

# NIUE CONSUMPTION TAX ACT 2009

## No. 296

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**AN ACT**

**to impose a tax on the import into, and the supply of goods and services in Niue**

**Part 1 - Preliminary**

**1 Short Title**

- (1) This is the Niue Consumption Tax Act 2009.
- (2) This Act applies to supplies and imports made on or after 1 April 2009.

**2 Interpretation**

In this Act, unless the context otherwise requires –

“Additional tax” means the additional tax imposed under section 116 of the Income Tax Act applying for the purposes of this Act by virtue of section 41;

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

“Commencement date” is the date specified in section 1(2);

“Consideration”, in relation to a supply, means the total of the following amounts –

- (a) the amount in money paid or payable by any person, directly or indirectly, for the supply;
- (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly, for the supply; and
- (c) any taxes, duties, levies, fees, and charges (including NCT) paid or payable on, or by reason of the supply,

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

“Customs Act” means the “Customs Act 1966;

“Customs legislation” means the Customs Act and the Customs Tariff Act;

“Customs Tariff Act” means the Customs Tariff Act 1982;

“Employment” includes the holding of an office unless the office is held as part of the business of an office holder;

“Enterprise” means –

- (a) an activity carried on continuously or regularly by a person whether or not for profit if the activity involves or is intended to involve the supply of goods or services to another person; or
- (b) an activity of a licensing authority in issuing a licence, permit, certificate, concession, or authorisation, for a fee,

but not including –

- (c) an employment;
- (d) a hobby or leisure activity of an individual; or
- (e) an activity of a person other than an individual that if carried on by an individual would come within paragraph (d);

“Exempt import” has the meaning in section 18;

“Exempt supply” has the meaning in section 6;

Fair market value” has the meaning in section 3;

“Finance lease” means –

- (a) a hire purchase agreement; or
- (b) any lease that is treated under international financial reporting standards as a finance lease;

“Financial Secretary” means the Financial Secretary appointed under section 6 of the Customs Act;

“Goods” means real or tangible personal property, but does not include money;

“Import”, in relation to goods, means to bring or cause to be brought into Niue from a foreign country or place;

“Importer” has the same meaning as in the Customs Act;

“Income Tax Act” means the Income Tax Act 1961;

"Input tax" means the NCT paid in respect of a taxable acquisition or a taxable import by a person, but does not include additional tax or penal tax imposed in respect of such acquisition or import;

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

“Money” means -

- (a) any coin or paper currency that is legal tender in Niue, other than a coin or paper currency that is a collector’s piece;
- (b) a bill of exchange, promissory note, bank draft, or postal or money order; or
- (c) whatever is supplied as payment by way of -
  - (i) credit card or debit card; or
  - (ii) crediting or debiting an account;

“NCT” means the Niue consumption tax imposed under this Act;

“NCT-exclusive fair market value”, in relation to a supply, means the fair market value of the supply reduced by an amount equal to the fair market value multiplied by the tax fraction;

“NCT period” means the calendar month;

“NCT-registered person” means a person who is registered for NCT;

“Non-resident” means a person who is not a resident;

“Output tax” means the NCT paid or treated as having been paid in respect of a taxable supply made or treated as having been made by a taxable person;

“Partnership” has the same meaning as in section 4 of the Partnership Act 1908;

“Person” means an individual, company, partnership, body of persons, trust, estate, the Government, or a foreign government;

“Recipient”, in relation to a supply, means the person or persons to whom the supply is made;

“Resident” means -

- (a) the Government;
- (b) a person that is resident in Niue under section 81 of the Income Tax Act; or
- (c) a person not covered by paragraph (a) or (b) that is formed in Niue or has its centre of administrative management in Niue;

“Revenue laws” means this Act, the Income Tax Act, Customs Act, and Customs Tariff Act, and includes any regulations or other subsidiary legislation made thereunder;

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

“Self-assessment” means an assessment treated as having been made by a taxable person under section 35;

“Self-assessment return” means a return furnished under section 32;

“Supplier”, in relation to a supply, means the person or persons who make the supply;

“Supply” means a supply of goods or services;

“Supply of goods” means -

- (a) a sale, exchange, or other transfer of the right to dispose of goods as owner; or
- (b) the lease or hire of goods under a finance lease;

“Supply of services” means anything done that is not a supply of goods or money, including -

- (a) the grant, assignment, or surrender of any right;
- (b) the making available of any facility or advantage;

- (c) the toleration of any situation;
- (d) the refraining from the doing of any act; or
- (e) the issuing of any licence, permit, certificate, concession, authorisation, or other document by a licensing authority;

“Tax fraction”, in relation to a taxable supply, means the fraction computed in accordance with the following formula –

$$r / (1+r)$$

where **r** is the rate of NCT applicable to the supply as determined under section 4(3)(b);

“Tax officer” –

- (a) means the Financial Secretary and any person employed by the Niue Public Service Commission acting under the authority of the Financial Secretary; and
- (b) includes a Customs Officer who is performing duties under this Act in accordance with the requirements of Customs legislation;

“Taxable acquisition”, in relation to a taxable person, means a taxable supply made to the person;

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

“Taxable person” means –

- (a) an NCT-registered person; or
- (b) a person who is required to apply for registration but who has not done so within the time specified in section 7;

“Taxable supply” means a supply made in Niue by a person in connection with the carrying on of an enterprise, including a supply in connection with the commencement or termination of an enterprise, but not including an exempt supply;

“Telecommunications services” means the transmission, emission, or reception of signals, writing, images, sounds, or information of any

kind by wire, radio, optical, or other electromagnetic systems, and includes –

- (a) the related transfer or assignment of the right to use capacity for such transmission, emission, or reception; and
- (b) the provision of access to global or local information networks,

but does not include the supply of the underlying writing, images, sounds, or information;

“Temporarily imported goods” means goods imported temporarily into Niue as described in section 181 of the Customs Act 1966 for a period of less than 12 months or another period prescribed under that Act;

“Zero-rated supply” has the meaning in section 5.

### **3 Fair market value**

- (1) The fair market value of a supply is the consideration that the supply would ordinarily fetch in the open market at the time of supply.
- (2) If the fair market value of a supply cannot be determined under subsection (1), the fair market value is the amount determined by the Financial Secretary.
- (3) If a provision of this Act requires the fair market value to be determined at a particular time for particular goods or services, or for an asset held by a person, that value is worked out by reference to the fair market value of a supply of those goods or services, or that asset, as determined under this section, at the relevant time.

## **PART II**

### **IMPOSITION OF NIUE CONSUMPTION TAX**

#### **4 Imposition of NCT**

- (1) Niue consumption tax is imposed on –
  - (a) a taxable supply by a person who is a taxable person at the time of supply; or
  - (b) a taxable import.
- (2) The amount of NCT payable in respect of a taxable supply or taxable import is computed by applying the rate specified in subsection (3) to the value of the taxable supply or taxable import.
- (3) The rate of NCT is –
  - (a) in the case of a zero-rated supply, zero percent; or

(b) in any other case, 12.5 percent.

(4) The NCT payable –

(a) on a taxable supply, is accounted for to the Financial Secretary by the taxable person making the supply in accordance with this Act; or

(b) on a taxable import, is payable by the importer in accordance with the requirements of Customs legislation.

(5) Notwithstanding anything contained in any law, the NCT payable by a taxable person on a taxable supply is recoverable by the supplier from the recipient of the supply.

## **5 Zero-rated supplies**

(1) Subject to subsection (3), the following supplies are zero-rated supplies –

(a) a supply of goods if the supplier has entered the goods for export under the customs legislation and the goods have been exported from Niue by the supplier;

(b) a supply of goods if the Financial Secretary is satisfied that the goods have been exported from Niue by the supplier;

(c) a supply of goods if the goods are situated outside Niue at the time of supply and are not-

(i) entered for home consumption by the supplier of the goods; or

(ii) situated in Niue at the time of delivery to the recipient;

(d) a supply of goods as consumable stores for use outside Niue on –

(i) an aircraft or ship going to a destination outside Niue; or

(ii) a fishing craft going outside Niue's fishery waters;

(e) a supply of goods in the course of repairing, renovating, modifying, or treating temporarily imported goods if the first-mentioned goods

–

(i) are wrought into, affixed to, attached to, or otherwise form part of the temporarily imported goods; or

(ii) consumable stores that become unusable or worthless as a direct result of being used in the repair, renovation, modification, or treatment process;

(f) a supply of services directly in connection with temporarily imported goods;

(g) a supply of telecommunications services if –

(i) the supply is made by a resident telecommunications supplier to a non-resident telecommunications supplier; or

(ii) the person who initiates the supply (including when the person initiates the supply on behalf of another person) is physically present outside Niue at the time the supply is initiated as determined under section 12(4), (5), and (6);

- (h) a supply of services if the Financial Secretary is satisfied that the services are for use or consumption outside Niue;
  - (i) a supply of international transport services;
  - (j) a supply of education services, but not including any textbooks or stationery supplied in relation to such services; and
  - (k) a supply of medical, dental, or nursing services, but not including any pharmaceuticals supplied in relation to such services.
- (2) Goods are exported from Niue if the goods are delivered to, or made available at, an address outside Niue, and for this purpose evidence of –
- (a) the consignment or delivery of goods to an address outside Niue; or
  - (b) the delivery of the goods to the owner, charterer, or operator of a ship or aircraft supplying international transport services for the purposes of carrying the goods outside of Niue,
- is considered sufficient evidence that the goods have been exported, in the absence of proof to the contrary;
- (3) A supply of goods is not a zero-rated supply under subsection (1)(a), (b), (c), or (d) if the goods have been or will be re-imported into Niue.
- (4) In this section –

“Ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and the storage of transported goods or goods to be transported, but does not include such services supplied directly in connection with an aircraft or ship that is temporarily imported goods;

“Consumable stores” means –

- (a) goods for consumption by passengers or crew on board an aircraft or ship; or
- (b) goods that are necessary to operate or maintain an aircraft or ship, including fuel and lubricants, but not including spare parts and equipment;

“Education services” means pre-primary, primary, secondary, tertiary, or adult education provided by the Government or an education service provider approved by Cabinet;

“Fishery waters” has the meaning in Territorial Sea and Exclusive Economic Zone Act 1996;

“Fishing craft” has the meaning in the Territorial Sea and Exclusive Economic Zone Act 1996;

“International transport services” means the services, other than ancillary transport services, of transporting goods or passengers by sea or air –

- (a) from a place outside Niue to another place outside Niue, including, if relevant, any part of the transport that takes place across the territory of Niue;
- (b) from a place outside Niue to a place within Niue as the final destination for the transportation; or
- (c) from a place within Niue as the place where the transportation commenced to a place outside Niue; and

## **6 Exempt supplies**

(1) The following supplies are exempt supplies –

- (a) a supply of financial services;
- (b) a supply of precious metal;
- (c) supply of donated goods or services by a non-profit body;
- (d) a supply by way of sale or long-term lease of residential premises, other than new residential premises; and
- (e) a supply by way of a lease of residential premises, other than a lease for a term of less than 2 months.

(2) A supply that is both a zero-rated supply under section 5 and an exempt supply under subsection (1) is treated as a zero-rated supply for the purposes of this Act.

(3) In this section –

“Donated goods or services”, in relation to a non-profit body, means goods or services that are gifted to the body and that are intended for use in the carrying out of the purposes of the body;

"Financial services" means -

- (a) the 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;
- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, and other securities, other than custody services;
- (e) the management of investment funds;
- (f) the provision, or transfer of ownership, of an insurance contract or the provision of reinsurance in respect of any such contract;

- (g) the provision, or transfer of ownership, of an interest in a scheme for the payment or granting of benefits by a benefit fund, provident fund, pension fund, retirement annuity fund, or preservation fund;
- (h) a supply of credit under a finance lease, if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods; or
- (i) the arranging of any of the services in paragraphs (a) to (h);

“Lease” includes a licence but does not include a long-term lease;

“Long-term lease” means a lease for more than 50 years;

“New residential premises” means residential premises that -

- (a) have not previously been sold as residential premises or been the subject of a long-term lease;
- (b) have been created by a substantial renovation of a building; or
- (c) have replaced demolished premises on the same land;

“Non-profit body” means a society, association, or organisation, whether or not incorporated, that is carried on for charitable or religious purposes and none of the income or assets of which confers, or may confer, a private benefit on any person;

“Precious metal” means -

- (a) gold, in any form, being gold of a fineness of not less than 99.5 percent;
- (b) silver, in any form, being silver of a fineness of not less than 99.9 percent;
- (c) platinum, in any form, being platinum of a fineness of not less than 99.0 percent; or
- (d) any other substance that is declared in the regulations to be a precious metal for the purposes of this definition; and

“Residential premises” means land or a building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation.

(4) Cabinet may exempt certain supplies of goods and/or services as it thinks fit. Cabinet may grant a partial or full exemption and may be for such period not exceeding 5 years.

### **PART III**

### **REGISTRATION**

## **7 Application for registration**

- (1) A person must apply to the Financial Secretary for registration for NCT –
  - (a) at the beginning of any 12 month period, if there are reasonable grounds to expect that the person will exceed the registration threshold in that period; or
  - (b) at the end of any 12 month or lesser period, if in that period the person exceeds the registration threshold.
- (2) Subject to subsection (3), a person exceeds the registration threshold in a particular period if the total value of taxable supplies made or reasonably expected to be made by the person during the period is equal to or greater than \$200,000.
- (3) In determining whether a person exceeds the registration threshold in subsection (2), the Financial Secretary may have regard to the value of taxable supplies made by an associate of the person.
- (4) A person making taxable supplies may apply for registration even though subsection (1) does not apply to the person if the person satisfies subsection (1) on the basis that the registration threshold is the total value of taxable supplies made or to be made by the person that are zero-rated supplies under section 5(1)(a) – (f) is equal to or greater than \$50,000.
- (5) An application for registration must be in the approved form and must be lodged with the Financial Secretary within seven days of becoming required to apply for registration.

## **8 Registration**

- (1) The Financial Secretary must register a person –
  - (a) who has applied for registration under section 7(1), if satisfied that the person is required to apply for registration; or
  - (b) who has applied for registration under section 7(4), if satisfied that the person is permitted to apply for registration.
- (2) The Financial Secretary –
  - (a) must register a person who is required to apply for registration under section 7(1) but who has failed to do so; or
  - (b) may register any person making taxable supplies if the Treasurer is of the view that a registered person will suffer a competitive disadvantage in the marketplace if the first-mentioned person is not registered; or
  - (c) may consider and grant an application for registration made by a person who does not meet the registration threshold set out in section 7(2) if –
    - (i) supplies of goods and services made by the person are mainly to NCT-registered persons; and
    - (ii) the person meets the requirements of subsection (2A);  
and

- (iii) it is in the best interests of the Niue economy for the person to be registered.
- (2A) For the purposes of subsection (2)(c), the requirements are that, in the view of the Financial Secretary, the person –
- (a) will suffer a competitive disadvantage in the marketplace if the person is not registered; and
  - (b) employs the necessary accounting systems to produce the records and documents required under this Act.
- (3) The Financial Secretary must issue a person registered under this section with a NCT registration certificate in the approved form.
- (4) Registration takes effect –
- (a) in the case of a person to whom section 7(1) applies, from the beginning of the first NCT period after the person became obliged to apply for registration or such later time as set out in the NCT registration certificate; or
  - (b) in the case of a person to whom subsection (2)(b) or section 7(4) applies, from the date set out in the NCT registration certificate.
- (5) A registered person must display, in a conspicuous place –
- (a) the original copy of its NCT registration certificate at the principal place at which the person carries on its enterprise; and
  - (b) a certified copy of the certificate obtained from the Financial Secretary at every other place at which the person carries on its enterprise.
- (6) A registered person must notify the Financial Secretary, in writing, of any change in the name (including business name), address, place of business, or nature of the business of the person within 21 days of the change occurring.
- (7) A registered person who is a partnership must notify the Financial Secretary, in writing, of any change in the membership of the partnership within 21 days of the change occurring.

## **9 Cancellation of registration**

- (1) An NCT-registered person who ceases to make taxable supplies must apply to the Financial Secretary in the approved form for cancellation of the person's registration within seven days of the date on which the person ceased to make taxable supplies.
- (2) An NCT-registered person who continues to make taxable supplies but does not exceed the registration threshold may apply to the Financial Secretary in the approved form for cancellation of the person's registration.
- (3) The Financial Secretary must, by notice in writing, cancel the registration of a person who has applied for cancellation if satisfied that the person is required to apply for cancellation under subsection (1) or permitted to apply for cancellation under subsection (2).
- (4) The Financial Secretary must, by notice in writing, cancel the registration of a person who has failed to apply for cancellation of the person's

registration as required under subsection (1), if the Financial Secretary is satisfied that the person has ceased to make taxable supplies.

(5) The cancellation of a person's registration takes effect from the date set out in the notice of cancellation.

(6) A person whose registration is cancelled under this section is treated as having made a taxable supply of any goods (including raw materials) or services on hand at the time the registration is cancelled but only if the person was allowed an input tax credit on acquisition or import of the goods or services, or in respect of the acquisition or import of goods or services which have been subsumed into those goods or services.

(7) The taxable supply referred to in subsection (6) is treated as having been made –

- (a) immediately before cancellation of the person's registration; and
- (b) for a value equal to –
  - (i) in the case of goods or services acquired in a taxable acquisition, the lesser of –
    - (A) the consideration paid on acquisition of the goods, reduced by an amount equal to the consideration multiplied by the tax fraction; or
    - (B) the NCT-exclusive fair market value of the goods at the time specified in paragraph (a); or
  - (ii) in the case of goods acquired in a taxable import, the lesser of –
    - (A) value of the import; or
    - (B) NCT-exclusive fair market value of the goods at the time specified in paragraph (b).

(8) The output tax payable in respect of the supply is treated as received at the time referred to in subsection (7)(a).

(9) If a person's registration is cancelled under this section, the person must –

- (a) immediately cease to hold out that the person is a registered person, including in any documentation used by the person;
- (b) furnish a final NCT return and pay all NCT due, including the NCT due as a result of subsection (6), within 15 days after the date of cancellation of the person's registration; and
- (c) immediately return the person's NCT registration certificate and certified copies thereof to the Financial Secretary.

## **PART IV**

### **RULES RELATING TO SUPPLIES**

#### **10 Mixed supplies**

(1) Subject to this Act, a supply of a particular kind that is ancillary or incidental to a supply of another kind ("the principal supply") is treated as part of the principal supply.

(2) Subject to this Act, a supply of services that is ancillary or incidental to an import of goods is treated as part of the import of goods.

(3) Subject to subsections (1) and (2), Regulations may provide that a supply of goods and services is a supply of goods or a supply of services, or that a supply of more than one kind is a supply of one of those kinds.

## **11 Time of supply**

(1) Subject to this Act, a supply of goods or services occurs on the earlier of –  
(a) the date on which the invoice for the supply is issued; or  
(b) the date on which any payment (including part payment) for the supply is made.

(2) A supply between associates or by way of a gift occurs –  
(a) in the case of goods, on the date the goods are delivered; or  
(b) in the case of services, on the date the performance of the services is complete.

(3) A supply of goods under a finance lease occurs on the date of commencement of the lease.

(4) A supply of goods by means of a vending machine, meter, or other device operated by a coin, note, or token occurs on the date the coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.

(5) If services are supplied –  
(a) by way of a lease of goods (other than a finance lease); or  
(b) progressively under an agreement or law that provides for periodic payments,

the supply of services (referred to as the “actual supply”) is treated as a series of separate, successive supplies of services corresponding to the successive parts of the period of the lease, or agreement or as determined by law, and each successive supply is treated as occurring on the earlier of the date on which the payment for that part of the actual supply is due or received.

(6) In this section, “invoice” means any document notifying an obligation to make a payment.

## **12 Place of Supply**

(1) Except as otherwise provided in this Act, a supply of goods or services takes place in Niue if –

- (a) the supplier is a resident; or
- (b) the supplier is a non-resident and –
  - (i) in the case of a supply of goods, the goods supplied are located in Niue at the time of the supply; or
  - (ii) in the case of a supply of services, the services are performed in Niue and the supplier is in Niue at the time the services are performed.

(2) A supply of services consisting of the issuing of a licence, permit, certificate, concession, or authorisation to do something in Niue takes place in Niue regardless of where it is issued.

(3) A supply of telecommunications services by a non-resident takes place in Niue if the person who initiates the supply is physically present in Niue at the time the supply is initiated, including when the person initiates the supply on behalf of another person.

(4) For the purposes of subsection (3), the person who initiates a supply of telecommunications services is the person who –

- (a) controls the commencement of the supply;
- (b) pays for the services; or
- (c) contracts for the supply,

and if persons are identified under more than one paragraph for the same supply, the person who initiates the supply is the person who appears in first listed paragraph.

(5) If a non-resident supplier of telecommunications services cannot apply subsection (3) because it is impractical for the supplier to determine the physical location of the person who initiates the supply due to the type of service or the class of customer to which the person belongs, the supply occurs at the place where the billing address of the person who initiates the supply is located.

(6) If subsection (5) applies, the supplier must apply the subsection to all supplies of telecommunications services made for that type of service or class of customer.

(7) Subsections (3) and (5) do not apply to supplies made between telecommunications suppliers.

(8) In this section, “billing address”, in relation to a telecommunications supply, means –

- (a) the address to which invoices for the supply are mailed; or
- (b) if invoices are not mailed –
  - (i) in the case of an individual, the place where the individual resides; or
  - (ii) in the case of any other person, the place where the person who initiates the supply undertakes an enterprise or other activity;

### **13 Value of supply**

(1) Subject to this section –

- (a) the value of a taxable supply made by a taxable person is the consideration for the supply reduced by an amount equal to the consideration multiplied by the tax fraction; or
- (b) the value of any other supply is the consideration for the supply.

(2) The value of a taxable supply made by a taxable person to an associate who is not a taxable person for no consideration or for a consideration that is

less than the fair market value of the supply is the NCT-exclusive fair market value of the supply determined at the time of the supply.

- (3) The value of a taxable supply under a finance lease is –
- (a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset (excluding NCT) in the lease agreement, that amount; or
  - (b) in any other case, the NCT-exclusive fair market value of the asset at the time of the supply.
- (4) Except as provided in this Act, the value of a supply for no consideration is zero.

### **13A Rounding of Amounts**

- (1) Subsection (2) applies when the consideration for a supply is an amount that includes a figure to the second decimal place, that is, when the amount specifies a reference to a number of cents between 1 cent and 9 cents.
- (2) The amount is rounded to the nearest 10 cents by –
- (a) Regarding 1 to 4 cents as zero;
  - (b) Rounding 5 to 9 cents up to 10 cents.
- (3) For the purpose of subsection (1), if several suppliers are included in a transaction, the rounding referred to in subsection (2) applies to the total consideration.
- (4) Subsection (5) applies when an amount of tax charged under this Act is an amount that includes a fraction of a cent.
- (5) The amount is rounded to the nearest cent by –
- (a) Regarding a fraction that is less than half a cent as zero;
  - (b) Rounding a fraction that is equal to or more than half a cent up to 1 cent.

### **14 Application of goods or services to private or exempt use**

(1) An application of goods or services by a taxable person wholly or partly to a private or exempt use is a taxable supply of the goods or services, but only if the taxable person has been allowed an input tax credit in respect of the acquisition of the goods or services, or that part of the goods or services applied to a private or exempt use.

(1A) For the purposes of subsection (1), an application of goods or services by a taxable person to an employee of the person is treated as a taxable supply of the goods or services if the supply is not connected with the performance of the employee's duties.

(1B) Subsection (1A) does not apply if the goods or services are provided by the person and received or used by the employee on the premises of the person. For the purposes of this subsection, "premises" –

- (a) include premises that the person owns or leases;
- (b) include premises, other than those referred to in paragraph (a), on which the employee is required to perform duties for the person;

- (c) do not include premises occupied by an employee of the person for residential purposes.
- (2) A taxable supply referred to in subsection (1) occurs on the date the goods or services are first applied to private or exempt use and the output tax payable in respect of the supply is treated as having been received at that time.
- (3) Subject to subsection (4), the value of a taxable supply referred to in subsection (1) is –
  - (a) in the case of goods or services acquired in a taxable acquisition, the lesser of –
    - (i) the consideration paid on acquisition of the goods, reduced by an amount equal to the consideration multiplied by the tax fraction; or
    - (ii) the NCT-exclusive fair market value of the goods at the time specified in paragraph (a);
  - (b) in the case of goods acquired in a taxable import, the lesser of –
    - (i) value of the import; or
    - (ii) NCT-exclusive fair market value of the goods at the time specified in paragraph (b).
- (4) The value of an import or supply determined under subsection (3) is reduced by –
  - (a) if part only of the input tax paid by the taxable person was allowed as an input tax credit, an amount reflecting the extent to which no input tax credit was allowed; or
  - (b) if part only of the goods were applied to a private or exempt use, an amount reflecting the extent to which the goods were not so applied.
  - (c) In this section, “exempt use” means the use of goods or services to make an exempt supply.

## **15 Lay-by sales**

- (1) A supply of goods under a lay-by agreement occurs on the date the goods are delivered to the purchaser and the output tax payable in respect of the supply is treated as received on that date.
- (2) If a lay-by agreement is cancelled and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under the agreement –
  - (a) the cancellation of the agreement is a supply of services by the seller at the time of cancellation;
  - (b) the value of the supply –
    - (i) if the seller is a taxable person at the time of the cancellation, is the amount retained or recovered by the seller reduced by an amount equal to the amount retained or recovered multiplied by the tax fraction; or
    - (ii) in any other case, is the amount retained or recovered by the seller; and

- (c) the output tax payable on the supply is treated as received at the time of the supply as determined under paragraph (a).
- (3) In this section, "lay-by agreement" means any purchase agreement for goods under which –
  - (a) the purchase price is payable by at least one additional payment after the payment of a deposit;
  - (b) delivery of the goods takes place at any time after payment of the deposit; and
  - (c) ownership of the goods is transferred by delivery.

## **16 Vouchers**

- (1) This section applies to a voucher, token, coupon or similar article (a "voucher") that can be redeemed by the holder of the voucher for goods or services up to a certain monetary amount. This section does not apply –
  - (a) to a postage stamp;
  - (b) if the voucher entitles the holder to receive a specified supply of goods or services.
- (2) The issue of a voucher is not a supply if the voucher –
  - (a) entitles the holder to receive a supply of goods or services for a monetary amount on redemption of the voucher; and
  - (b) is issued for a consideration in money.
- (3) On the redemption of a voucher, the value of the supply includes the consideration for the voucher.
- (4) Subsections (5) and (6) apply when a taxable person issues a voucher for no consideration and the voucher entitles the holder to a discount on the price of goods or services supplied by another person.
- (5) On the redemption of the voucher, the value of the supply includes the monetary amount of the voucher reduced by an amount equal to the monetary amount multiplied by the tax fraction.
- (6) The taxable person, as issuer of the voucher, is entitled to an input tax credit for an amount paid to the supplier on redemption of the voucher. The amount of the input tax credit is the amount paid to the supplier multiplied by the tax fraction.

## **17 Gambling Supplies**

- (1) Notwithstanding section 4(2), the amount of NCT imposed on gambling supplies made by a taxable person is determined on a global basis under this section for each NCT period rather than for each gambling supply.
- (2) A taxable person making gambling supplies in an NCT period is treated as having received output tax for the period in relation to those supplies of an amount computed in accordance with the following formula –

$$(A - B) \times C$$

where –

- A is the total amounts wagered with the person in the period;
- B is the total monetary prizes paid out by the person in the period; and
- C is the tax fraction.

(3) If the amount calculated under subsection (2) for a NCT period is a negative amount, no amount is included under this section in the output tax of the taxable person for that period.

(4) No input tax credits are allowed in respect of the acquisition of a gambling supply and a taxable person must not issue a NCT invoice for a gambling supply.

(5) In this section –

“Gambling event” means –

- (a) the conduct in Niue of a lottery, raffle, or similar undertaking; or
- (b) a race, game, sporting event, or other event in Niue that has or is intended to have an outcome;

“Gambling supply” means –

- (a) the supply of a ticket (however described) in a lottery, raffle, or similar undertaking; or
- (b) the acceptance of a bet (however described) relating to the outcome of a gambling event;

“Total amounts wagered”, in relation to a taxable person and a NCT period, means the sum of the following amounts –

- (a) the consideration for all the gambling supplies made by the person in the period; and
- (b) any amounts recovered by the taxable person in the NCT period in respect of an amount written off in the current or a previous NCT period that were included in total monetary prizes under paragraph (d) of the definition of that term; and

“Total monetary prizes”, in relation to a taxable person and a NCT period, is the sum of the following amounts, whether or not the relevant gambling event, gambling supply, or gambling loss occurred during the period –

- (a) the monetary prizes paid by the person in the period because of the outcome of gambling events;
- (b) the amounts of money paid in the period by the person to a recipient of the person’s gambling supplies because of an agreement between

- them requiring the person to repay a proportion of the recipient's losses from those supplies;
- (c) the amount, if any, referred to in subsection (3) arising in the immediately preceding period; and
  - (d) an amount that the person writes off as a bad debt in relation to all or a part of the consideration for a gambling supply made by the person that is due as a debt to the person and has not been received.
- (6) A payment referred to in paragraph (b) of the definition of "total monetary prizes" is not treated as consideration for a supply.

## **PART V**

### **RULES RELATING TO IMPORTS**

#### **18 Exempt imports**

- (1) The following imports are exempt imports -
- (a) an import of goods that, if supplied in Niue, the supply would be an exempt or zero-rated supply;
  - (b) an import of goods not exceeding \$50 in value arriving by air or sea in Niue and subject to the Collector treating more than one item as a single item under the Customs and Tariff Regulations; and
  - (c) an import of goods by a diplomatic or consular mission, or by a diplomat or member of the diplomat's family forming part of the diplomat's household in Niue to the extent provided for in the Diplomatic Privileges and Immunities Act 1968; and
  - (d) temporarily imported goods to which section 181 of the Customs Act 1966 applies.

#### **19 Time of import**

- (1) An import of goods occurs -
- (a) if the goods are entered under the Customs legislation, on the date on which they are so entered; or
  - (b) in any other case, on the date the goods are brought into Niue.

#### **20 Value of import**

- (1) Subject to subsection (2), the value of an import of goods is the sum of -
- (a) the value of the goods for the purposes of customs duty under the Customs legislation, whether or not any duty is payable on the import; and
  - (b) the amount of any customs duty, excise, port charges, or other fiscal charge (other than NCT) payable in respect of the import.
- (2) If goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, and the form or character of the goods has not changed, the value of the import is the amount of the

increase in value of the goods as a result of the repair, renovation, or improvement.

## **PART VI INPUT TAX CREDITS**

### **21 Input tax credits**

(1) Subject to this Act, if all the supplies made by a taxable person during an NCT period are taxable supplies, the person is allowed a credit for all the input tax paid in respect of taxable acquisitions or taxable imports by the person during the period for the purposes of making taxable supplies.

(2) Subject to this Act, if none of the supplies made by a taxable person during an NCT period are taxable supplies, the person is not allowed any credit for the input tax paid in respect of taxable acquisitions or taxable imports by the person during the period.

(3) Subject to this Act, if a taxable person makes both taxable and other supplies during an NCT period, the input tax credits allowed to the person for that period are determined as follows –

- (a) if a taxable acquisition or taxable import by the person relates wholly to making taxable supplies, an input tax credit is allowed for the full amount of input tax paid in respect of the acquisition or import;
- (b) if a taxable acquisition or taxable import by the person relates wholly to making supplies that are not taxable supplies, no input tax credit is allowed for the input tax paid in respect of the acquisition or import; or
- (c) if a taxable acquisition or taxable import by the person relates, whether directly or indirectly, partly to making taxable supplies and partly to making other supplies, the sum of the input tax credits allowed for such acquisitions or imports during the NCT period is calculated according to the following formula –

$$A \times \frac{B}{C}$$

where –

- A** is the total amount of input tax paid in respect of taxable acquisitions or taxable imports by the person during the period for the purposes of making taxable supplies, less the input tax accounted for under paragraphs (a) and (b);
- B** is the value of all taxable supplies made by the taxable person during the period; and

C is the value of all supplies made by the taxable person during the period, other than supplies made through an enterprise carried on by the person outside Niue.

(4) If the fraction  $B/c$  in subsection (3)(c) for an NCT period is more than 0.90, the taxable person is allowed an input tax credit for all of the input tax comprising component A of the formula in subsection (3)(c).

(5) No input tax credit is allowed under subsection (1) or (3) to the extent that the taxable acquisition or taxable import is for private use.

(6) Subject to subsection (7), an input tax credit under subsection (1) or (3), is allowed in the NCT period in which the input tax is paid.

(7) If, at the time a taxable person furnishes an NCT return for an NCT period in which an input tax credit would otherwise be allowable under this Act, the person does not hold the documentation referred to in subsection (8), the input tax credit is not allowed in that NCT period but instead is allowed in the first NCT period in which the person holds such documentation provided that is not more than two years after the right to the input tax credit arose under subsection (6).

(8) The documentation required for the purposes of subsection (9) is –

- (a) in the case of a taxable supply, the NCT invoice for the supply;
- (b) in the case of a taxable import, a bill of entry or other document prescribed under the Customs legislation for the import;
- (c) in the case of an input tax credit allowed in respect of input tax treated as payable under section 24(3), the NCT debit note required to be issued under section 28; or
- (d) in the case of an input tax credit allowed under section 24(4), a copy of the NCT credit note issued to the recipient of the supply.

(9) Whether an acquisition or importation made in an NCT period relates to making a particular kind of supply should be determined on the basis of the taxable person's intention at the time of the acquisition or importation, but the taxable person may take account of actual use or a change in intention that occurs before the date on which the NCT return for that period is required to be furnished.

## **22 Input tax credit for newly registered person**

(1) Subject to this Act, an NCT-registered person may claim, in the first NCT return of the person, an input tax credit determined in accordance with section 21 for the input tax paid in respect of goods held at the date of registration, if –

- (a) at the end of the last day before the date of the person's registration, the person held the goods as inventory;
- (b) the inventory was acquired by the person in a taxable acquisition or a taxable import by the person;

- (c) the acquisition or import occurred no more than four months prior to the date of registration; and
- (d) the person can provide documentary evidence satisfactory to the Financial Secretary that input tax has been paid on the acquisition or import.

### **23 Denial of input tax credits**

(1) No input tax credit is allowed under this Act for input tax paid in respect of a taxable acquisition or taxable import by a taxable person –

- (a) of a passenger vehicle, or spare parts or repair and maintenance services for such vehicle, unless the person's enterprise involves the dealing in, or hiring of such vehicles and the vehicle were acquired for the purpose of such enterprise;
- (b) of petroleum products, unless those products are wholly for use in the enterprise of the person;
- (c) to the extent that the acquisition or import is used to provide entertainment, unless the person's enterprise involves providing entertainment and the entertainment was provided in the ordinary course of the enterprise and was not supplied to an associate or employee;
- (d) to the extent to which the acquisition is used to provide accommodation, unless –
  - (i) the person's enterprise involves providing accommodation and the accommodation was provided in the ordinary course of the enterprise; or
  - (ii) the accommodation was provided while the recipient of the accommodation was away from home for the purposes of the enterprise of the recipient or the recipient's employer; or
- (e) if the acquisition provides membership or entrance for any person in a sporting, social, or recreational club, association, or society.

(2) Section 21 applies in determining whether an input tax credit is allowed for a taxable acquisition or taxable import that is an exception to the denial of input tax credits under subsection (1)(a), (b), (c), or (d).

(3) In this section –

“Entertainment” means the provision of food, beverages, tobacco, amusement, recreation, or hospitality of any kind; and

“Passenger vehicle” means a road vehicle designed or adapted for the transport of nine or fewer seated passengers.

## **PART VII POST-SALE ADJUSTMENTS**

## **24 Post-sale adjustments relating to changes to a taxable supply**

(1) This section applies if –

- (a) a taxable supply is cancelled;
- (b) the nature of a taxable supply is fundamentally varied or altered;
- (c) the consideration for a taxable supply is altered; or
- (d) the goods (or part thereof) the subject of a taxable supply are returned to the supplier.

(2) If this section applies and the NCT properly chargeable in respect of the supply exceeds the NCT actually accounted for by the supplier, the supplier must treat the amount of the excess as output tax paid on a taxable supply made by the supplier in the NCT period in which the event referred to in subsection (1) occurred.

(3) If subsection (2) applies and the supplier has issued an NCT debit note to the recipient of the supply in accordance with section 28, the recipient must treat the additional NCT specified in the debit note as input tax paid on a taxable supply made to the recipient in the NCT period in which the debit note is received.

(4) Subject to subsection (6), if this section applies and the NCT actually accounted for by the supplier exceeds the NCT properly chargeable in respect of the supply, the supplier is allowed an input tax credit for the amount of the excess in the NCT period in which the event referred to in subsection (1) occurred.

(5) If subsection (4) applies and the supplier has issued an NCT credit note to the recipient of the supply in accordance with section 28, the recipient must treat the additional NCT specified in the credit note as output tax paid on a taxable supply made by the recipient in the NCT period in which the credit note is received.

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

## **PART VIII**

### **COMPUTATION OF NET NCT PAYABLE AND REFUNDS**

#### **25 Computation of net NCT payable**

(1) The amount of NCT that a taxable person must remit to the Financial Secretary for a NCT period is the net NCT payable for the period computed according to the following formula –

$$A - B$$

where –

- A** is the total output tax received or treated as having been received by the person during the period; and
- B** is the total input tax credit allowed to the person under sections 21, 22, and 24 for the period, but does not include input tax for which section 23 denies the allowance of a credit.

## **26 Refunds**

(1) Subject to subsection (2), if the total input tax credit allowed to a taxable person for an NCT period exceeds the person's total output tax for the period, the Financial Secretary must –

- (a) apply the excess in payment of any tax or duty owing by the person under any revenue law; and
- (b) refund the remainder (if any) to the person within twenty working days after the person furnished the NCT return for the period.

(2) No refund is payable if the amount of the refund is less than \$5.

## **PART IX NCT DOCUMENTATION**

### **27 NCT Invoices**

(1) An NCT-registered person making a taxable supply to another NCT-registered person must, at the time of the supply, issue that other person with an original NCT invoice for the supply.

(2) An NCT invoice must contain the following particulars –

- (a) the words “NCT INVOICE” in a prominent place;
- (b) the name, address, and NCT registration number of the supplier;
- (c) the name, address, and NCT registration number of the recipient;
- (d) the individualised serial number and the date on which the NCT invoice is issued;
- (e) the description of the goods supplied (including quantity or volume) or services provided and the date on which the supply was made; and
- (f) the consideration for the supply and the amount of NCT charged.

### **28 NCT credit and debit notes**

(1) If –

- (a) an NCT-registered person (referred to as “the supplier”) has made a taxable supply to another NCT-registered person (referred to as “the recipient”);
- (b) the supplier has issued an original NCT invoice to the recipient;
- (c) section 24 applies to the supply; and

(d) the amount shown on the invoice as the NCT charged exceeds the NCT properly chargeable in respect of the supply, the supplier must provide the recipient with an original NCT credit note.

(2) An NCT credit note must contain the following particulars -

- (a) the words "NCT CREDIT NOTE" in a prominent place;
- (b) the name, address, and NCT registration number of the supplier;
- (c) the name, address, and NCT registration number of the recipient;
- (d) the individualised serial number and the date on which the NCT credit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the NCT credit note, including information sufficient to identify the taxable supply to which the NCT credit note relates;
- (f) if section 24(1)(a), (c), or (d) applies, the consideration shown on the NCT invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of NCT that relates to the difference; and
- (g) in any case when paragraph (f) does not apply, the NCT originally payable, the NCT payable as a result of the circumstances giving rise to the issuing of the NCT credit note, and the difference between those amounts.

(3) If -

- (a) an NCT-registered person (referred to as "the supplier") has made a taxable supply to another NCT-registered person (referred to as "the recipient");
  - (b) the supplier has issued an original NCT invoice to the recipient;
  - (c) section 24 applies to the supply; and
  - (d) the NCT properly chargeable in respect of the supply exceeds the amount shown on the invoice as the NCT charged,
- the supplier must provide the recipient with an original NCT debit note.

(4) An NCT debit note must contain the following particulars -

- (a) the words "NCT DEBIT NOTE" in a prominent place;
- (b) the name, address, and NCT registration number of the supplier;
- (c) the name, address, and NCT registration number of the recipient;
- (d) the individualised serial number and the date on which the NCT debit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the NCT debit note, including information sufficient to identify the taxable supply to which the NCT debit note relates;
- (f) if section 24(1)(a), (c), or (d) applies, the consideration shown on the NCT invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of NCT that relates to the difference; and
- (g) in any case when paragraph (f) does not apply, the NCT originally payable, the NCT payable as a result of the circumstances giving rise

to the issuing of the NCT credit note, and the difference between those amounts.

### **29 NCT documentation issued by or to agents**

(1) If a taxable supply is made by or to an agent on behalf of a principal and both the agent and principal are NCT-registered persons, an NCT invoice, NCT credit note, or NCT debit note required to be issued by or to the principal may be issued by or to the agent, using the name, address and NCT registration number of the agent.

(2) If a taxable supply is made by or to an agent on behalf of a principal and the principal is an NCT-registered person but the agent is not, an NCT invoice, NCT credit note, or NCT debit note required to be issued by or to the principal may be issued by or to the agent, but using the name, address and NCT registration number of the principal.

(3) If a taxable supply is made by or to an agent on behalf of a principal, an NCT invoice, NCT credit note, or NCT debit note required to be issued under this Act can be issued once only and cannot be issued by or to both the agent and the principal.

(4) An NCT invoice, NCT credit note, or NCT debit note issued by or to an agent in accordance with this section is treated as issued by or to the principal, as the case may be, for the purposes of this Act.

### **30 Requests for NCT documentation**

(1) A taxable person who, for any reason, has not been issued with an original NCT invoice, NCT credit note, or NCT debit note as required under this Act may make a written request to the supplier to issue the document.

(2) A request under subsection (1) must be made –

(a) in the case of an NCT invoice, within 60 days of the time of the supply; or

(b) in the case of an NCT credit note or NCT debit note, within 60 days of the date of the event under section 24 to which the NCT credit note or NCT debit note relates.

(3) An NCT-registered person receiving a request under subsection (1) must comply with the request within 14 days of receiving the request.

### **31 Maintenance of NCT documentation**

(1) An NCT-registered person can issue only one original NCT invoice for a taxable supply, or one original NCT credit note or NCT debit note for an event under section 24, but a copy clearly marked as such may be provided to an NCT-registered person who claims to have lost the original.

(2) A person must not issue a NCT invoice, NCT credit note, or NCT debit note other than in the circumstances specified in this Act.

(3) The following documents must be maintained by an NCT-registered person for the purposes of this Act –

- (a) original (or copies issued under subsection (1)) of all NCT invoices, NCT credit notes, and NCT debit notes received by the person;
- (b) a copy of all NCT invoices, NCT credit notes, and NCT debit notes issued by the person; and
- (c) customs documentation relating to imports and exports of goods by the person.

(4) The documents referred to in subsection (3)(b) must be maintained in chronological order.

(5) Documents required to be maintained under this Act must be –

- (a) maintained in Niue in English or Niuean; and
- (b) retained for seven years after the end of the NCT period to which they relate.

## **PART X PROCEDURAL RULES**

### **Division I Returns and Payments**

#### **32 NCT return**

(1) A taxable person must furnish an NCT return, in the prescribed form and manner, for each NCT period by the last day of the month following the end of the period.

(2) An NCT return purporting to be made or signed by or on behalf of a taxable person under this Act is treated as having been made by the taxable person or with the taxable person's authority unless the contrary is proved.

(3) A taxable person may apply, in writing, to the Financial Secretary for an extension of time to furnish an NCT return.

(4) The Financial Secretary may, upon satisfaction that there is reasonable cause, grant an application under subsection (3) and must serve notice of the decision on the applicant.

(5) An extension of time granted under subsection (4) does not change the date for payment of NCT due in respect of the return.

#### **33 Due date for payment of NCT**

(1) The net NCT payable by a taxable person for an NCT period computed under section 25 is payable by the due date for furnishing the NCT return for that period.

(2) A taxable person may apply, in writing, to the Financial Secretary for an extension of time to pay NCT due.

(3) The Financial Secretary may, upon satisfaction that there is reasonable cause, grant an application under subsection (2) and must serve notice of the decision on the applicant.

(4) The grant of an extension of time to pay NCT due does not preclude the liability for additional tax arising from the original date the NCT was payable.

(5) The NCT payable by an importer in respect of a taxable import is payable at the time of the import.

(6) The liability for NCT arises by operation of this section and does not depend on the Financial Secretary making an assessment of the NCT due.

### **34 Collection of NCT on imports**

(1) The Financial Secretary –

(a) must collect NCT due under this Act on an import of goods at the time of import and must, at that time, obtain the name and NCT registration number (if any) of the importer, the customs declaration, and invoice values in respect of the import; and

(b) may make arrangements for such functions to be performed on the Financial Secretary's behalf in respect of imports through the postal service.

(2) Except when the contrary intention appears, the provisions of the Customs legislation relating to the import, transit, coastwise carriage, and clearance of imported goods, and the payment and recovery of duty, in so far as relevant and with such exceptions and modifications as necessary, apply in relation to NCT payable on a taxable import.

(3) The Financial Secretary may exercise any power conferred on him by the Customs legislation as if the reference to customs duty in that legislation included a reference to NCT payable on imported goods under this Act.

## **Division II Assessments**

### **35 Self-assessments**

(1) For the purposes of this Act –

(a) a taxable person who has furnished an NCT return is treated as having made an assessment of the amount of NCT payable for the NCT period to which the return relates being that amount as set out in the return; and

(b) an NCT return furnished by a taxable person is treated as a notice of the assessment served by the Financial Secretary on the person on the date that the return was furnished.

### **36 Default assessments**

(1) The Financial Secretary may make an assessment of the NCT payable by a taxable person if –

- (a) the person fails to furnish an NCT return as required under this Act;  
or
- (b) the person has been paid a refund under section 26 to which the person is not entitled.

(2) If a person, other than a taxable person, makes a supply of goods or services and represents that NCT is charged on the supply, the Financial Secretary may make an assessment of the NCT payable by the person in relation to the supply as if the person were a taxable person and the supply were a taxable supply.

(3) If a taxable person makes a supply of goods or services and the supply is not a taxable supply or is zero-rate supply and, in either case, the taxable person represents that a positive rate is charged on the supply, the Financial Secretary may make an assessment of the NCT payable by the person in relation to the supply as if the supply were a taxable supply subject to a positive rate of NCT.

(4) An amount assessed under subsection (2) or (3) is treated, for all purposes of the Act, as NCT payable under the Act unless, in the case of an amount assessed under subsection (3), the taxable person reasonably believed that NCT should have been applied at a positive rate to the supply and the person has since refunded to the recipient of the supply the NCT charged on the supply or has otherwise satisfied the Financial Secretary that the recipient was not disadvantaged and the taxable person was not advantaged by the mistake.

(5) The Financial Secretary may make an assessment under this section at any time.

(6) The Financial Secretary may, based on the information available, estimate the NCT payable by a person for the purposes of making an assessment under this section.

(7) The Financial Secretary must serve a notice of the assessment made under this section on the person assessed stating –

- (a) the reason for the assessment;
- (b) the net amount of NCT payable under the assessment;
- (c) the date on which the net amount of NCT payable under the assessment is due, which must be, at least, [thirty] days after the date on which the notice is served; and
- (d) the time, place, and manner of objecting to the assessment.

(8) Additional tax –

- (a) in respect of NCT assessed under subsection (1)(a), is computed from the original due date for payment of NCT under section 33;
- (b) in respect of NCT assessed under subsection (1)(b), is computed from the date the refund was paid; or

- (c) in respect of NCT assessed under subsection (2) or (3), is computed from the date on which payment of the NCT would have been due under section 33 if the supply had been a taxable supply subject to a positive rate of NCT.

### **37 Assessment of recipient of a supply**

(1) If a taxable person has, in consequence of misrepresentation or fraud by the recipient of a supply, incorrectly treated the supply as an exempt or zero-rated supply, the Financial Secretary may assess the recipient of the supply for payment of the NCT due in respect of the supply and any additional tax imposed as a result of the late payment of the NCT.

(2) The Financial Secretary must serve notice of an assessment under subsection (1) on the recipient specifying –

- (a) the reason for the assessment as provided for in subsection (1);
- (b) the NCT payable under the assessment;
- (c) the date on which the NCT payable under the assessment is due, which must be at least thirty days after the date on which the notice is served; and
- (d) the time, place, and manner of objecting to the assessment.

(3) Subsection (1) does not preclude the Financial Secretary from recovering the whole or part of the NCT due in respect of the supply together with any additional tax payable from the taxable person who made the supply and –

- (a) any amount recovered from the recipient of the supply is credited against the liability of the supplier in respect of the supply; and
- (b) any amount recovered from the supplier is credited against the liability of the recipient of the supply,

but the Financial Secretary cannot recover more than the total amount of NCT and additional tax payable in relation to the supply.

(4) Any supplier who pays NCT or additional tax referred to in subsection (1) may recover the amount from the recipient of the supply.

(5) An assessment made under subsection (1) is treated as an assessment of NCT for all purposes of this Act.

### **38 Amendment of assessments**

(1) Subject to this section, the Financial Secretary may amend an assessment by making such alterations or additions to the assessment as the Financial Secretary considers necessary to ensure that a person is liable for the correct amount of NCT payable in respect of the NCT period to which the assessment relates.

(2) A taxable person may apply to the Financial Secretary within the time specified in subsection (3)(b) for the Financial Secretary to make an amendment in accordance with subsection (1) to a self-assessment and the Financial Secretary must serve the person with notice of the decision on the application.

- (3) The amendment of an assessment under subsection (1) may be made –
- (a) in the case of fraud or wilful neglect by or on behalf of the person assessed, at any time; or
  - (b) in any other case, within three years of the date the Financial Secretary served notice of the assessment on the person assessed.
- (4) As soon as practicable after making an amended assessment under this section, the Financial Secretary must serve the person assessed with notice of the amended assessment.
- (5) Subject to subsection (6), if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1), the Financial Secretary may further amend the original assessment within the later of –
- (a) three years after the Financial Secretary served notice of the original assessment on the person assessed; or
  - (b) one year after the Financial Secretary served notice of the amended assessment on the person assessed.
- (6) If subsection (5)(b) applies, the Financial Secretary is limited to amending the alterations and additions made in the amended assessment to the original assessment.
- (7) An amended assessment is treated in all respects as an assessment for the purposes of this Act (other than subsection (1) or (2)).

### **39 Application of Income Tax Act assessment provisions**

(1) Sections 21 – 24 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

## **Division III Objections and Appeals**

### **40 Application of Income Tax Act objection and appeal provisions**

Part IV of the Income Tax Act applies for the purposes of this Act with the necessary changes made.

## **Division IV Recovery of NCT**

### **41 Application of Income Tax Act recovery provisions**

Sections 115 and 116 – 126 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

### **42 Seizure of goods**

(1) The Financial Secretary may seize any goods in respect of which the Financial Secretary has reasonable grounds to believe that the NCT payable in respect of the supply or import of the goods has not been, or will not be paid.

(2) Goods seized under subsection (1) must be stored in a place approved by the Financial Secretary for the storage of seized goods.

(3) Immediately after the seizure of the goods, a written statement should be obtained from the owner of the goods or the person who had custody or control stating the quantity and quality of the goods.

(4) If goods have been seized under subsection (1), the Financial Secretary must, within ten days after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing –

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for the seizure; and
- (c) setting out the terms for the release or disposal of the goods.

(5) The Financial Secretary is not required to serve a notice under subsection (4) if, after making reasonable enquiries, the Financial Secretary does not have sufficient information to identify the person on whom the notice should be served.

(6) If subsection (5) applies, the Financial Secretary may serve notice under subsection (4) on a person claiming the goods, provided that person has given sufficient information to enable the notice to be served.

(7) The Financial Secretary may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (4) has been served if that person has paid, or gives security for the payment of, the NCT payable or that will become payable in respect of the supply or import of the goods.

(8) If subsection (7) does not apply, the Financial Secretary must detain the goods seized under subsection (1) –

- (a) in the case of perishable goods, for a period that the Financial Secretary considers reasonable having regard to the condition of the goods; or
- (b) in any other case, for the greater of –
  - (i) twenty days after the seizure of the goods; or
  - (ii) twenty days after the date for payment of the NCT in respect of the supply or import of the goods.

(9) If the detention period in subsection (8) has expired, the goods seized may be sold by public auction or in such other manner as the Financial Secretary may direct and the proceeds of disposal must be applied by the Financial Secretary –

- (a) first towards the cost of taking, keeping, and selling the seized goods;
- (b) then towards the payment of the NCT, additional tax, and penal tax that is or will become payable in respect of the supply of the goods;
- (c) then towards payment of any other tax, duty, additional tax, or penal tax payable by the owner of the goods under any revenue law; and
- (d) the remainder of the proceeds, if any, must be paid to the owner.

### **43 Security**

The Financial Secretary may, if there is reason to believe that a taxable person may not pay NCT when it becomes payable, require, by notice in writing, the person to give security by bond, deposit, or otherwise to the Financial Secretary's satisfaction for the payment of NCT that may become payable.

### **44 Temporary closure of business**

(1) If an NCT-registered person fails to deliver a NCT return by the due date or pay NCT by the date for payment, the Financial Secretary may notify the person in writing of the intention to close down part or the whole of the person's business unless the person delivers the return or pays the NCT owing, as the case may be, within a period of seven days of the date of the notice.

(2) If a person fails to comply with a notice under subsection (1), the Financial Secretary may issue an order to close down part or the whole of the business of the person for a period not exceeding fourteen days.

(3) The Financial Secretary may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

(4) The Financial Secretary must affix, in a conspicuous place on the front of the premises of the business or part of the business which has been closed under an order issued under subsection (2), a notice in the following words "CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE FINANCIAL SECRETARY UNDER SECTION 44 OF THE NIUE CONSUMPTION TAX ACT".

(5) If the return is delivered or the NCT owing is paid, as the case may be, within the period of closure, the Financial Secretary must immediately arrange for removal of the notice referred to in subsection (4).

## **Division V Information Collection and Investigations**

### **45 Power to enter and search**

(1) A tax officer for the purposes of this section must apply to a Judge or the Registrar of the Niue High Court for a warrant to -

- (a) enter and search any premises, place, property, book, record or data storage device; and
- (b) may make an extract or copy of any books, accounts, documents, records or information on a data storage device to which access is obtained under paragraph (a); and
- (c) may seize any books, accounts, documents, or records that, in the opinion of the tax officer, afford evidence that may be material in determining the NCT liability of any person; and

- (d) may retain any books, accounts, documents, or records seized under paragraph (c) for as long as they may be required for determining a person's NCT liability or for any proceeding under this Act; and
  - (e) may, if a hard copy or copy on a data storage media of information stored on a data storage device is not provided, seize and remove the device<sup>3</sup> from the premises and retain the device for as long as is necessary to copy the information required.
- (2) A tax officer may require a police officer or any other officer of the Niue Public Service to be present for the purposes of exercising powers under this section.
- (3) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates must not interfere with the execution of the warrant.
- (4) A person whose books, accounts, documents, records or data storage device have been seized under subsection (1) may examine them and make copies, at the person's expense, during office hours.
- (5) The tax officer is responsible for all books, accounts, documents, records, or data storage devices removed and retained under this section and return them to the owner within 14 days of the conclusion of the investigation and any proceedings to which they relate.
- (6) If any book, accounts, document, record, or data storage device removed and retained under subsection (1) is lost or destroyed in the possession of the tax officer the tax officer must appropriately compensate the owner for the loss or destruction, unless the loss or destruction was due to circumstances beyond the tax office control.

#### **46 Administrative summons**

- (1) For the purposes of this Act, the Financial Secretary may, by notice in writing, require any person -
- (a) to furnish such information as the Financial Secretary may require;
  - (b) to attend and give evidence concerning the person's or any other person's NCT affairs; or
  - (c) to produce all books, accounts, documents, or records in the person's custody or under the person's control relating to the person's or any other person's NCT affairs.
- (2) If the notice requires the production of books, accounts, documents, records, including in electronic format, it is sufficient if such books, accounts, documents, or records are described with reasonable certainty.
- (3) A notice issued under this section must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.

(4) The Regulations may prescribe scales of expenses to be allowed to persons required to attend and give evidence under this section.

#### **47 Audit of a person's NCT affairs**

(1) The Financial Secretary may select any person for an audit for the purposes of this Act having regard to –

- (a) the person's history of compliance or non-compliance with this Act or any other revenue law;
- (b) the amount of NCT payable by the person;
- (c) the class of business conducted by the person; or
- (d) any other matter that the Financial Secretary considers relevant to ensuring the collection of NCT due.

(2) The fact that a person has been audited in an NCT period does not preclude the person from being audited again in the next and following periods if there are reasonable grounds for the audits, particularly having regard to the matters referred to in subsection (1).

(3) An audit may be conducted for the purposes of more than one revenue law.

### **Division VI Representatives**

#### **48 Liabilities and obligations of representatives**

(1) In this Section, "representative" means –

- (a) in the case of an natural person under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf, or for the benefit of the individual;
- (b) in the case of a company, the chief executive officer, public officer, managing director, or any director of the company;
- (c) in the case of a partnership, a partner in the partnership;
- (d) in the case of a trust, a trustee of the trust;
- (e) in the case of an estate, the executor of the estate;
- (f) in the case of a body of persons other than a partnership or company, any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the body;
- (g) in the case of the Government or village council in Niue, any natural person responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government or village council;
- (h) in the case of a foreign government, political subdivision of a foreign government, or a public international organisation, any natural person responsible for accounting for the receipt or payment of moneys or funds in Niue on behalf of the government, political subdivision, or organisation;

- (i) in the case of a non-resident person, any natural person controlling the person's affairs in Niue, including any manager of any enterprise of such person;
  - (j) in the case of any person (including a person referred to in paragraphs (a)-(i)), a natural person that the Financial Secretary has, by notice in writing, declared to be a representative of the first-mentioned person for the purposes of this section.
- (2) Every representative of a person is responsible for performing any duties or obligations imposed by this Act on that person, including the payment of tax.
- (3) Subject to subsection (4), any NCT that, by virtue of subsection (2), is payable by a representative of a person is recoverable from the representative only to the extent of any assets of the person that are in the possession or under the control of the representative.
- (4) Every representative is personally liable for the payment of NCT due by the representative in that capacity if, while the amount remains unpaid, the representative disposes of or parts with any moneys or funds belonging to the person that are in the possession of the representative or which come to the representative after the tax is payable, if the NCT could legally have been paid from or out of such moneys or funds.
- (5) If there are two or more representatives of a person, the duties or obligations referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.
- (6) Nothing in this section relieves any person from performing any duties or obligations imposed on the person under this Act that the representative of the person has failed to perform.
- (7) This Act applies to any amount payable under this section by a representative as if the amount is NCT due.

#### **49 Liability for NCT payable by a company left with insufficient assets**

- (1) This section applies if an arrangement has been entered into with the purpose or effect of rendering a company unable to satisfy a current or future liability under this Act.
- (2) Subject to subsection (3), if this section applies, every person who was a director or controlling shareholder of the company at the time the arrangement was entered into is jointly and severally liable for the NCT liability of the company.
- (3) A director of a company is not liable under this section for the tax liability of the company if the director derived no financial or other benefit from the arrangement and –
- (a) the director has, on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the Financial Secretary, in writing, of the arrangement; or

(b) the director satisfies the Financial Secretary that, at the time the arrangement was entered into –

- (i) the director was not involved in the executive management of the company; and
- (ii) the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(4) This Act applies to any amount payable under this section as if the amount is NCT due.

(5) In this section –

“Arrangement” means any contract, agreement, plan, or understanding whether express or implied and whether or not enforceable in legal proceedings;

“Controlling shareholder”, in relation to a company, means any person who beneficially holds, either alone or together with an associate or associates –

- (a) more than fifty per cent (50%) of the voting rights in the company; or
- (b) more than fifty per cent of the rights to dividends; or
- (c) more than fifty per cent of the rights to capital; and

“Director”, in relation to a company, means any person occupying the position of director of the company.

## **Division VII Penal Tax**

### **50 Application of Income Tax Act penal tax provisions**

Sections 127, and 130 – 138 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

### **51 Penal tax for failure to apply for NCT registration**

A person who fails to apply for registration as required by section 7 is liable for penal tax equal to double the amount of NCT payable during the period commencing on the day on which the person was first required to apply for registration until either the person lodges an application for registration or the person is registered by the Financial Secretary on the Financial Secretary’s own motion.

## **52 Penal tax for failure to display NCT registration certificate**

A person who fails to display its NCT registration certificate or a copy thereof as required by section 8(5) is liable for penal tax equal to 0.2 penalty units per day for each day or part day on which the failure occurs.

## **53 Penal Tax for making a false or misleading statement**

(1) This section applies to a person -

- (a) who makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular; and
- (b) the NCT liability of any person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the "NCT shortfall").

(2) Subject to subsections (3) and (4), a person to whom this section applies is liable -

- (a) if the statement or omission was made knowingly or recklessly, for penal tax equal to seventy-five percent of the tax shortfall; or
- (b) in any other case, for penal tax equal to twenty percent of the tax shortfall.

(3) The amount of penal tax imposed under subsection (2) -

- (a) is increased by ten percentage points if this is the second or a subsequent application of this section to the person; and
- (b) is reduced by ten percentage points if the person voluntarily disclosed the statement to which the section applies prior to the earlier of discovery by the Financial Secretary or the commencement of an audit of the person's NCT affairs.

(4) No penal tax is payable under subsection (2)(b) if -

- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
- (b) the NCT shortfall arose as a result of the person taking a reasonably arguable position on the application of this Act to the person's circumstances in making a self-assessment return.

(5) Penal tax imposed under this section is in addition to additional tax payable in respect of the tax shortfall and nothing in subsection (4) prevents the imposition of additional tax in respect of an NCT shortfall if the NCT is not paid by the date for payment.

(6) A reference in this section to a statement made to a tax officer is a reference to a statement made in writing, orally, or in any other form to a tax officer acting in the performance of his or her duties under this Act, and includes a statement made -

- (a) in an application, certificate, declaration, notification, NCT return, objection, or other document 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 under this Act;
- (d) in 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 passed on to a tax officer.

#### **54 Penal tax for failing to maintain proper records**

(1) A person who fails to maintain books, accounts, documents, or records as required under this Act is liable –

- (a) if the failure was knowingly or recklessly made, for penal tax equal to seventy-five per cent of the amount of NCT payable by the person for the NCT period to which the failure relates; or
- (b) in any other case, for penal tax equal to twenty per cent of the amount of NCT payable by the person for the tax period to which the failure relates.

### **Division VIII Offences**

#### **55 Application of Income Tax Act offence provisions**

Sections 127 – 130 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

#### **56 Offences related to registration**

(1) A person who –

- (a) fails to apply for registration as required by section 7;
- (b) fails to notify the Financial Secretary of a change in circumstances as required by section 8(6);
- (c) applies for cancellation of registration when the value of the person's taxable supplies is not below the registration threshold specified in section 7(2);
- (d) fails to apply for cancellation of registration as required by section 9;  
or
- (e) fails to comply with section 9(9)(a) or (c),

commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

#### **57 Offences related to NCT documentation**

(1) A taxable person who fails to provide an NCT invoice, NCT credit note, or NCT debit note as required under this Act commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

(2) A person who issues an NCT invoice, NCT credit note, or NCT debit note otherwise than as provided for under this Act commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

(3) A registered person who fails to comply with a request under section 30 commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

#### **58 Offence for making a false or misleading statement**

(1) A person who knowingly or recklessly –

(a) makes a statement to a tax officer that is false or misleading in a material particular; or

(b) omits from a statement made to a tax officer any matter or thing without which the statement is misleading in a material particular, commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

(2) Section 53(6) applies in determining whether a person has made a statement to a tax officer.

#### **59 Offence for failing to maintain proper records**

A person who knowingly or recklessly fails to maintain books, accounts, documents, or records as required under this Act commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

#### **60 Offence for breach of recovery or investigations powers**

(1) A person who –

(a) rescues any goods that have been seized under section 42; or

(b) before, at, or after the seizure of goods under section 42, staves, breaks or destroys any goods, or documents relating to any goods, to prevent –

(i) the seizure or the securing of the goods; or

(ii) the proof of an offence;

(c) enters premises the subject of an order under section 44(2) without the permission of the Financial Secretary;

(d) fails to provide reasonable facilities and assistance as required under section 45(4); or

(e) fails to comply with a notice served on the person under section 46, commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

### **Division IX Forms and Notices**

**61 Forms and notices; authentication of documents**

(1) A form, notice, NCT return, statement, table, or any other document required for the purposes of this Act may be in such form as the Financial Secretary determines for the efficient administration of this Act.

(2) The Financial Secretary must make the documents referred to in subsection (1) available to the public at the Tax or Customs Office and at such other locations, or by mail or such other means, as the Financial Secretary may determine.

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

**62 Manner of furnishing documents**

(1) An NCT return, application, notice, or other document to be furnished with the Financial Secretary under this Act must be delivered personally or by registered post to the Tax or Customs Office.

(2) If the due date for furnishing an NCT return, application, notice, or other document is a Saturday, Sunday, or a public holiday, the due date is the next following business day.

**63 Service of notices**

(1) Subject to this Act, a notice or other document required to be served on a person for the purposes of this Act is treated as properly served on the person if –

- (a) personally served on the person or the person's representative; or
- (b) left at the person's usual or last known place of abode or business address in Niue; or
- (c) sent by registered post to the person's current address for service of notices or, if no address for service has been provided by the person to the Financial Secretary, to the person's last known address.

(2) The validity of service of any notice or other document under this Act cannot be challenged after the notice or document has been wholly or partly complied with.

**PART XI  
ADMINISTRATION**

**64 Financial Secretary to administer Act**

(1) The Financial Secretary is charged with the administration of this Act.

(2) Subject to subsection (3), the Financial Secretary may delegate to a tax officer any duties, powers, or functions conferred or imposed on the Financial Secretary under this Act, other than this power of delegation.

(3) The powers of the Financial Secretary under sections 42, 44, and 45 must be specifically delegated to a tax officer and cannot form part of a general delegation of powers under this Act.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power or performance of a function by the Financial Secretary.

## **65 Secrecy**

(1) A tax officer –

- (a) must maintain and aid in maintaining the secrecy of all matters relating to this Act that come to the officer's knowledge and the officer must not communicate any such matters to any person except for the purposes of carrying into effect any revenue law; and
- (b) must, before the officer begins to perform any official duty under this Act, take and subscribe an oath of fidelity and secrecy to maintain secrecy in conformity with this section.

(2) Nothing in subsection (1)(a) prevents a tax officer from disclosing a document or information to –

- (a) another tax officer or an officer of the Customs office for the purposes of carrying out any duty arising under a revenue law;
- (b) a Court to the extent necessary for the purpose of carrying into effect any revenue law;
- (c) any person in the service of the Government in the Statistics Department if such disclosure is necessary for the performance of official duties;
- (d) the Auditor-General or any person authorised by the Auditor-General if such disclosure is necessary for the performance of official duties; or
- (e) any person with the written consent of the person to whom the document or information relates.

(3) If the person receiving documents or information under subsection (2) is not a tax officer, subsection (1)(a) applies to a person as if the person were a tax officer.

(4) A person who wilfully contravenes this section commits an offence and is liable on conviction to imprisonment for a term not exceeding [six months] or to a fine not exceeding 2 penalty units.

(5) In this section, "tax officer" includes a former tax officer.

## **PART XII MISCELLANEOUS**

## **66 Branches and divisions**

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

## **66A Partnerships generally**

- (1) For the purposes of this Act, if partners in a partnership undertake or carry on an enterprise, the partnership is regarded as the taxable person in relation to the enterprise. The consequences of this treatment are set out in subsections (2) to (4).
- (2) The partnership is treated as carrying on the enterprise and the partners are treated as not carrying on the enterprise.
- (3) A taxable supply, taxable acquisition, or taxable import made by or on behalf of a partner in the partnership in the course of carrying on the enterprise-
  - (a) is taken to be a taxable supply, taxable acquisition, or taxable import of the partnership; and
  - (b) is not taken to be a taxable supply, taxable acquisition, or taxable import of that partner or any other partner in the partnership.
- (4) The partnership is the registered person in relation to the enterprise, and no partner in the partnership is eligible to apply for registration under section 7 in relation to the carrying on of the enterprise.

## **66B Responsibilities of partners**

- (1) Despite section 66A, for the purposes of this Act, a partner in a partnership is jointly and severally liable with the other partners in the partnership for-
  - (a) paying NCT, additional tax, or penal tax due in relation to the carrying on of the partnership's enterprise:
  - (b) furnishing NCT returns in relation to the carrying on of the partnership's enterprise:
  - (c) providing information, producing books, accounts, documents or records, or attending and giving evidence as required in relation to the carrying on of the partnership's enterprise:
  - (d) doing anything that is required to be done under this Act by or on behalf of the partnership.
- (2) Subsection (1) applies for an NCT period when a partner is a member of the partnership. For this purpose, a partner does not stop being a member of the partnership until the date on which the Financial Secretary receives written notice under section 8(7) of a change in the partnership's membership.
- (3) For the purposes of subsection (1)(d), a thing done by any partner in the partnership is sufficient compliance with the requirement.

### **66C Notices**

A notice served under this Act to a partnership in its registered name is treated as served on the partnership and on all the partners in the partnership.

### **66D Partnership changes**

A change in a partnership's membership does not give rise to any taxable supply or taxable acquisition under section 66A(3) and does not carry with it any consequences for the purposes of this Act.

### **67 Tax avoidance schemes**

(1) Notwithstanding anything in this Act, if the Financial Secretary is satisfied

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- (a) that a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) 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 a tax benefit,

the Financial Secretary may determine the NCT liability of the person who has obtained a tax benefit as if the scheme had not been entered into or carried out.

(2) If the Financial Secretary makes a determination under subsection (1), the Financial Secretary must issue an assessment giving effect to the determination.

(3) A determination under subsection (1) must be made within [3] years from the last day of the NCT period to which the determination relates.

(4) Subsection (3) does not affect the operation of section 38(3)(a).

(5) In this section -

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

“tax benefit” means -

- (a) a reduction in the liability of a person to pay NCT;
- (b) an increase in the entitlement of a person to an input tax credit;
- (c) an entitlement to a refund;
- (d) a postponement of a liability for the payment of NCT;
- (e) an acceleration of an entitlement to an input tax credit;
- (f) any other advantage arising because of a delay in payment of NCT or an acceleration of the entitlement to an input tax credit;
- (g) anything that causes a taxable supply or taxable import not to be a taxable supply or taxable import, as the case may be; or

- (h) anything that gives rise to an input tax credit entitlement for an acquisition or import that is used or to be used other than in making taxable supplies.

## **68 Currency**

(1) Any amount taken into account under this Act must be expressed in New Zealand dollars.

(2) If any amount is expressed or paid in a currency other than New Zealand dollars –

- (a) in the case of an import of goods, the amount must be converted into New Zealand dollars at the exchange rate applicable under the Customs legislation for the purposes of computing the customs duty payable on the import; or
- (b) in any other case, the amount must be converted to New Zealand dollars at the Reserve Bank of New Zealand mid-exchange rate applying between the foreign currency and New Zealand dollars on the date the amount is taken into account for the purposes of this Act.

## **69 Prevention of price exploitation on introduction of NCT**

(1) Subject to subsection (3), a person who makes a regulated supply for a price that is excessive having regard to –

- (a) the introduction of this Act;
- (b) the person's costs;
- (c) supply and demand conditions; and
- (d) any other relevant matter,

commits an offence and is liable on conviction to a fine not exceeding 2 penalty unit for the first breach of this subsection and a fine not exceeding 4 penalty units for the second and each subsequent breach.

(2) No offence is committed under subsection (1) if –

- (a) the contravention was due to reasonable mistake; and
- (b) the person took reasonable precautions and exercised due diligence to avoid contravention of subsection (1).

(3) The Financial Secretary must publish guidelines about when prices for regulated supplies may be in contravention of subsection (1).

(4) In this section, “regulated supply” means a supply occurring in the period commencing six months before and ending one year after the commencement date.

## **70 Act to bind Crown**

This Act binds the Crown.

**PART XIII**  
**FINAL PROVISIONS**

**71 Regulations**

- (1) The Cabinet may make regulations –
  - (a) prescribing forms required under this Act; and
  - (b) for the proper and efficient administration of this Act.
- (2) Without limiting the general effect of subsection (1), the regulations made under that subsection may –
  - (a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
  - (b) prescribe penalties for the contravention of the regulations.
- (3) The regulations may provide that rules of a transitional nature that are made under this section within six months after the commencement date take effect from the date on which the Act comes into force.

**72 Transitional rules relating to registration**

- (1) A person is required to apply to the Financial Secretary for registration under this Act no later than the transitional registration day if considering the total value of taxable supplies made or to be made by the person in the course or furtherance of the person's enterprise, the person would have been required to apply for registration under section 7 on or before that day if this Act had come into force at least 12 calendar months before that day.
- (2) A person who is not required to be registered under subsection (1) is required to apply for registration under this Act on any subsequent day before the commencement date, if on that day section 7 would have applied to that person if this Act had come in force at least 12 calendar months before that day.
- (3) Notwithstanding section 8, if a person is required to apply for registration under subsection (1) or (2), the registration takes effect from the commencement date.
- (4) If, prior to the commencement date –
  - (a) a person purported to lodge an application for registration under this Act;
  - (b) the Financial Secretary purported to register a person under this Act; or
  - (c) the Financial Secretary purported to issue an NCT registration certificate under this Act,the application, registration, or certificate, as applicable, is treated for all purposes of this Act as if it were made on the commencement date.

(5) If the Financial Secretary is satisfied that a person is required to apply for registration under subsection (1) or (2) and the person has not applied for registration as required, the Financial Secretary may register that person.

(6) In this section, “transitional registration day” means the day that is two calendar months before the commencement date.

### **73 General transitional rules**

(1) Subject to subsection (2), if a taxable person concluded a contract before the commencement date, the person is entitled to increase the price of a taxable supply made under that contract on or after the commencement date by an amount equal to the price multiplied by the tax fraction, notwithstanding that the contract contains no provision relating to increasing the price because of the imposition of NCT.

(2) If the period of a supply referred to in section 11(5) begins before and ends after the commencement date the supply is treated as having been made continuously and uniformly throughout that period and the consideration for the supply is apportioned accordingly in determining the value of the supply treated as having been made because of section 11(5).

(3) Subsection (2) does not apply to the supply of a warranty in relation to goods or a service if the value of the warranty has been included in the price of the goods or service.

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**I, ATAPANA SIAKIMOTU**, Speaker of the Niue Assembly, hereby certify that the requirements of Article 34 of the Niue Constitution have been duly complied with.

**SIGNED AND SEALED** at the Assembly Chambers this \_\_\_ day of  
\_\_\_\_\_ 2009

\_\_\_\_\_  
**Speaker of the Niue Assembly**

**COUNTERSIGNED** in the presence of the Speaker

\_\_\_\_\_  
**Clerk of the Niue Assembly**

This Act was passed by the Niue Assembly on the 5<sup>th</sup> day of February 2009.

This Act is administered by the Tax Division of the Treasury Department.