

**GST POLICY PAPER TO THE  
HONOURABLE MINISTER OF  
FINANCE, DEVELOPMENT AND  
ECONOMIC PLANNING**

**(3)**

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## **1.0 OVERVIEW OF THE PAPER**

This paper is the last of three papers forwarded to the Honourable Minister of Finance and Economic Development on GST policy issues over the past three weeks. The papers seek to present to the Minister an objective evaluation of policy options on the key issues in GST design and implementation. They also put forward the policy options recommended by the Project/GST Oversight Committee (PGOC) after series of working sessions and deliberations.

This paper covers the following issues:

- 2.0** Accounting Records
- 3.0** Appeal Mechanism
- 4.0** Bad debt relief
- 5.0** Time of supply
- 6.0** Transitional Arrangements
- 7.0** Treatment of Discounts
- 8.0** Treatment of Donations
- 9.0** Partial exemption rules
- 10.0** Treatment of Second Hand Goods
- 11.0** Non-deductible input tax
- 12.0** Import of services
- 13.0** Retail scheme
- 14.0** Retail export scheme/Tourist purchases

We look forward to the Minister's decisions to be incorporated into the draft GST Bill that will be forwarded to the Minister for onward submission to the Law Officers Department.

## **2.0 ACCOUNTING RECORDS**

The twin pillars of GST- input output mechanism and self-assessment - are founded on record-keeping. GST registered businesses do not only rely on accounting records (e.g. sales and purchase invoices and other records) to self-assess net liability at the end of each tax period, but also requires records to support (i.e. prove legitimacy of) input tax deductions and output tax declared. Similarly, on the part of the NRA, accounting records kept by the businesses constitute the critical basis for control and verification of declarations made by taxpayers.

Generally, GST registered businesses are required to keep records and accounts of taxable goods and services received or supplied in the course of doing any business including zero rated supplies. Detailed records should also be kept of exempt supplies made or received. In addition, the business must keep a summary of the totals of input and output tax for each tax period. It is this summary that is often referred to as 'a VAT Account' or in our case 'a GST Account'.

More specifically GST legislations impose on the taxpayer an obligation to keep basic accounts and records which normally include:

- Copies of all GST invoices, GST credit notes, and GST debit notes issued by the taxpayer, maintained in chronological order;
- All GST invoices, GST credit notes, and GST debit notes received by the taxpayer;
- All customs documentation relating to imports and exports of goods by the taxpayer; and
- In relation to all imported services, sufficient written evidence to identify the supplier and the recipient and to show the nature and quantity of services supplied, the time of supply, the place of supply and the consideration for the supply.

### **2.1 Mandatory Minimum Duration for Keeping Accounting Record**

One of the key issues requiring decision on record keeping is the duration for which the mandatory records must be kept by the taxpayer before they are disposed of. While too long a mandatory period could drive up the cost of storage and maintenance of records for the GST registered business, too short a duration could legitimize deliberate destruction of accounting records before NRA could mobilize audit resources to verify them.

### **2.1.1 Recommendation:**

It is recommended that taxpayers be required to maintain accounting records for a minimum of six (6) years at the end of the tax period to which the records relate; with a proviso for the taxpayer to apply for the Commissioner-General's written approval if grounds exist for destroying records before six (6) years.

### **2.1.2 Justification/Basis of Recommendation:**

Six (6) years is the modal average in GST legislations in Africa for taxpayers to maintain business records. Six (6) years is not only long enough to guarantee access by both taxpayers and NRA to records required for verification of declarations and control purposes, but also a reference for resolution of disputes.

This is in harmony with the Income Tax Act which also provides for retention of business records for the same minimum period of 6 years.

The provision for Commissioner General's authorization for disposal of records before the 6 years minimum duration provides a window for addressing special needs of any taxpayer for disposal of accounting records before the mandatory 6 years.

## **2.2 Media of Record Keeping**

The form and language in which the records must be kept need to be specified in the GST legislation for ease of compliance on the part of the taxpayer and accessibility on the part of NRA.

### **2.2.1 Recommendation:**

It is recommended that taxpayers be allowed the option of keeping their records in electronic media but in English language; if information stored is not in English then CG should reserve the power to require translation at the cost of the taxpayer.

### **2.2.2 Justification/Basis of Recommendation:**

This recommendation acknowledges and makes provisions for the growing trend in business to maintain computerized accounting systems. For some businesses, reversion to a paper-based accounting system is no longer a feasible option.

In the sub-region, where non-English speaking investors have predominance in large scale business, taxpayers wishing to confound NRA officers or indirectly impede accessibility to business records could do so by maintaining their business records in their own languages; hence

the need to specify English as the language in which business records must be maintained.

### **2.3 Taxpayers' Own-Generated/Printed Invoices versus Government Printed Invoice**

Generally GST authorities have the option of either requiring GST registered businesses to generate/print their own GST invoices based on guidelines specifying the information that should go on the invoice; or the GST administration printing a standard GST invoice for all taxpayers. But in practice the overwhelming majority of GST jurisdictions require registered businesses to print their own invoices using content-specifications defined by the tax administration.

This offers taxpayers the freedom to generate their own invoices provided the invoices contain the statutory details described by the tax authorities. Trying to standardize or compel taxpayers to purchase tax administration issued invoices, given the variety of businesses and accounting practices (both manual and computerized), imposes a heavy compliance burden on many businesses, and it is unlikely to have any noticeable impact on compliance. Also, this is at a time (the introduction of GST) when the authorities are seeking the greatest cooperation from the business community. Experience has shown that relatively minor adaptations to existing commercial documentation are sufficient to provide an adequate audit trail. Furthermore, such an imposition does not eliminate invoice fraud or concealed sales which are most appropriately addressed by a robust, risk-based audit program.

The very few GST systems that require taxpayers to use a standard GST invoice printed by the government/tax authorities, cite as an advantage, the extra trouble that a taxpayer will need to go to in order to print a fake set of invoices that could be issued side by side with that supplied by the tax authorities. While a business can more readily order two sets of own-printed invoices with the same serial numbers, forging a set of government issued GST invoices is a more audacious enterprise to embark on and is much easier for tax authorities to detect.

Besides, getting the co-operation or assistance of the general public in policing the issue of GST invoices by taxpayers is made easier if the invoice is a standard one printed by the tax administration.

On the negative side, the logistical challenges involved in printing invoices for all GST registered business could be overwhelming, particularly for an infant GST administration. Produced at a quality and cost that a not-so-large business would not opt for on its own volition, a government-printed

GST invoice could increase the cost of compliance for medium businesses. The alternative of selling the invoice to GST businesses below cost of printing raises the issue of how the deficit would be financed. Besides, government-printed invoice is no guarantee against off-record sales which are best addressed through invoice issue invigilation, surveillance and audit.

Perhaps the most important drawback of the government-printed invoice is the revenue loss that could result from shortage of invoices. The slightest hiccup in the supply of government printed invoices would be seized upon as a legitimate excuse for not charging the tax.

### **2.3.1 Recommendation:**

It is the specific recommendation of the PGOc that for the first twelve (12) months of the introduction of GST, the use of a standard NRA/Government printed invoice be made compulsory for all GST registered businesses, except traders on retail scheme and businesses with computerized accounting systems that generate GST invoice at the front end and have been authorized by the Commissioner General in writing to use their computer-generated invoice

### **2.3.2 Justification/Basis of Recommendation:**

- It would ensure stricter control and less scope for use of fake invoices for collection of GST which will not be declared.
- Limiting the duration of the use of government-printed invoice to a clearly defined period of 12 months, gives it the character of a Project the cost of which can be assessed beforehand and budgeted for and shortage averted.
- Businesses using accounting packages that generate GST invoice and store the details will be exempt from the use of government/NRA-printed invoice.
- GST registered businesses will be spared the burden of printing their own GST invoices in the year of inception.

## **2.4 Records, if any, to Attach to Returns**

In theory, it is conceivable for a GST Administration to require that registered taxpayers submit to the tax office all, part or none of the accounting records that they (GST registered businesses) are obliged to maintain. In other words, an obligation could be imposed on the taxpayer to submit all or part of their accounting records or retain all of it at their premises.

In practice however, and indeed that is best practice, taxpayers are required to complete and file at the GST office, a return form on which the basic details of GST transactions for a tax period are entered. The policy

issue on which decision is required is what records, if any, must be attached to the return submitted to the GST office for each tax period.

**2.4.1 Recommendation:**

It is recommended that GST returns including those on which refund request box has been checked should be filed without any attachment whatsoever.

**2.4.2 Justification/Basis of Recommendation:**

Apart from the heightened cost of compliance associated with the requirement of filing returns with attachments, the NRA can ill afford the space for storage of records attached to returns and the cost of tying down personnel to routine review of the attachments.

A requirement for taxpayers to attach accounting records to returns shifts to the NRA, the responsibility for the safety of those attachments. This has the potential of leaving gaps in the record trail on which sound taxpayer audit could be carried out at the trader's premises.

**3.0 APPEAL MECHANISM**

Technically, a taxpayer's appeal to the NRA at any level is an appeal to the Commissioner-General; but in practice, objection from the taxpayer begins with a verbal or written complaint to the Head of the unit or local office of NRA with which the taxpayer interacts on regular basis. Normally it is when no satisfactory decision is reached at the level of the Head of Unit or Local Office that the taxpayer would lodge a notice of objection to a reviewable decision requesting the Commissioner General to re-consider his decision. Beyond the Commissioner General, a person may appeal to a Board of Appellate Commissioners or the courts.

**3.1 Nature of Appeal Mechanism**

A transparent appeal system is one that sets out clearly the specific decisions that are subject to review and therefore appeal.

**3.1.2 Recommendation:**

It is recommended that a provision be made in the GST legislation for an appeal mechanism that commences from the unit or local office level of NRA through to the Board of Appellate Commissioners established under the Income Tax Act, 2000.

It is further recommended that the following decisions taken by or on behalf of the CG be made reviewable through the appeal mechanism:

- a decision to register or not register a person, including a decision in relation to the date of commencement of registration;
- a decision to cancel or not to cancel a person's registration, including a decision in relation to the date of cessation of registration;
- a decision to require a person to lodge fuller or additional returns;
- a decision not to pay a refund or allow an input tax credit;
- the issue of an assessment;
- a decision to make a determination in relation to a taxpayer's liability for an amount;
- a decision to require a person to give security;
- a decision not to remit a penalty, or a decision to remit the penalty only in part;
- a decision to appoint a person as a representative of a taxable person;
- a decision to allow or not to allow an input tax credit to a registered person, including a decision as to the amount of any input tax credit allowed.
- A decision on liability/tax treatment of a supply e.g. whether supply is zero-rated, exempt or standard-rated.

### **3.2.3 Justification/Basis of Recommendation:**

A well structured appeal mechanism with clearly defined reviewable decisions does not only impart transparency to the GST system, but also engenders taxpayer confidence by assuring the taxpayer of the willingness of the tax administration to review its own actions and decisions to take account of taxpayer complaints and objections.

### **3.3 Deadlines for Taxpayer to Raise Objection and GC to Respond**

Imposition of limitation on the period within which a taxpayer could lawfully petition a reviewable decision of the CG is important for ensuring that the Commissioner-General's decision could be enforced without any legitimate objection after the deadline. Without this, objection/petition could become an instrument for preventing or frustrating enforcement of the tax administration's decisions.

On the other hand, the need to avoid keeping the taxpayer in indefinite suspense requires the definition of a deadline beyond which an objection

to a reviewable decision of the CG would be considered to have been rejected if the CG failed to respond.

Similarly, where a petition relates to an assessment or a decision that has direct liability implications, payment of a defined proportion of the liability as a prerequisite for entertaining the petition would be necessary as a deterrent to the use of petition to delay payment of assessment/liability.

### **3.3.1 Recommendations**

It is recommended that the GST legislation provide for:

- A taxpayer's notice of objection to be given to the Commissioner-General within thirty(30) days after the date of service of the notice of assessment, or the date on which the decision was made.
- The Commissioner-General to be obliged to consider a valid objection, disallow or allow and inform the objector of his decision by notice in writing within ninety (90) days after receipt of objection; failing which the assessment or decision which the taxpayer objected to should stand.
- Payment of 50% of assessment/liability as a necessary condition for the validity of a petition where the petition relates to an assessment or decision that has readily computable liability implications.

### **3.3.2 Justification/Basis of Recommendation:**

Taxpayer's right to object will be time-bound and therefore objection/petition cannot be used to delay enforcement of the Commissioner General's decision after 30 days. On his part, the CG is put under obligation to respond to a taxpayer's petition promptly or risk his decision being rendered unenforceable for as long as 90 days.

## **4.0 BAD DEBT RELIEF**

In principle, the essence of providing for treatment of bad debts is to ensure that when a credit transaction falls into bad debt and is written off as a loss to the taxpayer, the GST already accounted for on this transaction that has been established to have a nil value, is recovered by the taxpayer. It is as much an issue of equity as one of ensuring that GST remains a true consumption tax the incidence of which does not fall on the taxpayer who is merely an agent of collection.

### **4.1 Conditions for Recovery of GST Accounted for on Bad Debt**

Without clearly defined and adequately rigorous conditions and guidelines, recovery of GST relating to bad debts could be easily abused.

#### **4.1.2 Recommendations:**

The following are recommended for incorporation into the GST legislation as necessary conditions for recovery of output tax relating to bad debt:

- The taxable person must have issued a GST invoice for the transaction and accounted for the GST appropriately to NRA.
- The buyer must have become insolvent; or failed to pay all or part of the taxable amount of the sale plus the GST imposed;
- The debt must have been outstanding for twelve (12) months or more.
- The debt must have become a bad debt certified as such for the purpose of Income Tax;
- The CG must have authorized in writing to allow as credit, the portion of the GST imposed on that transaction which is attributable to the deductible debt that becomes irrecoverable.

It is further recommended that a provision be made that where a debt previously written off as bad and for which credit has been given is later recovered, the tax due on the amount recovered should be paid to the Commissioner-General.

#### **4.1.3 Justification/Basis of Recommendation:**

Recommendations provide an avenue for the taxpayer to be relieved of GST relating to bad debt, while ensuring that scope for abuse is limited.

## **5.0 TIME OF SUPPLY**

Time of supply defines the specific criteria for establishing when the taxpayer becomes liable to account for the tax. It is the set of conditions that, when fulfilled, triggers liability to charge and account for GST. The time of supply therefore, defines the tax point.

### **5.1 Time of Supply for Import GST**

Import GST will be collected by the Customs Department along with import duty and other imposts on imports. This makes it necessary to align the time of supply for Import GST with that for the other revenue instruments applied on imports.

#### **5.1.2 Recommendation:**

It is recommended that the time of supply or tax point for Import GST be defined to be “when import duty would be chargeable”. Thus Import GST would be charged as if it were import duty. Therefore, procedures and processes (but not necessarily the basis) for collection of import duty would be applicable to GST.

### **5.1.3 Justification/Basis of Recommendation:**

The recommendation makes for collection of Import GST in a more cost-effective and seamless way with the other revenue handles imposed at importation.

## **5.2 Time of Supply for GST at the Domestic Front**

### **5.2.1 Recommendation:**

It is recommended that the following definition of time of supply be adopted:

A supply of goods or services is made on the earlier of the time when—

- an invoice for the supply is issued by the supplier; or
- any of the consideration for the supply is received.
- for a supply of goods, the goods are delivered or made available; or
- for a supply of services, the services are performed.

An application of goods or services to a private use is treated as being made on the date the goods or services are first applied to such use.

Where a progressive or periodic supply is treated, as a series of separate supplies made successively, each successive supply is treated as being made on the earliest of—

- (a) the date on which an invoice for the progressive or periodic payment corresponding to the supply is issued by the supplier, but only if a separate invoice is issued for each such supply;
- (b) the date on which the progressive or periodic payment corresponding to the supply is due;
- (c) the date on which any of the progressive or periodic payment corresponding to the time of supply to supply is received;
- (d) the first day of the period, if any, to which the progressive or periodic payment relates; or
- (e) the first day on which the recipient is able to commence use or enjoyment of the successive part of the actual supply which corresponds to the supply.

### **5.2.2 Justification/Basis of Recommendation:**

The rigorous definition of time of supply to have a tax point triggered by issue of invoice, receipt of payment, delivery of goods or performance of

service, whichever comes first, limits the scope for dispute on when liability is established. The definition also has the advantage of encompassing the supply of goods, services as well as metered supplies such as electricity and water.

## **6.0 TRANSITIONAL ARRANGEMENTS**

Transitional arrangements may cover three main areas – repeal of legislations covering taxes earmarked for replacement; conditions and procedures for recovery of sales tax on stocks in hand at the commencement of GST and treatment of contracts entered into before the effective date of GST.

### **6.1 Repeal of Legislations Covering Taxes Earmarked For Replacement**

#### **6.1.1 Recommendation:**

*It is recommended that the legislations under which the following taxes earmarked for replacement by GST are administered, be repealed by the GST legislation:*

- i. Import Sales Tax*
- ii. Domestic Sales Tax*
- iii. Restaurant and Food Tax*
- iv. Message Tax*
- v. Entertainment Tax*
- vi. Hotel Accommodation Tax*
- vii. Professional Services Tax*

*It is further recommended that notwithstanding the repeals, saving provisions be included in the GST law to ensure that the repealed laws remain in force -*

- for the purpose of verifying the tax returns for the taxes replaced by GST.*
- for the assessment and recovery of any arrears or penalty payable under the repealed enactments.*
- For pursuing any offences relating to the taxes replaced by GST.*

#### **6.1.2 Justification/Basis of Recommendation:**

*While the repeals will ensure that all the taxes to be subsumed by GST are administered under one (i.e. the GST) enactment; the saving provisions will furnish the legal basis on which evasion and arrears of the subsumed taxes will be pursued.*

## **6.2 Arrangements for Avoiding Imposition of GST on Sales-Tax-Paid Stocks**

Clearly defined guidelines and procedures by which GST registered businesses can take credit for sales tax or relieved from charging GST on stocks on hand at commencement of the tax are necessary for averting sudden price jump at the inception of GST. Without any recourse to recovery of sales tax paid or zero-rating of goods in stock at the start date, GST registered businesses will charge the GST on the sales-tax-inclusive value of their stocks resulting in price increases.

### **6.2.1 Stock-taking by NRA or Taxpayer?**

Any mechanism for recovery of Sales Tax or zero-rating of stocks requires stock-taking to establish the exact levels of stocks in hand on which credit for sales tax could be claimed or qualify for zero-rating. The question is whether the stock-taking should be carried out by the businesses themselves or NRA-hired personnel.

### **6.2.2 Recommendation:**

It is recommended that GST registered businesses with sales-tax-paid stocks in hand on the day GST becomes chargeable be required to take stock of the goods on which they seek to claim Sales Tax credit and obtain certification from a certified member of the Institute of Chartered Accountants of Sierra Leone (ICASL).

### **6.2.3 Justification/Basis of Recommendation:**

At the inception of GST, NRA would have neither the resources nor the expertise to carry out stock-taking for all registered businesses that wished to claim Sales Tax Credit on stocks. Besides, such an approach strikes at the heart of the self assessment system on which GST is based. Self-assessment by businesses of the Sales Tax claimable on stock would impose less burden on NRA, while the requirement for certification by a Chartered Accountant would reasonably minimize the risk of forgery and false claims.

## **6.3 Zero Rating versus Recovery of Sales Tax on Stocks on Hand**

Conceptually, the fundamental objective of avoiding the imposition of GST on the Sales Tax laden price of stocks on hand at the commencement of GST could be achieved by one of the two ways:

- (i) Zero rating of stocks on hand or
- (ii) Taking credit for Sales Tax paid on the stocks on hand and charging GST on the Sales Tax exclusive price.

### 6.3.1 Zero Rating of Stocks on Hand

GST-registered businesses could be allowed to zero-rate their confirmed stocks on hand; that is, charging GST at a rate of zero on the **Sales Tax inclusive** price. In this case, input GST claimable would be zero since the stocks were procured under Sales Tax ( i.e. prior to the introduction of GST), making the tax- treatment of the stocks more of a GST exemption in character as neither GST output tax is chargeable nor GST input tax claimable.

This approach to obviating double taxation of stocks on hand at GST inception has an appeal of simplicity as input tax claim is rendered unnecessary and irrelevant. In short, neither GST output tax is charged nor input tax credit taken.

Attractive as this approach appears at first encounter, its implementation would be fraught with very serious difficulties. In the normal run of business, GST registered businesses would continue dealing in the same line of product before and after GST. In the circumstances, stocks on hand at the commencement of GST would not be distinguishable from that acquired ex post. Even if the trader will display the zero rated or exempt stocks and the GST-liable stocks on separate shelves, distinguishing between them at the till point could be difficult. The confusion at the till point would be further heightened if a shopper had in his shopping basket, a quantity of the same product partly taken from the GST exempt stock and partly from the GST taxable stock.

While sales tax credit for the entire stock on hand could be taken one-off on a GST return for one tax period, selling stocks at zero rate of GST(or exemption) could drag on for months or possibly years. Therefore zero rating (or exemption) of stocks on hand, by its nature would not justify the imposition of deadline since the trader does not have much control over when the stocks on hand would be sold out.

### 6.3.2 Recovery of Sales Tax on Stocks on Hand

The transitional arrangement for averting double taxation (i.e. imposition of both Sales Tax and GST) on stocks held by the taxable business at the start date of GST by way of taking credit for sales tax on stocks is in tune with the GST mechanism in a number of ways:

- (i) It permits pre-GST stocks to be treated the same way as stocks procured in the post GST inception period.
- (ii) A one-off credit for sales tax on the entire stocks on hand could be taken in one tax period and the repayment carried forward until it is cleared.

- (iii) The stocks on which sales credit has been taken would be subject to GST in the same way as all other stocks held or acquired by the business.

### **6.3.3 Recommendation**

It is recommended that credit for sales tax on stocks be adopted as the mechanism for avoiding double taxation of on the supply of stocks held by GST businesses at the inception of GST.

### **6.3.4 Justification/Basis for recommendation**

Recovery of Sales Tax through the input tax credit mechanism of GST gives a more precise idea of how much of GST revenue collected by the taxable person is used to offset the Sales Tax on stocks. Apart from it being difficult to monitor or control, zero rating or exemption of stocks held by GST registered traders does not make for transparency in assessing the amount of GST revenue forgone.

## **6.4 Conditions and Approach for Claiming Sales Tax Credit**

In general a claim of Input tax credit on the GST return is virtually as good as cash claim from NRA. It is therefore important that the conditions and approach for taking credit for Sales Tax on stocks be so designed as to leave little room for false claims.

### **6.4.1 Recommendation:**

It is recommended that the following approach and conditions for recovery of sales tax on stocks in hand be adopted at the inception of GST:

A taxable person should be allowed to recover sales tax **paid by him or his direct supplier** to NRA on goods subject to *the positive rate of GST* output tax which are in stock at the start of business on the effective date of the tax, subject to the following conditions –

- The taxable person making a claim shall be GST registered from the effective date of the tax.
- The goods on which the credit is claimed are in the possession of the taxable person at start of business on the effective date of the tax;
- The taxable person is in possession of the originals of *tax invoice or customs entry* showing the charge to sales tax paid by him and/or copies of *tax invoice or customs entry authenticated by the direct supplier* showing that the charge to Sales tax was paid by the direct

*supplier* in respect of all goods for which the taxable person seeks to recover sales tax and retains that evidence for inspection by the tax office for 6 years.

- The taxable person shall have no reason for believing that the sales tax has not been or will not be paid, by his suppliers.
- The claim for recovery of the sales tax shall be submitted on a form to be provided by the Commissioner-General and shall be delivered to the tax office not later than two months after commencement of the tax;
- The supply or import occurred not more than four months prior to the date of registration, or in the case of capital goods, for a period which does not exceed six months;
- A taxable person claiming the input tax credit shall produce an inventory of all goods in hand on the effective date of the tax, supported by **audit certificate issued by a qualified accountant of good standing as a member of the Institute of Chartered Accountants of Sierra Leone (ICASL)**
- Any sales tax approved by the CG as deductible may be treated as an input tax deduction *against future tax liabilities* provided the deduction is made on the tax return form for any of the prescribed accounting periods ending *three months after the introduction of the tax*, unless the taxable person is instructed otherwise by the CG in writing.
- Where, following an audit or inspection, approval is later revoked by the CG, any tax previously treated as a credit may be recovered by the CG.

#### **6.4.2 Justification/Basis of Recommendation:**

The conditions recommended above allow credit for Sales Tax paid by the taxpayer and also sales tax paid by the taxpayer's direct supplier on goods held by the taxpayer, on condition that a photocopy of the evidence of Sales Tax paid by the direct supplier and duly certified/ authenticated by him, is held by the taxpayer. While the qualifying criteria do not cover stocks procured from suppliers twice (or more) removed from the importer or wholesaler who paid the Sales Tax at importation or the factory gate, it is not expected that GST registrable businesses will hold any significant stocks of this nature. Generally, businesses that will make the recommended GST registration threshold (i.e. annual taxable turnover of Le 200 Million) are the class of businesses that invariably import themselves or buy directly from the importer and at the domestic front buy directly from the factory or from the wholesaler who buys from the factory.

It is expected that by the recommended conditions for sales tax recovery, the bulk of the stocks in hand will be freed of Sales Tax before GST is charged on them; ensuring that price escalation that could emanate from charging GST on sales-tax-inclusive prices is avoided.

## **7.0 DISCOUNTS**

In principle, the consideration or value in relation to a supply or acquisition, on which GST is charged is the total amount in money paid or payable by any person, whether directly or indirectly, for the inducement of the supply in an arm's length transaction. This, by definition, requires allowing for any discount granted in arriving at the actual amount paid.

### **7.1 Recommendation:**

It is recommended that for purposes of determining the taxable value for GST, any price discounts or rebates allowed and accounted for at the time of the supply be deducted from the open market price where the supplier, purchaser or any other person concerned with the transaction is completely independent of each other and did not in any way influence the transaction.

### **7.2 *Justification/Basis of Recommendation:***

Recommended treatment of discount is in tune with the principle of charging GST on actual open market price of a supply.

## **8.0 DONATIONS/ GIFTS**

Exchange of gifts between private persons who are not GST-registered does not enter into the orbit of GST and is therefore not a transaction on which any GST is levied. In most cases any GST payable on the gift items may have been paid at the time of purchase.

However, when it comes to a GST registered business making a gift of a taxable item, a clear position is required on the liability of the transaction.

### **8.1 Recommendations**

It is recommended that gifts and donations of taxable items be subject to GST. In essence, a GST-registered business making a gift of a taxable item should be obliged to charge GST on the supply and issue a tax invoice for it.

The GST law does not need forbid a taxable person from appropriating taxable goods to private use outside the business or to the use of others. It should only require that the appropriate GST be charged because the transaction is taxable. This tax treatment of gifts would not be without

precedent; the Sales Tax law obliges a registered person to charge the tax on supplies made as a gift.

## **8.2 *Justification/Basis of Recommendation:***

The recommendation for provision in the GST law for the treatment of gifts made by taxable persons as taxable supplies is justified on grounds of constitutionality and tax compliance. The constitutional authority for waiving tax is the exclusive preserve of the Parliament. Therefore, while a GST-registered person is free to give out a gift, he does not have the authority to give away the tax of the state.

Furthermore, without any restriction in the GST law on private appropriation of taxable supplies by the agents who collect the tax, granting of gifts could become an avenue for tax evasion. Whereas a gift of a packet of toffee given by a GST-registered retailer to a child may not mean much in loss of tax revenue, a gift of a Mercedes Benz car given out by a registered car dealer has much bigger revenue implications.

## **9.0 PARTIAL EXEMPTION RULES**

Partial exemption is part way in the continuum between making entirely and exclusively taxable supplies and at the other extreme making exempt and only exempt supplies. The GST registered business wholly dedicated and confined to making taxable supplies is entitled to input tax credit for all its input tax. On the other hand, a business that has 100 percent of its supplies being exempt would not be GST-registered in the first place; therefore the issue of input tax credit does not arise in relation to the wholly exempt business.

Partial exemption rules derive from the need to establish a sound, equitable and administratively convenient basis for achieving a reasonably accurate input tax recovery for taxable supplies made by GST registered business making a mix of exempt and taxable supplies.

### **9.1 Direct Attribution**

Where the exempt and taxable supplies of the partially exempt taxpayer are very diverse and separate activities that do not share common inputs, and the inputs relating to taxable supplies are clearly distinguishable from those going into exempt supplies, direct attribution of input tax will yield the most accurate calculation of input tax credit.

**9.1.1 Recommendation:**

It is recommended that direct attribution of input tax be made the first option for calculation of input tax credit where taxable inputs relating to exempt and taxable supplies can be readily delineated.

**9.1.2 Justification/Basis of Recommendation:**

Where input tax relating to taxable supplies can be easily isolated by the partially exempt trader direct attribution yields more accurate calculation of input tax credit.

**9.2 Attribution and Apportionment**

At the practical level most partially exempt businesses acquire inputs that go exclusively into taxable supplies, inputs relating wholly to exempt supplies and a third category of inputs relating partly to taxable and partly to exempt supplies. This calls for stepwise use of direct attribution and apportionment (refer to Section 3.6 of Policy Paper 2 and Section 10.2.1 below).

**9.2.1 Recommendations**

The use of direct attribution and apportionment in the fashion outlined below is recommended as the heart of the partial exemption rules.

Where a taxable person makes both taxable and other supplies during a tax period, the input tax credits allowed to the person for that tax period are to be determined as follows:

- if an acquisition or import by the partially exempt business relates wholly to making taxable supplies, an input tax credit is to be allowed for the full amount of input tax payable in respect of the acquisition or import;
- If an acquisition or import by the business relates wholly to making supplies that are not taxable, no input tax credit is allowed for the input tax payable in respect of that acquisition or import;
- For acquisitions or imports by the partially exempt business that relate, partly to making taxable supplies and partly to making exempt supplies, the sum of the input tax credits allowed for such supplies or imports during the tax period is to be calculated according to the following formula—

$$A \times B/c$$

where—

A is the total amount of input tax payable in respect of imports or acquisitions made by the partially exempt person.

B is the value of all taxable supplies made by the partially exempt person during the period; and

C is the value of all supplies made by the partially exempt person during the period.

### **9.3 De minimis Rules**

Bearing in mind that the apportionment formula is an approximation of the deductible input tax, the following de minimis rules are recommended

- if the fraction  $B/C$  is more than 0.95, the taxable person is to be allowed input tax credits for all of the input tax payable on taxable acquisitions or imports made by the person during that tax period;
- if the fraction  $B/C$  is less than 0.05, the taxable person is not to be allowed input tax credits for taxable acquisitions or imports made by the person during that tax period;

#### **9.3.1 Justification/Basis of Recommendation:**

Recommendations simplify and lend clarity to the basis and approach to claiming input tax credit under partial exemption.

## **10.0 SECOND HAND GOODS**

The requirement for input tax invoice as the authority on which input tax credit can be claimed under GST presents special challenge to applying GST to the supply of locally sourced second-hand goods. Generally dealers in locally procured second-hand goods purchase their piecemeal stocks from consumers who must have long lost their purchase invoice. Even where a consumer disposing of his used good (e.g. car) is in possession of documentary proof of tax paid on purchase, the document would not be in the name of the second hand dealer and therefore cannot furnish a legitimate basis for input tax credit claim. A special scheme that addresses these challenges is required for applying GST to supply of locally sourced second hand good.

### **10.1 Recommendation**

It is recommended that a “margin scheme” of the following features be prescribed for dealers in locally procured second-hand motor vehicles, household electronic goods and furniture:

- A taxable person who deals in locally procured second-hand goods may apply to the Commissioner-General for approval to charge GST

on the difference between the buying price and the selling price of certain used goods, subject to the condition that no GST credit shall be taken on any goods purchased for resale, and a permanent record will be kept showing—

- (a) in respect of purchases—
    - (i) the date of purchase;
    - (ii) the name and address of the person from whom the goods were purchased;
    - (iii) the sufficient description of the goods to clearly identify them, including part and serial numbers, if any,
    - (iv) the total amount paid; and
  - (h) in respect of sales—
    - (i) the date of sale;
    - (ii) the name and address of the person to whom the goods are sold;
    - (iii) the selling price, exclusive of GST;
    - (iv) the difference between purchase and selling price;
    - (v) the rate of GST;
    - (vi) the amount of GST on the difference;
    - (vii) the total amount received.
      - The details specified above shall be recorded at the same time as the respective purchases or sales are made.
      - Where a taxable person has been granted approval by the Commissioner-General to operate this procedure, a sales receipt showing the GST-inclusive value of the supply shall be issued in place of the GST invoice.
      - The sales receipt shall be printed in duplicate and shall contain the following minimum information:
        - (a) the name and full address of the seller;
        - (b) the GST registration number of the seller;
        - (c) the serial number of the receipt;
        - (d) the gross amount of the transaction including GST; and
        - (e) the date of the transaction.
- Where the transaction involves used goods between two registered persons, the normal method for accounting for GST shall apply.
  - If the registered person using the procedure described above fails to maintain satisfactory records he shall be required to account for GST on the full selling price of the goods sold and pay that amount of GST with the next tax return.

## **10.2 Justification/Basis of Recommendation:**

The margin scheme as recommended gets round the peculiar challenges that do not make locally procured second-hand supplies amenable to the normal invoice credit scheme of GST.

## **11.0 NON-DEDUCTIBLE INPUT TAX**

The deductibility of input tax relating to taxable supplies on which is founded the strength of GST as a consumption tax neutral on production, is compromised by any intervention that restricts or denies input tax credit. This notwithstanding, provisions that identify specific supplies in respect of which GST incurred cannot be claimed as input tax continue to be common in GST legislations, for reasons of administrative convenience and prevention of abuse.

### **11.1 Recommendation**

It recommended that GST on the following supplies that tend to lend themselves as much to personal/private consumption as business uses, be made non-deductible, unless the taxpayer is in the business of dealing in these supplies.

- Motor vehicle designed or adapted for the transport of 12 or fewer seated passengers. and their spare parts.
- Mobile phone handsets, spare parts, repair service and mobile phone services.
- Entertainment including provision of food, beverages, tobacco, amusement, gambling, recreation, or hospitality of any kind;
- Hotel accommodation

### **11.2 Justification/Basis of Recommendation:**

Blocking input tax deductibility of the recommended supplies will prevent fraudulent claim of input tax credit for private consumption of these supplies.

Indeed some of these supplies have much greater frequency and scope of application in private/personal consumption than in business.

## **11.2 REVERSE CHARGE/IMPORT OF SERVICES**

Two characteristics of imported service set it apart for special treatment. Unlike import of goods which is more easily controlled at the points of entry (e.g. ports and frontiers), import of service does not readily lend itself to physical (and therefore customs) control. Usually, import of service comes to the attention of the GST Administration from the taxpayer through voluntary declaration (after the service has been provided) or documentary proof in the books of the taxpayer. Therefore, the customs regime on which GST relies for the collection of the tax on imported goods cannot be employed for imported service.

Secondly, the GST collection mechanism at the domestic front by which the tax is charged to the buyer/recipient of goods or service by the GST registered business that makes the supply cannot be employed for the collection of GST on imported service, as the supplier (i.e. exporter) of the

imported service is outside the jurisdiction of the GST Administration. In the circumstances, the most feasible option is to get the importer (i.e. the recipient) of the imported service to assume a reverse role of a GST registered provider of the service and charge the tax to himself as the recipient of the supply of service.

### **12.1 Recommendation**

It is recommended that the reverse charge scheme as outlined below be adopted for taxation of imported service.

The supply of service made by a non-resident must be treated as a taxable supply made by the recipient of the supply at the same time and for the same consideration as the actual supply, if

- the supply would have been a taxable supply if it had been made by a resident who was registered for GST; and
- the supply is not or would not be zero-rated;

but only to the extent that the recipient will use the supply–

- to make exempt supplies;
- for private or domestic use, or a use that would be private or domestic if the recipient were an individual; or
- to provide entertainment to:
  - (i) an associate or employee; or
  - (ii) any other person other than in the course of a taxable activity of providing entertainment.

### **12.2 Justification/Basis of Recommendation:**

The reverse charge scheme as recommended is the most effective and widely used approach to collecting GST on imported service.

## **13.0 RETAIL SCHEMES**

It is recognised that many GST registered businesses operate under circumstances that make it very difficult to issue the GST invoice for each transaction. This is normally the case in the retail situation (e.g. Supermarkets, drinking bars, restaurants etc) where the high turnover of customers makes it near-impossible to issue a full blown GST invoice for every customer. Generally the requirement for the issue of GT invoice for every taxable transaction is difficult to comply with where the business

involves the sale of high volume, low value goods to customers who are generally not registered for GST. Retail schemes which essentially relieve the retailer of the obligation to issue GST invoice for all transactions, are designed to address these challenges.

### **13.1 Recommendation**

It is recommended that the following retail schemes be provided for in the GST legislation to meet the special requirements of the types of retail supplies for which they have been designed.

#### **Retail Scheme 1 - for Retailers of Only Taxable Goods**

A taxable person who is a retailer of only taxable goods may apply for approval to use this retail scheme which requires the retailer to-

- quote prices and sell at prices inclusive of GST
- record the value and brief details of each supply as it occurs and before the goods leave the business premises;
- keep copies of all purchase invoices issued by suppliers;
- keep a cash register, book, or other suitable record at each point of sale in which shall be entered details of all daily gross takings received and cash payments made at the time that they are made and at the end of each day the record shall be totalled and a balance shall be struck: and
- record in the appropriate records at the end of each tax period the output GST chargeable on supplies made and deductible input GST shown on GST invoices in respect of supplies received.

The output GST shall be calculated by applying the following method-

Step 1: Add up the total daily gross takings in the month;

Step 2: Multiply the total at Step 1 by the GST fraction, where the formula for **the GST fraction** is-

$$\frac{\text{The rate of GST}}{100 + \text{the rate of GST}}$$

#### **Retail Scheme 2 – for Retailers of Both Taxable and Exempt Goods.**

Where a retailer of goods makes both taxable and exempt supplies, he must first apportion his daily gross takings between taxable and exempt supplies; for this purpose he shall-

- Keep a separate record of exempt supplies and deduct the total of these from the daily gross takings in the tax period; the output GST shall be calculated by applying Step 2 in the calculation shown under Scheme 1 above to the balance; or
- Calculate from his purchase records, the total value of all goods purchased for resale in the tax period and also the total value of taxable goods purchased in the tax period.

**The output GST** shall be calculated by applying the following method-

Step 1: divide the total **taxable** purchases for resale in the tax period by the total purchases for resale in the tax period;

Step 2: multiply the result of Step 1 by the total daily gross takings in the tax period;

Step 3: apply the GST fraction to the result of Step 2.

### **Annual adjustments**

A taxable person who calculates his output GST using the method specified above shall, on the anniversary of starting to use the method and on each subsequent anniversary, make an annual adjustment to his output GST for that year.

(2) The adjustment shall be calculated by applying the same method, but substituting purchases for resale in the year for purchases for resale in the tax period in Step 1, and substituting total daily gross takings in the year for total daily gross takings in the tax period in Step 2.

(3) The taxable person shall compare the result of this adjustment with the total output GST previously calculated for that year and adjust the difference on the return for the next accounting period.

(4) In the event of a change in the rate of the tax, a taxable person shall make an adjustment to his output GST to cover the period from the date of his last adjustment until the date of the change in the rate of tax and on each anniversary of the change.

### **Notification of decision of Commissioner-General on operation of a special retail scheme**

The Commissioner-General shall notify any person in writing of a decision to approve or reject an application to operate a special retail scheme within 30 days of receipt of the application.

### **Retail Sales Receipt**

Where a person has been granted approval to use a retail scheme, a retail sales receipt, printed in duplicate and containing the following minimum information, shall be issued in place of a GST invoice:

- (a) the name and full address of the seller;
- (b) the inscription "Retail Receipt" at the top;
- (c) the description of the goods sold;
- (d) the registration number of the seller;
- (e) the serial number of the receipt; and
- (f) the date of the transaction.

A retail sales receipt issued shall also state either the gross amount of the transaction, including GST or the amount of the transaction and GST.

Upon a request by a purchaser who is registered for GST, the vendor shall issue a full GST invoice.

Copies of the retail receipt shall be retained by the supplier in accordance with regulation 20.

### **Use of electronic cash register under a special retail scheme**

- A taxable person registered under a special retail scheme who makes annual sales of Leones **400 million** or above shall be required to install an electronic cash register to record all sales and GST liability in lieu of the retail receipt.
- Where an electronic cash register is used, it shall be programmed to retain information for the purpose of verifying all transactions.

#### **13.2 Justification/Basis of Recommendation:**

Recommended scheme ensures that retail trade involving high numbers of small value transactions is freed of the burden of invoice issue for each transaction while retaining enough, but simple record keeping requirements, that establish adequate audit trail for verification by the GST Administration.

### **14.0 RETAIL EXPORT SCHEME/TOURIST PURCHASES**

Supplies made to non-residents leaving Sierra Leone who take them out of the country technically qualify for classification as export and therefore zero-rating. In practice, however the administration of zero-rating and its incidental administrative responsibility of processing of request for refund, presupposes the zero-rated supply being made by a GST registered person with a permanent address known to the GST Administration in the jurisdiction.

In the case of retail exports involving non-residents (e.g. tourists) making local purchases and exporting them mostly as accompanied baggage and on whom the GST Administration has very little information, credible documentation or audit trail on which tax refund could be based is rather tenuous. What is more, non-resident travellers claiming GST refund on goods they are taking out of the country normally require the payment to be made in so short a period that procedures for verification of claims cannot be elaborate or rigorous. For these and other reasons, GST refund for retail exports has been fraught with abuse and fraudulent claims even in the mature GST jurisdictions.

#### **14.1 Recommendation**

It is recommended that in the first 2 years of the inception of GST, no scheme be put in place for refund of GST on goods purchased in Sierra Leone by persons not resident or domiciled in Sierra Leone for consumption outside Sierra Leone.

#### **14.2 Justification/Basis of Recommendation:**

There does not seem to be a stable or reliable scheme with wide acceptance for refund of GST to non-residents on supplies they are taking out for consumption outside the territorial boundaries of a GST jurisdiction.

This is evidenced by the high incidence of fraud rapidity with which rules on such refunds are changed, even in the mature GST countries. Taking on the complications associated with retail export refunds in the first two years of inception when skills for the administration of GST are yet to be honed to high levels of performance, could take its toll on the GST Administration's effectiveness in more critical areas of implementation and consolidation.

## **15.0 CONCLUSION**

While effort has been made to cover the key issues considered important in arriving at decisions on the topics covered in this paper, it is not intended that the paper be a substitute for a meeting of MOFED with the technical team of the NRA for discussion to clarify GST issues in or outside of this paper.

Finally, we look forward to your comments on all the GST Policy Papers submitted.