulation, the Comptroller is unable to recover any amount of tax, penalty and interest due and payable under this Act by a person

for a specified period, the Minister may, subject to reinstatement under subsection (3), order the extinguishment of the liability as a debt due to the Government.

(2) An order made under subsection (1) must be approved by Cabinet.

(3) If the Comptroller determines that a person subject to an order under subsection (1) has assets that may be attached to recover the unpaid tax, penalty and interest specified in the order, then with the approval of Cabinet, the order may be revoked and the liability reinstated.

107. (1) The following are repealed with effect from the date this Act comes into force- Repeals.

- | | |
|-------------------------------------|--------------------|
| (a) the Sales Tax Act; | Chap. 67:06 |
| (b) the Hotel Occupancy Tax; | Chap. 70:06 |
| (c) the Consumption Tax Order 1984; | S.R.O. 23 of 1984. |
| (d) the Entertainment Tax Act. | Chap. 70:07. |

(2) No reference to sales tax, hotel occupancy tax, or consumption tax, or entertainment tax in any Act, other than this Act, shall be treated as a reference to tax under this Act.

108. (1) In this section - Transition.

“repealed legislation” means the legislation referred to in section 107(1).

(2) The repealed legislation, including the rules governing the levy, payment, assessment, reporting, and recovery of those taxes, continue to apply to a supply or import taking place prior to the date on which this Act comes into operation pursuant to section 1.

(3) All appointments made under the repealed legislation and subsisting at the date of commencement of this Act are treated as appointments made under this Act; and an oath of secrecy taken under the repealed legislation is treated as having been taken under this Act.

(4) All forms and documents used in relation to the repealed legislation may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.

(5) Where a contract was concluded between two or more parties before the entry into operation of this Act, and no provision relating to tax was made in the contract, the supplier may recover from the recipient tax due on any taxable supplies made under the contract after the date on which this Act came into operation.

(6) Where a contract concluded after the date on which this Act came into operation does not include a provision relating to tax, the contract price is deemed to include tax and the supplier under the contract is required to account for the tax due.

(7) Subject to subsection (9), if, in connection with a supply of goods or services,

- (a) title to goods passes, delivery of goods is made, or services are rendered after the date on which this Act came into operation, and
- (b) payment is received or an invoice is issued within nine months before that date,

for purposes of determining the tax period in which the supply occurs or an input tax deduction is allowable, the payment is treated as having been made or the invoice is treated as having been issued on the date on which this Act comes into operation.

(8) If services subject to sales tax were rendered before the date on which this Act came into effect and payment is made within four months after this Act came into effect, VAT is not imposed on the supply of the services.

(9) If-

- (a) successive supplies described in section 14(8) or (9) were provided; or

(b) services subject to sales tax were rendered, during a period that began before this Act came into effect and ended after this Act came into effect, VAT is imposed on the consideration for the services rendered after this Act came into effect, except that to the extent the consideration for the services rendered before this Act came into effect is paid more than four months after this Act came into effect, the consideration is treated as consideration for the supply of services rendered on the day after the end of that four month period.

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

(11) If real property is provided under a rental agreement for a period that commences before and ends after the effective date of this Act, the consideration for the rental shall not include the amount attributable to the portion of the period that ends before the effective date.

(12) For purposes of section 25(1)(c), an amount paid as a prize or winnings does not include an amount attributable to obligations or contingent obligations that exist immediately before this Act comes into effect.

(13) The Minister may make regulations for other transitional measures relating to the end of consumption tax and sales tax, the start of value added tax, or the transition from consumption tax and sales tax to value added tax.

SCHEDULE I**ZERO-RATED SUPPLIES****1. In this Schedule -**

“export country” means any country other than Dominica and includes any place which is not situated in Dominica, but does not include a specific country or territory that the Minister by Order in the Gazette designates as one that is not an export country;

“exported from Dominica”, in relation to any movable goods supplied by a registered person under a sale or a credit agreement, means, subject to paragraph 4 of this Schedule-

(a) consigned or delivered by the registered person to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Comptroller;
or

(b) delivered by the registered person to the owner or charterer of a foreign-going aircraft or foreign-going vessel when such aircraft or vessel is going to a destination in an export country and such goods are for use or consumption in such aircraft or vessel, as the case may be;

“fuel” has the meaning given to it under the Customs Tariff Headings

2710.10, 2710.20, 2710.30, 2710.40 and 2711.10;

“intellectual property rights” means any patent, design, trade mark, copyright, know-how, confidential information, trade secret, or similar rights;

2. The classification and description of goods specified in this Schedule which bear the heading numbers as designated in the Customs Tariff are to be interpreted in accordance with the rules for interpretation set out in Part I of the Customs Tariff.

3. The following supplies are specified for the purposes of section 17 to the extent provided in regulations-

(1) SUPPLY OF GOODS

- (a) except for exports governed by Schedule II, paragraph 2(s), a supply of goods where the supplier has entered the goods for export, pursuant to the Customs (Management and Control) Act, and the goods have been exported from Dominica by the supplier;
- (b) a supply of goods where the Comptroller is satisfied that the goods have been exported from Dominica by the supplier without having been used in Dominica after the supply was entered except as necessary for or incidental to, the export of the goods;
- (c) a supply of goods where the supplier is a licensed duty-free vendor who has given satisfactory documentation that the goods are to be removed from Dominica;
- (d) a supply of goods where the goods are not situated in Dominica at the time of supply and are not to be entered into Dominica for home consumption pursuant to the Customs (Management and Control) Act by the supplier of the goods;
- (e) a supply of goods under a rental agreement, charter party, or agreement for chartering, where the goods are used exclusively in an export country;
- (f) a supply of goods in the course of repairing, renovating, modifying, or treating goods to which subparagraph (2)(b)(ii) or (iv) applies and the goods supplied -
 - (i) are wrought into, affixed to, attached to, or otherwise form part of those other goods; or
 - (ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process;
- (g) a supply of fuel;

- (h) a supply of the following foods to the extent provided in regulations:
- (i) flour;
 - (ii) milk;
 - (iii) rice;
 - (iv) sugar;
- (i) a supply of the following agricultural inputs to the extent provided in regulations:
- (i) seedlings, cuttings and fertilizers;
 - (ii) pesticides, insecticides, and other treatments approved for use in agriculture by the Ministry of Agriculture;
 - (iii) herbicides, fungicides and nematicides;
 - (iv) hay, fodder, silage, and animal feed other than food for domesticated animals generally held as pets;
 - (v) ventilated boxes and packing film specifically designed for use in transporting unprocessed agriculture products;
 - (vi) machinery and equipment specifically designed for agricultural or horticultural use;
- (j) a supply of the following fishing inputs - fibreglass and wooden boats, anchors, grapnels, G.P.S, compass, V.H.F. Radio, fish finder, flare guns and flares, life vests, life ring, buoys and floats, monofilament fishing lines, gaff, harpoons, outboard engines up to 100 hp, inboard diesel engines, winches, spools, line haulers, jigging reels and propellers;
- (k) a supply of invalid carriages and orthopaedic appliances covered in Customs Tariff Headings 87.13 and 90.21;
- (l) the first 50 units of electrical energy provided by Dominica Electricity Services Limited to a dwelling per billing period;
- (m) a supply to a telecommunication carrier not conducting business in Dominica that involves the transmission of

calls and other telecommunication services through Dominica that have their origin and destination outside Dominica, but are not for the consumption or use of persons in Dominica.

(2) SUPPLY OF SERVICES

- (a) a supply of services directly in connection with land, or any improvement thereto, situated outside Dominica;
- (b) a supply of services directly in respect of -
- (i) personal property situated outside Dominica at the time the services are rendered;
 - (ii) goods temporarily imported into Dominica under the special regime for temporary imports specified in the Customs (Control and Management) Act;
 - (iii) a supply of goods referred to in paragraphs (a) or (b) of the definition of “exported from Dominica”; or
 - (iv) the repair, maintenance, cleaning, outfitting, refurbishing or improving a foreign-going aircraft or foreign-going vessel;
- (c) a supply of services directly to a non-resident who is not a taxable person, otherwise than through an agent or other person comprising the storage, repair, maintenance, cleaning, management, or arranging the provision of a container temporarily imported under the special regime for temporary imports specified in the Customs (Control and Management) Act, or the arranging of such services;
- (d) a supply of services -
- (i) by the Dominica Port Authority to a ship; or
 - (ii) by the Manager of Airports to an unregistered non-resident who is the owner or operator of the ship or aircraft, as the case may be, used by that person in international commercial service, for consumption or use in connection with that ship or aircraft;

- (e) a supply of services to a non-resident who is not a taxable person comprising the arranging for the person of -
 - (i) a supply of goods referred to in paragraphs (a) and (b) of the definition of “exported from Dominica”; or
 - (ii) a supply of services to which sub-paragraph (2)(b)(iv) applies;
 - (f) a supply of services other than services referred to in paragraphs 2(m), (n), (t) and (u) of Schedule II to the extent that such services are utilised or consumed elsewhere than in Dominica;
 - (g) a supply of financial services (within the meaning of Schedule II) to a non-resident by an offshore financial institution operating under the Offshore Banking Act;
 - (h) a supply of services comprising -
 - (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of any intellectual property rights for use outside Dominica;
 - (ii) incidental services necessary for the supply of services referred to in sub-paragraph (i); or
 - (iii) the acceptance by a person of an obligation to refrain from pursuing or exercising in whole or part any intellectual property rights for use outside Dominica;
- (3) A supply by a registered person to another registered person of a taxable activity, or part of a taxable activity, as a going concern, if:
- (a) sections 4(2) and 13(4) are satisfied;
 - (b) a notice in writing signed by the transferor and transferee is furnished to the Comptroller within 21 calendar days after the supply takes place; and
 - (c) the notice in sub-paragraph (3)(b) contains the details of the supply;

4. (1) A supply of goods shall not be considered to be exported from Dominica unless -

- (a) immediately before being put on board the exporting ship or aircraft, as the case may be, the goods are produced to the Comptroller of Customs for examination;
- (b) upon demand by the Comptroller of Customs such samples of the goods as he may require for testing or any other purpose are made available;
- (c) the master or commander of the exporting ship or aircraft, or such other person as the master or commander may authorise for the purpose, certifies on the document on which the goods are entered that the goods have been received on board; and
- (d) particulars of the goods are included in the cargo manifest of the ship or aircraft;

(2) A supply of goods shall not be considered to be exported from Dominica if the supply has been or will be re-imported to Dominica by the supplier.

SCHEDULE II

EXEMPT SUPPLIES

1. In this Schedule -

“ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and storage of transported goods or goods to be transported;

“commercial rental establishment” means -

- (a) accommodation in a hotel, motel, inn, boarding house, guest house, hostel, or similar establishment in which lodging is regularly or normally provided to five or more persons at a daily, weekly, monthly, or other periodic charge;

- (b) accommodation in a house, flat, apartment, or room, other than accommodation in respect of which the provisions of paragraph (a) or (c) of this definition apply -
- (i) which is regularly or systematically leased or held for lease as residential accommodation for continuous periods not exceeding 45 calendar days in the case of each occupant of such house, flat, apartment, or room, or
 - (ii) which is leased with utilities and furnishings provided by the lessor;
- (c) accommodation in a house, flat, apartment, room, caravan, houseboat, tent, or caravan or camping site which constitutes an asset, including a leased asset, of a business undertaking or a separately identifiable part of a business undertaking carried on by any person who -
- (i) leases or holds for leasing as residential accommodation, a house, flat, apartment, room, caravan, houseboat, or caravan or camping sites in the course of such business undertaking; and
 - (ii) regularly or normally leases or holds for lease as residential accommodation such house, flat, apartment, room, caravan, houseboat, or caravan or camping sites for continuous periods not exceeding 45 calendar days in the case of each occupant; or
- (d) any other accommodation designated by the Minister by regulation to be a commercial rental establishment, but does not include, unless within paragraph (d) -
- (e) accommodation in a boarding establishment or hostel operated by any employer solely or mainly for the benefit of the employees of such employer or of a related person of such employer or their dependents,

provided such establishment or hostel is not operated for the purpose of making profits from such establishment or hostel for the employer or such related person;

- (f) accommodation in a boarding establishment or hostel operated by a local authority otherwise than for the purpose of making profits from such establishment or hostel; or
- (g) accommodation in a registered hospital, maternity home, nursing home, convalescent home, or clinic;

“dwelling” means any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of a natural person or which is intended for use as a place of residence or abode of a natural person, together with any appurtenances belonging thereto and enjoyed therewith, but does not include a commercial rental establishment;

“education services” means tuition or instruction for students provided by a duly registered or licensed institution being-

- (a) a pre-primary, primary, or secondary school;
- (b) a technical college, community college, or university; or
- (c) an educational institution established for the promotion of adult education, vocational training, technical education; or
- (d) an institution established for the education or training of physically or mentally handicapped persons;
- (e) an institution established for the training of sports persons.

“financial services” means –

- (a) granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor; or

- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring; or
- (c) transactions relating to financial derivatives, forward contracts, options, and similar arrangements; or
- (d) transactions relating to shares, stocks, bonds, and other securities, other than custody services; or
- (e) management of investment funds; or
- (f) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents; or
- (g) other financial services provided by banks within the scope of their banking business.

“international transport services” means the services, including ancillary transport services, of transporting passengers or goods by road, water, or air -

- (a) from a place outside Dominica to another place outside Dominica where the transport or part of the transport is across the territory of Dominica; or
- (b) from a place outside Dominica to a place in Dominica; or
- (c) from a place in Dominica to a place outside Dominica.

“medical services” means a supply of a medical, dental, nursing, convalescent, rehabilitation, midwifery, paramedical or other service, where the service is performed by, or under the supervision and control of, a person who is registered as being qualified to perform that service under the Medical Act;

2. The following supplies are specified as exempt supplies for the purposes of section 18 to the extent provided in regulations -

- (a) a supply of financial services;

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- (b) a supply of medical services and services of registered optometrists except for those cosmetic in nature;
 - (c) a supply of veterinary services;
 - (d) a supply of education services;
 - (e) a sale of real property, including land, attributable to a dwelling;
 - (f) a supply of an accommodation in a dwelling -
 - (i) under a lease or rental of the accommodation;
 - (ii) under a lease of land to the extent that the subject land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land; or
 - (iii) where the supplier is the employer of the recipient, the recipient is entitled to occupy the accommodation as a benefit of his office or employment and his right thereto is limited to the period of his employment or the term of his office or a period agreed upon by the supplier and the recipient;
 - (g) a supply of land used or to be used for agricultural purposes;
 - (h) a supply of any goods or services by the State, or a local authority in connection with a taxable activity, where the consideration for the goods or services is nominal in amount or not intended to recover the cost of such goods or services;
 - (i) a supply of services rendered by a day care business, including after-school care, and by a summer camp for children under the age of 18;
 - (j) games of chance conducted by non-profit organisations, lotteries conducted by Dominica Lotteries Commission, and Windward Islands Lotteries Commission;
 - (k) a supply of unprocessed agricultural products by the producer;

- (l) a supply of bread by the producer of bread;
- (m) a supply of international transport services;
- (n) a supply of the transportation of goods and passengers by land;
- (o) a supply of water by the Dominica Water and Sewerage Company;
- (p) a supply of services by a Trade Union, non-government organisation, community based organisation to a member or to another Trade Union, non-government organisation, community based organisation, where the supply is made in the ordinary course of its objectives as a Trade Union, non-government organisation, community based organisation;
- (q) a supply of services provided directly by a facility to the following persons who need care:-
 - (i) aged persons;
 - (ii) indigent persons;
 - (iii) infirm persons;
 - (iv) disabled persons;
- (r) a supply by a non-profit-making sports association engaged in a sporting activity to its members in return for membership subscription and other fees if the sports association is affiliated with the National Sports Council under the Sports Act or approved by the National Sports Coordinator;
- (s) an export of unprocessed agricultural products;
- (t) a supply of services directly to a non-resident who is not a taxable person, otherwise than through an agent or other person-
 - (i) comprising the handling, pilotage, salvage, or towage of any foreign-going aircraft while situated in Dominica; or

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- (ii) provided in connection with the operation or management of any foreign-going aircraft or foreign-going vessel;
 - (u) a supply of services to a non-resident who is not a taxable person comprising the arranging for the person of services ancillary to the transportation of goods within Dominica;
 - (v) articles of religious worship;
 - (w) a supply of printed matter, articles and materials classified under the Customs Tariff Headings 49.01 to 4903.00 ; and
 - (x) live animals or insects, other than domesticated animals generally held as pets.

SCHEDULE III

EXEMPT IMPORTS

The following imports of goods are exempt imports under section 21 to the extent provided in the regulations -

1. An unconditional gift of goods to an approved charitable organisation, other than for purposes of re-sale.
2. An unconditional gift of goods (other than for re-sale) consigned to the State if the Comptroller of Customs has written notification from the Financial Secretary before entry, that the goods are to be exempt from tax.
3. Goods referred to in paragraph X in the List of Conditional Duty Exemptions specified in the Second Schedule of the Customs Import and Export Tariffs (Amendment) Order 2001 (SRO 18 of 2001) to facilitate the movement of persons.
4. Motor vehicles imported by natural persons on change of permanent residence.

5. Imported goods (including packing containers) that were exported and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or adaptation and without a permanent change of ownership: Provided that the exemption shall not apply if at the time of export of such goods -

- (a) the supply of the goods was charged with the tax at the rate of zero percent under section 17; or
- (b) the supply of those goods was made before the commencement date of the Value Added Tax and that supply would have been charged with tax at the rate of zero percent under section 17, if the supply had taken place on or after the commencement date.

6. Goods (including packing containers) produced or manufactured in Dominica, exported therefrom and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or adaptation: Provided that the exemption shall not apply if at the time of export of such goods -

- (a) the supply of the goods was charged with tax at the rate of zero percent under section 17; or
- (b) the supply of those goods was made before the commencement date of Value Added Tax and that supply would have been charged with tax at the rate of zero percent under section 17, if the supply had taken place on or after the commencement date.

7. Bona fide unsolicited gifts which do not exceed \$75.00 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco.

8. Goods which are shipped or conveyed to Dominica for transshipment or conveyance to any other country.

9. Goods imported by Dominicans returning home for permanent residence.

10. Goods imported by Dominicans upon return from studies abroad.

Passed in the House of Assembly this 29th day of August, 2005.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Assembly

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