



ANALYSIS

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An Act to amend the Value Added Tax Act 1997

(10 October 2005)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short title and commencement – (1) This Act may be cited as the Value Added Tax Amendment Act 2005 and shall be read together with and deemed part of the Value Added Tax Act 1997 (“the principal Act”).

(2) This Act is deemed to have come into force on 1 July 2005.

2. New section 17A - The principal Act is amended by inserting after section 17 of the principal Act the following new section -

“17A. Adjustments for changes of use – (1) Where a registered person applies goods or services principally for the purposes of making taxable supplies that were formerly not so applied, and a deduction hasn’t previously been made under section 16 of this Act, a deduction to the extent to which the goods or services are used for the purposes of making taxable supplies will be allowed in the month in which those goods or services are firstly so applied.

(2) For the purposes of subsection (1) the deduction shall be one-ninth of the lesser of –

- (a) the current market value of those goods or services; or
- (b) the cost price of those goods or services.

(3) Where a registered person applies goods or services principally for a purpose other than for the making of taxable supplies in respect of which a deduction has previously been made under section 16 of this Act, an amount of tax will become payable in the month in which those goods or services are firstly so applied.

(4) For the purposes of subsection (3) the tax payable shall be one-ninth of the greater of –

- (a) the current market value of those goods or services;
or
- (b) the cost price of those goods or services.

3. Avoidance - Section 43 of the principal Act is repealed and the following section is substituted –

“43. Avoidance - (1) A tax avoidance arrangement entered into by a person is void against the Collector for tax purposes.

(2) A tax avoidance arrangement is one that directly or indirectly –

- (a) has tax avoidance as its purpose or effect; or
- (b) has tax avoidance as one of its purposes or effects, whether or not another purpose or effect relates to ordinary business or family dealings.

(3) If a tax avoidance arrangement is void against the Collector, the Collector may adjust the amount of tax payable by, or the amount of tax refundable to, a registered person affected by the arrangement, whether or not the registered person is a party to the arrangement, in the manner the Collector considers appropriate to counteract any tax advantage obtained by the registered person from or under the arrangement.

(4) For the purpose of subsection (3), the Collector may, in addition to any other treatment the Collector considers appropriate, treat –

- (a) a person who is not a registered person and who is a party to or has participated in an arrangement as being a registered person;
- (b) a supply of goods and services, whether or not a taxable supply, that is affected by or is part of an arrangement as being made to or by a registered person;
- (c) a supply of goods and services as occurring in a return period that, but for an arrangement affected by this section, would have occurred in the return period in which the supply was made;
- (d) a supply of goods and services as having been made, or consideration for the supply as having been given, at open market value.

(5) For the purpose of this section –

“Arrangement” means a contract, agreement, plan or understanding, whether enforceable or unenforceable, including all steps and transactions by which it is carried into effect;

“Tax avoidance” includes –

- (a) a reduction in the liability of a registered person to pay tax;
- (b) a postponement in the liability of a registered person to pay tax;

- (c) an increase in the entitlement of a registered person to a refund of tax;
- (d) an earlier entitlement of a registered person to a refund of tax;
- (e) a reduction in the total consideration payable by a person for a supply of goods and services.

This Act is administered by the Ministry of Finance and Economic Management