

SAINT LUCIA

—
No. 7 of 2012

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I ASSENT

[L.S.]

CORNELIUS LUBIN,
Deputy Governor-General.

August 24, 2012.

SAINT LUCIA

No. 7 of 2012

AN ACT to provide for the imposition and collection of value added tax and for related matters.

[ON ORDER]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PART I
PRELIMINARY

Short title and commencement

1.— (1) This Act may be cited as the Value Added Tax Act, 2012.

(2) Subject to subsection (3), this Act shall come into force on a date to be fixed by the Minister by Order published in the Gazette.

(3) The Minister may by Order published in the Gazette fix different dates for the coming into force of different Parts or different sections of this Act.

Interpretation

2. In this Act —

“approved charitable organisation” means an organisation designated as an approved charitable organisation by the Minister in accordance with the Regulations;

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

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

(b) 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 benefit any person other than by way of the provision of charitable assistance, religious worship, or 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, is 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” includes coins, bills, a cheque, debit card and credit card payments;

“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;

“company” means a body corporate, wherever incorporated, but does not include a partnership or an unincorporated body of persons;

“Comptroller” means the Comptroller of Inland Revenue referred to under the Income Tax Act, Cap.15.02;

“Comptroller of Customs” means the Comptroller of Customs referred to under section 4 of the Customs (Control and Management) Act, Cap. 15.05;

“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 tax payable under this Act, 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 (Control and Management) Act” means the Customs (Control and Management) Act, Cap. 15.05;

“Customs Tariff Headings” means the headings in the Customs Common External Tariff, as amended;

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

“dealer” means a person who buys goods from a manufacturer or producer and sells the goods for wholesale or retail;

“documents” include electronic documents;

“Eastern Caribbean Dollar” or “\$” means, except as otherwise provided in this Act, EC\$ or XCD\$;

“entry”, in relation to goods imported, is to be construed within the meaning of “entered” in the Customs (Control and Management) Act;

“exempt import” has the meaning in section 21;

“exempt supply” means a supply of goods or services to which section 17 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 per cent 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 per cent 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;

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

“goods” mean 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 hire-purchase agreement under the Consumer Credit Act, No. 29 of 2006;

“import” means —

- (a) in the case of goods, bringing or causing to be brought into Saint Lucia; 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 Saint Lucia;

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

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

“importer”, in relation to an import of goods, has the meaning assigned in the Customs (Control and Management) Act;

“Income Tax Act” means the Income Tax Act, Cap. 15.02;

“input tax” means tax paid or payable under this Act 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;

“lease” has the meaning given in article 1509 of the Civil Code, Cap. 242 of the Revised Laws of Saint Lucia 1957;

“local authority” means a local authority under the Local Authorities Ordinance, Cap. 239 of the Revised Laws of Saint Lucia 1957;

“Minister” means the Minister responsible for Finance;

“money” means –

- (a) a coin or paper currency recognised in Saint Lucia 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 chargeable on a taxable supply made by that person;

“person” includes the State, a public authority, a local authority, a natural person, trust, company, partnership and an unincorporated body of persons;

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

- (a) a duly recognised educational institution under the Education Act, Cap.18.01;
- (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 or registered in Saint Lucia under any statute; or
- (e) an approved charitable organisation;

“public authority” includes any entity for the purposes of this Act-

- (a) established by or under the Constitution of Saint Lucia 1978, Cap. 1.01;
- (b) established by statute;
- (c) which forms part of any level or branch of Government;
- (d) owned, controlled or substantially financed by funds provided by the Government or the State; or
- (e) carrying out a statutory or public authority function;

except that a body is a public authority only to the extent of its statutory or public functions;

“public entertainment” means any musical entertainment, theatrical performance, comedy, dance performance,

circus, show or any similar event to which the public is invited;

“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;

“registered recipient” means a registered person receiving a taxable supply;

“registered supplier” means a registered person making a taxable supply;

“Regulations” means Regulations made under section 106;

“Registrar of Lands” means the Registrar of Lands under section 5 of the Land Registration Act, Cap. 5.01;

“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 of the partnership or company limited who, together with shares or other membership interests held by persons who are related to such member under another paragraph of this definition, owns twenty-five per cent 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 paragraph of this definition —
 - (i) controls twenty-five per cent or more of the voting power in the company limited by shares; or
 - (ii) owns twenty-five per cent 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 paragraph of this definition —

(i) controls twenty-five per cent or more of the voting power in both companies; or

(ii) owns twenty-five per cent or more of the rights to dividends or of the rights to capital in both companies; and, for the purposes of paragraphs (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, or a lineal descendant of the person’s grandparents, 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, a public authority or a local authority;

(b) a person resident in Saint Lucia for the year in question for the purposes of the Income Tax Act;

(c) a person, other than an individual, formed or created under a law in force in Saint Lucia or managed and controlled in Saint Lucia, whether or not that person is resident in Saint Lucia for the year in question for the purposes of the Income Tax Act; or

(d) any other person to the extent that the person carries on a taxable activity in Saint Lucia;

“returnable container” means a container —

(a) for which a deposit is charged by the supplier; and

(b) the deposit for which is required by law or agreement to be refunded or allowed as a credit to the person returning it;

“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;

“sales receipt” means a document that a supplier is required to issue under section 34;

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

“State” means the Government of Saint Lucia but does not include a public authority;

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

“supply” has the meaning in section 4;

“tax” means value added tax;

“taxable activity” has the meaning in section 6;

“taxable person” has the meaning in section 11 and includes any reference in this Act to a registered person or a taxpayer;

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

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

“tax debit note” has the meaning in section 35;

“tax credit note” has the meaning in section 35;

“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 34;

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

“tax period” has the meaning in section 36;

“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 or herself the administration or control of property subject to a trust;

“unregistered recipient” means a person who is not registered receiving a taxable supply;

“value added tax” means the tax imposed under this Act and includes any amount, including interest or a penalty payable under this Act to the extent that it is treated as tax for the purposes of this Act;

“value of an import” has the meaning in section 24;

“value of a supply” has the meaning in section 20.

Fair market value

3.— (1) 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 the given date in Saint Lucia, being a supply or import freely offered and made between persons who are not related persons.

(2) Where the fair market value of a supply or import of goods or services at a given date cannot be determined under subsection (1), 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 the given date in Saint Lucia, 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 cannot be determined under subsection (1) or (2), 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.

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

(5) 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 enable the goods and services to perform the same functions and to be commercially interchangeable;

“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.

Supply

4.— (1) Subject to this Act —

(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) transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water.

(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 person placing the bet.

(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) The Minister may by Regulations 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 zero rate; or

(b) 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 that person was not entitled to claim a deduction for input tax imposed and paid on the acquisition of such goods or services, 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 per cent in terms of paragraph 2(1)(i) of the First Schedule, 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 ten per cent 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, Cap. 145 of the Revised Laws of Saint Lucia 1957, 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 supply of goods or the rendering of services.

(21) A person whose registration is cancelled under section 14 is deemed to have made a taxable supply in Saint Lucia of —

(a) except as provided in paragraph (b), the value of goods on hand; and

(b) the value of capital goods for income tax purposes, as if those capital goods were sold,

on 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 immovable property does not include the supply of services incidental to that supply or the import of services incidental to that supply.

(23) The Minister may by Regulations prescribe rules to determine whether a transaction constitutes a supply for the purposes of this section.

Supply by agent or auction

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

(a) by a person as agent for a principal is a supply by the principal;
or

(b) 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.

(5) In this section “principal” means a person on whose behalf an agent acts.

Taxable activity

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

(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 a 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 tax officer or 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 73.

(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.

(4) Subject to subsections (5) and (6), a decision made and a notice or communication issued or signed by the Comptroller or the Comptroller's 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.

Secrecy and oath of secrecy

8. — (1) Subject to this section, a tax officer or other person carrying out the provisions of this Act shall not —

- (a) disclose to any person any matter in respect of any other person that may in the exercise of the tax officer's powers or the performance of the tax 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 tax officer's powers or the performance of the officer's duties under this Act or by Order of a Court.

(2) A person referred to in subsection (1) is not required to produce in any Court, any return of income, assessment or notice of assessment or to divulge or communicate any information which comes to his or her knowledge in the performance of his or her duties under this Act except to the extent to which it is necessary for the purposes of this Act.

(3) 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 law in force in Saint Lucia which the Comptroller or the Comptroller of Customs has the power, duty or function to administer;

(ii) a person authorised by any enactment to receive such information;

(iii) the competent authority of the Government of another country with which Saint Lucia 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 in force in Saint Lucia;

(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.

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

(5) 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 law administered by the Minister, Comptroller or the Comptroller of Customs.

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

(7) 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.

(8) Nothing in this section prevents the Comptroller and the Comptroller of Customs from exchanging information in order to perform their duties under any enactment in force in Saint Lucia that is administered by the Comptroller and the Comptroller of Customs.

(9) A tax officer, other person appointed under or employed in carrying out the provisions of this Act or a person to whom confidential information is disclosed under subsection (3)(a) or (3)(b) shall make an oath or affirmation of secrecy in the manner and form approved by the Comptroller.

(10) An oath or affirmation under subsection (9) may be taken before the Comptroller, who is hereby authorised to administer the oath or affirmation, or before a magistrate, and no fee is payable.

(11) The obligation as to secrecy imposed by this section continues to apply in respect of any person although he or she ceases to have any official duty under or be employed in carrying out the provisions of this Act.

(12) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.

PART III IMPOSITION AND RATE OF TAX

Imposition of tax and persons liable

9.— (1) Subject to this Act, a tax to be known as the value added tax shall be charged and paid in accordance with this Act on -

- (a) every taxable supply by a taxable person;
- (b) every import of goods or import of services, other than an exempt import;
- (c) the value of a supply of goods by a registered or unregistered person, mission, organization or government that obtained an exemption from tax or a refund of the tax on the import or domestic acquisition of such goods if such supply occurs within five years after the goods are acquired.

(2) Except as otherwise provided in this Act, tax payable under subsection (1) shall —

- (a) in the case of a supply, be accounted for by —
 - (i) the taxable person; or
 - (ii) the person specified in subsection (1) (c);
making the supply;
- (b) in the case of an import of goods, be paid by the importer;
- (c) in the case of an import of services, be paid by the recipient
of services.

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

Rate of tax

10.— (1) The amount of tax shall be calculated in accordance with this Act at the rate of fifteen per cent of the value of taxable goods or services imported into Saint Lucia or of the value of taxable supplies of goods or services except in the case of a supply that is zero rated.

(2) Notwithstanding subsection (1) the Minister may, by Order, specify the rate of tax for goods and services provided by hotels.

(3) The Minister may, by Order, vary the rates specified in subsections (1) and (2).

(4) An Order made pursuant to this section is subject to the affirmative resolution of Parliament.

(5) For the purposes of this section, “hotel” means a building or group of buildings in the State occupied together comprising not less than five bedrooms for the purpose of providing hotel accommodation for reward.

PART IV REGISTRATION

Taxable person

11.— (1) A taxable person is a person who is registered or is required to register under section 12 of this Act or a Regulation made pursuant to this Act.

(2) Where a person is required to register under section 12(1), 12(6), 12(7), or 12(9), that person is a taxable person from the date specified for that person under section 13(6)(a) and (b).

(3) Where a person who applies for registration under section 12(5) and is registered under section 13(2), that person is a taxable person from the date specified under section 13(6)(c).

(4) Where a person is required to register under section 12(10) that person is a taxable person from the date specified in section 13(6)(d).

Registration

12.— (1) Subject to this Act, every person who carries on a taxable activity and is not registered, shall apply for registration within ten working days of —

- (a) the end of any period of twelve or fewer months where during that period the person made taxable supplies the total value of which exceeded one hundred and eighty thousand dollars; or
- (b) the beginning of any period of three hundred and sixty-five 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 one hundred and eighty thousand dollars.

(2) In determining whether a person is required to apply for registration under subsection (1), (9) or (10) 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), (9) or (10) the value of a person's supplies is determined under section 20.

(4) A person is not required to apply for registration under subsection (1), (9) or (10) where the Comptroller is satisfied that the value of taxable supplies exceeded the amount specified under subsection (1) solely as a consequence of —

- (a) the cessation;
- (b) substantial and permanent reduction in the size or scale; or
- (c) the replacement of old capital goods;

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), (9) or (10) 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) or (10), 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 Saint Lucia for the year in question for the purposes of the Income Tax Act, supplies made by that person are taken into account for the purposes of subsection (1), (9) or (10) only where the supply is made, or to be made in Saint Lucia.

(9) Notwithstanding subsection (1) or (10), a promoter of public entertainment and a licensee and proprietor of a place of public entertainment shall apply for registration at least forty-eight hours before the commencement of the public entertainment promoted by them if, within any period of twelve 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 one hundred and eighty thousand dollars.

(10) Notwithstanding subsection (1), a person who carries on a taxable activity and is not registered shall apply for registration where—

- (a) during any period of three months that person made taxable supplies which exceed forty-five thousand dollars; 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 one hundred and eighty thousand dollars.

(11) A person required to register under subsection (10) shall apply for registration within ten working days of the end of the third month after which the person's taxable supplies exceeded forty five thousand dollars.

(12) A person is subject to the one hundred and eighty thousand dollars annual threshold, wherever that amount appears in this section,

if the person renders services that are subject to the one hundred and eighty thousand dollars threshold and also makes supplies that are subject to the one hundred and eighty thousand dollars threshold.

(13) Where any person has proved to the satisfaction of the Comptroller that such person has commenced any business or any project to carry on a business or project in Saint Lucia, and undertakes to make taxable supplies in such business or project within a period of eighteen months from commencement of such business or project, he or she may apply to register pursuant to subsection (5) and the Comptroller may register such person subject to such conditions as may be specified by him or her, and allow credit for input tax in respect of such business or project subject to the provisions of sections 30 and 31.

(14) Where the Comptroller is satisfied that in consideration of the nature of the business or project that the period of eighteen months is not sufficient to make taxable supplies he or she may extend such period on the basis of an application made by such registered person to that effect.

(15) Where any person registered by virtue of subsection (14) does not commence making taxable supplies within the period of eighteen months or extended period approved by the Comptroller, the person is liable for the amount of tax that otherwise would have been payable by the person during the eighteen months or extended period, but for the provisions of subsections (5) and (14).

Registration procedure

13.— (1) An application for registration under section 12 must be in the form approved 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 fifteen working days of receipt of the application, unless the Comptroller is satisfied that the person is not eligible to apply for registration under section 12.

(3) Notwithstanding subsection (2), where an application for registration is made under section 12 (5) the decision to register or not is at the discretion of the Comptroller who must inform the applicant of the decision within thirty calendar days of receiving the application.

(4) An application for registration under section 12(5) must not be accepted where —

- (a) the person has no fixed place of abode or business;
- (b) the person does not keep proper records; or
- (c) 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 12, 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 12(1)(a), from the beginning of the tax period immediately following the end of the period of twelve or fewer months;
- (b) a person referred to in section 12(1)(b), 12(6), 12(7), or 12(9), from the beginning of the three hundred and sixty-five 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 12(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 12(10), from the beginning of the tax period immediately following the end of the three month period.

(7) The Comptroller shall serve a notice in writing on an applicant for registration of the decision in respect of the application within twenty-one 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 under Part IX of this Act.

(9) The Comptroller shall 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 identification number.

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

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

(12) A taxable person shall notify the Comptroller, in writing, within twenty-one 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 14(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.

(14) For the purposes of subsections (2) and (7), if within the twenty-one-day period, the Comptroller requests additional information from the applicant in order to determine if the applicant is eligible to apply for registration under section 12, the twenty-one day period is

suspended until the Comptroller receives the required information in the form prescribed by the Comptroller.

Cancellation of registration

14.— (1) Subject to subsections (2) and (13), a taxable person who ceases to carry on taxable activities shall notify the Comptroller of that fact within five working 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 shall 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) If the Comptroller is satisfied that a taxable person —

- (a) is not carrying on a taxable activity;
- (b) was not required or entitled to apply for registration;
- (c) has no fixed place of abode or business;
- (d) has not kept proper accounting records relating to any business activity carried on by that person; or
- (e) has not submitted regular and reliable tax returns as required by section 37,

the Comptroller may cancel the registration of the person 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 the Comptroller shall notify the person in writing of the date on which the cancellation takes effect.

(5) A date determined by the Comptroller for the cancellation of registration under subsection (4) 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.

(6) Subject to subsection (7) or (8), 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 twelve months has not been, or

(b) in the period of twelve months then beginning will not be more than the amount specified under section 12(1).

(7) A person —

(a) required to register under section 12(1) or (10) who ceases to satisfy the criteria under section 12(1) or (10), or

(b) registered as a result of an application under section 12(5),

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

(8) Subsection (6) does not apply to an auctioneer, the State, or a local authority.

(9) Where the Comptroller is satisfied that a taxable person who has made an application under subsection (6) or (7) is entitled to have a registration cancelled, the Comptroller is required to cancel that 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.

(10) 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.

(11) Where the registration of a person is cancelled, the Comptroller shall remove the person's name and details from the register described in section 13(10).

(12) 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 under Part IX of this Act.

(13) A taxable person who sells a going concern or engages in a similar transaction, such as a merger, shall 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.

Registered person to recover tax from person supplied

15.— (1) A registered person who makes a taxable supply may recover from the person to whom the supply is made an amount calculated by multiplying the value of the supply by the rate of tax charged on that supply and, unless the supply is expressed to be for a consideration that includes an amount in respect of tax, that amount is recoverable in addition to any other consideration for the supply.

(2) A registered or other person who, knowingly otherwise than in accordance with subsection (1), recovers or seeks to recover from any other person an amount represented to be in respect of tax commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or imprisonment for a term not exceeding two years or to both.

PART V
TAX ON SUPPLY

DIVISION 1
Zero rated and exempt supply

Zero rated supply

16. — (1) The supply of goods specified in the First Schedule is zero rated for the purposes of this Act.

(2) The supply of services specified in the First Schedule is zero rated for the purpose of this Act.

(3) Where the supply of any goods or the supply of any services is zero rated, the rate at which tax is regarded as being charged is zero per cent, and consequently no tax shall be charged on the supply.

(4) Where a taxable person has applied the rate of zero per cent 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

17.— (1) Subject to subsection (3), a supply of goods is an exempt supply if it is specified in the Second Schedule.

(2) Subject to subsection (3), a supply of services is an exempt supply if it is specified in the Second Schedule.

(3) A supply of goods or services is not an exempt supply if, in the absence of subsections (1) and (2), the supply would be charged with tax at the rate of zero per cent under section 16.

DIVISION 2
Rules relating to supply

Time of supply

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

- (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 credit 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 or her 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 installments 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 section 4(21) occurs at the time the registration is cancelled.

(14) The Minister may by Regulations prescribe rules to determine the time of a supply of particular goods or services which are not governed by this section.

Place of supply

19.— (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, at 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 and to Regulations, a supply of a service takes place at the location of the place of business of the supplier 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, licence, 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;
- (g) the leasing of tangible personal property, other than transport property;
- (h) the supply of goods via electronic commerce and the supply of internet access or similar services; or
- (i) telecommunication services.

(5) The supply of public entertainment or any 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 immovable property takes place where the immovable 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 Saint Lucia which would be treated as supplied outside Saint Lucia under subsections (4) to (7) are considered as supplied in Saint Lucia and are considered as exported from Saint Lucia for the purposes of the First Schedule.

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

(10) The Minister may by Regulations prescribe rules to determine the place of a supply of particular goods or services which are not governed by this section.

Value of supply

20.— (1) Subject to the remaining provisions of this section, 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 taxable 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 the goods or services; or
- (b) the fair market value of the supply.

(5) The Minister may by Regulations 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 the 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 the 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 an 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 the purposes of subsection (11), "issuer" means the holder of a token, voucher, gift certificate or stamp issued by a taxable person.

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

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

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

(16) 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.

(17) 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.

(18) The value of a supply referred to in section 4(21) is equal to —

- (a) except as provided in paragraph (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 capital allowance under the Income Tax Act, the undepreciated cost of the goods deemed to be supplied.

(19) Notwithstanding this section, the value of services consisting of a hotel accommodation or tour package in Saint Lucia arranged by a non-resident, unregistered travel agent or a non-resident, unregistered tour operator is the consideration charged by the registered supplier for the services, less the commission or fee paid to that travel agent or tour operator for those services.

(20) For the purposes of subsection (19) —

- (a) the deduction for the commission or fee paid cannot exceed twenty per cent of the registered supplier's published rates for those services; and

(b) the output tax reported on hotel accommodation or tour package specified in subsection (19) is not less than the tax the registered supplier charged the foreign travel agent or tour operator for the covered services.

(21) The Minister may by Regulations prescribe rules to determine the value of a supply of particular goods or services not governed by this section.

PART VI
TAX ON IMPORTS

DIVISION 1
Exempt Imports

Exempt imports

21.— (1) An import of goods is exempt from the payment of tax where the import is specified in the Third Schedule.

(2) An import of services is exempt from the payment of tax where the import is specified in the Third Schedule.

DIVISION 2
Tax on Import of Goods

Calculation and collection of tax on import of goods

22.— (1) Tax charged on the import of goods shall be of an amount calculated by multiplying the rate of tax applicable under this Act by the value of the import of goods.

(2) The Comptroller of Customs shall on behalf of the Comptroller be responsible for the collection of the tax to which this Division applies.

(3) Tax on the import of goods shall be charged and payable under this Act but, for the purposes of collecting and enforcing the payment of this tax the Customs (Control and Management) Act applies with the necessary changes in the same manner as if it were a duty of customs.

(4) The Comptroller of Customs may, by virtue of subsection (3), 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.

(5) Where the interpretation of a provision of this Act by the Comptroller differs from the interpretation of a provision of this Act by the Comptroller of Customs, the interpretation of the Comptroller prevails unless, where necessary, a determination on the issue is made by a Court.

Time of import of goods

23. An import of goods occurs when the goods are entered for home use for the purposes of the Customs (Control and Management) Act.

Value of import of goods

24. — (1) For the purposes of this Act, the value of an import of goods into Saint Lucia is —

- (a) the value of the goods determined in accordance with the Second Schedule to the Customs (Control and Management) Act, whether or not duty is payable under that Act; and
- (b) any duties, taxes, other than the tax charged under this Act, imposed, paid or payable upon the entry of imported goods.

(2) Notwithstanding subsection (1), where the goods are re-imported after being exported for repair, renovation or improvement and it is shown that the goods have been subjected to a process of repair, renovation or improvement abroad and where the form or character of the goods has not been changed, the value of the goods, for the purposes of calculating tax, if any, on the entry of the goods when the goods are re-imported, is the amount of the increase in the value of the goods that is attributable to the process.

Import declaration and payment of tax for importation of goods

25.— (1) The Comptroller of Customs —

- (a) shall collect, at the time of import and on behalf of the Comptroller, any tax due under this Act on an import of goods

and, at that time, obtain the name and the taxpayer identification 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 or her behalf in respect of imports through the postal services.

(2) Where tax is payable on an import of goods, the importer shall, upon such entry, 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) must —

(a) be in the form approved 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 specified 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 Regulations 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.

DIVISION 3 Tax on import of services

Time of import of services

26. An import of services occurs at the time determined by applying section 18 to the import on the basis that the import is a supply of services.

Value of import of services

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

(2) 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; or

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

(3) 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.

Import declaration and payment of tax for importation of services

28.— (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) shall —

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

(b) pay the tax due in respect of the import within twenty 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 approved 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 specified by the Comptroller.

PART VII
CALCULATION OF TAX PAYABLE

Tax payable for tax period

29.— (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 tax period, less the total input tax deduction allowed to the person under section 30 for the tax 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 tax period, the amount of the excess is dealt with in accordance with section 57.

Input tax deduction

30.— (1) Subject to this section, the total amount of input tax allowed as a deduction for the purposes of section 29 is the sum of —

- (a) the input tax payable in respect of taxable supplies made to the person during the tax period and the input tax 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 32 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 18(11) by the supplier for tax period; and
- (e) any amount carried forward under section 57(7);
- (f) subject to paragraphs (g), (h), and (i), an amount equal to seventy per cent of the tax fraction of the lesser of —
 - (i) the amount paid for; or
 - (ii) the fair market value, including tax,

of second-hand goods acquired in Saint Lucia during the tax period by a registered person from a person, registered or not registered, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies;

(g) an amount equal to seventy per cent of the tax fraction of the lesser of-

- (i) the amount paid, or
- (ii) the fair market value, including tax,

for the second-hand goods acquired in Saint Lucia during the tax period by a registered person from a related person, registered or not registered, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies, but not more than the tax imposed on the supply of the goods to the related person;

(h) an amount equal to seventy per cent of the tax fraction of the value of second-hand goods that are repossessed in Saint Lucia during the tax period by a creditor who is a registered person, from a defaulting debtor, whether registered or not, in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies, but not more than the tax imposed on the supply of the goods to the defaulting debtor;

(i) an amount equal to seventy per cent of the tax fraction of the value of second-hand goods that are acquired in Saint Lucia during the tax period by an insurer who is a registered person, from an insured person in a transaction not subject to tax if the goods-

- (i) are acquired in settlement of an insurance claim;
- (ii) are taxable at a positive rate under this Act; and
- (iii) are acquired for re-supply in a taxable transaction, but not more than the tax imposed on the supply of the goods to the insured person.

(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 note or tax credit note, as the case may be, in relation to the supply, has been provided in accordance with section 34 or 35 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 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 financial year 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 deduction claimed by the taxable person is correct.

Input tax deduction allocation and disallowance rules

31.— (1) A taxable person shall not under section 37 deduct any amount of 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;

(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; or

(d) a taxable supply to, or import by, the person of goods or services acquired for the repair or maintenance of a passenger vehicle, unless the person is in the business of refurbishing for resale or of hiring of such vehicles, and the repair or maintenance was directly related to the provision of taxable supplies in the ordinary course of that refurbishing or hiring business.

(2) Subject to subsections (3) and (4), 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 30(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 is to 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 is to 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-

- (i) 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 30(1)(a), less the input tax accounted for under paragraphs (a) and (b);
- (ii) B is the total amount of taxable supplies made by the taxable person during the period; and
- (iii) C is the total amount of all supplies made by the taxable person during the period.

(3) Where the fraction B/C in subsection (2)(c) is more than zero point nine zero, the taxable person may deduct the total amount of input tax on supplies and imports described in that paragraph.

(4) In the case of a bank or other financial institution making both exempt and taxable supplies for a tax period, subsection (2) does not apply and the amount of the input tax allowed as a deduction under section 30(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.

(5) Notwithstanding subsection (2), 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.

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

(7) In this section —

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

“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.

Post-sale adjustments and bad debts

32.— (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 of the goods or services are returned to the supplier.

(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 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 the purposes of section 30, 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 30 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 subsection (13) a registered person is allowed an input tax deduction under section 30 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) A is the amount allowed as a deduction under subsection (9);
- (b) B is the amount of the bad debt recovered; and
- (c) C is the amount of the bad debt previously written off.

(13) A deduction is allowed under subsection (9) 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).

Interest on unpaid tax

33.— (1) Tax payable under this Act which is not paid by the date upon which it becomes due and payable bears interest at the rate of one point two five per cent per month or part of a month for the period during which it remains unpaid.

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

(3) Interest paid by a person under subsection (1) must be refunded to the person to the extent that the tax 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.

(5) Interest payable under this section is in addition to the late payment penalty imposed under section 46(4).

Tax invoices and sales receipts

34.— (1) Subject to subsection (2), a registered supplier, making a taxable supply to a registered recipient, shall provide the registered recipient with an original tax invoice for the taxable supply in the form and containing the information specified by the Comptroller.

(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 shall not provide a tax invoice in circumstances other than the circumstances specified under this section.

(4) Subject to subsection (6), a registered supplier shall not issue more than one tax invoice for each taxable supply.

(5) Where, within sixty 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 shall comply with the request within fourteen 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 an unregistered recipient, shall provide the unregistered recipient with a sales receipt for the taxable supply in the form and containing the information specified by the Comptroller.

(8) Notwithstanding this section -

- (a) a registered supplier making a taxable supply to a person, mission, organisation, or government specified in section 59(1) may issue an original tax invoice covering that supply to the person, mission, organisation, or government in the form and containing the information specified by the Comptroller;
- (b) if a recipient referred to in paragraph (a) claims to have lost the original tax invoice for a taxable supply, the registered supplier may provide a copy clearly marked "copy"; and
- (c) a registered person making a taxable supply consisting of one or more items totalling not more than five dollars is not required to issue a tax invoice or sales receipt for that supply.

(9) A person shall not -

- (a) issue a false invoice or a false sales receipt; or
- (b) use a false taxpayer identification number.

(10) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding one year or to both.

Tax credit and debit notes

35.— (1) Where a tax invoice has been issued in the circumstances specified under section 32(2)(a) and the amount shown as tax charged on 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 the Regulations.

(2) A person shall 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 32(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 the Regulations.

(4) A person shall not provide a tax debit note in any circumstances other than the circumstances 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".

(7) A person shall not knowingly or recklessly issue a false tax credit note or a false tax debit note.

(8) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or imprisonment for one year or both.

PART VIII TAX PERIOD, RETURNS AND ASSESSMENTS

Tax period

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

Returns

37.— (1) Subject to section 38, every taxable person shall file a tax return for each tax period with the Comptroller within twenty-one calendar days after the end of the period, whether or not tax is payable in respect of that period.

(2) A tax return must -

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

(b) state the information necessary to calculate the tax payable in accordance with section 29 for the period; and

(c) be filed in the manner approved by the Comptroller.

(3) In addition to or instead of any tax 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 form approved by the Comptroller 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 under Part IX of this Act.

(5) A person who, for two or more consecutive or non-consecutive tax periods, fails to file returns within the time and in the manner prescribed under this section commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both.

Extension of time

38.— (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 37 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 46.

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

Assessments

39.— (1) 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 where —

(a) a person fails to file a return as required by section 37 or fails to furnish an import declaration as required by section 25 or 28;

- (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 per cent 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 101(1); or
 - (g) a taxable person supplies goods or services and the supply is a taxable supply charged with tax at a positive rate and the taxable person represents that the rate of zero per cent is charged on the 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 101(1); 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 willful 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 case other than that referred to in paragraph (a), 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 sixty calendar days after the date that notice of such assessment is served on the taxpayer.

(9) 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.

(10) Where an assessment has been made under this section, the Comptroller shall serve a notice of the assessment on the person assessed, stating -

- (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.

(11) 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 in the notice, amend an assessment by making such alterations or additions to the assessment as the Comptroller considers necessary, in which case the Comptroller shall serve notice of the amended assessment on the person assessed.

(12) An assessment under this section may be amended by the Comptroller notwithstanding that the tax or refund as assessed may already have been paid.

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

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

General provisions relating to assessments

40.— (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 relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) An assessment or other document purporting to be made, issued or executed under this Act is not to 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 the assessment or other document.

PART IX OBJECTIONS AND APPEALS

Objections

41.— (1) A person dissatisfied with an appealable decision may lodge an objection to the decision with the Comptroller within thirty calendar days after the service of the notice of the decision.

(2) Where the Comptroller is satisfied that owing to absence from Saint Lucia, sickness, or other reasonable cause, the person was prevented from lodging an objection within the time specified under subsection (1) 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 (1).

(3) 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 of all of the tax not in dispute and fifty per cent of the amount of tax in dispute.

(4) Where a person who is dissatisfied with an appealable decision fails to file an objection within the time specified in subsection (1) or where the reason for filing the objection after the time specified in subsection (1) is not accepted by the Comptroller under subsection (2), the objection shall not be regarded by the Comptroller and the whole amount of the tax assessed becomes payable by the person liable to tax.

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

(6) The Comptroller shall serve the person objecting with a notice in writing of the decision on the objection.

(7) If the Comptroller has not made a decision on the objection, and ninety calendar days have passed since the objection was lodged, the Comptroller is deemed to have made a decision to allow the objection.

(8) A person dissatisfied with a decision of the Comptroller under subsection (2) may challenge the decision under this Part.

(9) For the purposes of subsection (3), if an assessment is based solely on a calculation error in a filed return, an objection to the assessment does not suspend the taxpayer's obligation to pay any of the amount assessed.

(10) In this section "appealable decision" means an assessment, or a decision described in sections 13(7), 14(12), 31(7), 37(4), 38(3), 39(6), 41 (9), 42 (7), 46 (5), 50(5), 57(13), 61(2) and 85(4).

Appeals to Appeal Commissioners

42.— (1) A person dissatisfied with a decision on the objection under section 41(5) may, within thirty calendar days after being served with

notice of the decision lodge a notice of appeal with the Appeal Commissioners and, if lodged shall serve a copy of the notice of appeal on the Comptroller.

(2) Upon application in writing by a person dissatisfied with a decision under section 41 (5), the Appeal Commissioners may, where satisfied that owing to absence from Saint Lucia, sickness, or other reasonable cause, the person was prevented from lodging a notice of appeal within the time specified under subsection (1) 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 (1).

(3) In an appeal to the Appeal Commissioners against an objection decision the Appeal Commissioners may consider the objection only if the Comptroller —

- (a) certifies that the person assessed has paid the full amount of the tax due under the assessment; or
- (b) 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 interest that may become payable.

(4) 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.

(5) 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.

(6) A person dissatisfied with a decision of the Appeal Commissioners under subsection (2) may challenge the decision under this Part.

(7) Sections 108, 109, 110, and 111 of the Income Tax Act, apply to appeals under this Act to the extent that the sections are not inconsistent with the provisions of this Act.

(8) If the Appeal Commissioners have not made a decision on the appeal and one hundred and eighty calendar days have passed since the objection was lodged, the Appeal Commissioners are deemed to have made a decision to allow the appeal.

(9) In this section “Appeal Commissioners” means the Appeal Commissioners appointed under section 108 of the Income Tax Act.

Appeal to the High Court

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

(2) An appeal to the High Court under subsection (1) may be made 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.

(3) 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.

Appeal to the Court of Appeal

44.— (1) A person who is dissatisfied with a decision of the High Court may, within forty-two calendar days after being notified of the decision, appeal to the Court of Appeal and the Court of Appeal 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.

(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.

Burden of proof

45. 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.

PART X PAYMENT, COLLECTION AND RECOVERY

Due date for payment of tax

46.— (1) Tax payable under this Act is due and payable —

- (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 sections 25 and 28 in respect of the import; or
- (d) by any other person, by the date a taxable transaction occurs as determined under this Act.

(2) Subject to section 41(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 to 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 the purposes of section 33.

(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 per cent of the amount of tax due.

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

Allocation of payments

47. 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

48.— (1) Tax that is due and payable under this Act is a debt due to the Crown and payable to the Comptroller, and may be recovered in the manner provided by the Income Tax Act, or by court action in the manner provided by the Income Tax Act with the necessary modifications, 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.

(3) A portion of the tax due and payable to the Comptroller under this Act, being such portion as may be determined from time to time by the Comptroller after consultation with the Minister of Finance, is to be paid into a Special Fund established in accordance with section 9 of the

Finance (Administration) Act, Cap. 15:01 to pay the refunds required to be paid under this Act.

Recovery of tax from persons leaving Saint Lucia

49.— (1) Where the Comptroller has reasonable grounds to believe that a person may leave Saint Lucia without paying all tax due under this Act, the Comptroller may obtain an order from a Court, directing the Chief Immigration Officer to take the necessary steps to prevent the person from leaving Saint Lucia until the person makes —

(a) payment in full; or

(b) an arrangement satisfactory to the Comptroller for the payment of the tax.

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

Security

50.— (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 within a specified time that is or may become payable by the person under this Act.

(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) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year or to both.

(4) Where security under subsection (1) is in cash and the Comptroller is satisfied that the security is no longer required, the

Comptroller shall apply the amount of the security as specified under section 57(4).

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

(6) A promoter of public entertainment shall not allow the public entertainment to take place unless the promoter has paid the amount required under subsection (1) and received the Comptroller's written approval.

(7) A promoter of public entertainment who contravenes subsection (6) commits an offence and is liable —

(a) on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both; and

(b) to a tax at the rate under subsection 10(1) on the value of the tickets printed for entertainment.

Preferential claim to assets

51.— (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—

(a) the assets of the person liable to pay the tax; and

(b) any asset of a related person if the Comptroller reasonably believes that the person liable to pay the tax legally owns the asset and transferred the asset to the related person in order to avoid the payment of tax.

(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 High Court or the Registrar of Lands to register a security interest in any fixed assets,

which are 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 (3), the Registrar of the High Court or the Registrar of Lands shall register the notice of security without fee, as if the notice were an instrument 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 of the High Court or the Registrar of Lands registers a security interest referred to in subsection (4) the Registrar shall notify the owner of the property, within fifteen days of such registration that the security interest has been registered.

(6) The Comptroller shall serve a copy of the notice referred to in subsection (4) on the person in default and that person may pay the tax in default and have the notice removed.

Seizure of goods and vehicles

52.— (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 a Magistrate for an Order to authorise him or her to seize the goods and the Magistrate on being satisfied of the reasons for such application shall issue the Order.

(2) The Comptroller may seize any vehicle used in the removal or carriage of goods 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 of the vehicle 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 (9).

(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 is seized under subsection (2), the Comptroller is required to serve on the owner of the goods or vehicle or the person who had custody or control of the goods or vehicle immediately before seizure, a notice in writing, within fourteen days after the seizure-

- (a) identifying the goods or vehicle;
- (b) stating that the goods or vehicle has 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 shall not 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 shall post a notice of the seizure in a conspicuous place on the premises from where the goods were seized.

(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 50, 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 shall 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) twenty working days after the seizure of the goods; or
- (ii) twenty working days after the due date for payment of the tax on the supply or import of the goods.

(9) Where the detention period in subsection (8) has expired, the Comptroller —

- (a) may subject to paragraph (b) sell the goods in the manner specified under section 53(4) and apply the proceeds of sale as set out in section 53(5);
- (b) before he or she sells a vehicle seized under paragraph (a), shall obtain an order from the High Court authorizing the Comptroller to sell the vehicle.

(10) The Judge shall not grant an order under subsection (9), unless the Judge is satisfied that the seizure was in order.

(11) Notwithstanding the provisions of this section, the Comptroller may proceed under section 48 with respect to any balance owed if the proceeds of sale are not sufficient to meet the costs thereof and the tax due.

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

Distress proceedings

53.— (1) The Comptroller may recover unpaid tax by distress proceedings against the personal property of the person liable to pay the tax.

(2) For the purposes of executing distress under subsection (1), the Comptroller may, upon warrant issued by a Magistrate —

- (a) at any time enter any house or premises; 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 working 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 to pay the tax.

(4) Where the person liable to pay the tax 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, after the ten working days period referred to in subsection (3),

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) shall 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 57, the remainder of the proceeds, if any, shall be restored to the person liable to pay the tax.

(6) Nothing in this section precludes the Comptroller from proceeding under section 48 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 to pay the tax 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

54.— (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 that has become payable under sections 33 and 46.

(2) The Comptroller shall serve a 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 or interest from the taxable person making the supply.

(5) For the 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 or interest 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.

Recovery of tax from third parties

55.— (1) Where a person liable to pay tax under this Act, fails to pay tax 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 to pay the tax;

- (b) holding or who may subsequently hold money for, or on account of, the person liable to pay the tax;
- (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 to pay the tax notwithstanding any other law,

to be the agent of that person to pay the money or deliver the property to the Comptroller within such period specified in the notice or if on such date no money is due or held to which this subsection applies, within fifteen 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 to pay the tax.

(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 to pay the tax 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.

(5) A person who fails to comply with a notice under this section is liable for the amount of the tax to which the notice applies.

(6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

Duties of receivers

56.— (1) A receiver shall notify the Comptroller in writing within fourteen calendar days after being appointed to the position or taking

possession of an asset of the person liable to pay tax in Saint Lucia, whichever first occurs.

(2) 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.

(3) A receiver —

- (a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Comptroller under subsection (2), 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;
- (c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(4) A receiver is personally liable to the extent of any amount required to be set aside under subsection (3) 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.

(5) In this section “receiver” means a person who, with respect to an asset in Saint Lucia 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) an executor or administrator of the estate of a deceased person; or
- (e) any other person conducting business on behalf of a person legally incapacitated.

PART XI
CARRY FOWARDS, REFUNDS AND INTEREST

Carry forward of excess credits and refund of tax

57.— (1) Where-

- (a) the total amount of input tax deductible by a taxable person under section 30 for a tax period exceeds the person's output tax for that period; or
- (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 subsections (5), (14), and (16), 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 three 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 by the Comptroller.

(4) By the end of the first 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 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 111; and
- (b) is required to refund any excess remaining to the taxable person.

(5) Where at least fifty per cent of the amount of the taxable supplies of a taxable person for the taxable period is taxed at a rate of zero percent, and the person reports an excess described in subsection (1)(a) for the tax 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 by the Comptroller.

(6) By the end of the first calendar month following the month in which the claim for refund described in subsection (5) was received 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 111; 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 one hundred dollars the excess must be carried forward to the next succeeding tax period and must be accounted for as provided in section 30(1)(e).

(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 specified by the Comptroller.

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

(a) the Comptroller shall 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 thirty 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 under Part IX of this Act.

(14) Notwithstanding anything in this section, the Comptroller may first apply the amount of any excess under subsection (1) in reduction of any tax, levy or interest payable by the person in terms of this Act, other taxes collected by the Comptroller under any other Acts, and any unpaid amounts under the Acts repealed by section 111.

(15) For the purpose of this section, subsection (1)(b) applies to a person entitled to a refund of tax under section 59(1) and (3).

(16) A person shall not improperly claim a refund under subsections (3), (5), or (8).

(17) A person who contravenes subsection (16) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand

dollars or to imprisonment for a term not exceeding two years or to both.

Interest on overpayment

58. — (1) Where the Comptroller fails to pay a refund of tax relating to an excess under section 57 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 41;
- (b) a decision of the Appeal Commissioners under section 42;
- (c) a decision of the High Court under section 43; or
- (d) a decision of the Court of Appeal under section 44,

the Comptroller shall 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 is such rate as is specified in the Regulations.

Others eligible for tax refund

59.— (1) The Minister may make Regulations that authorise the grant of a refund of tax paid or borne on a supply to -

- (a) a person to the extent provided under the Diplomatic Immunities and Privileges Act, Cap. 10.04, an international or regional treaty or convention having force of law in Saint Lucia, or the recognised principles of international law;
- (b) a diplomatic or consular mission of a foreign country established in Saint Lucia, 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 or other agreement entered into with the Government of Saint Lucia.

(2) The refund provided for in subsection (1)(a) is not available to —

(a) a citizen; or

(b) a permanent resident of Saint Lucia within the meaning of the Immigration Act, Cap. 76 of the Revised Laws of Saint Lucia 1957.

(3) The Minister, may by Regulations 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 the 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

60.— (1) 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.

(2) Every representative is personally liable for the payment of any tax payable in his or her 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.

(3) Nothing in this section is to 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.

(4) 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 Saint Lucia, including any manager of a taxable activity of the non-resident in Saint Lucia in the case of a non-resident or a person referred to in paragraph (b) of the definition of “resident” in section 2.

Power to appoint representatives

61.— (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 60.

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

Directors of corporations

62.— (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 on and penalties relating to the amount of tax.

(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 shall not be assessed for an amount payable by him or her 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 39(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

63.— (1) 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.

(2) 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 or her capacity as a member or officer of the body is deemed to be an activity of the body and not an activity of the person.

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

(4) Any document which is served on an unincorporated body pursuant to this Act or the Regulations is deemed to have also been served on the officers of the unincorporated body.

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

(6) 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 committee referred to in subparagraph (ii), a member of the body;

“unincorporated body” includes unincorporated associations.

Partnerships or unincorporated associations

64.— (1) Where —

- (a) a partnership, or unincorporated association or body is dissolved 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 unincorporated association or body comes into existence 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,

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

(2) In this section —

“dissolved entity” means a partnership or unincorporated association or body that is dissolved;

“new entity” means a new partnership or unincorporated association or body that comes into existence.

Death or insolvency of taxable person

65. 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, administrator 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, administrator or trustee, is deemed for the purposes of this Act to be the taxable person in respect of the taxable activity.

Trustee

66. 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 or divisions

67. 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

68. In this Part, “records” include accounting records, accounts, books, computer-stored information, and other records, including the records referred to in section 69.

Record-keeping

69. — (1) A taxable person or any other person liable to tax under this Act shall maintain in Saint Lucia the following records —

- (a) original tax invoices, sales receipts, tax credit notes and tax debit notes received by the person;
- (b) a copy of all tax invoices, sales receipts, 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 Saint Lucia; and
- (e) any other records as may be prescribed by Regulations.

(2) Records required to be maintained under subsection (1) must be retained —

- (a) in the English language;

(b) for six 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.

(4) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

Notice to obtain information or evidence

70.— (1) The Comptroller may, by notice in writing, require any person, whether or not liable to tax under this Act —

- (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 tax officer authorised by the Comptroller for this purpose concerning the assessable or chargeable tax or any transaction or matters appearing to the Comptroller to be relevant to the examination for 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; or
- (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;
 - (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 or her 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; or

(iii) inspect the process of that person, including the method adopted in recording the supplies; and

(d) require the owner of the business, or any employee or agent, to give him or her 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 or she 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) Without prejudice to the generality of subsection (1), the Comptroller may require —

(a) a bank or other financial institution to furnish the Comptroller with the details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements or statement of assets of any such banking account or other asset;

(b) a bank to permit the Comptroller or any tax officer authorised by him or her to inspect the records of the bank or other financial institution with respect to the banking account of any person;

(c) the attendance of an officer of a bank or other financial institution before the Comptroller to give evidence respecting bank accounts or other assets which may be held by the bank or other financial institution on behalf of a person.

(5) 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.

(6) A person who contravenes a notice issued under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Liability to cost

71. A person liable to tax shall bear the cost of an examination under section 70.

Access to records, computers and goods

72.— (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 on the premises, the Comptroller shall apply to a Magistrate for a warrant to allow a tax 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 tax 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 the records 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 in the records and access to records, computers and goods;

(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 tax 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 tax 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 shall 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 may examine or make copies or extracts from any records or computers which are removed and retained under subsection (1) during regular office hours under such supervision as the Comptroller may determine.

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

(6) An owner, manager or any other person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

PART XIV
OFFENCES AND PENALTIES

DIVISION 1
Criminal proceedings

Sanction for prosecution

73. — (1) Subject to the powers of the Director of Public Prosecutions under the Constitution of St. Lucia 1978, Cap. 1.01 no criminal proceedings in respect of any offence under this Act is to be commenced except with the sanction of the Comptroller.

(2) Criminal proceedings under this Act must be commenced in the name of the State.

Time limit for proceedings to be taken

74. 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 nondisclosure 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 or her correct liability to tax has become final for that tax period.

Tax evasion

75.— (1) A person shall not willfully evade, or attempt to evade an assessment, payment, or collection of tax.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

Impeding tax administration

76.— (1) A person shall not willfully impede or attempt to impede the Comptroller in his or her administration of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term of six months or to both.

(3) 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 tax officer to examine documents, records, 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 tax officer authorised by the Comptroller;
- (c) interferes with the lawful right of a tax officer to enter onto a business premises or a dwelling unit; or
- (d) otherwise impedes the determination, assessment, or collection of any tax.

Offences by tax officers

77.— (1) A tax officer in carrying out the provisions of this Act shall not —

- (a) directly or indirectly ask for, or take 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) enter into or acquiesce 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.

(2) A tax officer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand or to imprisonment for a term not exceeding one year or to 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 tax officer's wrong doing and which cannot be recovered from the person liable for the tax.

Offences by companies, aiders and abettors

78. — (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, is 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.

Collection of tax by non-registered persons

79.— (1) A non-registered person shall not collect tax on a supply.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding of one hundred thousand dollars or to imprisonment or a term not exceeding four years.

False or misleading statements

80.— (1) A person shall not knowingly or recklessly make a statement to a tax officer that is false or misleading in a material particular or omit from a statement made to a tax officer any matter or thing without which —

- (a) the statement is misleading in a material particular; and

(b) 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.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment or a term not exceeding four years.

(3) Notwithstanding subsection (2), a person must pay to the Comptroller the tax payable and the tax payable includes —

(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.

(4) A reference in this section to a statement made to a tax 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 tax officer otherwise than pursuant to this Act;

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

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

Other offences

81. For the avoidance of doubt the offences created under sections 8(12), 15(2), 34(10), 35(8), 37(5), 50(2), 50(7), 55(6), 57(17), 69(4), 70(6), 72(6), 75(2) and 100(6) are subject to the provisions of sections 73 and 74 in this Division.

General penalty

82. A person who commits an offence under this Act for which no penalty is specified is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

Compounding of offences

83.— (1) Where a person has committed an offence under this Division other than an offence under section 75 or 77, the Comptroller may, at any time prior to the commencement of the hearing by any court of the proceedings relating to that offence, 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.

(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 of St. Lucia 1978, Cap. 1.01, and the Comptroller shall give the Director of Public Prosecutions a copy of the order described in subsection (3) at the time the order is served on the taxpayer.

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

DIVISION 2 Civil penalties

General provisions

84.— (1) A penalty is not payable under this Division where, in respect of the same act or omission, the person has been convicted of an offence under Division 1, or an offence has been compounded under section 83.

(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 to 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 the 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 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 74.

Procedure

85. — (1) If the Comptroller has reason to believe that a person is liable for a penalty under sections 86 to 94 of this Division, he or she may serve a Notice of Penalty on the person.

(2) A Notice of Penalty referred to in subsection (1) must be in a form approved by the Comptroller and must in every case—

- (a) contain a description of the alleged offence for which that person may be liable for a penalty and the amount payable as prescribed in this Division; and
- (b) advise that if the person does not wish to have a complaint of the alleged offence heard and determined by the district court, the penalty amount specified in the Notice of Penalty must be paid to the Inland Revenue Department within a period of thirty days of service of the Notice of Penalty;
- (c) advise that if the person claims that he or she is not liable to the penalty specified, he or she must, within thirty calendar days of the date of service of the Notice of Penalty, give notice of his or her claim at the district court office specified in the Notice of Penalty;
- (d) advise that if the person contests the alleged offence as provided for in paragraph (c), and the person is found liable by the District Court, that the penalty amount for which the person is liable is

an amount greater than the amount specified in the Notice of Penalty.

(3) A copy of a Notice of Penalty served on a person under this Division and a copy of a certificate of service by the person effecting service must be filed in the District Court and has the same effect as a claim form and an affidavit of service filed in civil proceedings in the Court.

(4) Where the penalty amount specified in the Notice of Penalty has been paid within the thirty day period as provided for in subsection 2(b), the Comptroller shall immediately cause a Certificate of Payment in a form approved by the Comptroller to be filed in the District Court Office and no further proceedings must occur in respect of the Notice of Penalty.

(5) An amount paid under subsection 2(b) must be dealt with as if it were a penalty imposed by a Court.

(6) Where the person contests the alleged offence as provided for under subsection 2(c), immediately upon notice being given of a claim in accordance with subsection 2(c) the District Court shall issue a court date to both parties and the Comptroller shall on the said date proceed against the person.

(7) Where a person who contests the alleged offence is found liable by the District Court for the penalty, the penalty amount for which the person is liable is a fine greater than the fixed penalty amount specified in sections 86-94 but not exceeding a maximum of double the fixed penalty amount.

(8) Where a person served with a Notice of Penalty does not give notice of his or her claim by the end of the relevant thirty day period and upon the Comptroller certifying in writing that the person has not paid the specified amount within the thirty day period as provided for under subsection 2(b), the District Court shall register the Notice of Penalty and upon registration the Notice of Penalty has the same force and effect as if it were a judgement in default of appearance granted by the District Court in favour of the Crown against a judgement debtor

and all proceedings may be taken upon the registered Notice and it may be enforced as if it were a judgement of the District Court.

Division 3
Civil Offences

Failure to register or display certificate

86.— (1) A person who fails to apply for registration as required under sections 12 and 112(12) is liable to 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.

(2) A person who fails to display the certificate of registration issued by the Comptroller as required by section 13 (11) is liable to a penalty of one hundred dollars per day for each day or portion of the day that the failure continues.

Failure to notify Comptroller

87. A person who fails to notify the Comptroller as required by section 13(12) or 14 (1) is liable to a penalty of two hundred and fifty dollars for the first instance, five hundred dollars for the second instance and one thousand dollars for the third and any subsequent instance.

Tax invoices etc.

88. A person who —

- (a) issues a false invoice or false sales receipt;
- (b) uses a false taxpayer identification number;
- (c) fails to provide a tax invoice, sales receipt, tax credit note, or tax debit note, or provides one otherwise than as provided for in sections 34 and 35

is liable to a penalty of five thousand dollars for the first instance, ten thousand dollars for the second instance, fifteen thousand dollars for the third instance and twenty-five thousand dollars for the fourth and any subsequent instance.

Failure to file return

89. A person who fails to file a return within the time required under this Act is liable to a penalty of two hundred and fifty dollars per month or part of the month, for the period during which the return remains unfiled.

Failure to comply with notice of recovery of tax

90. A person who fails to comply with a notice under section 55 is liable to a penalty of twenty-five per cent of the amount sought to be recovered from that person.

Failure to keep records

91. A person who fails to maintain proper records as required by section 69 is liable to a penalty of one hundred dollars per day for each day or portion of the day that the failure continues.

Failure to provide facilities and assistance

92. A person who fails to provide a tax officer with reasonable facilities and assistance as required by section 72 (3) is liable to a penalty of one thousand five hundred dollars.

Failure to comply with notice to give information

93. A person who fails within the specified time to comply with a notice issued under section 70(1) is liable to a penalty of one thousand dollars and a further penalty of one hundred dollars for each day or part of the day that the breach continues after receiving a written warning from the Comptroller to correct the breach.

Non-compliance with price quotation requirements

94. A person who contravenes the requirements of subsection (2) or (4) of section 100 is liable to a penalty of five hundred dollars and a further penalty of fifty dollars for each day or part of the day that the breach continues after receiving a written warning from the Comptroller to correct the breach.

Temporary closure of business premises

95.— (1) Where a person repeatedly violates an offence under —

- (a) section 34 in relation to tax invoices;
- (b) section 35 in relation to tax debit notes or tax credit notes;
- (c) section 37 by failing to file returns;
- (d) section 46 by failing to pay tax when due;
- (e) section 57 by improperly claiming tax refunds; or
- (f) section 76 by impeding tax administration;

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 not exceeding fourteen calendar days.

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

Publication of names of defaulters

96. Notwithstanding anything in any other law in force in Saint Lucia, where a person is convicted of an offence under this Act, the Comptroller may publish, in a newspaper circulating in the State, the name of the person or the name of the business of that person, or both.

PART XV
MISCELLANEOUS

Taxpayer identification number

97. The Comptroller shall require a person to include the taxpayer identification number issued by the Comptroller to that person in any

return, notice, or other documents prescribed or used for the purposes of this Act.

Forms and notices and authentication of documents

98.— (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 are valid whether or not published in the Gazette.

(2) The Comptroller shall make the documents referred to in subsection (1) available to the public at the offices of the Inland Revenue Department 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 tax officer, is printed, stamped, or written on the document.

Service of notices

99. — (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.

(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 60;
- (c) left at the person's usual or last known place of abode, office, or place of business in Saint Lucia; or
- (d) sent by registered post to such place of abode, office, or place of business, or to the person's usual or last known address in Saint Lucia.

Tax-inclusive pricing

100.— (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.

(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 a class of taxable persons approve any other method of displaying prices of goods or services by such persons.

(6) A person who contravenes subsection (2) or (4) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

Schemes for obtaining tax benefits

101.— (1) 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.

(2) 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;

“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.

Currency conversion

102.— (1) For the purposes of this Act, all amounts of money are to be expressed in Eastern Caribbean Dollars, EC\$ or XCD\$.

(2) Where an amount is expressed in a currency other than Eastern Caribbean Dollars, EC\$ or XCD\$ —

- (a) in the case of imports, the amount is to be converted at the exchange rate as determined for purposes of the Customs (Control and Management) Act;
- (b) in all other cases, the amount is to be converted at the exchange rate applying between the currency and the Eastern

Caribbean Dollar, EC\$ or XCD\$ at the time the amount is taken into account under this Act.

International agreements

103.— (1) To the extent that the terms of a treaty or other international agreement to which Saint Lucia is a party are inconsistent with the provisions of this Act, the terms of the treaty or international agreement prevails over the provisions of this Act.

(2) In this section, “international agreement” means an existing agreement or any agreement that may thereafter be approved by Cabinet between Saint Lucia and a foreign government or an international organisation providing humanitarian or technical assistance.

Registration of certain goods prohibited in certain circumstances

104.— (1) 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 Saint Lucia 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 Saint Lucia, 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 Saint Lucia, 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 59 or under international agreements, as defined under section 91, a receipt or certificate issued by the Comptroller or the Comptroller of Customs that payment of tax has been made.

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

Auctioneer and agent

105.— (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.

(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 shall 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 shall recover that tax from the purchaser.

Regulations

106.— (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.

(2) Without prejudice to the generality of subsection (1), the Regulations may provide for —

- (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) the application of terms used in this Act and ancillary rules that facilitate the application of the provisions in this Act, including the determination of the value, time, and place of transactions for the purposes of applying this Act to the transactions;
- (d) guidelines as an aid to interpretation of this Act.

Variation of consideration on a change in rate

107.— (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 shall, 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) must 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.

Application of increased or reduced rate

108.— (1) Where —

- (a) services are performed; or
- (b) goods are provided in respect of a successive supply contemplated in section 18(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 18 to have been made on or after the said date, the value of the supply is, on the basis of a fair and reasonable apportionment, deemed to consist of a part, relating

to the performance of services or provision of goods before the said date and a part, relating to the performance of services or provision of goods on or after the said date.

(2) For the 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 is to be determined at the rate applicable before the said date and the tax payable in respect of the second part is determined at the rate applicable on the said date;
- (b) the imposition of tax on the said date, the first part is not to be subject to tax; or
- (c) the withdrawal of the tax, the first part is to 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.

(4) In this section —

“first part” means the part relating to the performance of services or provision of goods before the said date;

“second part” means the part relating to the performance of services or provision of goods on or after the said date.

Amendment of Schedules

109.— (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

(2) An Order made under subsection (1) is to be subject to the following affirmative resolution of Parliament save and except where the Minister amends the Tariff heads only.

Remission of tax

110.— (1) Where the Comptroller has taken all steps permissible under this Act to recover tax and 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 Comptroller shall advise the Minister and the Minister may remit the matter to the Comptroller for the steps to be re-taken or may, subject to reinstatement under subsection (3), order the extinguishment of the liability as a debt due to the Crown.

(2) An Order made under subsection (1) shall 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.

Repeals

111.— (1) The following are repealed with effect from the date this Act comes into force —

- (a) Consumption Tax Act, Cap. 15.03;
- (b) Environmental Protection Levy Act, Cap.15.20;
- (c) Motor Vehicle Rental Fee Act, Cap.15.23;
- (d) Mobile Cellular Telephone (Tax) Act, Cap.15.36;
- (e) Hotel Accommodation Tax Act, Cap.15.10.

(2) A reference to tax, duty, service charge or fee in any Act, other than in this Act, must not be treated as a reference to tax under this Act and an exemption in any law from the payment of tax, duty, service charge or fee must not be treated as an exemption from tax under this Act.

Transition

112.— (1) 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 force pursuant to section 1.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Subject to subsection (8), 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,
- (c) 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.

(7) Subject to subsection (8), if goods subject to consumption tax were supplied successively as provided under section 18(8) or (9), and the supply occurred during a period that began before and ended after this Act came into effect, tax under this Act is imposed on the portion of the consideration for the goods supplied after this Act came into effect.

(8) Subsection (7) applies only if —

- (a) the value of the consideration for the goods on the day before this Act came into effect is determined in a manner approved by the Comptroller; and
- (b) the required documentation is submitted to the Comptroller in the form approved by the Comptroller by the end of the supplier's first tax period after this Act becomes effective.

(9) Notwithstanding subsection (8), 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, tax 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 tax period after this Act becomes effective.

(10) If immovable 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 must not include the amount attributable to the portion of the period that ends before the effective date.

(11) For the purposes of section 30(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.

(12) A person who is required to register under section 12 as of the effective date of this Act must register no later than two months before the date that this Act comes into effect, and any such registration

is effective as of the date that this Act comes into effect, even if the application for registration is filed up to three months before the effective date.

(13) The Minister may make Regulations for other transitional measures relating to the end of any repealed tax under section 111, the start of value added tax, or the transition from any repealed tax under section 111 to value added tax.

(14) In this section “repealed legislation” means the legislation referred to in section 111(1).

Exemption in another law

113. A provision in another law that grants an exemption under section 17 or 21 of this Act, or a tax at a rate of zero per cent under section 16 of this Act does not come into effect for the purposes of this Act until a corresponding amendment is made to this Act.

FIRST SCHEDULE

(Sections 4(18), 16(1) and (2) and 19(8))

ZERO RATED SUPPLIES

1. In this Schedule —

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

“exported from Saint Lucia”, 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” means the goods described under the following Customs Tariff Headings 27.10.13.90, 27.10.22.10, 27.10.22.90, 27.10.31.10, 27.10.31.90, 27.10.39.10, 27.10.39.90, 27.11.11.00, 27.11.12.00, 27.11.13.00, 27.11.14.00.

ZERO RATED SUPPLY OF GOODS AND SERVICES

2. —(1) The following supply of goods are zero rated for the purposes of section 16 of the Act —

(a) a supply of goods where the supplier has entered the goods for export, pursuant to the Customs (Control and Management) Act, and the goods have been exported from Saint Lucia by the supplier;

(b) a supply of goods where the Comptroller is satisfied that the goods have been exported from Saint Lucia by the supplier without having been used in Saint Lucia after the supply was entered except as necessary for or incidental to, the export of the goods;

(c) a supply of goods to a warehouse under Part 7 of the Customs (Control and Management) Act or to a licensed duty free shop under the

Tourism (Duty-Free Shopping System) Act, Cap. 15.31 or to a destination within a free zone under the Free Zone Act, Cap. 15.17;

- (d) a supply of goods where the supplier is a licensed duty-free shop operator under the Tourist (Duty-Free Shopping System) Act, Cap. 15.31 who obtains and produces evidence satisfactory to the Comptroller of Customs that the conditions specified in section 20 of the Tourism (Duty-Free Shopping System) Act, Cap. 15.31 in respect of the goods have been complied with;
- (e) a supply of goods where the goods are not situated in Saint Lucia at the time of supply and are not to be entered into Saint Lucia for home consumption pursuant to the Customs (Control and Management) Act by the supplier of the goods;
- (f) a supply of goods under a rental agreement, charter party, or agreement for chartering, where the goods are used exclusively in an export country;
- (g) a supply of live animals other than domesticated animals generally held as pets;
- (h) a supply of fuel;
- (i) 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-
 - (i) sections 4(2) and 14 (13) are satisfied; and
 - (ii) a notice in writing signed by the transferor and transferee and containing the details of the supply is furnished to the Comptroller within twenty-one calendar days after the supply takes place.
- (j) a supply of the following food items described under the following Customs Tariff Headings:
 - 0407.003. Fresh Eggs (other than hatchling eggs)
 - 1902.19. Uncooked pasta, not stuffed or otherwise prepared (e.g. spaghetti, macaroni, noodles, lasagna, chow-mein).
- (k) Ventilated Boxes specifically designed for use in transporting unprocessed agricultural products.

2—(2) The following supply of services are zero rated for the purposes of section 16 of the Act-

- (a) a supply of services directly in connection with land, or any improvement thereto, situated outside Saint Lucia;

- (b) a supply of services directly to a non-resident who is not a registered 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;
- (c) a supply of services by a non-resident person to a business operating in an area designated as a free zone area under the Free Zone Act, Cap. 15.17;
- (d) a supply to a telecommunication carrier not conducting business in Saint Lucia that involves the transmission of calls and other telecommunication services through Saint Lucia that have their origin and destination outside Saint Lucia, but are not for the consumption or use of persons in Saint Lucia;
- (e) a supply of water and sewerage provided by the Saint Lucia Water and Sewerage Company;
- (f) a supply of electrical energy provided by Saint Lucia Electricity Services Limited.

3.— (1) A supply of goods shall not be considered to be exported from Saint Lucia 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 Saint Lucia if the supply has been or will be re-imported to Saint Lucia by the supplier.

SECOND SCHEDULE

(Section 17)

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 house, flat, apartment, or room, other than accommodation in respect of which the provisions of paragraph (a) or (c) of this definition apply- 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 which is leased with furnishings provided by the lessor;
- (b) 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 forty-five calendar days in the case of each occupant; or
- (c) any other accommodation designated by the Minister by Regulations to be a commercial rental establishment;
- (d) 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;
- (e) 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

- (f) 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 or a time-share arrangement;

“education services” means tuition or instruction for students provided by an institution duly recognized by the Ministry of Education pursuant to the Education Act, Cap. 18.01 whether public, private, assisted or denominational, being –

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

“educational supplies” means a supply of printed material, as defined under Customs Tariff Heading 49.01 - 49.05;

“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;

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

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

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

(a) from a place outside Saint Lucia to another place outside Saint Lucia where the transport or part of the transport is across the territory of Saint Lucia; or

(b) from a place outside Saint Lucia to a place not beyond a port of entry in Saint Lucia; or

(c) from a place in Saint Lucia to a place outside Saint Lucia;

“medical services” means a supply of a medical, dental, allied health, nursing, convalescent, rehabilitation, midwifery, paramedical or other similar 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 Health Practitioners Act 2006, No. 36 or under the Registration of Nurses and Midwives Act, Cap 11.08;

“pre-primary school” means a school duly recognized by the Ministry of Education which conducts early childhood education under the Education Act, Cap. 18.01;

“religious services” means the conducting of religious ceremonies including baptisms, christenings, dedications, funerals, burials, marriages, blessings; presiding over or performing mass or service; conducting of workshops or seminars for church members and social groups, such as groups for the youth, women or men;

2. The following supplies are specified as exempt supplies for the purposes of section 17 of this Act:
- (a) a supply of financial services;
 - (b) a supply of medical services, except for elective services that are cosmetic in nature. In the event of any uncertainty or dispute as to what constitutes "cosmetic" the Ministry of Health shall be the competent authority;
 - (c) a supply of services in a nursing home, residential care facility or provided directly by a facility to aged, indigent or disabled persons who need care;
 - (d) a supply of hearing aids, crutches, manual and motorized wheelchairs, trusses, colostomy bags and similar appliances and apparatus and identifiable spare parts for the relief of permanent bodily disablement, including reading matter and reading aides (excluding glasses, frames and contact lenses) specifically designed for the visually impaired;
 - (e) a supply of veterinary services in respect of any live bird, livestock or other animal of a kind generally used as food for human consumption;
 - (f) a supply of baby or adult diapers;
 - (g) a supply of prophylactics and contraceptives;
 - (h) a supply of education services;
 - (i) a supply of services rendered by a daycare business recognized by the Ministry of Education, including after-school care and by a summer camp for children under the age of 18;
 - (j) a supply of educational supplies;
 - (k) a sale of an immovable, including land attributable to a dwelling;
 - (l) a sale of immovable property, including land, attributable to a dwelling provided that upon application to the relevant Ministry for change of use of such immovable property, so that the use of the immovable property will become commercial in nature, the person making the application for change of use or on whose behalf the application is made, must account for the tax that would have been payable at the time of the sale, had the sale of the immovable property been subject to the tax;
 - (m) 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;
- (n) a supply of land used or to be used for agricultural purposes provided that upon application to the relevant Ministry for change of use of such land, so that the use of the land will become commercial in nature, the person making the application for change of use or on whose behalf the application is made, must account for the tax that would have been payable at the time of the supply, had the supply of land been subject to the tax;
- (o) a supply of games of chance conducted by non-profit organisations, lotteries, the Saint Lucia National Lottery, and the Windward Islands Lotteries Commission;
- (p) a supply of religious services by a registered institution of religious worship;
- (q) a supply of local transportation of passengers from one point within Saint Lucia to another point within Saint Lucia;
- (r) a supply of a returnable crate used to transport beverages for consideration not exceeding the separately stated deposit;
- (s) a supply of services by a Trade Union (or similar organisation providing services in the nature of trade union services), to a member or to another trade union, where the supply is made solely in the ordinary course of its objectives as a trade union (or similar organization);
- (t) a supply of postal services by the State not including courier services;
- (u) a supply of services comprising-
 - (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of any intellectual property rights for use outside Saint Lucia;
 - (ii) incidental services necessary for the supply of services referred to in subparagraph (a); or
 - (iii) the acceptance by a person of an obligation to refrain from pursuing or exercising in whole or in part any intellectual property rights for use outside Saint Lucia;

- (v) a supply of the following agricultural inputs approved for use in agriculture by the Ministry of Agriculture:
 - (i) seeds, seedlings, cuttings and fertilizers;
 - (ii) pesticides, insecticides and other treatments;
 - (iii) herbicides, fungicides and nematicides;
 - (iv) animal feed other than food for domesticated animals generally held as pets;
 - (v) packing film specifically designed for use in transporting unprocessed agricultural products;
 - (vi) machinery and equipment specifically designed for agricultural or horticultural use;
 - (vii) plant propagation bags;
 - (viii) poultry spectacles, waterers, feeders;
 - (ix) a greenhouse specifically designed for horticultural use
- (w) a supply of the following fishing inputs approved for use in the fishing trade by the Ministry of Agriculture:
 - (i) fibre-glass and wooden boats;
 - (ii) anchors, grapnel, G.P.S, compass, V.H.F radio, fish finder;
 - (iii) flare guns and flares, life vests, life rings, buoys and floats;
 - (iv) mono-filament fishing lines, gaffs, harpoons;
 - (v) outboard engines up to 100 hp, inboard diesel engines, propellers;
 - (vi) winches, spools, line haulers, jigging reels;
- (x) a supply of international transport services;
- (y) a supply of goods in the course of repairing, renovating, modifying, or treating goods to which subparagraph (y) or (z) 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;

- (z) a supply of services directly in respect of —
 - (i) personal property situated outside Saint Lucia at the time the services are rendered;
 - (ii) a supply of goods referred to in paragraphs (a) or (b) of the definition of “exported from Saint Lucia” in the First Schedule”;
or
 - (iii) the repair, maintenance, cleaning, outfitting, refurbishing or improving a foreign-going aircraft or foreign-going vessel;
- (aa) a supply of any services, including port and harbour services, docking, berthing, mooring, parking or the arranging of such services-
 - (i) to a foreign-going vessel or foreign-going aircraft for consumption or use in connection with that vessel or aircraft;
 - (ii) to a yacht or pleasure craft (including an airplane) owned by persons who are neither citizens nor residents of Saint Lucia at the time when the service is supplied.
- (bb) a supply of toilet paper; and
- (cc) a supply of the following food items as defined under the following Customs Tariff Headings:
 - 0207.21 Fowls of the species Gallus Domesticus
 - 0207.39 Chicken cuts and offal (including livers) fresh or chilled
 - 0207.411 Backs and necks of the fowls of the species Gallus Domesticus, frozen
 - 0207.412 Wings of the fowls of the species Gallus Domesticus, frozen
 - 0207.419 Other cuts of the meat of the species Gallus Domesticus
 - 0207.50 Chicken, livers, frozen
 - 0302.309 Tunas, skipjack or stripe bellied bonito, excluding livers and roes
 - 0302.409 Other herrings, excluding livers and roes
 - 0302.509 Other cod, excluding livers and roes
 - 0302.602 Snapper, shark, croaker, grouper, dolphin, bangamary and sea trout, excluding livers and roes
 - 0302.603 Flying fish, excluding livers and roes

0302.609	Other fish, excluding livers and roes
0303.409	Tunas, skipjack or stripe-bellied bonito, excluding livers and roes
0303.509	Other herring, excluding livers and roes
0303.609	Other cod, excluding livers and roes
0303.702	Snapper, shark, croaker, grouper, dolphin, bangamary and sea trout, excluding livers and roes
0303.703	Flying fish, excluding livers and roes
0303.709	Other fish, excluding livers and roes
0304.101	Fillet of flying fish, fresh or chilled
0304.109	Fillet or other fish, fresh or chilled
0304.201	Fillet of flying fish, frozen
0304.209	Fillet of other fish, frozen
0304.90	Other fish meat, fresh, chilled or frozen
0401.001	Fresh milk
0402.10	Powdered milk
0402.20	Powdered milk
0402.91	Evaporated milk
0405.101	Fresh butter
0405.102	Salted Butter
0701.90	Other potatoes
0702.00	Tomatoes, fresh or chilled
0703.101	Onions
0703.102	Shallots (eschallots)
0703.20	Garlic
0703.90	Leeks and other alliaceous vegetables
0704.101	Cabbages
0704.002	Cauliflowers

0704.009	Other
0705.10	Lettuce
0706.001	Carrots
0706.002	Beets
0706.009	Other
0707.001	Cucumbers
0708.001	Pigeon peas
0708.002	Blackeye peas
0708.003	String beans
0708.004	Bora (bodi) beans (Vigna spp.)
0708.009	Other
0709.001	Aubergines (egg-plants)
0709.002	Zucchini
0709.003	Ochroes
0709.004	Pumpkins
0709.005	Sweet corn (corn on the cob)
0709.006	Sweet peppers
0709.008	Other fruits of the genus Capsicum or of the genus Pimenta
0709.009	Other
0713.001	Red kidney beans
0713.002	Other beans
0713.003	Pigeon peas
0713.004	Split peas
0713.005	Blackeye peas
0713.006	Chickpeas (garbanzos)
0713.007	Other peas
0713.009	Other

0714.10	Manioc (cassava)
0714.20	Sweet potatoes
0714.901	Arrowroot
0714.902	Dasheens
0714.903	Eddoes
0714.904	Tannias
0714.905	Yams
0714.909	Other
0801.101	Coconuts, not shelled (fresh)
0801.109	Coconuts, other (fresh)
0803.001	Bananas (fresh)
0803.002	Plantains (fresh)
0804.30	Pineapples (fresh)
0804.40	Avocados (fresh)
0804.501	Guavas (fresh)
0804.502	Mangoes (fresh)
08.05	Citrus Fruit, (fresh)
0805.10	Oranges (fresh)
0805.202	Ortaniques (fresh)
0805.209	Mandarins, (including tangerines and sasutmas); clementines, wilkings and similar citrus hybrids (fresh)
0805.301	Lemons (fresh)
0805.302	Limes (fresh)
0805.40	Grapefruit (fresh)
0805.90	Other citrus fruit (fresh)
0807.192	Watermelons (fresh)
0807.20	Pawpaws (papayas) (fresh)
0810.901	Sapodillas (fresh)

0810.902	Golden apples (fresh)
0810.903	Passion fruit (fresh)
0810.904	Soursop (fresh)
0810.905	Breadfruit (fresh)
0810.906	Carambolas (fresh)
0810.908	Christophine (fresh)
1006.109	Rice in the husk (paddy or rough)
1006.20	Husked (Brown) Rice
1006.201	White Rice, in packages for retail sale
1006.202	Other White Rice
1006.203	Parboiled Rice, in packages for retail sale
1006.204	Other Parboiled Rice
1006.30	Semi-milled or wholly milled rice, whether or not polished or glazed
1006.301	Semi-milled White Rice in packages of not more than 10 kg
1006.302	Other Semi-milled White Rice
1006.303	Semi-milled Parboiled Rice in packages of not more than 10 kg
1006.304	Other Semi-milled Parboiled Rice
1006.305	Wholly Milled White Rice, in packages of not more than 10 kg
1006.306	Other Wholly Milled White Rice
1006.307	Wholly Milled Parboiled Rice, in packages of not more than 10 kg
1006.308	Other Wholly Milled Parboiled Rice
1006.40	Broken Rice
1006.401	In Packages for Retail Sale
1006.409	Other Broken Rice
11.01	Wheat or Meslin Flour

- 1101.001 Of Durum Wheat
- 1101.009 Other
- Ex 1513.19 Coconut oil
- 1517.10 Margarine excluding liquid margarine
- 1517. 901 Imitation lard and lard substitutes (shortening)
- 1602.501 Canned corned beef of bovine animals
- 1604.131 Sardines
- 16.04.141 Tuna
- 1604.15 Mackerel
- 1701.11 Cane Sugar
- 1901.10 Preparations for infant use, put up for retail sale
- 1905.901 Biscuits, unsweetened
- Ex 1905.909 Bread unsweetened (e.g. sandwich loaves, hot dog rolls and hamburger buns)
- 2501.001 Table salt in retail packages of not more than 2.5 kg
- 2501.002 Other table salt

THIRD SCHEDULE

(Section 21)

EXEMPT IMPORTS

The following imports of goods are specified as exempt imports for the purposes of section 21 of this Act:

1. Goods or services imported by a person where a supply of the goods or services to the person in Saint Lucia would be exempt or zero rated.
2. 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, but not including goods if at the time of export -
 - (a) the supply of the goods was charged with the tax at the rate of zero percent under section 16; or
 - (b) the supply of those goods was made before the commencement date of the tax and that supply would have been charged with tax at the rate of zero percent under section 16, if the supply had taken place on or after the commencement date.
3. Goods (including packing containers) produced or manufactured in Saint Lucia, exported from Saint Lucia 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, but not including goods if at the time of export -
 - (a) the supply of the goods was charged with tax at the rate of zero percent under section 16; or
 - (b) the supply of those goods was made before the commencement date of tax and that supply would have been charged with tax at the rate of zero percent under section 16, if the supply had taken place on or after the commencement date.
4. The personal effects of a passenger, carried in his or her baggage or on his or her person which he or she might reasonably be expected to carry with him or her for his or her own regular and private use, which are so declared and passed as such by a Customs officer at the port of entry and which in the case of a passenger 18 years old or older may include:
 - (a) wine or spirits not exceeding one quart;
 - (b) tobacco not exceeding half a pound;

- (c) cigars not exceeding fifty in number;
 - (d) cigarettes not exceeding two hundred in number.
5. Goods belonging to a passenger which accompany the passenger and which were acquired by him abroad for his personal or household use or as souvenirs or gifts which the Comptroller of Customs is satisfied are not for sale provided that this does not apply to:
- (a) goods exceeding \$250 in value;
 - (b) goods contained in passengers' baggage;
 - (c) wines, spirits or manufactured tobacco (including cigarettes or cigars);
 - (d) arms and ammunition (except where carried by a member of an armed force entitled to carry such arms on his person).
6. An unconditional gift of goods (other than for resale) to the State if the Comptroller of Customs has written notification from the Ministry of Finance before entry, that the goods are an unconditional gift subject to exemption under this Schedule.
7. An unconditional gift of goods to a charitable organization, other than for the purposes of resale if the Comptroller of Customs has written notification from the Ministry of Finance before entry, that the goods are an unconditional gift subject to exemption under this Schedule.
8. An import of:
- (a) the remains (including its receptacle) of a citizen of Saint Lucia or a person resident in Saint Lucia, who has died abroad; or
 - (b) the personal effects (not including merchandise) of a citizen of Saint Lucia or a person resident in Saint Lucia, who has died abroad.
9. Household goods and personal effects, determined as such by the Comptroller of Customs, which accompany a passenger or which are imported by a passenger within 3 months before or after the arrival of the passenger or within such further period as the Comptroller of Customs deems reasonable, that are for the passenger's personal use and not for sale or exchange and are declared to have been in the use and possession of the passenger for at least one year.
10. Used implements, instruments and tools of profession, trade, occupation or employment of a passenger, determined as such by the Comptroller of Customs in consultation with the returning national, which accompany that passenger, or imported by that passenger within three months before or

after the arrival of the passenger or within such further period as the Comptroller of Customs may allow, which are not intended for sale or exchange and which are declared to have been in the use and possession of that passenger for a period of at least one year.

11. Goods which are shipped or conveyed to Saint Lucia for transshipment or conveyance to any other country.
12. Goods imported by nationals returning home for permanent residence in the following categories:
 - (a) household and personal effects, determined as such by the Comptroller of Customs whether used or new, which accompany the returning national or imported by that returning national within three months before or after the arrival of the returning national or within such further period as the Comptroller of Customs may allow, adequate to furnish his or her family residence and which are not intended for sale or exchange;
 - (b) one motor vehicle per family of a returning national whether the motor vehicle is used or new, which accompanies the returning national arrives or imported by the returning national within three months before or after the arrival of the returning national or within such further period as the Comptroller of Customs may allow, which is not intended for sale or exchange within 3 years of importation;
 - (c) implements, instruments and tools of profession, trade or occupation (not including plant, machinery and heavy equipment), determined as such by the Comptroller of Customs in consultation with the returning national, of a returning national

where a "returning national" is either (i) a citizen of Saint Lucia or (ii) an alien spouse of a citizen of Saint Lucia, who is eighteen years and above, returning to Saint Lucia to settle after a minimum of ten years residence abroad and provided that —

- (i) a returning national who, during the ten year period immediately preceding his or her return to Saint Lucia as a returning national has visited or stayed in Saint Lucia for a continuous period of more than 6 months on more than 2 occasions shall not qualify for the exemption;
- (ii) no person shall benefit from the exemption on more than one occasion;
- (iii) a returning national who is accorded the exemption who, during the three year period immediately following his return to Saint Lucia returns abroad and resides outside Saint Lucia for a continuous period exceeding three months loses his or her privileges and is liable to pay all of the tax waived for him or her under this exemption.

13. Containers temporarily imported under Customs Tariff Heading 8609.00.
14. Cups, medals, shields and similar trophies not being articles of general utility proved to the satisfaction of the Comptroller of Customs to be specially imported for bestowal as honorary distinctions or prizes or when won abroad, or sent by donors resident abroad provided that the articles are not imported or stocked for purposes of trade.
15. Newspapers, trade catalogues and advertising matter and patterns and samples of no commercial value.
16. Goods and services imported during a threatened disaster alert or after a disaster emergency where the authorised signatories of the Office of the National Emergency Management Organisation (NEMO) or the Cabinet Secretary certifies that those goods are urgently required for dealing with the threat or emergency. These goods are not for resale.
17. Currency notes and coins imported under the Eastern Caribbean Central Bank Agreement Act, Cap. 19.07.
18. Imports of goods by:
 - (a) a person to the extent provided under the Diplomatic Immunities and Privileges Act, Cap. 10.04, an international or regional treaty or convention having force of law in Saint Lucia, or the recognised principles of international law;
 - (b) a diplomatic or consular mission of a foreign country established in Saint Lucia, 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 Saint Lucia.

This exemption is not available to a citizen or permanent resident of Saint Lucia.
19. The Comptroller may exempt from tax, capital goods imported, if the following conditions are satisfied before the importation –
 - (a) the importer is a registered person under section 12(5);
 - (b) the importer has a valid licence under the Fiscal Incentives Act, Cap.15.16;
 - (c) the importer has not commenced taxable activity;

- (d) the Minister of Finance approves of a Master List of the capital goods eligible for exemption;
- (e) the goods are consigned directly to the approved importer;
- (f) the capital goods eligible for exemption are goods to be used in a taxable activity and goods that qualify under section 31;
- (g) the importer whose investment has been approved under paragraph (b) above has filed all required returns and paid all taxes due under all tax Acts;
- (h) the importer agrees to pay the amount of tax otherwise payable on the import of the capital goods if —
 - (i) the importer violates the terms of the licence agreement;
 - (ii) the importer's registration is cancelled as a result of the expiration of the licence; or
 - (iii) the registration is cancelled in accordance with the provisions of this Act.

Passed in the House this 26th day of June, 2012.

PETER I. FOSTER,
Speaker of the House.

Passed in the Senate this 10th day of July, 2012.

CLAUDIUS J. FRANCIS,
President of the Senate.