# VALUE ADDED TAX (AMENDMENT) BILL, 2021

## A BILL
## for

**An Act to amend the Value Added Tax Act, 2001[1] to make provision for the taxation of imported services; other technical amendments to the Act and incidental matters.**

**ENACTED by the Parliament of Lesotho**

**Short title and commencement**

1. This Act may be cited as the Value Added Tax (Amendment) Act, 2021 and shall come into operation on the date to be appointed by the Minister by notice published in the Gazette.

**Amendment of section 3 on interpretation**

2. The Value Added Tax Act, 2001(in this Act referred to as the "Principal Law") is amended in section 3 by –

(a) inserting the subsection designation "(1)" between "3" and "In";

(b) deleting the following definitions:

(i) "associate";

(ii) "electronic means";

(iii) "foreign supplier";

(iv) "intangible services" and

(v) "place of consumption";

(c) deleting the definition of "importer" and substituting the following:

"importer" means, in relation to an import of goods, a person who owns, possesses, or has a beneficial interest in the goods at the time of import;

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2021 -11- 25
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(d) inserting in the definition of "taxable value" after "taxable supply" the following:

",supply of imported services,"

(e) inserting the following definitions in alphabetical order:

"approved form" is a form approved by the Commissioner General;"

"relative" means –

(i) spouse;

(ii) an ancestor, a descendant of any of the grandparents, or an adopted child of a person or the person's spouse;

(iii) the spouse of any person specified in sub-paragraph (ii).

"remote services" means services which at the time of the supply of services, had no necessary connection between –

(a) the place where the service is physically performed; and

(b) the location of the recipient of the services.

"supply of imported services" means a supply of services provided for in section 4A;

(f) by inserting the following new subsections after subsection (1):

"(2) For the purposes of this Act and subject to subsection (3), two persons are "associates", if the relationship between the person is such that one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other person or both persons may reasonably be expected to act in accordance with the

directions, requests, suggestions, or wishes of a third person.

(3) Two persons are not associates solely by reason of the fact that one person is the employee or client of the other, or both persons are employees or clients of a third person.

(4) For the avoidance of doubt, an individual and a relative of the individual are associates, except when the Commissioner is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestion, or wishes of the other".

**Amendment of section 4 on fair market value**

3. Section 4 (1), (2) and (3) of the Principal Law is amended by inserting ",supply of imported services" after "taxable supply" wherever it occurs.

**Insertion of a new section 4A**

4. The Principal Law is amended by inserting the following new section after section 4:

"**Supply of imported services**

4A. (1) A supply of imported services is a supply that-

(a) is –

(i) made to a vendor or by a person who is not a vendor;

(ii) not made in Lesotho; and

(b) would have been a taxable supply, if it had been made in Lesotho.

(2) For purposes of subsection (1), if a vendor carries on an enterprise both in and outside Lesotho –

(a) that part of the enterprise carried on outside Lesotho is treated as if it were an enterprise carried on by a person referred to as the foreign person separate from the vendor and the foreign person and the vendor are treated as associates of each other;

(b) the foreign person is deemed not to be a vendor; and

(c) the internal provision of services from the foreign person to the vendor is treated as a supply of services made by the foreign person in the course or furtherance of an enterprise carried on outside Lesotho".

**Amendment of section 5 on levy of value added tax**

5. Section 5 of the Principal Law is amended –

(a) at the end of paragraph –

(i) (a), by deleting "and";

(ii) (b), by deleting the full stop and substituting ";and"; and

(b) by inserting after paragraph (b), the following paragraph:

"(c) every supply of imported services.".

**Amendment of section 6 on exempt supplies and exempt imports**

6. Section 6 (1) of the Principal Law is amended –

(a) by deleting the definition of "financial services" and substituting the following definition:

"financial services" means any of the following services, except to the extent that the service is rendered for a fee, commission, or other similar charge (other than a discounting cost):

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

(ii) transactions concerning money, including deposits and current accounts, payments, transfers, debts, cheques, or negotiable instruments, but excluding debt collection and factoring;

(iii) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;

(iv) transactions relating to shares, stocks, bonds, treasury bills, unit portfolios, or other debt or equity securities, but excluding custody services;

(v) transactions involving granting or transferring ownership of an interest in a scheme by which provision is made for the payment or granting of benefits by a benefit fund (including a medical aid or similar fund), provident fund, pension fund, retirement annuity fund, or preservation fund ; and

(vi) a supply of credit under a hire purchase agreement, if the credit for goods is provided for a separate charge and the charge is disclosed to the recipient of the goods, but does not include the service of arrangement for, or facilitating any of the above services, or the preparation of any documentation relating to any of the above services.

(b) in subsection (2), by inserting after paragraph (h) the following new paragraph:

"(i) a supply of diamonds outside Lesotho.".

**Amendment of section 7 on persons liable to pay tax**

7. Section 7(1) of the Principal Law is amended by–

(a) deleting-

(i) "or" at the end of paragraph (a);

(ii) the full stop at the end of paragraph (b) and substituting ";and"; and

(b) inserting after paragraph (b) the following new paragraph:

"(c) in the case of a supply of imported services, is to be paid by a vendor receiving the services.".

**Amendment of section 9 on time of supply**

8. Section 9 of the Principal Law is amended by inserting after subsection (5) the following new subsection:

"(6) A supply of imported services occurs on the earliest date on which–

(a) the performance of the service is completed;

(b) the invoice for the supply is issued; or

(c) payment including part payment for the supply is made.".

**Amendment of section 10 on place of supply**

9. Section 10 of the Principal Law is deleted and substituted with the following section:

"**Supply of goods in Lesotho**

10. A supply of goods occurs in Lesotho where the goods are-

(a) delivered or made available in Lesotho by the supplier; or

(b) in Lesotho when the transportation commences, if delivery or making available involves transportation.".

**Insertion of new sections 10A and 10B**

10. The Principal Law is amended by inserting the following new sections after section 10:

"**Place of supply of services**

10A. (1) Subject to subsection (2), a supply of services occurs in Lesotho, if the place of business of the supplier from which the services are supplied is in Lesotho.

(2) Notwithstanding subsection (1) and subject to section 10B, a supply of services by a person who does not have a place of business in Lesotho occurs in Lesotho, if the recipient of the supply is not a vendor and the services are-

(a) physically performed in Lesotho by a person who is in Lesotho at the time of the supply; or

(b) remote services supplied to a resident of Lesotho.

(3) For purposes of subsection (2)(b) and subject to subsection (4), a recipient of a supply of remote services is treated as a resident of Lesotho, if at least two of the following factors support the conclusion that the person is a resident of Lesotho:

(a) the recipient's billing address;

(b) the internet protocol address of the device used by the recipient or another geolocation method;

(c) the recipient's bank details, including the account the recipient uses for payment or the billing address held by the bank;

(d) the mobile country code of the international mobile subscriber identity stored on the subscriber identity module card used by the recipient;

(e) the location of the recipient's fixed land line through which the service is supplied to the recipient; or

(f) any other commercially relevant information.

(4) Where there are two factors on the list in subsection (3) supporting that the recipient is a resident of Lesotho and two factors supporting residence in another country, the supplier shall determine the recipient's residence based on the factors that, in the circumstances, are the most reliable indicators of the recipient's residence.

(5) Where the supplier has established that the recipient of a supply is a resident of Lesotho under subsection (3), the supplier shall treat the recipient as not being a vendor, unless the recipient-

(a) notifies the supplier, in writing, that he is a vendor; or

(b) provides the supplier with a copy of their Value Added Tax registration certification.

**Electronic marketplace**

10B. (1) In this section –

"electronic marketplace" means a website, internet portal, gateway, store, distribution platform, or other similar platform that is operated electronically and through which the underlying supplier makes a supply of remote services electronically through another person, who may be the operator of the market place, to a third person, who is the recipient, but does not include a market place that solely process payments.

(2) This section applies when the following conditions are satisfied:

(a) a supply of remote services is made by an underlying supplier through an electronic market place;

(b) the market place is operated by a person who does not have a place of business in Lesotho who-

(i) authorises the charge to the recipient of the supply;

(ii) authorises the delivery of the supply to the recipient of the supply; or

(iii) sets the terms and conditions under which the supply is made; and

(c) the recipient of the supply is a resident of Lesotho as determined under section 10A(3).

(3) Subject to subsection (4) and where this section applies, section 10A(2) shall apply on the basis that the operator of the electronic marketplace is treated as having made the supply of remote services in the course or furtherance of an enterprise conducted by the operator.

(4) This section does not apply where the underlying supplier and the operator of the marketplace have agreed, in writing, that the underlying supplier is liable for the payment of value added tax on taxable supplies made through the electronic marketplace.".

**Amendment of section 11 on imports**

11. Section 11 of the Principal Law is amended –

(a) by deleting subsection (1) and substituting the following new subsection:

" (1) Import, in the case of goods, means to bring or cause to be brought into Lesotho from a foreign country.".

(b) in subsection 2(a) by deleting "require clearance" and substituting "are cleared"; and

(c) by deleting subsection (3).

**Amendment of section 13 on taxable import**

12. Section 13 of the Principal Law is amended by deleting the words "or services".

**Amendment of section 16 on taxable value of a taxable import**

13. Section 16 of the Principal Law is amended –

(a) in subsection (1), by deleting "(4)" and substituting "(2)";

(b) by deleting subsections (2) and (3) and renumbering accordingly.

**Insertion of a new section**

14. The Principal Law is amended by inserting the following new section after section 16 :

"**Taxable value of a supply of imported services**

16A. (1) The taxable value of a supply of imported services is–

(a) the fair market value of the supply determined at the time of the supply, where the supplier and recipient are associates; or

(b) the consideration for the supply in any other case.

(2) A vendor, liable for value added tax under section 7(1)(c), shall prepare a recipient-created value added tax invoice in the approved form in respect of the supply of imported services.".

**Amendment of section 17 on registration of vendors**

15. Section 17 of the Principal Law is amended –

(a) in subsection (1), by deleting the words "who is not already registered";

(b) by deleting subsection (4) and substituting the following subsection:

"(4) For purposes of this section, a reference to a taxable supply made by a person includes a supply which would be a -

(a) taxable supply, if the person making; and

(b) supply of imported services made to the person, if the person receiving;

the supply is a vendor".

(c) by inserting the following new subsection after subsection (4):

"(4A) For purposes of subsection (1)-

(a) the taxable value of a person's supplies is determined under section 14 or 16A; and

(b) in determining whether the registration threshold is exceeded, regard shall be had to the taxable supplies made, or supplies of imported services received, by the person and associates of the person.";

(d) by deleting subsection (6) and substituting the following subsection:

"(6) A person who is an auctioneer shall apply for registration."

(e) in subsection (10) after the word "believe" by inserting the following words "will assist the Commissioner in the collection of value added tax or"; and

(f) by deleting subsection (12) and substituting the following subsection:

"(12) Where a person who is required to apply for registration under this section has not done so within the time specified, the person is treated as registered, for the purposes of this Act, from the beginning of the tax period immediately following the period in which the requirement to apply for registration arose or from such other time as the Commissioner may determine.".

**Amendment of section 20 on calculation of value added tax payable on the invoice method for a tax period**

16. Section 20 of the Principal Law is amended –

(a) in subsection (1) by deleting-

(i) the formula "**A – B**" and substituting it with the formula "**(A + B) – C**";

(ii) "and" at the end of the explanation of component "**A**";

(iii) the letter "**B**" and substituting "**C**"; and

(iv) inserting the following new explanation after the explanation of component "**A**":

"**B** is the total value added tax payable in respect of supplies of imported services received by the vendor during the tax period; and";

(b) in subsection (2) by deleting –

(i) "B" and substituting "C"; and

(ii) "A" and substituting "(A+B)";

(c) in subsection (3), after the word "supply" by inserting the words "or a supply of imported services".

**Amendment of section 21 on calculating of value added tax payable on the cash method for a tax period**

17. Section 21 of the Principal Law is amended –

(a) in subsection (2) by-

(i) deleting the formula "A-B" and substituting the following formula:

"(A+B)-C";

(ii) deleting "and" at the end of the explanation of component "A";

(iii) deleting the letter "B" and substituting "C"; and

(v) inserting the following new explanation after the explanation of component "A":

"B" is the total value added tax payable in respect of supplies of imported services received by the vendor during the tax period; and"

(b) in subsection (3) by-

(i) deleting "and" at the end of paragraph (a);

(ii) inserting the following new paragraph after paragraph (a):

"(b) value added tax payable on a supply of imported services shall be accounted for in the tax period in which the consideration for the supply is payable; and"

(iii) renumbering paragraph (b) as a paragraph (c);

(c) in subsection (4), by inserting the words "and supplies of imported services received" after the word "made".

**Amendment of section 23 on credit for input tax**

18. Section 23 of the Principal Law is amended in subsection (6) by –

(a) deleting –

(i) "or" at the end of paragraph "(a)"; and

(ii) the full stop at the end of paragraph (c) and substituting a semi colon and "or" and

(b) inserting the following new paragraph after paragraph (c):

"(d) to a vendor in relation to the making of a supply of a remote services referred to in section 10A(2)(b).".

**Amendment of section 37 on due date for payment of value added tax**

19. Section 37 of the Principal Law is amended in subsection (1)(a) by inserting the words, "or a supply of imported services to," after "by".

**Insertion of a new section**

20. The Principal Law is amended by inserting the following new section after section 37:

**"value added tax representatives of vendors making taxable supplies of remote services**

37A. (1) The Commissioner may require a vendor making supplies of remote services referred to in section 10A (2) (b) to –

(a) appoint a value added tax representative who is an individual based in Lesotho; and

(b) lodge security in accordance with the law applicable in respect of the administration of tax.

(2) The Commissioner may, by notice published in the Gazette, prescribe the mode, manner, and requirements for the appointment of a value added tax representative and the responsibilities of the representative.

(3) The registration of a value added tax representative is to be made in the name of the vendor they represent.

(4) An individual may be a value added tax representative for more than one vendor, but shall have a separate registration for each vendor they represent.

(5) Where a vendor fails to appoint a value added tax representative as required under this section, the value added tax representative is such individual in Lesotho as the Commissioner notifies the vendor in writing, to be the value added tax representative.

(6) The value added tax representative is personally liable for any value added tax liability, including penalty and late payment interest of the vendor they represent and this liability is treated as secondary

liability for the purposes of the law applicable in respect of the administration of tax.

(7) The value added tax representative of a vendor in treated as a nominated officer of the person for the purposes of the law applicable in respect of the administration of tax.".

**Amendment of section 47 on refund of value added tax to diplomats, contractors and certain organisations**

21. Section 47 of the Principal Law is amended –

(a) in subsection (1), by deleting the definition of "charitable activities" and substituting the following definition:

"charitable organisation" means an organisation which –

(i) is of public character and is permanent in nature;

(ii) is registered, established and functions exclusively to provide social welfare services;

(iii) none of its income or assets confers, or may confer, a private benefit on any person; and

(iv) has obtained a written ruling from the Commissioner stating that it is a charitable organisation.";

(b) by deleting subsection (5) and substituting the following subsection:

"(5) The Commissioner may authorise the granting of a refund in respect of the value added tax paid or borne by a charitable organisation in respect of the acquisition of goods or services when the goods or services are to be resupplied by the organisation in the course of providing social welfare services.".

**Amendment of section 48 on accounts and records**

22. Section 48 of the Principal Law is amended in subsection (1)-

(a) by deleting "and" at the end of paragraph (c);

(b) re-numbering paragraph (d) as paragraph (e); and

(c) inserting the following new paragraph after paragraph (c) -

"(d) recipient-created value added tax invoices in respect of supplies of imported services made to the person.".

NOTE

[1] . Act No. 9 of 2001

# THE PARLIAMENT OF LESOTHO

# VALUE ADDED TAX (AMENDMENT) BILL, 2021

## STATEMENT OF OBJECTS AND REASONS

**(Circulated by the Authority of the Minister of Finance, Honourable Thabo Sophonea MP)**

The object of the Bill is mainly to implement the new regime for taxation of imported services consistent with international norms. The regime distinguishes between: (a) imported services in a "business-to-business" transaction, where the recipient of the service is a vendor (a person empowered by law to charge and collect Value Added Tax); and (b) imported services in a "business-to-consumer" transaction, where recipient of the service is a final consumer.

The underlying principle of the regime is the reverse charge rule; where the recipient of the services in the "business-to-business" transaction charges itself Value Added Tax and pays it to the tax administration.

The rationale for the regime is that the taxation of imported services is more complicated than the taxation of imported goods because services do not "pass through" any border control. This means that, unlike with goods, the Value Added Tax on imported services cannot be collected at the border. Lesotho has for a long time been unable to maximise collection of revenue on taxation of imported services using the traditional methods of collection, hence the implementation of this new regime.