

# VALUE ADDED TAX ACT, 2014

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## VALUE ADDED TAX ACT, 2014

### AN ACT TO PROVIDE FOR THE IMPOSITION ASSESSMENT AND COLLECTION OF VALUE ADDED TAX ON THE SUPPLY AND IMPORTATION OF GOODS AND SERVICES IN THE BAHAMAS AND FOR CONNECTED MATTERS

Enacted by the Parliament of The Bahamas

#### PART I – PRELIMINARY

##### 1. Short title and commencement.

- (1) This Act may be cited as the Value Added Tax Act, 2014.
- (2) Subject to subsection (3), this Act shall come into force on the 1<sup>st</sup> day of January, 2015.
- (3) The Minister may appoint, by notice published in the *Gazette*, different dates for the coming into force of Part III, Part IV and section 98 of this Act, respectively.

##### 2. Interpretation.

- (1) In this Act, unless the context otherwise requires —
  - “**Appeal Commissioner**” means a member of the Value Added Tax Appeal Commission;
  - “**authorised person**” means a person authorised in writing by the Comptroller to act for and on behalf of the Department under this Act;
  - “**business**” includes —
    - (a) a trade, profession, vocation, venture, or undertaking;
    - (b) the provision of personal services, or technical and managerial skills, and any adventure or concern in the nature of trade that does not include employment;

- (c) the provision by a club, association or organisation, for a subscription or other consideration, of the facilities or advantages available to its members;
- (d) the admission, for consideration, of persons to any premises;
- (e) the exploitation of tangible or intangible property for the purpose of obtaining income on a continuing basis from such property;

**“Comptroller” or “Comptroller of VAT”** means —

- (a) the Comptroller of Value Added Tax referred to in section 12;
- (b) a VAT officer or authorised person acting on behalf, or under the authority, of the Comptroller;

**“construction goods or services”** means goods or services supplied directly in the construction, major reconstruction, manufacture, or extension of a building or civil engineering work;

**“credit agreement”** means a —

- (a) hire-purchase agreement under the Hire Purchase Act (*Ch. 342*) and includes a conditional sale agreement and a credit sale agreement;
- (b) finance lease as determined by criteria prescribed in regulations;

**“Customs Management Act”** means the Customs Management Act (*No. 30 of 2011*);

**“Department” or “VAT Department”** means the Value Added Tax Department established under section 12;

**“The Bahamas”** means the entire territory of the Commonwealth of The Bahamas, including its territorial waters, airspace and its Exclusive Economic Zone;

**“exempt importation” or “exempt import”** means an import of goods or services into The Bahamas by any person on which value added tax is not chargeable;

**“exempt person”** means a diplomatic mission or international organisation, and their eligible staff members, in relation to the acquisition of a qualifying good or service comprising a taxable supply or a taxable importation;

**“exempt supply”** means a supply of goods or services of a description for the time being specified in the *Second Schedule*;

**“export”** has the meaning ascribed in subsection (2);

**“financial institution”** means an institution or person referred to in section 3 of the Financial Transactions Reporting Act (*Ch. 368*);

**“goods”** means real or tangible personal property and utilities but does not include money;

**“Government”** means the Government of the Commonwealth of The Bahamas and includes a ministry, department, statutory body, agency, local government council, or other entity of Government;

**“Hawksbill”** means the Hawksbill Creek Agreement scheduled to the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act (*Ch. 261*), as amended;

**“importer”** —

- (a) in relation to the importation of goods, has the meaning ascribed in the Customs Management Act; and
- (b) in relation to the importation of services, means the person importing the services and the resident to whom the services are supplied, jointly and severally;

**“input tax”** means the VAT paid or payable by a taxable person —

- (a) on taxable supplies to him;
- (b) on taxable importations by him;

**“input tax deduction”** means the tax deduction allowable to a registrant where taxable supplies to him, or taxable importations by him, are utilized in the production of new taxable supplies;

**“licensed financial services provider”** means a licensed financial institution;

**“Minister”** means the Minister responsible for Finance;

**“money”** means —

- (a) a coin or paper currency recognised in The Bahamas as legal tender;
- (b) a coin or paper currency of a foreign country that is used or circulates in The Bahamas as currency;
- (c) a bill of exchange, promissory note, bank draft, postal order, money order, or similar instrument, other than an item of numismatic interest;
- (d) a credit card or debit card that is used as currency;

**“non-resident”** means a person who does not, and is not deemed to, carry on a taxable activity in The Bahamas;

**“non-taxable person”** means a person who is not a taxable person for the purposes of this Act;

**“output tax”** means the VAT charged on a taxable supply by a taxable person made to another person;

**“peace officer”** means —

- (a) a member of the Royal Bahamas Police Force;

(b) a member of the Royal Bahamas Defence Force;

**“person”** includes —

- (a) the Government;
- (b) a natural person, corporation, company, trust, partnership;
- (c) an unincorporated association or body;

**“Port Area”** means the Port Area as defined in Hawksbill;

**“Port licensee”** means the Grand Bahama Port Authority or a licensee of the Port Authority entitled to the tax benefits conferred under the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act (*Ch. 261*);

**“positive rate”** means the standard rate or the special rate at which VAT is chargeable;

**“prescribed”** means prescribed by or in regulations made under or pursuant to this Act;

**“promoter of public entertainment”** means a person who arranges the staging or supply of public entertainment or a licensee or proprietor of a place of public entertainment;

**“public entertainment”** means any musical entertainment, theatrical performance, comedy show, dance performance, circus show, or show connected with a festival, or any similar event, to which the public is invited;

**“registrable goods”** —

- (a) means goods requiring registration under any law for the time being in force within The Bahamas whereby a registering authority issues to the applicant upon registration a permit, licence, certificate, or other authorisation;
- (b) includes an aircraft, boat, fishing vessel, ship, yacht, motor cycle, motor vehicle, tractor, caravan, firearms, or trailer;

**“registrant”** means a person who is registered pursuant to Part IV;

**“registrant financial institution”** means a financial institution that is registered under section 19 or section 20;

**“registrant recipient”** means a registrant who receives a supply of goods or services;

**“registrant supplier”** means a registrant who makes a supply of goods or services;

**“registration threshold”** means the amount of turnover from a taxable activity obtained by a person on an annual or lesser basis which requires, or entitles, such person to apply for registration as a taxable person under this Act;

**“resident”** means —



- (a) the Government;
- (b) a citizen or permanent resident;
- (c) any person to the extent such person carries on a taxable or other activity within The Bahamas;

**“sale”** means —

- (a) an agreement of purchase and sale;
- (b) any other transaction whereby ownership of goods passes or is to pass from one person to another;

**“self-supply”** means, in relation to section 31(8), a taxable supply by a taxable person made to himself or that is deemed to be made to himself;

**“supply”** includes all forms of supply, but excludes anything done otherwise than for a consideration;

**“supply of goods”** means a supply referred to in Part V;

**“supply of services”** means a supply referred to in Part V;

**“tax”** means value added tax;

**“taxable activity”** means any activity within The Bahamas carried on in the form of a business —

- (a) which is carried on continuously or regularly by a person, whether or not for a pecuniary profit; and
- (b) which for a consideration involves or is intended to involve, in whole or in part, the supply of taxable supplies to another person or the import of taxable importations,

but does not include —

- (i) an activity carried on essentially as a private recreational pursuit or hobby;
- (ii) an engagement, occupation or employment under a contract of service or as a director of a company;
- (iii) an activity to the extent it comprises the production, acquisition or making of exempt supplies and exempt importations;

**“tax identification number”** or **“VAT identification number”** means the identifier issued to a person by the Comptroller for the purposes of this Act;

**“tax fraction”** or **“VAT fraction”** means in relation to a taxable supply the fraction calculated in accordance with the formula 'R divided by (1 + R)' where “R” is the rate of VAT expressed as a percentage applicable to the price of the taxable supply;

**“taxable importation”** means —

- (a) an importation from outside The Bahamas by any person of goods or services into The Bahamas other than an exempt importation;
- (b) in relation to the Port Area, an importation from outside The Bahamas by any person of goods or services into the Port Area other than an exempt importation or an importation referred to in subsection (3) of section 3;

**“tax period”** means a period of one calendar month or such other period as the Comptroller may in a particular case, or category of cases, determine;

**“taxable person”** means a person who carries on a taxable activity and is registered, or required to apply for registration, under section 19 or section 20;

**“tax rates”** means the rates referred to in section 6;

**“taxable supply”** means —

- (a) a supply of goods and services in The Bahamas made by a person in the course or furtherance of a taxable activity carried on by such person, other than an exempt supply;
- (b) in relation to the Port Area, a supply of goods and services in the Port Area made by a person in the course or furtherance of a taxable activity carried on by such person other than an exempt supply or a supply referred to in subsection (3) of section 3;

**“taxable transaction”** means a transaction —

- (a) involving a taxable supply or a taxable importation;
- (b) made by or on behalf of a taxable person in the course or furtherance of a taxable activity carried on by such person;

**“token”** includes, in relation to section 37(8)(9), a voucher, gift certificate, or stamp;

**“turnover”** means the total revenues in money and money's worth accruing to a person from his taxable activities during the preceding twelve or fewer months, or such other accounting period as allowed under Part IV, including all cash, credit sales and commissions, without any deductions whatsoever;

**“utilities”** or **“utility goods”** means thermal or electrical energy, heat, gas, refrigeration, air conditioning, and water;

**“value”** means the value of goods and services by reference to which value added tax is chargeable on taxable supplies and taxable importations;

**“value added tax”** or **“VAT”** means —

- (a) the tax referred to in section 4;

(b) any other amount to the extent that such amount is treated as VAT for the purposes of this Act;

“**VAT Appeal Commission**” means the Value Added Tax Appeal Commission to be established by the Minister pursuant to section 82;

“**VAT Guidelines**” means guidelines issued under section 17 by the Comptroller of VAT in respect of a matter under this Act involving value added tax and includes —

- (a) VAT Guidance Notes;
- (b) VAT Recommended Practices and Procedures;
- (c) VAT Practice Directions;

“**VAT invoice**” means the invoice a registrant is required to issue when making a taxable supply to another registrant;

“**VAT officer**” means a public officer appointed to a post within the Value Added Tax Department and includes a Deputy Comptroller and an Assistant Comptroller;

“**VAT return**” means the return required to be filed by a registrant in accordance with section 47;

“**VAT Rules**” means rules, having the force of law, issued under section 17 by the Comptroller of VAT in respect of a matter under this Act involving value added tax;

“**VAT sales receipt**” means the receipt a registrant is required to issue when making a taxable supply to a recipient who is not a registrant;

“**zero rated importation**” means a taxable importation that is chargeable to VAT —

- (a) at a zero percent rate on goods and services of a description for the time being specified in the *First Schedule*;
- (b) where a registrant is allowed to make a claim for input tax deduction in relation to the importation;

“**zero-rated supply**” means a taxable supply that is chargeable to VAT —

- (a) at a zero percent rate on goods and services of a description for the time being specified in the *First Schedule*;
- (b) where a registrant is allowed to make a claim for input tax deduction in relation to the supply.

(2) Subject to this Act and the regulations —

(a) an export of goods or services from a place of business within The Bahamas is a supply made in The Bahamas which, unless exempt, is chargeable to tax as a taxable supply where the export is —

- (i) by or on behalf of a taxable person;

- (ii) made in the course or furtherance of a taxable activity carried on by such person;
  - (b) subject to paragraph (c), an export under paragraph (a) occurs where —
    - (i) goods or services are transported or transferred, by whatsoever means, from within The Bahamas to a country or place outside The Bahamas;
    - (ii) the use, benefit or advantage of the goods or services is obtained or enjoyed in the country or place to which they have been transported or transferred; and
  - (c) notwithstanding paragraph (b), an export under paragraph (a) also occurs where movable goods are placed on board an aircraft or vessel in The Bahamas, that is en route to a country or place outside The Bahamas, for use or consumption in such aircraft or vessel.
- (3) Notwithstanding subsection (2), for the purposes of this Act —
  - (a) the provision by a person domiciled outside The Bahamas of telecommunications services or electronic commerce for the use, enjoyment, benefit or advantage of persons within The Bahamas is a —
    - (i) taxable supply of services made within The Bahamas;
    - (ii) taxable activity carried on by such person;
  - (b) a person referred to in paragraph (a) is deemed to be resident in The Bahamas to the extent such person, or an agent of such person, carries on the taxable activity and makes the taxable supplies of services;
  - (c) a reference to —
    - (i) **“telecommunication services”** means services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the provision of access to global information networks, and the related transfer or assignment of the right to use capacity for such access, transmission, emission or reception;
    - (ii) **“electronic commerce”** includes business transactions taking place through the electronic transmission of data over communications networks such as the internet;
  - (d) examples of telecommunication services and electronic commerce include, but are not limited to —
    - (i) websites, web-hosting, distance maintenance of programmes and equipment;
    - (ii) software and the updating of software;

- (iii) images, text and information, and databases available;
- (iv) political, cultural, artistic, sporting, scientific, and entertainment broadcasts and events; and
- (v) distance teaching.

### 3. Application.

- (1) Subject to the provisions of this section, this Act applies in The Bahamas to every —
  - (a) taxable supply made by a taxable person; and
  - (b) taxable importation by any person.
- (2) This Act applies in the Port Area where —
  - (a) a taxable supply within the Port Area is made by —
    - (i) a taxable person who is a Port licensee to a person who is not a Port licensee;
    - (ii) a taxable person to a person who is a Port licensee, where the supply is not of goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill;
    - (iii) a taxable person to another person neither of whom is a Port licensee;
  - (b) a taxable importation from outside The Bahamas is made into the Port Area by a person who —
    - (i) is not a Port licensee;
    - (ii) is a Port licensee but the importation is not of goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill;
  - (c) a taxable importation from outside The Bahamas is made into the Port Area for the personal use of any person;
  - (d) a taxable supply in the Port Area is made by a taxable person for the personal use of any person;
  - (e) a taxable person within the Port Area, whether or not a Port licensee, makes a taxable supply within The Bahamas to a recipient outside the Port Area;
  - (f) a taxable person in another part of The Bahamas makes a taxable supply to a recipient in the Port Area who —
    - (i) is not a Port licensee; or
    - (ii) is a Port licensee but the supply is not of goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill.
- (3) This Act does not apply to transactions taking place within the Port Area where —

- (a) a supply of goods within the Port Area is made by a taxable person who is a Port licensee to another Port licensee and the goods are of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill; and
  - (b) an importation of goods from outside The Bahamas is made into the Port Area by a Port licensee and the goods are of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill.
- (4) References in this Act to goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill do not include goods that are “consumable stores” as defined in clause 2(5) of Hawksbill.
  - (5) This Act applies to exempt persons.
  - (6) This Act does not apply to a supply of services by an employee to an employer by reason of employment.
  - (7) This Act applies to the Government from the date a ministry, department, statutory body, agency, local government council, or other entity of Government commences a taxable activity.

## **PART II – IMPOSITION AND LIABILITY FOR PAYMENT OF VALUE ADDED TAX**

### **4. Imposition of tax.**

- (1) Subject to this Act, there is imposed on and from the date this Act comes into force a tax, called value added tax, chargeable on every —
  - (a) taxable supply made by a taxable person; and
  - (b) taxable importation made by any person.
- (2) A taxable transaction chargeable to tax under both paragraphs (a) and (b) of subsection (1) is treated as a taxable supply chargeable under paragraph (a).
- (3) Value added tax is chargeable at a percentage rate of the value of a taxable supply and taxable importation determined in the manner prescribed by this Act, VAT Rules and the regulations.
- (4) A person who is not a taxable person, or who is an unregistered taxable person, must not collect, advertise or quote value added tax in respect of a taxable supply by him to another person.
- (5) Notwithstanding any other law, enacted after the enactment or coming into force of this Act —

- (a) an exemption from a charge of VAT granted in such other law is of no effect for the purposes of this Act until and unless a corresponding exemption from VAT is granted under this Act; and
  - (b) the imposition in such other law of a rate of VAT on a taxable supply or taxable importation that is contrary to the rates imposed by section 6 is of no effect for the purposes of this Act until and unless an amendment is made to this Act imposing such rate of VAT.
- (6) No reference to tax in any Act, enacted before the enactment or coming into force of this Act, shall be treated as a reference to VAT under this Act.

## **5. Persons liable to pay and account for tax.**

- (1) Subject to this Act and the regulations, liability to pay and account for value added tax —
- (a) in the case of a taxable supply, falls on the taxable person making the supply who must account for and pay tax in relation to the supply in accordance with Part VII and Part VIII;
  - (b) in the case of a taxable importation of goods, falls on the importer and is due and payable at the time the goods are entered for home consumption as if it were a duty of customs under the Customs Management Act; and
  - (c) in the case of a taxable importation of services, falls jointly and severally on the importer and the recipient of the services and is due and payable at the time prescribed by this Act and the regulations.
- (2) A hotel, or any other person responsible for the administration of condos or other residential accommodations that form part of a pool or other collective rental arrangement, must register in accordance with section 19 and pay the tax payable under this Act in relation to the rental of such accommodations.
- (3) Subject to this Act, a liability to pay and account for value added tax means a liability to pay and account to the Value Added Tax Department.

## **6. Rates of tax.**

Value added tax imposed under section 4 on a taxable supply and a taxable importation is chargeable at —

- (a) a zero percent rate on the value of such taxable supplies and taxable importations for the time being specified in the *First Schedule* subject to such conditions and restrictions as may be prescribed in regulations and VAT Rules; and
- (b) a standard rate of seven and one half per cent on the value of any taxable supply and taxable importation that is not zero rated.

**7. Exempt supplies and exempt importations.**

Subject to section 8, value added tax is not chargeable on such supplies and importations, called exempt supplies and exempt importations, for the time being specified in the *Second Schedule* subject to such conditions and restrictions as may be prescribed in regulations and VAT Rules.

**8. Exempt persons.**

A diplomatic mission or international organisation may, in relation to a transaction in respect of which it is an exempt person, claim a refund of VAT paid on a qualifying good or service in accordance with section 58.

**9. Refunds to Port licensees in certain circumstances.**

(1) Where a Port licensee has been charged VAT on a transaction falling within paragraph (a) of subsection (3) of section 3, that Port licensee is, subject to the provisions of section 59, entitled to a refund of the VAT which was charged on that transaction.

(2) Where —

- (a) a Port licensee has purchased new and unused goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill from a person within The Bahamas, and
- (b) the goods purchased by the Port licensee are goods upon which VAT was charged upon their importation into The Bahamas,

then, save where the Port licensee is entitled to a refund under subsection (1) in respect of the sale to it of the goods, and subject to the provisions of section 59, the Port licensee is entitled to a refund of the VAT which was charged on the original importation.

(3) Any claim to a refund under this section must be made in accordance with section 59.

**10. Tax-inclusive pricing.**

(1) A registrant must —

- (a) in respect of a taxable supply, state the price inclusive of value added tax; and
- (b) where the registrant charges value added tax on a taxable supply, state the tax separately on a VAT invoice or a VAT sales receipt.

(2) A registrant may, in a marketing campaign, state the price of a taxable supply exclusive of value added tax where the registrant includes in such statement the fact that VAT is excluded in the price.

(3) Subject to subsection (2) of section 24, a price charged by a taxable person in respect of a taxable supply is deemed to include value added



tax chargeable on the supply, whether or not the taxable person has included tax in such price.

- (4) A taxable person must display the prices of goods or services supplied by such person in the manner prescribed in regulations and VAT Guidelines.

#### **11. Interest on unpaid tax treated as tax.**

- (1) Tax payable under this Act which is not paid by the date on which it becomes due and payable bears interest —
  - (a) in respect of any outstanding amount, at the rate prescribed in the Financial Administration and Audit Act (*Ch. 359*); and
  - (b) which is recoverable as if the interest were value added tax due under this Act.
- (2) Interest paid by a person under this Act must, to the extent that any tax to which it relates is subsequently determined not to have been due and payable, be refunded to the payer of such interest.

### **PART III – ADMINISTRATION**

#### **12. Establishment of the Value Added Tax Department.**

- (1) There is established for the purposes of this Act a department of Government to be known as the Value Added Tax Department or VAT Department.
- (2) The Department is headed by a Comptroller of Value Added Tax who shall —
  - (a) be appointed upon recommendation of the Minister; and
  - (b) report to the Financial Secretary.
- (3) Responsibility for the administration and enforcement of this Act lies with the Value Added Tax Department.
- (4) The Comptroller has responsibility for —
  - (a) the exercise of all powers of the Department;
  - (b) the discharge and performance of all functions and duties of the Department; and
  - (c) control and supervision over all administrative units, personnel and activities of the Department.
- (5) The Comptroller must promote and ensure —
  - (a) honesty and integrity in the day to day functions and operations of the Department in the assessment, levy and collection of value added tax; and

- (b) efficient and effective tax collection and the enhancement and maximisation of value added tax revenues to the Consolidated Fund.
- (6) The Comptroller shall occupy office for a term of five years from the date of appointment and the initial term of appointment may, by order published in the *Gazette*, be extended for an additional consecutive term of five years.
- (7) The Minister has responsibility for supervision, control and oversight of the VAT Department and to ensure that the Department is endowed with sufficient managerial and financial autonomy so as to —
  - (a) establish a performance based meritocracy in respect of all officers and employees of the Department;
  - (b) create an efficient and effective, transparent and fair, system for the administration and enforcement of value added tax; and
  - (c) engender and maintain a high level of public confidence in —
    - (i) the honesty and integrity of VAT administration and enforcement;
    - (ii) the competence, honesty and professionalism of the officers and employees responsible for the implementation of this Act.
- (8) The funds of the VAT Department consist of —
  - (a) monies appropriated by Parliament and allocated by the Minister for the purpose of the budget of the Department;
  - (b) loans or grants received by the Department with the approval of the Minister; and
  - (c) such other monies as may, with the approval of the Minister, be received by or made available to the Department for the purpose of performing its functions.
- (9) The VAT Department must credit to the Consolidated Fund all VAT revenues collected by, or due and payable to, the Department under this Act.
- (10) The expenditure of the VAT Department is a charge on the Consolidated Fund.
- (11) The VAT Department has a symbol, the description and design of which shall be —
  - (a) approved by the Minister;
  - (b) appointed by notice published in the *Gazette*; and
  - (c) placed on all correspondences, forms and reference materials, vehicles, identity cards and other means of identification, of the Department.

### **13. Functions and powers of the Comptroller.**

- (1) The Comptroller is responsible for the exercise of all powers and discharge of all functions and duties of the Value Added Tax Department under or pursuant to this Act.
- (2) Subject to this Act, the powers, functions and duties of the Comptroller are to —
  - (a) ensure the effective and efficient assessment and collection of value added tax in accordance with the provisions of this Act and the regulations;
  - (b) prepare a national framework for the levy and collection of value added tax, including administrative procedures, standards and protocols;
  - (c) advise the Minister on the information technology systems, personnel, skills and other resources required to ensure the optimal functioning of the Department in relation to VAT administration and enforcement;
  - (d) make decisions or determinations whether or not —
    - (i) a person is a taxable person or a transaction is a taxable transaction;
    - (ii) a taxable supply is a standard rated, zero-rated or an exempt supply;
    - (iii) a taxable importation is a standard rated, zero-rated or an exempt importation;
    - (iv) a person is carrying on a taxable activity;
    - (v) a taxable supply or taxable importation was made in the course or furtherance of a taxable activity;
    - (vi) input tax is attributable to the production or distribution of a taxable supply;
    - (vii) a taxable supply is to be treated in any particular case as a supply of goods or a supply of services;
    - (viii) a taxable importation is to be treated in any particular case as an import of goods or an import of services;
  - (e) process applications for registration;
  - (f) process claims for input tax deductions and decide whether a claim is allowable and the amount, if any allowed on the claim;
  - (i) withdraw or amend a decision, determination, or notice, made or issued by a VAT officer or by the Comptroller;
  - (j) advise the Minister on the level of fees to be set in relation to applications and forms made or required, and services performed by the Department, under or pursuant to this Act;

- (k) coordinate, supervise and give advice on matters related to training for VAT officers;
  - (l) supervise the Department's daily operations under or pursuant to this Act including the performance of VAT officers and other employees;
  - (m) annually review the performance of the Department and make such changes to administrative procedures, standards and protocols as may be necessary or desirable to enhance performance in the administration and enforcement of this Act;
  - (n) issue VAT Rules prescribing the form and content of all applications, notices, returns, invoices, receipts, notes, warning letters, or other documents required for use under or pursuant to this Act or regulations made under this Act;
  - (o) issue on behalf of the Value Added Tax Department such warning letters as the Comptroller considers appropriate to taxable and other persons in non-compliance with the provisions of this Act and the regulations; and
  - (p) perform such other functions relating to the assessment, payment and collection of value added tax as the Minister may request.
- (3) Notwithstanding any provision to the contrary contained in the Data Protection (Privacy of Personal Information) Act (*Ch. 324A*) —
- (a) the Comptroller may, in the exercise of his functions and powers under subsection (2), request in writing from any ministry, department, statutory body, agency, local government council, or other entity of Government such documents and information as the Comptroller considers to be necessary or desirable to facilitate the administration and enforcement of this Act; and
  - (b) a ministry, department, statutory body, agency, local government council, or other entity of Government receiving a request by the Comptroller must provide the documents and information contained in the request to the Comptroller.
- (4) Subject to this Act and the regulations, the functions, powers and duties of the Comptroller are exercisable and may be performed —
- (a) by a Deputy Comptroller or Assistant Comptroller; and
  - (b) except where a contrary intention appears, by a VAT officer.
- (5) For the purposes of paragraph (b) of subsection (4), a contrary intention appears where the Comptroller is required under this Act or the regulations to authorise a VAT officer in writing in respect of a specific matter or purpose.

**14. Identity cards and oaths of office.**

- (1) There shall be appointed to the Value Added Tax Department such VAT officers and other personnel as may be required in order to ensure the efficient and effective administration and enforcement of this Act and the regulations.
- (2) The Comptroller must issue an identity card or other means of identification to every —
  - (a) VAT officer; and
  - (b) other employee or person whom the Comptroller authorises in writing to act under this Act on behalf of the Department.
- (3) Every VAT officer or authorised person must —
  - (a) when on duty, carry the identity card or other means of identification issued pursuant to subsection (2) and produce it on request when exercising any power under this Act;
  - (b) on ceasing to be a VAT officer or authorised person, surrender immediately to the Comptroller his identity card or other means of identification; and
  - (c) on appointment or grant of authority, make or subscribe before a magistrate, justice of the peace, or notary public, an oath and declaration in such form as may be prescribed.
- (4) The oath and declaration of the Comptroller shall be taken by the Minister.
- (5) A VAT officer or authorised person must not, in the exercise of or in connection with his functions, powers and duties under this Act and the regulations —
  - (a) directly or indirectly ask for, or take —
    - (i) a payment or reward, pecuniary or otherwise, which is not a payment or reward which such officer or authorised person is lawfully entitled to receive;
    - (ii) a promise or security for a payment or reward referred to in sub-paragraph (i);
  - (b) enter into, or acquiesce in, an agreement to do, abstain from doing, permit, conceal, or connive at any act or thing —
    - (i) whereby the VAT revenue is or may be defrauded; or
    - (ii) which is contrary to the provisions of this Act and the regulations or to the proper exercise of the duty of such officer or authorised person.

**15. Minister may give policy directions.**

- (1) Subject to subsection (2), the Minister may give the Comptroller directions of a general character as to the policy the Minister considers to be necessary in the public interest to be followed by the Comptroller in the exercise and discharge of the Comptroller's powers, functions and duties under this Act.
- (2) The Minister may not —
  - (a) intervene in matters relating to the day-to-day administration and collection of VAT revenues or implementation of VAT policy;
  - (b) participate in the making of, or influence, any decision by the Comptroller concerning the —
    - (i) affairs of a particular taxable person;
    - (ii) enforcement of this Act in relation to a particular taxable person; or
  - (c) access, except by written request made to the Comptroller, Department information regarding the income, business or affairs of a particular taxable person.

**16. Administrative fines and warning letters.**

- (1) The Value Added Tax Department may order the payment of an administrative fine in any case where it is satisfied that a person has contravened or failed to comply with a provision of —
  - (a) this Act;
  - (b) a regulation made under or pursuant to this Act;
  - (c) a VAT Rule made pursuant to section 17;
- (2) An order by the Department pursuant to subsection (1) may not impose a fine exceeding one hundred fifty thousand dollars.
- (3) A contravention or non-compliance under this section may in accordance with the regulations and VAT Rules be —
  - (a) classified as very serious, serious, or minor; and
  - (b) liable to imposition of a fixed fine or to a variable fine.
- (4) A contravention or non-compliance classified as minor is, in respect of each day or part of a day during which the act or omission constituting the contravention or non-compliance is continued, a separate contravention or non-compliance.
- (5) The Department may impose in relation to a contravention or non-compliance classified as—
  - (a) minor, a maximum fine of twenty-five thousand dollars;
  - (b) serious, a maximum fine of seventy-five thousand dollars; and

- (c) very serious, a maximum fine of one hundred fifty thousand dollars.
- (6) The Department may, where the Comptroller is satisfied that a contravention or non-compliance under this Act or the regulations or VAT Rules has been committed and such contravention or non-compliance constitutes an offence, elect to proceed with the matter as —
  - (a) a criminal offence and institute criminal proceedings; or
  - (b) a contravention or non-compliance subject to the imposition of an administrative fine in accordance with this section and the regulations or VAT Rules.
- (7) The Department is, on completion of a proceeding in the manner elected pursuant to subsection (6), precluded from proceeding in the other manner.
- (8) An order made by the Value Added Tax Department under this section must —
  - (a) be in writing;
  - (b) specify the —
    - (i) specific contravention or non-compliance which has been committed and its classification, if applicable;
    - (ii) amount of the fine imposed;
    - (iii) time period within which the fine must be paid in full; and
  - (c) be served on the person fined in the manner prescribed by regulations.
- (9) An order under this section may be enforced in the same manner as an order of a court.
- (10) A person fined under this section, upon payment within the prescribed time of the fine in full, cannot subsequently be prosecuted for an offence in respect of the same act or omission constituting the contravention or non-compliance to which the fine related.
- (11) The Department may, where a person is in contravention of or non-compliance with a provision of this Act or the regulations or VAT Rules, issue a warning letter in the form prescribed to such person specifying the act or omission giving rise to the contravention or non-compliance and the remedy requested by the Comptroller.
- (12) A warning letter under subsection (11) must be kept by the Comptroller on the file of the taxable person, or other person, liable to pay tax.
- (13) The Comptroller may not make an application to a court under section 77 to close the business premises of a person unless the Department has issued to such person a warning letter in accordance with subsection (3) of that section.

- (14) The imposition of a fine, or issuance of a warning letter, under this section must be made in accordance with the regulations.
- (15) The Department may, where it decides a fine imposed under this section was imposed in error, remit all or part of such fine and such remission may be conditional or unconditional.

#### **17. VAT Rules and Guidelines.**

- (1) The Comptroller of VAT may, in performing his functions and duties in carrying out the administration of this Act, make rules providing for such matters as may be necessary or expedient for giving effect to such functions and duties and to the intent and purposes of this Act.
- (2) VAT Rules —
  - (a) have the force of law and are effective on the date published in the Gazette or such later date as may be specified in the Rules; and
  - (b) are subject to the regulations and, where a rule conflicts with a regulation, the regulation made by the Minister prevails.
- (3) The Comptroller may from time to time publish VAT Guidelines in order to clarify, explain, illustrate, or illuminate any procedure, process, or matter in respect of the administration and enforcement of this Act, the regulations and VAT Rules.
- (4) VAT Guidelines do not have the force of law and must be published in accordance with the regulations.

#### **18. Advance VAT rulings.**

- (1) The Comptroller may, on application by a person in the prescribed form, issue an advance VAT ruling in respect of a matter involving the liability of a person to pay tax in relation to a proposed supply or import of specific goods or services.
- (2) Subject to subsection (3), an advance VAT ruling by the Comptroller takes effect in respect of the specific transaction to which the ruling relates and is valid for the period specified in the ruling.
- (3) An advance VAT ruling issued by the Comptroller on the basis of false, misleading or incorrect information provided in the application for the ruling is void.



## PART IV – REGISTRATION

### 19. Mandatory registration.

- (1) A person must apply for registration in accordance with this Part where such person, in the course or furtherance of a taxable activity carried on by him, makes taxable supplies or taxable importations and —
  - (a) has at the end of any period of twelve or fewer months obtained a turnover from the taxable activity carried on by him in excess of the registration threshold;
  - (b) at the beginning of any period of three hundred and sixty-five days, has reasonable grounds to expect to obtain from the taxable activity carried on by him during such period a turnover in excess of the registration threshold;
  - (c) where such person is a promoter of public entertainment, or a licensee or proprietor of a place of public entertainment, reasonably expects within any period of twelve or fewer months to obtain a turnover from such public entertainment in excess of the registration threshold; or
  - (d) is the holder of a temporary licence under section 5 of the Business Licence Act (*No. 25 of 2010*).
- (2) A person must apply for registration in accordance with this Part where such person is a hotel or other person responsible for the administration of condos, or other residential accommodations, forming part of a pool or other collective rental arrangement where the criteria referred to in paragraphs (a) or (b) of subsection (1) is met in relation to the administration of such accommodations.
- (3) A person referred to in subsection (1) and subsection (2) must apply to the Comptroller for registration —
  - (a) within fourteen days of meeting the requirements specified in paragraphs (a), (b) or (d) of subsection (1); or
  - (b) in case of paragraph (c) of subsection (1), a minimum of forty-eight hours prior to the commencement of the public entertainment being promoted.
- (4) A person who meets the requirements specified in subsection (1) and subsection (2) is a taxable person whether or not such person applies for registration under this section.
- (5) The Comptroller may —
  - (a) make an assessment in accordance with Part VIII on a person believed to be an unregistered taxable person in order to determine such person's liability to be registered and pay tax; and

- (b) where the assessment confirms he is a taxable person, and he has made no application for registration, compulsorily register such person in accordance with subsection (2) of section 23.
- (6) The Comptroller may, in making an assessment pursuant to subsection (5), have regard to the value of taxable supplies and taxable importations made by another person where both persons are —
  - (a) related persons, determined in accordance with criteria prescribed by regulations; or
  - (b) acting in concert in making the taxable supplies and taxable importations.
- (7) A person is not required to apply for registration under subsection (1) or subsection (2) where the Comptroller is satisfied that such person exceeded the registration threshold solely as a consequence of the —
  - (a) sale of capital goods;
  - (b) cessation, or substantial or permanent reduction in the size or scale, of a taxable activity carried on by such person.
- (8) Paragraphs (a) and (b) of subsection (1) apply to a person who is domiciled outside The Bahamas to the extent such person provides through an agent, telecommunication services or electronic commerce to persons for use, enjoyment, benefit or advantage within The Bahamas.
- (9) Notwithstanding subsection (1) —
  - (a) the Government is deemed to be registered on and from the date a ministry, department, statutory body, agency, local government council, or other entity of Government, commences a taxable activity; and
  - (b) a person who is an auctioneer must apply for registration on the date such person becomes an auctioneer.
- (10) An exempt person under section 8, a charitable organisation or body under section 58, or a Port licensee under section 9, desiring to claim a tax refund must, prior to making the claim for refund, apply for registration in accordance with section 58 and section 59 respectively.
- (11) Registration under sections 58 and 59 is for the purpose of and restricted to the claim for refund only.
- (12) A person desiring to make a claim for input tax deduction in respect of prior investments made in a new business must, prior to becoming a registrant under this Part, be registered as a new business registrant under section 51.

## **20. Voluntary registration.**

- (1) A person may apply for registration in accordance with this Part where such person —
  - (a) makes taxable supplies and taxable importations in the course or furtherance of a taxable activity carried on by him and has in the twelve months immediately preceding the application for registration obtained a turnover from such taxable activity in a lesser amount than the registration threshold; or
  - (b) intends to make taxable supplies and taxable importations in the course or furtherance of a taxable activity to be carried on by him and has reasonable grounds to expect to obtain from the taxable activity carried on by him an annual turnover in a lesser amount than the registration threshold.
- (2) A person applying for registration pursuant to subsection (1) must satisfy the Comptroller in such manner as may be prescribed that such person —
  - (a) has a fixed place of abode or a business within The Bahamas from which he carries on or intends to carry on a taxable activity;
  - (b) carries on or intends to carry on a taxable activity in terms of paragraphs (a) or (b) of that subsection;
  - (c) is likely to be entitled, if granted registration, to claim input tax deductions on input tax paid;
  - (d) is able and willing to keep proper records as prescribed; and
  - (e) is able and willing to submit regular and reliable VAT returns in accordance with this Act.

## **21. Registration threshold.**

For the purposes of this Act, the registration threshold is—

- (a) in respect of paragraphs (a), (b) and (d) of subsection (1) of section 19, and paragraphs (a) and (b) of subsection (1) of section 20, one hundred thousand dollars;
- (b) in respect of paragraph (c) of subsection (1) of section 19, such amount as the Comptroller determines to be appropriate in the circumstances of a particular case.

## **22. Application for registration.**

- (1) An application for registration under this Part must be made to the Comptroller in the prescribed form and an applicant must provide the Comptroller with such further information, in writing, as the Comptroller may require.
- (2) For the purposes of this Act, a taxable person who carries out a taxable activity in branches or divisions is treated as a single person carrying out

the taxable activity and may not separately register such branches or divisions.

- (3) The Comptroller may allow registration as a group where —
  - (a) a taxable person is treated as a single person under subsection (2); or
  - (b) a group of applicants for registration are all related persons.
- (4) Registration as a group is not allowed where —
  - (a) a resident and a non-resident form part of the same grouping; or
  - (b) a Port licensee and a person who is not a Port licensee form part of the same grouping.

### **23. Grant of registration.**

- (1) The Comptroller, on application being made in the prescribed form —
  - (a) must register, within twenty-one business days of receipt of the application, an applicant under section 19 who in the opinion of the Comptroller meets the requirements for registration under that section;
  - (b) may register an applicant who has applied for registration pursuant to section 20 and who satisfies the Comptroller that he —
    - (i) has a fixed place of abode or a business within The Bahamas from which he carries on a taxable activity;
    - (ii) carries on or intends to carry on the taxable activity in terms of paragraphs (a) or (b) of that section;
    - (iii) is likely to be entitled, if granted registration, to claim input tax deduction under this Act;
    - (iv) is able and willing to keep proper records as prescribed; and
    - (v) is able and willing to submit regular and reliable VAT returns as required by this Act; and
  - (c) must within twenty-one business days of receiving an application, inform the applicant by notice in writing of the Comptroller's decision to grant or refuse the application.
- (2) The Comptroller may, where the Comptroller compulsorily registers a taxable person pursuant to subsection (5) of section 19, impose an effective date of registration that is —
  - (a) retrospective; and
  - (b) the earliest date on which the Comptroller reasonably determines the person first became a taxable person under that section.
- (3) The Comptroller must on registering a person pursuant to subsections (1) and (2) —

- (a) issue to each registrant a certificate of registration in the prescribed form containing —
    - (i) a tax identification number;
    - (ii) the effective date of the registration;
    - (iii) other relevant details of the registrant; and
  - (b) allocate to each registrant a tax period commencing on the effective date of the registration;
- (4) The effective date of registration is, for —
- (a) an applicant under section 19 who applies within the prescribed time, or who applies for voluntary registration under section 20, the first day of the month immediately following the date on which the Comptroller issues the registration certificate;
  - (b) the Government, the date a ministry, department, statutory body, agency, local government council, or other entity of Government commences the taxable activity;
  - (c) an applicant who is an auctioneer, the date the person became an auctioneer; and
  - (d) an applicant under section 19 who does not apply within the prescribed time, such date as the Comptroller determines on assessment to be appropriate.
- (5) The Comptroller is deemed to have made a decision refusing the grant of an application where —
- (a) the Comptroller fails to serve a notice as required under paragraph (c) of subsection (1); and
  - (b) the applicant has provided in writing all further information required by the Comptroller.
- (6) A person aggrieved with a decision, or deemed decision, of the Comptroller pursuant to subsection (1) or subsection (5) may object or appeal the decision under Part XI.
- (7) Where the Comptroller, upon application made pursuant to section 22, makes a group registration —
- (a) the Comptroller may issue a single tax identification number for the group;
  - (b) the group must file a single VAT return;
  - (c) the group is not required to account for VAT on taxable supplies of goods and services made between members of the group; and
  - (d) each member of the group is jointly and severally liable where the group contravenes or fails to comply with a provision or requirement of this Act, the regulations or VAT Rules.

**24. Unregistered taxable person remains liable to pay and account for VAT.**

- (1) A person must, on becoming a taxable person, apply within the prescribed time to the Comptroller for registration under this Part.
- (2) An unregistered taxable person —
  - (a) must not collect tax or issue to any person a VAT invoice, VAT sales receipt, tax credit note or tax debit note;
  - (b) is not eligible to file a VAT return with the Comptroller; and
  - (c) is liable to pay and account to the Value Added Tax Department for value added tax chargeable on all taxable supplies and taxable importations made by him while unregistered.

**25. Registrant must display certificate of registration.**

A registrant must at all times display a valid certificate of registration issued to him under this Part in a conspicuous place at each location where he carries on a taxable activity.

**26. Notice of change of circumstances.**

- (1) A registrant must notify the Comptroller in writing —
  - (a) within twenty-one calendar days, of any change in circumstances that affect the particulars —
    - (i) declared in the application for his registration;
    - (ii) otherwise furnished to the Comptroller in connection with his registration;
    - (iii) appearing in his registration certificate;
  - (b) within seven calendar days, of the cessation in whole or in part of the business comprising the taxable activity carried on by him;
  - (c) of any other change or event as may be prescribed.
- (2) A taxable person who sells or transfers a taxable activity as a going concern must notify the Comptroller, as prescribed in regulations, a minimum of fourteen calendar days prior to the earliest of the date —
  - (a) the sale closes;
  - (b) the purchaser or transferor acquires a legal interest in the assets to be acquired; or
  - (c) the assets of the business are transferred.
- (3) A notification under subsection (1) must be in the form and manner prescribed in regulations and specify —
  - (a) the date on which the registrant ceased to carry on all taxable activity;

- (b) whether the registrant intends to carry on a taxable activity within twelve months of the date referred to in paragraph (a).

**27. Cancellation and suspension of registration.**

- (1) The Comptroller must, on receipt of a notification under paragraph (b) of subsection (1) of section 26, cancel the registration of the registrant with effect from the last calendar day of the tax period during which all taxable activities of the registrant ceased or such other date as the Comptroller may determine.
- (2) The Comptroller must not cancel a registration under subsection (1) where the Comptroller has reasonable grounds to believe the registrant will carry on a taxable activity at any time within twelve months from the date of cessation of the business.
- (3) Subject to subsection (4), the Comptroller may at any time cancel a registration where the Comptroller is satisfied that the registrant does not meet or no longer meets the requirements for mandatory registration under section 19 or voluntary registration under section 21.
- (4) The Comptroller may determine a date for cancellation under subsection (3) that is retrospective to a date not earlier than —
  - (a) the last day of the tax period during which the the taxable activity carried on by the registrant ceased; or
  - (b) the effective date of the registration where the Comptroller is satisfied that the registration was obtained through fraud, misrepresentation or other misconduct and the registrant never, in fact, carried on a taxable activity.
- (5) Subject to subsection (6), a registrant may apply as prescribed for a cancellation of his registration.
- (6) The Comptroller must cancel a registration pursuant to an application made in the prescribed form under subsection (5), where —
  - (a) the Comptroller is satisfied that the registrant did not meet the registration threshold during the twelve month period immediately prior to the application being made, or, will not meet the threshold during the twelve month period following the date of the application; and
  - (b) a minimum period of two years have elapsed since the effective date of the registration.
- (7) The Comptroller must, where the Comptroller grants or refuses an application to cancel a registration under this section, serve within fourteen days of the decision a written notice on the registrant as prescribed by regulations.

- (8) A cancellation takes effect from the end of the tax period in which the registration is cancelled or at such earlier date as the Comptroller may determine.
- (9) Subsection (6) does not apply to an auctioneer, the Government or a promoter of public entertainment.
- (10) A cancellation of registration under this section does not affect the liability to file a VAT return and to pay tax, or any other obligation or liability of a person which accrued while such person was a registrant.
- (11) Upon cancellation of a registration —
  - (a) the registrant must on notification of the cancellation by the Comptroller remove the certificate of registration from public display; and
  - (b) the Comptroller must remove the registrant's name from the register.
- (12) The Comptroller may —
  - (a) suspend the certificate of registration of a registrant —
    - (i) who has failed to file a VAT return for three or more consecutive tax periods;
    - (ii) in any circumstances other than referred to in paragraph (a), where the Comptroller deems it appropriate for the efficient administration of the Act; and
  - (b) publish the suspension of the registration certificate in such manner as the Comptroller may determine.
- (13) A registrant whose certificate of registration is suspended by the Comptroller remains liable for VAT payable on taxable supplies made during the suspension period.
- (14) A person aggrieved by a decision of the Comptroller in respect of an application made under this section may object or appeal the decision under Part XI.

## **28. Register open to the public.**

- (1) The Comptroller must establish and maintain an up to date register containing the details of all registrants.
- (2) The register shall be open to the public at all reasonable hours and available in electronic media.
- (3) A person may, upon payment of the prescribed fee, require an extract or copy of an entry from the register to be certified by or on behalf of the Comptroller.



- (4) The Comptroller may, where satisfied a certificate has been lost, mutilated or destroyed, issue to a registrant on written request a certified copy of a registration certificate upon payment of such fees as may be prescribed.
- (5) An extract or copy of an entry from the register, certified by or on behalf of the Comptroller, is in all legal proceedings receivable in evidence as proof —
  - (a) of the registration of a person as at the date stated in the entry; and
  - (b) that a certificate of registration was issued to such person.
- (6) The Comptroller must publish annually, as of the 1<sup>st</sup> day of January in each year, by notice in the Gazette or in such other manner as may be prescribed, a list of all registrants.

## **PART V – SUPPLIES OF GOODS AND SERVICES**

### **29. Rules relating to a supply of goods.**

- (1) Subject to this Act and the regulations, a supply of goods includes a —
  - (a) sale of goods;
  - (b) grant of the use of , or right to use, goods under a rental agreement, credit agreement, freight contract, agreement for charter, or other agreement;
  - (c) transfer or provision of utility goods;
  - (d) supply of goods for a consideration in goods or services;
  - (e) a transfer of goods on consignment;
  - (f) a supply of services incidental to a supply of goods.
- (2) The disposition of a taxable activity as a going concern, or of such part of the activity that is capable of separate operation, is a taxable supply of goods.
- (3) For the purposes of subsection (2), a taxable activity or its relevant part is disposed of as a going concern where —
  - (a) all the goods and services necessary for the continued operation of the activity, or its relevant part, are supplied to the transferee; and
  - (b) the transferor carries on the activity, or its relevant part, up to the time of its transfer to the transferee.
- (4) The transfer of goods to a person acting in a representative capacity to the transferor is not a supply of goods under this Act.
- (5) A supply of goods by auction is, if not an exempt supply, a taxable supply.

**30. Rules relating to a supply of services.**

- (1) Subject to this Act and the regulations, a supply of services is any thing done which is not a supply of goods or money including —
  - (a) making available any facility or advantage;
  - (b) refraining from, or tolerating, an activity; or
  - (c) the grant, assignment, cessation, or surrender of a right.
- (2) A supply of services for a consideration in goods or services is a supply of services.
- (3) A supply of goods incidental to a supply of services is part of the supply of services.

**31. Treatment of supplies of goods and services in special cases.**

- (1) The application to a different use of goods and services acquired by a taxable person for use in a taxable activity carried on by such person, including the provision of such goods and services to an employee for personal use, is a taxable supply.
- (2) A repossession of goods under a credit agreement —
  - (a) is a supply of such goods by the debtor under the agreement to the person exercising the right of repossession; and
  - (b) where the debtor is a registrant, is a taxable supply unless such goods did not form part of the assets held or used by the debtor in connection with the taxable activity carried on by him.
- (3) The termination or cancellation of a lay-away agreement is a supply of services by the seller where the seller —
  - (a) retains an amount paid by the purchaser; or
  - (b) recovers an amount the purchaser owes under the agreement.
- (4) Subject to subsection (5), a right to receive goods or services —
  - (a) for a monetary value stated on a token, other than a postage stamp under the Post Office Act (*Ch. 300*); and
  - (b) granted for a consideration in money,is not a supply of such goods or services, except to the extent that the consideration paid for the token exceeds the monetary value stated on the token.
- (5) Subsection (4) does not apply to a —
  - (a) phone card;
  - (b) prepayment on a cellular phone; or
  - (c) similar scheme of advance payment for the supply of goods or the rendering of services.

- (6) A registrant is treated —
- (a) where his registration is cancelled pursuant to section 27; and
  - (b) where an input tax deduction has been claimed with respect to the goods and services on hand on the date of cancellation,
- as if the registrant had made a taxable supply of all goods and services on hand at the date of cancellation, including capital goods and intellectual property.
- (7) Each part of a taxable supply is treated as a separate supply where —
- (a) the supply is liable to tax at two different positive rates, or a positive rate and a zero rate, or the supply is also an exempt supply; and
  - (b) each part of the supply is reasonably capable of being supplied separately.
- (8) A zero rated supply by a registrant supplier to a registrant recipient of the whole or part of a taxable activity as a going concern is treated as a self-supply by the registrant recipient, and chargeable to tax, to the extent that the goods or services comprising the taxable activity were acquired for a purpose —
- (a) other than consumption, use or supply in the course of making taxable supplies; or
  - (b) referred to in paragraph (a) but such purpose comprises less than ten per cent of the total taxable activity acquired by the registrant recipient.
- (9) The conversion of a condo or other residential property comprising a commercial rental establishment to a dwelling is a taxable supply unless exempted from VAT in accordance with the requirements set out in regulations.
- (10) A supply by an agent for a principal is a supply by the principal and a supply to an agent for a principal is a supply to the principal except where —
- (a) services are supplied by the agent to the agent's own principal; or
  - (b) the principal is a non-resident.
- (11) A supply by a taxable person that is not allowable for a claim to input tax deduction, including an exempt supply, is not a taxable supply.
- (12) Notwithstanding any provision of this section, the Minister may make regulations determining whether a transaction constitutes a taxable supply under this section and prescribing the specific circumstances in which —
- (a) a supply of goods, or a category of goods, is to be treated as a supply of services;

- (b) a supply of services, or a category of services, is to be treated as a supply of goods;
- (c) a mixed supply of goods and services is to be treated as a supply of goods or a supply of services; and
- (d) an importation of goods incidental to a supply of services is to be treated as a supply of services.

### **32. Rules relating to time of supply.**

- (1) A supply of goods or services takes place, in accordance with this Act and the regulations, on the first to occur of the following —
  - (a) an issue by the supplier of an invoice for the supply;
  - (b) payment, in whole or in part, for the supply is received by the supplier;
  - (c) the goods are delivered or made available to the recipient; or
  - (d) completion of performance of the services.
- (2) A supply of goods under a credit agreement occurs on the date of commencement of the agreement.
- (3) A supply of goods pursuant to a lay-away agreement occurs when the goods are delivered to the purchaser.
- (4) A taxable supply applied to a different use by a taxable person occurs when the goods or services are applied to a different use.
- (5) A supply of goods by a debtor, where goods are repossessed under a credit agreement, takes place when the first of the following occurs —
  - (a) when the goods are repossessed by the creditor; or
  - (b) the day after the last day of any period during which the debtor may, under any law, be reinstated in his rights and obligations under the credit agreement.
- (6) A supply of services, where a lay-away agreement terminates or is cancelled, occurs when the seller —
  - (a) obtains the right to retain an amount paid by the purchaser under the agreement; or
  - (b) recovers an amount owing by the purchaser under the agreement.
- (7) A supply for consideration in money received by the supplier by means of a machine, meter or other device operated by coin, note, or token occurs at the time the coin, note or token is removed from the machine, meter or other device by or on behalf of the supplier.
- (8) A supply of goods or services, under a rental or other agreement providing for periodic payments, is treated as successively supplied for successive

parts of the period of the agreement and each successive supply occurs when a payment becomes due or is received, whichever is the earlier.

- (9) A supply occurs, to the extent the issuance of a token constitutes a supply, when such token is issued.
- (10) A self-supply of goods or services, pursuant to subsection (8) of section 31, by the registrant recipient of a taxable activity occurs on the disposition of the whole or part of the taxable activity to which the self-supply relates.
- (11) A supply under a scheme of advance payment occurs when a phone card, cellular phone prepayment or other form of advance payment is supplied or made.
- (12) A supply of services on the forfeit of a deposit, other than a deposit on a returnable container, occurs when the deposit is forfeited.
- (13) A supply of goods or services on cancellation of a person's registration under this Act occurs at the time the registration is cancelled.
- (14) A supply of goods by transfer on consignment occurs when the goods are transferred to the consignee.
- (15) A supply of goods under an agreement for hire-purchase, or under an arrangement whereby the recipient has an option to return the goods to the supplier, takes place when the goods are made available to the recipient;
- (16) A supply of utility goods, or construction goods or services, under an agreement providing for payments in instalments or periodically is treated as successively supplied for each period to which a payment for the goods or services relates and each successive supply occurs when a payment becomes due, is received, or an invoice relating only to such payment is issued, whichever is the earliest to occur.
- (17) Where a contract for a taxable supply provides for retention by the recipient of part of the purchase price pending satisfactory completion of the whole or part of the contract, VAT becomes payable on the part of the purchase price so retained on the earlier to occur of the following events —
  - (a) payment of the retained part of the purchase price becomes due to the supplier; or
  - (b) payment of the retained part of the purchase price is received by the supplier.
- (18) A taxable supply made under an agreement, other than a hire-purchase agreement, that is appropriated for the use of some person other than the purchaser under the terms of the agreement in circumstances where the total consideration is not determined at the time of appropriation is deemed to have taken place on the first to occur of the following events —

- (a) payment of the whole or part of the consideration for the supply becomes due to the supplier;
  - (b) payment of the whole or part of the consideration for the supply is received by the supplier; or
  - (c) an issue by the supplier of a VAT invoice for the supply.
- (19) The time of a supply of goods or services for which payment is provided by debit card occurs when the card is swiped, or the supplier otherwise accepts a specified amount, for the goods provided or services rendered against the funds available on the card.
- (20) Notwithstanding any provision of this section, the Comptroller may determine that in a particular case or category of cases —
- (a) the time of supply occurs only when payment for the supply is received; and
  - (b) the liability to pay and account for output tax, in support of a claim for input tax deduction, relates only to the portion of the supply for which payment has been received.

### **33. Rules relating to place of supply.**

- (1) Subject to this Act and the regulations, a supply of goods takes place —
- (a) where the goods are delivered or made available by the supplier; or
  - (b) in a case involving transportation of the goods by the supplier, at the site where the goods are located when such transportation commences.
- (2) A supply of utility goods takes place where the supply is received.
- (3) Subject to this Act and the regulations, a supply of services takes place at the location of the place of business of the supplier who makes the supply.
- (4) A supply of services, other than a supply referred to in section 34, takes place at the location where the service is physically performed in the case of services —
- (a) comprising cultural, artistic, sporting, educational, or similar activities; or
  - (b) connected with tangible personal property.
- (5) A supply of services connected with real property, other than a supply referred to in section 34, takes place where the property is located.
- (6) A supply of services of or incidental to transport, other than a supply referred to in section 34, takes place where the transport occurs.
- (7) Any supply of a kind not referred to in this section, or section 34, is deemed to take place within The Bahamas.

**34. Treatment of place of supply in special cases.**

- (1) Subject to subsection (2), a supply of goods or services takes place at the location where the recipient of the supply uses or obtains the benefit or advantage of the goods or services and such goods or services comprise —
  - (a) a transfer or assignment of a copyright, patent, licence, trademark, or similar right;
  - (b) the services of a consultant, engineer, lawyer, architect, accountant, person processing data or supplying information, or any similar services;
  - (c) an advertising service;
  - (d) the supply of personnel;
  - (e) the service of an agent in procuring for a principal a service referred to in this subsection;
  - (f) the leasing of tangible personal property, other than transport property;
  - (g) the supply of goods via electronic commerce and the supply of internet access or similar services; or
  - (h) the obligation to refrain from pursuing or carrying on a taxable activity or exercising a right falling within paragraph (a) to (g).
- (2) A supply of goods or services referred to in paragraphs (a) through (h) of subsection (1) is deemed to take place within, and treated as an export from, The Bahamas when such goods or services are supplied —
  - (a) from a place of business in The Bahamas; and
  - (b) to a recipient who uses or obtains the benefit or advantage of the supply at a location outside The Bahamas.

**35. Calculation of the value of a taxable supply.**

- (1) Subject to this Act and the regulations —
  - (a) the value of a taxable supply is the total of the consideration for the supply; and
  - (b) value added tax is excluded from the calculation of the consideration.
- (2) The value of a supply is, where a portion of the price of such supply represents VAT that is not accounted for separately, the price reduced by an amount equal to the VAT fraction multiplied by such price as determined in accordance with the regulations.

**36. Calculation of the consideration for a taxable supply.**

- (1) Subject to subsection (2), the consideration for a taxable supply is the total amount in money or money's worth paid or payable for the supply less the amount of any price discounts or rebates allowed and accounted for at the time of the supply.
- (2) For the purposes of subsection (1) —
  - (a) the total amount paid or payable for a supply includes —
    - (i) an amount paid or payable for the supply by any person, directly or indirectly;
    - (ii) a deposit on a returnable container;
    - (iii) any duties, levies, and taxes (other than VAT) paid or payable on, or by reason of, the supply; and
  - (b) a price discount or rebate does not include —
    - (i) a cash payment made by a person as an unconditional gift to an approved charitable organisation;
    - (ii) a deposit given in connection with the supply, other than a deposit on a returnable container, unless and until the supplier applies the deposit as consideration for the supply or the deposit is forfeited.

**37. Rules relating to value of a taxable supply.**

- (1) The value of a taxable supply is the fair market value of the supply where —
  - (a) a taxable person makes the supply for no consideration or a consideration less than its fair market value; and
  - (b) the taxable person and the recipient of the supply are related persons.
- (2) The value of a supply, where a taxable person makes a taxable supply through the application to a different use of goods or services acquired in the course or furtherance of a taxable activity, is the lesser of —
  - (a) the consideration paid or payable by the taxable person for such goods or services; and
  - (b) the fair market value of the supply of such goods or services.
- (3) The value of a supply referred to in subsection (2), where the taxable person applies only a part of the goods and services to a different use, is determined in the manner prescribed in regulations.
- (4) The value of a supply of goods under a credit agreement is the cash value of the supply.



- (5) The value of a supply, where a debtor makes a supply of goods as a result of a repossession of the goods by the creditor under a credit agreement, is an amount equal to the balance of the cash value of the supply owing to the creditor at the time of the supply by the debtor.
- (6) The balance of the cash value of a supply referred to in subsection (5) is determined in the manner prescribed in regulations.
- (7) The value of a supply of services by a seller as a result of the cancellation or termination of a lay-away agreement is an amount equal to the amount —
  - (a) paid by the purchaser and retained by the seller; or
  - (b) owing by the purchaser and recoverable by the seller.
- (8) The value of a supply made through the issue of a token is an amount equal to the amount by which the money paid for the issue exceeds the monetary value stated on the token.
- (9) A supplier of goods or services must —
  - (a) where the holder of a token surrenders such token to the supplier in return for a price discount on a taxable supply;
  - (b) where the token was issued for no consideration by a taxable person who is not the supplier to whom it is surrendered; and
  - (c) where the monetary value stated on the token is inclusive of VAT, include in the value of the taxable supply made to the holder the monetary value stated on the token less the amount attributable to VAT.
- (10) The value of a taxable supply is, where the supply is not the only matter to which the consideration for the supply relates, such part of the consideration as is attributable to the taxable supply.
- (11) The value of a self-supply, referred to in subsection (8) of section 31 and subsection (10) of section 32, is the consideration for the acquisition of the taxable activity less the amount of such consideration attributable to the intended use or application of the taxable activity for making taxable supplies.
- (12) The value of a taxable supply made through a scheme of advance payment is the face value of the phone card, gift card, or other voucher supplied.
- (13) The value of a taxable supply on a cancellation of registration, referred to in subsection (6) of section 31, is equal to —
  - (a) subject to paragraph (b), the fair market value of the goods or services deemed to be supplied; and
  - (b) in the case of capital goods, such amount as may be determined in the manner prescribed in regulations.
- (14) The value of a taxable supply, not referred to in this Part, is as may be prescribed in regulations.

- (15) For the purposes of this Part —
- (a) the fair market value in relation to a taxable supply is determined in accordance with the regulations; and
  - (b) the cash value in relation to a supply of goods under a credit agreement is determined in accordance with the regulations.

**38. Calculation of the value of a hotel accommodation or tour package.**

Notwithstanding section 37, the value of a taxable supply by a taxable person of services comprising a hotel accommodation or tour package —

- (a) arranged by a travel agent resident outside The Bahamas who is not a taxable person; or
- (b) arranged by a tour operator resident outside The Bahamas who is not a taxable person,

is the consideration charged by the taxable person including the commission or fee paid to and in respect of the services supplied by the travel agent or tour operator resident outside The Bahamas.

## **PART VI – IMPORTS OF GOODS AND SERVICES**

**39. Time of import of goods and services.**

Subject to this Act and the regulations —

- (a) an importation of goods occurs at the time the goods are entered for home consumption in accordance with the Customs Management Act;
- (b) the time of import of a vehicle for a farm which is bonded for Customs purposes is the time when the vehicle enters bond for purposes of the Customs Management Act; and
- (c) an importation of services occurs at the time a supply of such services occurs under Part V.

**40. Mixed imports.**

- (1) Services incidental to an importation of goods is part of the importation of goods;
- (2) An importation of goods incidental to an importation of services is both an importation of services and an importation of goods.

**41. Calculation of the value of a taxable importation.**

Subject to this Act and the regulations —

- (a) the value of a taxable importation is the total of the consideration for the import; and
- (b) value added tax is excluded from the calculation of the consideration.

**42. Calculation of the consideration for a taxable importation.**

- (1) The consideration for a taxable importation of goods is an amount equal to the total of the —
  - (a) customs value of the goods for the purposes of customs duty under the Customs Management Act;
  - (b) amount of any customs duty, excise tax, environmental levy or surcharge, or any other fiscal charge or tax (other than VAT) payable on the importation of the goods; and
  - (c) amount of any customs service charge payable on the importation of the goods.
- (2) The consideration for a taxable importation of services is the total amount in money or money's worth paid or payable for the import less the amount of any price discounts or rebates allowed and accounted for at the time of the import —
- (3) For the purposes of subsection (2) —
  - (a) the total amount paid or payable for a taxable importation of services includes —
    - (i) an amount paid or payable for the import by any person, directly or indirectly;
    - (ii) any duties, levies, and taxes (other than VAT) paid or payable on, or by reason of, the import; and
  - (b) a price discount or rebate does not include —
    - (i) a cash payment made by a person as an unconditional gift to an approved charitable organisation;
    - (ii) a deposit given in connection with the import, unless and until the deposit is applied as consideration for the import or the deposit is forfeited.

**43. Rules relating to value of a taxable importation.**

The value of a taxable importation of services is the fair market value, determined in accordance with the regulations, of the import where —

- (a) a person makes an importation of services for no consideration or for a consideration less than the fair market value of such import; and
- (b) the supplier of the services and the recipient are related persons.

**44. Payment of tax for a taxable importation of goods.**

- (1) The Comptroller of Customs —
  - (a) must on behalf of the Comptroller of VAT collect, at the time of import, value added tax due under this Act on a taxable importation of goods and —
    - (i) record the name and the taxpayer identification number, if any, of the importer;
    - (ii) retain copies of the import declaration and the invoice values in respect of the import; and
  - (b) may delegate in writing to the Postmaster General the performance on his behalf of specified functions in respect of taxable importations of goods made through the postal services.
- (2) The importer of a taxable importation of goods must, on entry of the goods —
  - (a) submit an import declaration to the Comptroller of Customs; and
  - (b) pay the VAT due on the import.
- (3) An import declaration under this section must —
  - (a) be in the form prescribed by the Comptroller;
  - (b) include the information necessary to calculate the VAT payable in respect of the import; and
  - (c) be submitted in the manner prescribed by regulations or approved by the Comptroller of Customs.
- (4) The Comptroller of VAT may publish VAT Rules specifying the —
  - (a) conditions subject to which a registrant may defer payment of VAT on the importation of taxable supplies of goods;
  - (b) subsequent tax periods within which the registrant must account for the deferred tax;
  - (c) circumstances in which a bond or other approved security is required for a deferment of tax under this section.
- (5) The provisions of the Customs Management Act shall, except where a contrary intention appears in this Act or the regulations, apply *mutatis mutandis* to a charge of value added tax on a taxable importation of goods as if the value added tax charged were a duty of customs under the Customs Management Act.
- (6) Pursuant to subsection (4), the Comptroller of Customs may exercise any power conferred on the Comptroller of Customs by the Customs Management Act or any other customs legislation as if the reference to customs duty in such legislation included a reference to value added tax chargeable on taxable importations of goods under this Act.

**45. Payment of tax for a taxable importation of services.**

- (1) The importer and recipient of a taxable importation of services are, where they are different persons, jointly and severally liable for payment of VAT in respect of such taxable importation of services.
- (2) The importer or recipient of a taxable importation of services must upon completion of the services or on entry of the person or persons contracted to perform the services —
  - (a) submit a VAT return to the Comptroller of VAT; and
  - (b) pay the VAT due on the import —
    - (i) where the recipient is not a taxable person, within seven calendar days of the import;
    - (i) where the recipient is an unregistered taxable person, on the date stated in the notice of assessment; and
    - (iii) where the recipient is a registrant, within twenty-eight calendar days after the tax period in which the services were imported.
- (3) A VAT return under this section must —
  - (a) be in the form prescribed in regulations;
  - (b) include the information necessary to calculate the VAT payable in respect of the import; and
  - (c) be submitted in the manner prescribed by regulations or the Comptroller of VAT.
- (4) The Comptroller of VAT may publish VAT Rules specifying the —
  - (a) conditions subject to which a registrant may defer payment of VAT on the importation of taxable supplies of services;
  - (b) subsequent tax periods within which the registrant must account for the deferred tax;
  - (c) circumstances in which a bond or other approved security is required for a deferment of tax under this section.
- (5) Tax is payable under this section notwithstanding that the —
  - (a) recipient of a supply of services is a registrant, if the importation of such services is not for use in making taxable supplies; or
  - (b) recipient of a supply of services is a not a taxable person or a registrant, whether because such recipient is not engaged in making taxable supplies or does not meet the registration threshold.
- (6) For purposes of this section, a local branch or other affiliate of a non-resident branch or home office of a business is a separate person from such non-resident branch or home office.

## **PART VII - CALCULATION OF TAX PAYABLE BY TAXABLE AND OTHER PERSONS**

### **46. Tax payable by registrants.**

- (1) Value added tax is payable by a registrant in respect of each tax period and is calculated by —
  - (a) applying the rate of tax chargeable on each taxable supply made by the registrant for the tax period, and making such post-supply and other adjustments as may be required, to determine the total amount of output tax payable by the registrant;
  - (b) determining the amount of input tax paid by the registrant during the tax period in respect of taxable supplies received by the registrant and the input tax deduction, if any, allowed to the registrant for the period in respect of such supplies;
  - (c) applying the rate of tax chargeable on each taxable importation made by the registrant during the tax period to determine the amount of tax paid or payable for the period and the input tax deduction, if any, allowed to the registrant in respect of such importations; and
  - (d) subject to section 56, deducting from the total amount of output tax payable under paragraph (a) the total amount of input tax deductions allowed under paragraphs (b) and (c).
- (2) The tax period applicable to a registrant under this Act is one calendar month or such other period as the Comptroller may in a particular case, or category of cases, determine.

### **47. VAT return.**

- (1) A registrant must —
  - (a) file with the Comptroller a VAT return in the prescribed form within twenty-eight days after the end of each tax period, whether or not tax is payable by the registrant in respect of the period;
  - (b) pay the tax due —
    - (i) in accordance with the VAT return by the end of the twenty-eight day period within which the registrant is required to file the return; and
    - (ii) in a notice of assessment issued pursuant to paragraph (5), by the date specified in the notice of assessment.
- (2) A VAT return must —

- (a) specify the particulars necessary to calculate the tax payable by the registrant for the tax period to which the return relates;
  - (b) be filed in the manner and in the form prescribed in regulations.
- (3) The Comptroller must —
  - (a) evaluate each VAT return filed by a registrant;
  - (b) to the Comptroller's satisfaction, determine the reasonableness and accuracy of the return;
  - (c) where the Comptroller considers it necessary, request further and better particulars from a registrant; and
  - (d) based on the Comptroller's evaluation pursuant to paragraphs (a) through (c), make a decision in accordance with subsection (4).
- (4) A decision by the Comptroller pursuant to paragraph (d) of subsection (3) confirms the Comptroller's evaluation —
  - (a) that the amount of tax represented by the registrant in the VAT return as payable for the tax period is the correct amount of tax due and payable by the registrant by the due date for filing of the return; or
  - (b) that the return filed by the registrant is unreasonable or inaccurate and does not, to the satisfaction of the Comptroller, represent the correct amount of tax due and payable by the registrant for the tax period.
- (5) The Comptroller must, where the Comptroller makes a decision pursuant to paragraph (b) of subsection (4) —
  - (a) make or cause to be made pursuant to paragraph (b) of subsection (1) of section 60 an assessment of the taxable activity carried on by the registrant; and
  - (b) serve a notice of assessment on the registrant in accordance with subsection (5) of section 60.
- (6) A registrant aggrieved by the Comptroller's decision under subsection (4) may object or appeal under Part XI.
- (7) A registrant who, in an exceptional case and with good cause, is unable to file a VAT return within twenty-eight calendar days after the end of the registrant's tax period may apply in writing as prescribed to the Comptroller for an extension of the period within which to file the return.
- (8) The Comptroller may, where the Comptroller is satisfied in an application made pursuant to subsection (7) that the case is exceptional and good cause has been shown, grant the registrant an extension of time including the waiver of a fine.
- (9) The grant of an extension of time by the Comptroller under subsection (8) does not alter the due date for payment of value added tax or the interest payable in respect of such tax.

- (10) A registrant who is aggrieved with a decision made by the Comptroller pursuant to subsection (8) may object or appeal the decision under Part XI.
- (11) A registrant who has filed a VAT return in accordance with this section may apply in writing to the Comptroller as prescribed, within one year after the date the return was filed, to vary such return and the Comptroller may, in accordance with criteria prescribed in regulations, permit the registrant to vary the return.

#### **48. Tax payable by unregistered taxable person.**

- (1) Value added tax is payable by an unregistered taxable person in respect of a relevant period prior to his becoming registered in accordance with the assessment made by the Comptroller pursuant to Part VIII.
- (2) Subject to section 50 and to subsection (3), the Comptroller may, in making an assessment of prior tax liability for the purpose of registering a taxable person who has applied for registration outside of the time period required under section 19, allow a claim for input tax deduction on input tax paid where —
  - (a) the taxable supply or taxable importation to which a claim relates occurred no more than three months prior to the date of registration;
  - (b) the goods are on hand, or the services have not yet been performed, at the date of registration; and
  - (c) such person's records and accounts in relation to the supply or import are acceptable to the Comptroller.
- (3) A claim for input tax deduction pursuant to subsection (2) is allowable only where the taxable person pays the total amount of tax due and payable under the assessment prior to being registered by the Comptroller.
- (4) An unregistered taxable person must pay the tax assessed under this section by the due date stated in the notice of assessment.

#### **49. Tax payable by auctioneer.**

- (1) An auctioneer, where the auctioneer makes a taxable supply, must add the output tax chargeable on the supply to —
  - (a) the amount of a successful bid; or
  - (b) in the case of a sale out-of-hand, the purchase price.
- (2) An auctioneer under subsection (1) —
  - (a) must include the output tax in the total cost or price charged to the bidder or purchaser; and
  - (b) is liable to account and pay for output tax whether or not it is included in the total cost or price charged to the bidder or purchaser.



**50. Rules relating to a claim for input tax deduction.**

- (1) A claim for input tax deduction for input tax paid or payable by a taxable person is not allowable where —
  - (a) the taxable supply or taxable importation to which the claim relates was not used, or is not intended for use, in the course or furtherance of a taxable activity carried on by the claimant;
  - (b) the supply or import to which the claim relates —
    - (i) is an exempt supply or an exempt importation;
    - (ii) is a taxable supply which was directly used in, or is directly allocable to, the production of an exempt supply;
  - (c) input tax payable on the importation to which the claim relates has not been paid;
  - (d) a VAT invoice or tax debit or tax credit note as prescribed by this Act, or such other document as may be approved by the Comptroller, in respect of a taxable supply to which a claim relates —
    - (i) is not in the possession of a registrant, and available for inspection by the Comptroller, at the time the registrant files a VAT return for the tax period in which the supply occurred;
    - (ii) is not provided by an unregistered taxable person at the time the Comptroller makes an assessment under Part VIII;
  - (e) an import declaration, or other prescribed or approved document, in respect of a taxable importation —
    - (i) is not in the possession of a registrant, and available for inspection by the Comptroller, at the time the registrant files a VAT return in respect of the taxable importation;
    - (ii) is not provided by an unregistered taxable person at the time the Comptroller makes an assessment under Part VIII;
  - (f) the taxable supply or taxable importation to which the claim relates is a passenger vehicle and the claimant —
    - (i) does not carry on a taxable activity dealing in, or involving the hiring of, or providing transportation services in, such vehicles;
    - (ii) carries on a taxable activity referred to in sub-paragraph (i) but the vehicle was not acquired for the purposes of such taxable activity;
  - (g) the taxable supply or taxable importation to which the claim relates is the repair or maintenance of a passenger vehicle and the claimant —
    - (i) does not carry on a taxable activity refurbishing for resale, or involving the hiring of, such vehicles;

- (ii) carries on a taxable activity referred to in sub-paragraph (i) but the goods or services acquired for repair or maintenance do not directly relate to such taxable activity;
  - (h) the claim is in respect of a taxable supply or taxable importation of entertainment and the claimant —
    - (i) does not carry on, in whole or in part, a taxable activity providing entertainment nor was the entertainment provided to an employee of the claimant as part of the reward for services rendered by such employee to the claimant;
    - (ii) carries on a taxable activity providing entertainment, in whole or in part, but the entertainment was not provided by the claimant in the ordinary course of such taxable activity;
  - (i) the claim relates to fees or subscriptions paid by such person in respect of the membership of any person in a club, association, or society of a sporting, social, or recreational nature;
  - (j) the claim relates to a taxable supply or taxable importation of petroleum products and such products are not wholly for use in the taxable activity carried on by the claimant.
- (2) The total amount of input tax allowable to a taxable person as a deduction under this Part is the sum of the —
  - (a) input tax payable in respect of taxable supplies made to such person, and taxable imports made by such person, during the tax period where the supply or import is for use in a taxable activity carried on by such person;
  - (b) input tax deduction allowed under this section, section 51 and section 53;
  - (c) amount equal to the tax fraction of any amount paid during the tax period by such person to a supplier in respect of the surrender of a token referred to in section 37(9);
  - (d) amount, if any, carried forward under section 56;
  - (e) tax fraction of seventy percent of the price for which a registrant who deals in second-hand vehicles sold a second-hand vehicle, other than a vehicle imported by such registrant dealer, where —
    - (i) the supply of the vehicle to the registrant dealer was not a taxable supply; and
    - (ii) the registrant dealer sells the second-hand vehicle in a taxable supply on which tax is charged at the standard rate.
- (3) A claim for input tax deduction, where a taxable supply or taxable importation is used in the course or furtherance of both a taxable activity and a non-taxable activity, must be made and is calculable and allowable in the manner prescribed in regulations.

- (4) A taxable person must not submit a claim for input tax deduction to the Comptroller that is not allowable under subsection (1) or subsection (2).
- (5) For the purposes of this section —
  - (a) a taxable activity is an activity involving the production, supply or importation of taxable supplies and an activity is not a taxable activity to the extent the activity involves —
    - (i) the production or supply of exempt supplies or the importation of exempt imports;
    - (ii) the acquisition of taxable supplies or taxable importations directly allocable to the making of exempt supplies;
  - (b) a supply or import of goods or services made or received by a taxable person is not made or received in the course or furtherance of a taxable activity to the extent the goods or services supplied or imported are exempt supplies or exempt importations;
  - (c) a reference to —
    - "entertainment" means food, beverages, tobacco, accommodation, amusement, recreation, or other hospitality of any kind;
    - "passenger vehicle" includes a motorcar, station wagon, sport utility vehicle, or other road vehicle principally designed for the transportation of people, but excludes a pick-up truck exclusively used for commercial purposes;
- (6) The Comptroller must —
  - (a) determine whether a claim for input tax deduction for input tax paid or payable by a taxable person is allowable under this Act;
  - (b) where allowable, decide the amount, if any, of input tax deduction allowed to a claimant; and
  - (c) where the claim is made pursuant to section 51, allow the claim in accordance with criteria prescribed in regulations, VAT Rules and VAT Guidelines.
- (7) The Comptroller may, where a taxable person does not have a VAT invoice evidencing the input tax paid by such person, allow an input tax deduction in the tax period in which the deduction arises where the Comptroller is satisfied that the —
  - (a) taxable person took all reasonable steps to acquire a VAT invoice;
  - (b) failure to acquire a VAT invoice was not the fault of the taxable person; and
  - (c) the amount of input tax claimed by the taxable person is correct.
- (8) A taxable person aggrieved with a determination or decision of the Comptroller under subsection (6) may object or appeal under Part XI.

**51. Claim for input tax deduction by a new business registrant.**

- (1) A person may, upon registration under section 19 or section 20, make a claim for input tax deduction under this section.
- (2) A claim for input tax deduction under this section may be made only by a person who is registered by the Comptroller in accordance with this section.
- (3) The Comptroller may on application register under this section as a new business registrant a person who —
  - (a) is investing in a new business to carry on a taxable activity that has not yet commenced; and
  - (b) intends upon registration under section 19 or section 20 to claim input tax deduction in respect of investments in the new business made prior to such registration.
- (4) The Comptroller may allow a claim for input tax deduction under subsection (1) only in respect of taxable supplies and taxable importations made within the twenty-four month period immediately preceding registration under section 19 or section 20 where the registrant —
  - (a) made the supplies and importations in the course or furtherance of the taxable activity to be carried on by the new business;
  - (b) has paid VAT on such supplies and importations;
  - (c) has submitted to the VAT Department for recordation, prior to payment of the relevant VAT, details of such supplies and importations; and
  - (d) has maintained such documentation in support of the claim as may be prescribed by regulations or approved by the Comptroller.
- (5) The Comptroller may allow a claim under this section in whole or in part as the Comptroller determines to be appropriate in the circumstances of a particular case.

**52. Post-supply adjustments to output tax.**

- (1) Subject to subsection (2), this section applies in relation to a taxable supply by a registrant where —
  - (a) the supply is cancelled;
  - (b) goods provided on assignment are returned;
  - (c) the VAT applicable to the supply changes because the nature of the supply is fundamentally varied or altered;
  - (d) the consideration previously agreed for the supply is altered due to an offer of a discount or for any other reason; or
  - (e) the whole or part of the supply is returned to the registrant supplier.

- (2) This section applies in a situation where a registrant supplier has —
  - (a) issued a VAT invoice in relation to a supply and the amount shown on the invoice as the tax chargeable on such supply is incorrect as a result of the occurrence of one or more events referred to in subsection (1); or
  - (b) filed a VAT return for the tax period in which a supply was made and has accounted for an incorrect amount of output tax on such supply as a result of the occurrence of one or more events referred to in subsection (1).
- (3) A registrant supplier must, where subsections (1) and (2) apply, make an adjustment in accordance with subsection (4) or subsection (6).
- (4) A registrant supplier must, where the output tax properly chargeable in respect of a taxable supply exceeds the output tax actually paid or accounted for by him, treat the amount of the excess as output tax charged in relation to a taxable supply made by him in the tax period in which the event or events referred to in subsection (1) occurred.
- (5) A registrant recipient must, where a registrant supplier issues a tax debit note to him in respect of the balance of output tax properly payable pursuant to subsection (4), treat the additional tax shown in the tax debit note as input tax payable by him in respect of a taxable supply in the tax period in which the tax debit note is received.
- (6) Subject to subsection (8), where output tax actually accounted for by a registrant supplier exceeds the output tax properly chargeable in relation to the supply, the registrant supplier may claim an input tax deduction for the amount of the excess in the tax period in which the event or events referred to in subsection (1) occurred.
- (7) A registrant recipient must, where a registrant supplier issues a tax credit note to him in respect of an excess amount of output tax charged as referred to in subsection (6), treat the additional tax shown in the credit note as output tax payable by him in respect of a taxable supply made by him in the tax period in which the tax credit note is received.
- (8) An input tax deduction under subsection (6) is not allowed where the registrant supplier has made the supply to a recipient who is not a registrant unless the registrant supplier has repaid the amount of the excess output tax to such recipient —
  - (a) in cash; or
  - (b) as a credit against an amount owing to the registrant supplier by such recipient.

### **53. Post-supply adjustment due to bad debt.**

- (1) Subject to this section, a registrant may claim input tax deduction for input tax paid in respect of a taxable supply made by him where,

subsequently, the registrant has treated the whole or part of the consideration for the supply as a bad debt.

- (2) The amount of the input tax deduction allowed under subsection (1) is the amount of the input tax paid by the registrant in respect of the taxable supply which corresponds to the amount of the debt treated as bad by the registrant.
- (3) A claim for input tax deduction pursuant to subsection (1) arises on the date the bad debt was written off in the accounts of the registrant.
- (4) A registrant is treated, where an amount in respect of which input tax deduction has been allowed under subsection (1) is at any time wholly or partly recovered by the registrant, as having charged tax in respect of a taxable supply made by him during the tax period in which the bad debt is wholly or partly recovered in an amount calculated according to the formula  $A \times B/C$  where —
  - (a) A is the amount allowed as a deduction under subsection (1);
  - (b) B is the amount of the bad debt recovered; and
  - (c) C is the amount of the bad debt previously written off.
- (5) An input tax deduction is not allowed under this section unless —
  - (a) the taxable supply was made to a person who is not a registrant;
  - (b) the taxable supply was made to a registrant and the registrant supplier claiming the deduction issued a tax credit note to the registrant recipient of the supply showing the amount of input tax deduction claimed in accordance with the formula referred to in subsection (4); or
  - (c) the supply is not a supply falling within subsection (20) of section 32 where the Comptroller has determined that —
    - (i) the time of supply occurs only when payment for the supply is received; and
    - (ii) the liability to pay and account for output tax, in support of a claim for input tax deduction, relates only to the portion of the supply for which payment has been received.

#### **54. VAT invoices and VAT sales receipts.**

- (1) Subject to the provisions of this section, a registrant supplier who makes a taxable supply to a registrant recipient must within sixty calendar days issue to the recipient an original VAT invoice for the taxable supply in the form, and specifying the particulars, prescribed by the Comptroller.
- (2) A registrant supplier who makes a taxable supply to a registrant recipient may issue a VAT sales receipt in lieu of a VAT invoice —

- (a) where the total consideration for the taxable supply is in cash and does not exceed fifty dollars; and
  - (b) in the form, and specifying the particulars, prescribed by the Comptroller.
- (3) A registrant supplier must —
  - (a) issue one VAT invoice only in respect of a taxable supply; and
  - (b) where a registrant recipient who has not within sixty calendar days after the date of a supply to him been issued a VAT invoice makes a request in writing for the issue of such invoice, comply with the request within fourteen calendar days after receiving it.
- (4) A registrant supplier may, where a registrant recipient claims to have lost the original VAT invoice for a taxable supply, issue to the recipient a copy of such invoice clearly marked "copy".
- (5) A registrant supplier who makes a taxable supply to a recipient who is not a registrant must issue to such recipient a VAT sales receipt for the taxable supply in the form, and specifying the particulars, prescribed by the Comptroller.
- (6) A person who is not a registrant must not issue a VAT invoice or a VAT sales receipt.
- (7) A registrant must not issue a VAT invoice or VAT sales receipt except in accordance with the provisions of this section.
- (8) An agent of a registrant supplier may, where the agent makes a taxable supply as agent to a registrant recipient, issue a VAT invoice in relation to the supply and the registrant supplier as principal may not issue a VAT invoice in relation to the same supply.
- (9) An agent of a registrant recipient who receives a taxable supply as agent may request the registrant supplier to issue to the agent a VAT invoice in relation to the supply and the registrant supplier may not issue a VAT invoice to the principal of the agent in relation to the same supply.
- (10) A registrant supplier who makes a supply to a Port licensee must within sixty calendar days issue to the recipient an invoice for the supply in the form, and specifying the particulars, prescribed by the Comptroller.

**55. Tax credit notes and tax debit notes.**

- (1) A tax credit note must be issued —
  - (a) by a registrant supplier to a registrant recipient where a VAT invoice issued by the supplier shows an amount as tax charged in excess of the tax properly chargeable in respect of the supply made to the recipient; and
  - (b) in the form, and specify the particulars, prescribed by the Comptroller.

- (2) A tax debit note must be issued —
  - (a) by a registrant supplier to a registrant recipient where a VAT invoice issued by the supplier shows an amount as tax charged that is less than the tax properly chargeable in respect of the supply made to the recipient; and
  - (b) in the form, and specify the particulars, prescribed by the Comptroller.
- (3) A person who is not a registrant must not issue a tax credit note or a tax debit note.
- (4) A registrant must not issue a tax credit note or a tax debit note except in accordance with the provisions of this section.
- (5) A registrant —
  - (a) must issue only one tax credit note or tax debit note in respect of tax improperly charged on a taxable supply; and
  - (b) may issue to a registrant who claims to have lost the original tax credit note, or tax debit note, a copy note clearly marked "copy".

## **56. Carry forward of excess credits and refund of tax.**

- (1) This section applies where -
  - (a) the total amount of input tax deductible by a registrant for a tax period exceeds the output tax for such period; or
  - (b) the amount of tax paid by a person, in circumstances other than that specified in paragraph (a), exceeds the amount properly chargeable to tax under this Act.
- (2) Where paragraph (a) of subsection (1) applies and the tax period is one calendar month —
  - (a) the excess is carried forward to the next tax period and treated as input tax deductible in that tax period; and
  - (b) if any excess remains after being carried forward to the next tax period and treated as an input tax deductible in that tax period, the registrant may file with the Comptroller a claim for refund for the amount remaining in the form and manner prescribed by regulations.
- (3) Subject to subsection (4), the Comptroller must allow a claim for refund under paragraph (b) of subsection (2) to the extent the Comptroller is satisfied that the registrant is entitled to the amount of the refund claimed —
  - (a) by the end of the first calendar month following the date a claim for refund is filed; or



- (b) where the Comptroller orders an audit of the claim for refund, within ten working days after conclusion of the audit if later than the end of the first calendar month period.
- (4) The Comptroller in allowing a claim for refund pursuant to subsection (3) —
  - (a) may apply the amount of the refund claimed in reduction of —
    - (i) any tax, levy, interest, or penalty payable by the registrant under this Act;
    - (ii) any unpaid amounts in taxes owing by the registrant under a provision of any other Act administered by an entity of Government; and
  - (b) after applying the refund in accordance with paragraph (a), must refund any excess remaining to the registrant claiming the refund.
- (5) A registrant may file, in the form and manner prescribed by regulations, a claim for refund with the Comptroller for excess input tax deductions where —
  - (a) at least fifty percent of the amount of the registrant's taxable supplies for the tax period is taxed at a zero percent rate; or
  - (b) the registrant's tax period is three or more calendar months.
- (6) The Comptroller must allow a claim for refund under subsection (5) to the extent the Comptroller is satisfied the registrant is entitled to the amount of the refund claimed —
  - (a) by the end of the first calendar month following the date the claim for refund filed; or
  - (b) where the Comptroller orders an audit of the claim, within ten working days after conclusion of the audit if later than the end of the first calendar month period.
- (7) The Comptroller in allowing a claim for refund pursuant to subsection (6) must apply the refund and refund the balance in accordance with paragraphs (a) and (b) of subsection (4).
- (8) Notwithstanding subsections (4) and (7), any excess refund to a registrant of five hundred dollars or less must be carried forward to the next succeeding tax period and be accounted for as input tax deduction.
- (9) A person may, where paragraph (b) of subsection (1) applies, file a claim with the Comptroller for refund of the tax overpaid in the form and manner prescribed by regulations.
- (10) In a claim for refund filed by a registrant pursuant to subsection (9) —
  - (a) the Comptroller must treat the claim as if it were a claim made under paragraph (b) of subsection (3); and

- (b) to the extent any output tax claimed by the registrant to be refundable was paid by a recipient who is not a registrant, the output tax is refundable only to the extent the registrant will repay it to such recipient whether in cash or as a credit against an amount owing to the registrant by such recipient.
- (11) The Comptroller may, where a registrant has failed to file a VAT return for any tax period as required under this Act, withhold payment of any amount refundable under this section until the registrant files the return as required.
- (12) A claim for a refund under this section must be made within three years after the date the claimant has the right to apply for the refund.
- (13) The Comptroller must serve on a claimant for refund a notice in writing as prescribed of the Comptroller's decision in respect of the claim —
  - (a) within thirty calendar days of the Comptroller receiving the claim; or
  - (b) where the Comptroller orders an audit of the claim, within ten calendar days of completion of the audit.
- (14) A claimant for a refund under this section who is aggrieved by the Comptroller's decision under subsection (13) may object or appeal the decision under Part XI.
- (15) In a claim for refund pursuant to subsection (9) filed by a claimant who is not a registrant, the Comptroller must in order of priority apply the amount of any excess allowed under the claim in reduction of any tax, levy, interest, fine or penalty payable by the claimant —
  - (a) under this Act; and
  - (b) under any other Act where the Minister specifies by order the tax, levy, interest, fine or penalty that may be reduced by an allowable refund.
- (16) Paragraph (b) of subsection (1) applies to a claimant for refund of tax, other than a person referred to in subsection (1) of section 58.

## **57. Interest on overpayment.**

- (1) The Comptroller must —
  - (a) pay a refund of tax allowed under section 56 within two months of the end of the relevant period referred to in subsections (3) and (6) of that section; and
  - (b) where the Comptroller fails to make payment in accordance with paragraph (a), pay the claimant interest on the amount due commencing two months after the end of the relevant period

referred to in that paragraph and ending on the date the refund is paid.

- (2) The Comptroller must, where the Comptroller is required to refund an amount of tax under this Part as a result of an objection or appeal by a person, pay interest on the refund for the period commencing from the date the person paid the tax refunded and ending on the date the Comptroller makes the refund.
- (3) Interest payable on a refund under this section is payable at the rate prescribed in the Financial Administration and Audit Act (*Ch. 359*).

#### **58. Other persons eligible for tax refund.**

- (1) A claim for a refund of tax paid on the acquisition of qualifying goods or services may be made to the Comptroller by —
  - (a) an exempt person under section 8;
  - (b) under this section —
    - (i) an eligible charitable organisation, or a non-governmental organisation, approved by the Minister in accordance with criteria prescribed in regulations and VAT Rules; or
    - (ii) an eligible body, other than referred to in paragraph (b), approved by the Minister.
- (2) A claimant for refund made under section 8 or this section —
  - (a) before making a claim pursuant to subsection (1) for the first time, must apply for registration in accordance with this section; and
  - (b) is not eligible for grant of a refund under subsection (1) unless registered in accordance with subsection (3).
- (3) The Comptroller, on application —
  - (a) shall register a person referred to in paragraphs (a) and (b) of subsection (1) solely for the purpose of processing a claim for refund pursuant to that subsection; and
  - (b) may grant a claim for refund only after the claimant has been registered by the Comptroller under this section.
- (4) A claim for a refund of tax under this section —
  - (a) must be made in the form and manner prescribed in regulations and VAT Rules save as the Comptroller may otherwise allow or direct either generally or specially; and
  - (b) is subject to such conditions and restrictions as may be prescribed in regulations and VAT Rules.
- (5) Registration by the Comptroller under this section is for the purpose of and restricted to a claim for refund made under section 8 and this section only.

- (6) A person aggrieved with a decision made by the Comptroller in relation to a claim for refund made pursuant to this section may object or appeal the decision under Part XI.

**59. Port licensees eligible for tax refund in certain circumstances.**

- (1) A Port licensee seeking a refund under section 9 must apply in writing to the Comptroller for such a refund in accordance with this section.
- (2) A Port licensee —
- (a) before making a claim for a refund under section 9 for the first time, must apply for registration in accordance with this section; and
  - (b) is not eligible for grant of a refund under section 9 unless registered in accordance with subsection (3).
- (3) The Comptroller, on application —
- (a) shall register a Port licensee referred to in subsection (1) solely for the purpose of processing a claim for refund under section 9; and
  - (b) may grant a claim for refund only after the claimant licensee has been registered by the Comptroller under this section.
- (4) The Comptroller may register a Port licensee under this section whether or not such licensee is otherwise liable to be registered in accordance with Part IV.
- (5) A claim for a refund under section 9 —
- (a) must be made in the form and manner prescribed in regulations and VAT Rules, save as the Comptroller may otherwise allow or direct either generally or specially; and
  - (b) is subject to such conditions and restrictions as may be prescribed in regulations and VAT Rules.
- (6) Registration by the Comptroller under this section is for the purpose of and restricted to a claim for refund under this section only.
- (7) A person aggrieved with a decision made by the Comptroller in relation to a claim for refund made pursuant to this section may object or appeal the decision under Part XI.

## PART VIII - ASSESSMENTS

### 60. Rules relating to assessments.

- (1) Subject to subsection (3), the Comptroller may at any time make, or cause to be made, an assessment of the taxable activity carried on by a person in order to determine such person's liability to pay VAT where —
  - (a) a registrant fails to file a VAT return within the time period, or any extended period, referred to in section 47;
  - (b) the Comptroller is not satisfied that a VAT return filed by a registrant is accurate or reasonable;
  - (c) a person who is not a taxable person makes a taxable supply and represents that VAT is charged on such supply;
  - (d) a taxable person represents that a positive rate of tax is charged in relation to a supply made by him that is —
    - (i) not a taxable supply;
    - (ii) a taxable supply but is a zero rated supply;
    - (iii) a taxable supply chargeable at a different positive rate of tax;
  - (e) the Comptroller is satisfied that a scheme to evade or abuse the provisions, and intent and purpose, of this Act has been entered into or carried out by any person or persons;
  - (f) a registrant applies to vary a VAT return pursuant to subsection (11) of section 47; or
  - (g) the Comptroller has reason to believe a person may be an unregistered taxable person.
- (2) The Comptroller may at any time make, or cause to be made, an assessment of a person's liability to pay tax where —
  - (a) the Comptroller has reason to believe that a person will become liable to pay an amount of tax but is unlikely to pay such amount; or
  - (b) a recipient of a taxable supply referred to in section 71 has acted fraudulently or made a misrepresentation.
- (3) An assessment pursuant to paragraphs (b) or (f) of subsection (1), or paragraph (a) of subsection (2), where the default was not due to the fraud or wilful default of the person filing or submitting the return or declaration, must be made —
  - (a) within five years after the date the VAT return was filed or the import declaration submitted; or
  - (b) where an audit is ordered by the Comptroller within the five year period referred to in paragraph (a), within five years after the completion of the audit.

- (4) An assessment by the Comptroller under this Part is based on the information available to the Comptroller and is the Comptroller's reasonable estimate of the tax properly due and payable by the person assessed.
- (5) The Comptroller must, where the Comptroller makes an assessment under this section, serve a notice of assessment as prescribed on the person assessed specifying the —
  - (a) amount of tax payable by the person assessed;
  - (b) date the tax assessed is due and payable;
  - (c) time, place, and manner of objecting to the assessment.
- (6) A person liable to pay tax may apply in writing to the Comptroller for an extension of time, beyond the date on which the tax is due and payable, in which to make payment and the Comptroller may where good cause is shown —
  - (a) extend the time for payment by the applicant; or
  - (b) make such other arrangements with the applicant acceptable to the Comptroller to ensure payment of the tax due.
- (7) An extension of time or other arrangement granted or made by the Comptroller pursuant to subsection (6) may include the waiver of a fine but does not affect the accrual of interest on all amounts of tax due and payable by a person that remains outstanding until actual payment is made.
- (8) The Comptroller may, within three years after service of a notice of assessment —
  - (a) amend, as the Comptroller considers necessary, an assessment; and
  - (b) serve a written notice as prescribed of the amended assessment on the person assessed.
- (9) For all purposes of this Act —
  - (a) an assessment includes an amended assessment;
  - (b) a person assessed must pay in full the tax assessed by the date specified in the notice of assessment; and
  - (b) value added tax charged under this Act includes an amount of tax assessed as due and payable by the Comptroller in an assessment under this Part.

**61. Assessment as evidence in proceedings, other documents.**

- (1) The original, or a copy certified by the Comptroller, of a notice of assessment is receivable in any proceedings as conclusive evidence that —
  - (a) the assessment is a true assessment duly made; and

- (b) except in appeal proceedings before the VAT Appeal Commission, the amount and all particulars in the notice are correct.
- (2) A notice of assessment or other document purported to be made, issued, or executed under this Act shall not be quashed, or deemed to be void or voidable, for want of form or by reason of mistake, defect or omission where —
  - (a) the assessment or other document is in substance and effect in conformity with this Act; and
  - (b) the person assessed or intended to be assessed, or affected by the document, is identified in the assessment or document.

## **PART IX – INVESTIGATORY POWERS AND ENFORCEMENT**

### **62. Investigatory powers of the Comptroller and VAT officers.**

- (1) The Comptroller may, for purposes of the administration and enforcement of this Act, by notice in writing in the prescribed form require any person to —
  - (a) furnish such information as the Comptroller specifies in the notice concerning himself or any other person the Comptroller considers —
    - (i) is an unregistered taxable person; or
    - (ii) may otherwise be liable to tax;
  - (b) attend at such time and place as the Comptroller specifies in the notice to be examined on oath before the Comptroller, or a VAT officer authorised by the Comptroller in writing for such purpose, concerning the tax affairs of himself or any other person;
  - (c) for the purposes of paragraph (b), produce any record or computer in his control that the Comptroller or a VAT officer may require him to produce; and
  - (d) provide the Comptroller or a VAT officer with access to the premises where a taxable activity is carried on by him, or books of account are kept in respect of such taxable activity, in order to —
    - (i) examine the records or books of account, or any other documents, that relate to the taxable activity;
    - (ii) inspect any raw materials, trading stock, or other assets;
    - (iii) inspect the processes used by him, including the methods adopted in recording supplies.
- (2) A person carrying on a taxable activity or an employee or agent of such person must, where a notice requiring access to premises pursuant to

- paragraph (d) of subsection (1) is received, give the Comptroller or a VAT officer —
- (a) such reasonable assistance in connection with the examination or inspection as the Comptroller or VAT officer may require; and
  - (b) answers, orally or in writing as the Comptroller or VAT officer may require, to any questions relating to the examination or inspection.
- (3) A notice pursuant to paragraph (c) of subsection (1) is adequate and sufficient where the record or computer to be produced is described in the notice with reasonable certainty.
- (4) The Comptroller or a VAT officer may, where during an examination or inspection it appears that there has not been a correct disclosure of liability to tax filed in a VAT return or otherwise —
- (a) take possession of books of account, or other documents or computer records, for further examination; and
  - (b) after the examination referred to in paragraph (a), retain or make copies of, or take extracts from, the books, documents, or computer records for any of the purposes of this Act.
- (5) Without prejudice to the generality of the Comptroller's powers under subsection (1), the Comptroller may by notice in writing as prescribed require a bank or other financial institution —
- (a) to furnish the Comptroller with —
    - (i) details of any banking account or other assets that may be held by or on behalf of a taxable or related person;
    - (ii) a copy of bank statements or statement of assets of any banking account or other asset referred to in sub-paragraph (i);
  - (b) to permit the Comptroller, or a VAT officer authorised in writing by the Comptroller for such purpose, to inspect the records of the bank or other financial institution in relation to the banking account of a taxable or related person; and
  - (c) to attend, by an officer of such bank or other financial institution, before the Comptroller to give evidence in respect of bank accounts or other assets that may be held by such bank or financial institution on behalf of a taxable or related person.
- (6) Subsection (5) has effect notwithstanding any other law to the contrary relating to privilege, public interest, bank confidentiality, or bank secrecy.
- (7) No person must use information furnished, or records or documents produced, under this section for a purpose other than that for which they were furnished or produced.
- (8) No person must —



- (a) contravene or fail to comply with a provision of this section; or
- (b) prevent, impede or interfere in any way with the Comptroller or a VAT officer in the lawful exercise of a power under this section.

**63. VAT officer's powers of entry and seizure.**

- (1) A VAT officer who has reasonable grounds to believe that an offence under this Act is being or is about to be committed, or that evidence of the commission of such an offence is to be found, on any premises may apply to the court for a warrant authorising the officer to —
  - (a) at any time and without prior notice, enter such premises or place where records are kept and search for records relating to any offence under this Act;
  - (b) pursuant to a search under paragraph (a), in any manner open and remove or cause to be opened or removed any article in which the officer suspects that records are kept;
  - (c) seize any records that, in the opinion of the VAT officer, may provide evidence material in determining the liability of any person to pay tax under this Act;
  - (d) retain records seized pursuant to paragraph (c) for as long as may be required -
    - (i) to determine a person's liability to pay tax under this Act; or
    - (ii) for any proceeding under this Act;
  - (e) examine and make extracts from, and copies of, any records and require from any person an explanation of entries in such records; and
  - (f) where a hard copy or computer disk of computer-stored information is not provided, seize and retain the computer in which the information is stored for as long as is reasonable to copy the information required.
- (2) A VAT officer exercising a power under subsection (1) must not enter or remain on or at any premises or place where, on being requested by the occupier of such premises or place, the officer is unable to or fails to produce the warrant referred to in subsection (1).
- (3) The owner, manager, or any occupier lawfully on or at a premises or place entered or proposed to be entered by a VAT officer under this section must provide reasonable facilities and assistance for the effective exercise of the power by the officer.
- (4) A person whose records or computer have been removed and retained pursuant to the exercise of a power under subsection (1) may, during regular office hours and under such supervision as the Comptroller may determine, examine and make copies or extracts from such records or computer.

- (5) A VAT officer may, in exercising a power under subsection (1), request the assistance of a Customs officer or police officer and such Customs officer or police officer must render such assistance as the VAT officer may reasonably require.
- (6) A warrant issued under this section remains in force for one month and an application for a warrant must be made in the form and manner prescribed in regulations.
- (7) No person must —
  - (a) contravene or fail to comply with a provision of this section; or
  - (b) prevent, impede or interfere in any way with a VAT officer in the lawful exercise of a power under this section.

**64. Comptroller may require bond at time of registration.**

- (1) The Comptroller may, on the registration under sections 19 and 20 of a person who is the holder of a temporary licence pursuant to section 5 of the Business Licence Act (*No. 25 of 2010*), require the registrant to provide security in the form of a bond for output VAT that may become payable by such registrant.
- (2) The Comptroller may require the provision of a bond pursuant to subsection (1) in such form and manner as the Comptroller may approve where the Comptroller is satisfied that —
  - (a) goods or services will be supplied over a period of limited duration in accordance with VAT rules; and
  - (b) the registrant does not or will not permanently reside in The Bahamas.

**65. Comptroller may request security.**

- (1) The Comptroller may, where the Comptroller considers it reasonable to do so for the protection of Government revenues, issue a notice in writing in the prescribed form requiring a person to give security for the payment of tax that is, or may become, payable by such person under this Act.
- (2) Security required under subsection (1), including a security required from a promoter of public entertainment, must be in the amount, form, and furnished within the time period, specified by the Comptroller in the notice.
- (3) A promoter of public entertainment must not allow the public entertainment to take place unless the promoter has —
  - (a) paid the amount of security required under subsection (2); and
  - (b) received the Comptroller's approval in writing.

- (4) The Comptroller must, where a security is in cash and the Comptroller is satisfied that the security is no longer required, apply the amount of the security in the manner prescribed in VAT rules.
- (5) A person aggrieved with a decision of the Comptroller under subsection (1) may object or appeal the decision under Part XI.

**66. Value Added Tax Department has lien on assets.**

- (1) The Value Added Tax Department has, from the date on which value added tax becomes due and payable under this Act and until the date the tax is paid, a lien on the assets in the possession or control of the Customs Department or any other Government entity —
  - (a) of the person liable to pay the tax;
  - (b) of any related person where the Comptroller of VAT reasonably believes that the person liable to pay the tax —
    - (i) beneficially owns or enjoys the asset; and
    - (ii) transferred legal ownership of the asset to the related person in order to avoid payment of the tax.
- (2) A lien is not valid against the holder of a security interest in the assets subject to the lien where the holder's security interest in the assets arose before the assets came into the possession or control of the Customs Department or other Government entity.

**67. Seizure of goods and vehicles.**

- (1) The Comptroller may seize goods where the Comptroller has reasonable grounds to believe that —
  - (a) the goods comprise a taxable supply by a taxable person or a taxable importation; and
  - (b) value added tax on the supply or import has not or will not be paid.
- (2) The Comptroller may seize any vehicle used in the carriage or removal of goods referred to in subsection (1) except where it is shown that —
  - (a) the vehicle was so used without the consent or knowledge of the owner or any person lawfully in possession or charge of such vehicle; or
  - (b) the owner or person lawfully in possession had no reason to believe that the vehicle was used to remove or carry goods in respect of which tax had not been paid.
- (3) A vehicle seized pursuant to subsection (2) may in the discretion of the Comptroller —
  - (a) be sold by public auction; or
  - (b) subject to subsection (9), be dealt with in such other manner as the Comptroller may direct.

- (4) Goods seized pursuant to subsection (1) must be stored in a place approved by the Comptroller for the storage of such goods.
- (5) Subject to subsection (6), the Comptroller must in respect of goods or a vehicle seized under this section serve on the owner or the person with custody or control immediately before seizure a notice in writing within fourteen days after the seizure —
  - (a) identifying the goods or vehicle;
  - (b) stating that the goods or vehicle has been seized under authority of this section and the reason for the seizure; and
  - (c) stating the terms for recovery of the goods or vehicle.
- (6) A notice under subsection (5) must be served where —
  - (a) a person claiming the goods or vehicle has provided the Comptroller with sufficient information to enable service of the notice on him; or
  - (b) after making reasonable inquiries, the Comptroller has sufficient information to identify the person on whom the notice should be served.
- (7) The Comptroller must, where service of a notice pursuant to subsection (6) is not possible, post a notice of seizure in a conspicuous place in or on the premises from which the goods or vehicle was seized.
- (8) Subject to subsection (9), the Comptroller may authorise delivery of goods or a vehicle seized under subsection (1) to the person on whom a notice of seizure has been served where such person —
  - (a) pays the tax due and payable or that will become due and payable in respect of the supply or import; or
  - (b) gives security, acceptable to the Comptroller, for the payment of tax that is or will become due and payable in respect of the supply or import.
- (9) The Comptroller may detain goods or a vehicle seized under this section —
  - (a) in the case of perishable goods, for such period as the Comptroller considers reasonable having regard to the condition of the goods;
  - (b) in any other case, until the later of ten working days after —
    - (i) the seizure of the goods or vehicle; or
    - (ii) the due date for payment of the tax on the supply or import of the goods or vehicle.
- (10) The Comptroller may —

- (a) sell the goods or vehicle, after expiry of the detention period referred to in subsection (9), in accordance with subsection (3) and apply the proceeds of sale in order of priority towards the —
    - (i) Comptroller's costs and the tax payable; and
    - (ii) restoration of the remainder of the proceeds, if any, to the person liable to pay tax;
  - (b) where the proceeds of sale are not sufficient to pay the Comptroller's costs and the tax payable in full, proceed in accordance with this Act for the balance of tax owed.
- (11) For the purpose of this section, “vehicle” means a method of carriage or conveyance and includes a cart or wagon or vessel and any trailer attached to such vehicle.
- (12) No person must prevent, impede or interfere in any way with the Comptroller in the exercise of the Comptroller's powers under this section.

**68. Distress proceedings.**

- (1) The Comptroller may recover unpaid tax by distress proceedings against the personal property of the person liable to pay the tax by specifying the —
- (a) person liable;
  - (b) location of the property; and
  - (c) tax liability to which the proceedings relate.
- (2) Property, other than perishable goods, on which the Comptroller levies a distress under this section must be kept for ten working days at the —
- (a) cost of the person liable;
  - (b) premises where the distress is levied or at such other place as the Comptroller may consider appropriate.
- (3) The Comptroller may, where the person liable does not pay the tax due and the costs of a distress, sell by auction or in such other prescribed manner the property distrained on —
- (a) in the case of perishable goods, within such period as the Comptroller considers reasonable having regard to the condition of the goods;
  - (b) in any other case, after ten working days.
- (4) The Comptroller —
- (a) must apply the proceeds of a disposal pursuant to subsection (3) in order of priority towards the —
    - (i) costs of taking, keeping and selling the property distrained on;
    - (ii) tax due and payable; and

- (iii) restoration of the remainder of the proceeds, if any, to the person liable to pay tax; and
  - (b) where the proceeds of the distress are not sufficient to meet the Comptroller's costs and the tax due, may proceed under this Act with respect to any balance owed.
- (5) All costs incurred by the Comptroller in respect of a distress may be recovered by the Comptroller from the person liable as tax due under this Act.
- (6) Distress may not be levied under this section upon tools of trade.

**69. Right of entry to execute seizure and distress.**

The Comptroller may for the purpose of executing a seizure or distress under section 67 or section 68 —

- (a) at any time enter any house or premises;
- (b) require a Customs officer or a peace officer to be present while the seizure or distress is being executed.

**70. Registration of goods prohibited until payment of tax.**

- (1) An authority which is a registering authority pursuant to any law in force within The Bahamas must not register the ownership of, or a change of ownership in, any registrable goods which is a taxable supply by a taxable person or a taxable importation unless the applicant for registration produces to the authority —
- (a) in case of a taxable importation, a Customs receipt or other document issued by the Comptroller of Customs certifying that the import —
    - (i) is standard rated at seven and one half per cent of its value and value added tax payable under this Act has been paid in full in respect of the import;
    - (ii) is zero rated and no tax is payable under this Act in respect of the import;
  - (b) in case of a taxable supply, a declaration in the prescribed form by the registrant supplier certifying —
    - (i) that the registrant supplied the goods;
    - (ii) the rate of tax charged on the supply by the registrant supplier;
    - (iii) that the output tax payable under this Act on the supply has been or will be paid in full by the registrant.
- (2) A registering authority must not register the ownership of, or a change of ownership in —

- (a) any registrable goods which is an exempt supply or an exempt importation unless the applicant for registration produces to the registering authority a certificate issued by the Comptroller of VAT in the prescribed form certifying that the supply or importation of such goods is an exempt supply or an exempt importation, as the case may be;
- (b) any registrable goods supplied by a person who is not a registrant for which a refund or exemption under this Act has been granted unless the applicant for registration produces to the registering authority a certificate issued by the Comptroller of VAT or the Comptroller of Customs in the prescribed form, certifying that the tax payable under this Act has been paid in full.

**71. Recovery of tax from recipient of supply in case of fraud.**

- (1) The Comptroller may, where a taxable person due to fraud or misrepresentation by the recipient of a taxable supply has incorrectly treated the supply as an exempt or zero rated supply, make an assessment on such recipient for —
  - (a) the amount of unpaid tax in respect of the supply; and
  - (b) any interest, fine or other penalty payable under this Act.
- (2) The Comptroller must serve a notice of assessment as prescribed on a recipient under subsection (1) specifying the —
  - (a) amount of the tax, together with any interest, fine or other penalty, assessed;
  - (b) date the amount assessed is due and payable; and
  - (c) time, place, and manner of objecting to the assessment.
- (3) A recipient served with a notice of assessment under subsection (2) must pay the amount assessed by the date specified in the notice.
- (4) Notwithstanding subsection (1) —
  - (a) the Comptroller may recover the tax, interest or penalty from the taxable person who made the supply;
  - (b) the taxable person, where he has paid the tax, interest or penalty, may recover the amount paid from the recipient.
  - (c) any amount recovered from the recipient must be credited against the liability of the taxable person; and
  - (d) any amount recovered from the taxable person must be credited against the liability of the recipient.

**72. Comptroller has power to recover tax from agent.**

- (1) The Comptroller may, by notice in writing as prescribed, require a person to be the agent of another person who is liable to pay tax under this Act

where the person liable to pay tax fails to do so by the due date and the person required by the Comptroller to be agent —

- (a) owes or may owe money to the person liable;
  - (b) holds or may subsequently hold money for or on account of the person liable;
  - (c) has authority from some other person to pay money to the person liable; or
  - (d) has possession of the property of the person liable.
- (2) A person in receipt of a notice under subsection (1) is deemed to be the agent of the person liable to pay tax and must pay the money or deliver the property specified in the notice to the Comptroller —
- (a) in the case of money or property due or held, within fifteen calendar days of the date of service of the notice;
  - (b) in case of money or property to become due or held, within fifteen calendar days of the date on which —
    - (i) the money becomes due; or
    - (ii) the money or property is held in any of the circumstances referred to in subsection (1).
- (3) The Comptroller must serve a copy of the notice referred to in subsection (1) on the person liable to pay tax.
- (4) An agent under subsection (1) who makes a payment or delivers property to the Comptroller pursuant to subsection (2) is treated as having acted under the authority of the person liable to pay the tax, and of all other persons concerned, and such payment or property is treated in the hands of the Comptroller as if it were tax due under this Act.
- (5) Notwithstanding any other law to the contrary, this section has effect and a person required to be an agent under subsection (1) incurs no liability in complying with the provisions of subsection (2).

### **73. Duties of receivers.**

- (1) In this section, a receiver is a person who in relation to an asset within The Bahamas is —
- (a) a liquidator of a company;
  - (b) a judicial receiver or a receiver appointed out of court;
  - (c) a trustee for a bankrupt person;
  - (d) a mortgagee in possession;
  - (e) an executor of the estate of a deceased person; or
  - (f) any other person conducting business on behalf of a person legally incapacitated.



- (2) A receiver must notify the Comptroller in writing within fourteen calendar days after the person is appointed receiver, or takes possession of an asset of a person liable to value added tax within The Bahamas, whichever event occurs first.
- (3) The Comptroller may in writing notify a receiver of the amount which appears to the Comptroller to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.
- (4) A receiver —
  - (a) must set aside out of the proceeds of sale of an asset —
    - (i) the amount notified by the Comptroller under subsection (3); or
    - (ii) such lesser amount as the Comptroller may subsequently agree with the receiver;
  - (b) is liable, to the extent of the amount set aside, for the tax of the person who owned the asset; and
  - (c) notwithstanding any provision of this section, may pay any debt that has priority over the tax referred to in this section.
- (5) A receiver is personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (3) where, and to the extent that, the receiver fails to comply with the requirements of this section.

**74. Comptroller has power to declare representatives.**

- (1) The Comptroller may, where the Comptroller considers it necessary or desirable to do so for the administration and enforcement of this Act, declare a person to be a representative of a taxable person in the form and manner prescribed in regulations.
- (2) A person who is declared by the Comptroller under subsection (1) to be the representative of a taxable person is deemed to be such representative and must perform the duties imposed by this Act on the taxable person, including the duty to register and pay value added tax.
- (3) A representative is personally liable, in his representative capacity, for the payment of tax payable where the representative during the time the amount remains unpaid —
  - (a) alienates, charges, or disposes of any money received or accrued in respect of which the tax is payable;
  - (b) disposes of or parts with any fund or money belonging to the taxable person whose representative he is, and from or out of which such tax could legally have been paid, which —
    - (i) is in the possession of the representative; or

- (ii) comes to the representative after the tax becomes payable.
- (4) Notwithstanding any provision of this section, a taxable person must perform any duty imposed under this Act on a taxable person which a representative declared under this section has failed to perform.
- (5) In this section, a representative in relation to a taxable person is —
  - (a) the financial controller or the designated officer of a company, other than a company in liquidation;
  - (b) a member of the committee of management of an unincorporated association or body;
  - (c) a person who is responsible for accounting for the receipt and payment of money or funds on behalf of a company or unincorporated association or body, where paragraphs (a) and (b) do not apply;
  - (d) the liquidator of a company in liquidation;
  - (e) a person responsible for accounting for —
    - (i) the receipt and payment of money under the provisions of any law;
    - (ii) the receipt and payment of public funds;
    - (iii) the receipt and payment of funds voted by Parliament to a statutory body;
  - (f) a partner in a partnership;
  - (g) a trustee of a trust;
  - (h) a person controlling the affairs of a resident or non-resident of The Bahamas, including a manager of a taxable activity carried on by the resident or non-resident of The Bahamas.
- (6) A person aggrieved with a decision of the Comptroller under subsection (1) may object or appeal the decision under Part XI.

## **75. Schemes for obtaining tax benefits.**

Notwithstanding any other provision of this Act, the Comptroller may —

- (a) where the Comptroller is satisfied a scheme has been entered into or carried out;
- (b) where a person has obtained a tax benefit in connection with the scheme in a manner that the Comptroller determines constitutes an abuse of the provisions of this Act; and
- (c) where, having regard to the substance of the scheme, it is reasonable to conclude 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 referred to in paragraph (b) to obtain the tax benefit,

determine the liability of the person who has obtained the tax benefit —

- (i) as if the scheme had not been entered into or carried out; or
- (ii) in such manner as the Comptroller, having regard to the circumstances of the case, considers appropriate for the prevention or reduction of the tax benefit.

**76. Liability of a director or similar officer of a company to pay VAT.**

- (1) Subject to subsection (2), a person is jointly and severally liable together with a company to pay VAT payable by the company under this Act, together with interest and penalties in relation to such VAT, where —
  - (a) the company fails to pay an amount of VAT payable by the company within the time prescribed; and
  - (b) such person was at the time the company was liable to pay the amount of VAT a director or other similar officer of the company or acted, or purported to act, in such a capacity.
- (2) A person referred to in paragraph (b) of subsection (1) is not liable and may not be assessed for VAT where the Comptroller is satisfied that such person exercised the degree of care, diligence, and skill that a reasonably prudent person would have exercised in order to prevent the failure by the company to pay the amount of VAT payable within the prescribed time.
- (3) The Comptroller must serve on a person liable under subsection (1) a notice of assessment specifying the —
  - (a) amount of the tax, together with any interest, fine or other penalty, assessed;
  - (b) date the amount assessed is due and payable; and
  - (c) time, place, and manner of objecting to the assessment.
- (4) A person served with a notice of assessment pursuant to subsection (3) —
  - (a) must pay in full the amount assessed by the date specified in the notice;
  - (b) may object or appeal the decision under Part XI.
- (5) The Comptroller may not assess a person for an amount of VAT payable by such person under this section where —
  - (a) more than seven years have passed since the filing of the return relating to the amount concerned; or
  - (b) in the case where an assessment was made by the Comptroller under Part VIII, more than seven years have passed since the date of the assessment relating to the amount.
- (6) A person who pays an amount of VAT payable by a company under this section, in whole or in part, is entitled to contribution in respect of the

amount so paid from the other persons who are liable to pay the amount under subsection (1).

## **77. Temporary closure of business premises.**

- (1) The Comptroller may make application to the court for an order of the court to forcibly close, for the duration of the contravention or non-compliance, one or more business premises of a person who has repeatedly contravened or failed to comply with this Act, regulations or VAT Rules by —
  - (a) failing to issue VAT invoices in accordance with section 54;
  - (b) issuing, or failing to issue, tax debit notes or tax credit notes contrary to section 55;
  - (c) failing to file VAT returns in accordance with section 47;
  - (d) failing to pay tax when due under any provision of this Act or the regulations;
  - (e) improperly claiming VAT refunds contrary to section 56; or
  - (f) impeding tax administration contrary to section 94.
- (2) The Comptroller may, where the court issues an order for temporary closure pursuant to subsection (1), use such reasonable force or police assistance as may be necessary to close any or all of the premises specified in the order including barring access to the premises with locks, fencing, boarding, or other appropriate methods.
- (3) For the purposes of subsection (1), a repeated contravention or non-compliance is one that is committed by a person within one year of receipt by such person of a warning letter under subsection (13) of section 16 stating that—
  - (a) a specified contravention or non-compliance referred to in paragraphs (a) through (f) of subsection (1) of this section has been committed more than once within the preceding year; and
  - (b) a repetition of the specified contravention or non-compliance may result in closure of one or more of such person's business premises under this section.

## **78. Publication of names of VAT defaulters.**

- (1) The Comptroller may publish, in a newspaper circulating in the Bahamas or in such other manner as the Comptroller deems appropriate, the name of a person who —
  - (a) fails to file a VAT return in accordance with this Act on three or more consecutive occasions;

- (b) being liable to pay VAT, fails to pay the amount of VAT payable on three or more consecutive occasions; or
  - (c) contravenes any provision of this Act, the regulations or VAT Rules that is classified as, or the Comptroller determines to be, a very serious or serious contravention or non-compliance.
- (2) Subsection (1) has effect notwithstanding any provision of any other law to the contrary.

## **PART X – RECORD KEEPING AND ACCOUNTS**

### **79. Reliable accounting records to be kept.**

- (1) Subject to subsection (3), every taxable person and any other person liable to pay tax under this Act must maintain within The Bahamas up to date and reliable accounting records in the English language in relation to —
- (a) all sums in money and money's worth received and expended by such person in a taxable transaction and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transfers comprising the transaction; and
  - (b) input tax, output tax and the entitlement to a claim of input tax deduction, interest or a refund.
- (2) Accounting records maintained pursuant to this section must be kept for a period of five years after —
- (a) the end of the tax period to which such records relate, in the case of a registrant; or
  - (b) the occurrence of the taxable transaction to which such records relate.
- (3) A person may apply in writing to the Comptroller for permission to dispose of records required to be maintained under this section prior to the expiration of the period referred to in subsection (2) and the Comptroller may, if satisfied that the records are not likely to be required for any tax purposes, grant such permission in writing.
- (4) The Comptroller may, for any purpose under Part III, Part VII, Part VIII or Part IX, order an audit of the accounts of a taxable person or any other person.

### **80. Nature of records to be kept.**

- (1) For the purposes of subsection (1) of section 79, accounting records must as applicable —
- (a) correctly document and explain all taxable transactions;

- (b) enable a taxable person to accurately prepare VAT invoices and make accurate VAT returns;
  - (c) enable the Comptroller to determine with reasonable accuracy at any time the liability of the taxable person to pay tax in respect of the taxable activity carried on by him;
  - (d) be maintained using the forms prescribed by this Act and the regulations; and
  - (e) include as applicable in order to facilitate (a), (b) and (c) —
    - (i) tax accounts;
    - (ii) purchase and sales ledgers;
    - (iii) invoices, whether or not they are VAT invoices, for acquisitions of goods or services by the person;
    - (iv) copies of invoices, whether or not they are VAT invoices, issued for supplies of goods or services made by the person;
    - (v) records of any VAT invoices for which the recipient of the supply requested a copy to be issued;
    - (vi) tax debit notes and tax credit notes issued and received;
    - (vii) income and expense accounts;
    - (viii) till rolls, audit rolls and tapes or similar records;
    - (ix) bank statements;
    - (x) customs documentation relating to imports and exports made by the person;
    - (xi) sales invoices and sales receipts, whether or not they are VAT sales receipts;
    - (xii) records relating to the supply of goods or services to officers, directors, and employees, whether or not the supplies were made for consideration;
    - (xiii) accounting instruction manuals, systems, programmes and any relevant documentation in use to describe the accounting system; and
    - (xiv) any other records related to the taxable activity, such as bookings, diaries, correspondence, computer print-outs, audit reports, contracts, or any other accounts or records in any way related to the person's taxable activity.
- (2) A taxable person must maintain records by electronic means including, but not limited to, the use of such electronic tills or point of sale systems, and computerized accounting systems, as comply with the standards specified by the Comptroller.

## **PART XI – OBJECTIONS AND APPEALS**

### **81. Objection to a decision of the Comptroller.**

- (1) This section applies to an appealable decision of the Comptroller under this Act.
- (2) For the purposes of this section, an appealable decision is a decision referred to in —
  - (a) subsection (6) of section 23;
  - (b) subsection (14) of section 27;
  - (c) subsections (6) and (10) of section 47;
  - (d) subsection (8) of section 50;
  - (e) subsection (14) of section 56;
  - (f) subsection (6) of section 58;
  - (g) subsection (7) of section 59;
  - (h) subsection (5) of section 65;
  - (i) subsection (6 ) of section 74; and
  - (j) subsection (4) of section 76.
- (3) A person aggrieved with an appealable decision may lodge with the Comptroller an objection to the decision within thirty calendar days after the date of service of the notice of the decision on such person.
- (4) The Comptroller may accept an objection lodged after the time specified in subsection (3) where the Comptroller is satisfied that there has been no unreasonable delay on the part of a person in lodging the objection due to —
  - (a) absence from The Bahamas;
  - (b) sickness; or
  - (c) other reasonable cause.
- (5) An objection to an appealable decision must —
  - (a) be made by notice in writing in the form and manner prescribed by regulations;
  - (b) specify in detail the grounds on which the objection is made; and
  - (c) where it is an objection to an assessment of tax, be accompanied by payment of the total amount of tax assessed, or security for such amount in a form acceptable to the Comptroller, at the time the objection is lodged.
- (6) An objection to an assessment that is based solely on an error of calculation in a VAT return filed with the Comptroller does not suspend the objector's obligation to pay the amount assessed.

- (7) The Comptroller must, within ninety calendar days after an objection is lodged, consider the objection and after such consideration serve a notice in writing as prescribed on the objector specifying the Comptroller's decision to —
  - (a) allow the objection, in whole or in part; or
  - (b) disallow the objection.
- (8) An objector aggrieved by the Comptroller's decision in a notice received pursuant to subsection (7) may appeal against the decision to the VAT Appeal Commission pursuant to section 83.
- (9) An objector may, where ninety calendar days have passed since the objection was lodged and the Comptroller has not served a notice in writing on the objector as referred to in subsection (7), appeal against the decision to the VAT Appeal Commission as if the Comptroller had made a decision to disallow the objection.
- (10) A person who fails to file an objection to an appealable decision under this section has no further right of objection or appeal under this Act.
- (11) A notice under subsection (7) of the Comptroller's decision is conclusive evidence that the decision has been made and, subject to such further rights of appeal the objector may have, that the decision is correct.

## **82. Establishment of VAT Appeal Commission.**

- (1) The Minister shall by regulation pursuant to section 96 establish, within twenty-one days of the coming into force of this Act, a body independent of the Value Added Tax Department to be known as the Value Added Tax Appeal Commission or VAT Appeal Commission.
- (2) The Commission shall hear and decide appeals by objectors in respect of decisions made by the Comptroller under or pursuant to this Act.
- (3) The Commission shall consist of three Appeal Commissioners, including —
  - (a) a chairman, being a counsel and attorney with a minimum of ten years membership in The Bahamas Bar Association;
  - (b) an accountant qualified in accordance with the Public Accountants Act (*Ch. 364*) with a minimum of ten years experience since becoming so qualified; and
  - (c) a representative of the business community with a minimum of ten years of leadership experience and acumen in the operation of a business.
- (4) Each member of the VAT Appeal Commission must be a person of integrity who is of good financial and professional standing in the community.



- (5) The Minister shall appoint members of the Commission in writing and notice of each appointment, or reappointment, must be published in the *Gazette*.
- (6) An Appeal Commissioner holds office for a term of five years commencing from the date on which the Commissioner's appointment is Gazetted, unless earlier terminated by removal, retirement, resignation, disability or death.
- (7) The Minister may —
  - (a) from time to time reappoint an Appeal Commissioner for a further term, not exceeding five years, but an Appeal Commissioner may not serve for more than ten consecutive years;
  - (b) at any time terminate the appointment of an Appeal Commissioner for good and sufficient reason, including —
    - (i) engaging in any occupation for reward outside the duties of the Commissioner's office where the terms of his appointment as a member of the Commission prohibit such engagement;
    - (ii) disability;
    - (iii) bankruptcy;
    - (iv) neglect of duty;
    - (v) misconduct proven to the satisfaction of the Minister; and
  - (c) where an Appeal Commissioner is for any reason temporarily unable to act, appoint an eligible replacement from the same profession or background to act in his place for such term as the Minister specifies in the notice of appointment, not exceeding the remainder of the term of the Commissioner he replaces.
- (8) The clerk to the Appeal Commissioners must be a public officer who is a counsel and attorney with a minimum of five years membership in The Bahamas Bar Association.
- (9) Subject to this Act and the regulations, the Commission may determine its own procedure.
- (10) An Appeal Commissioner on becoming aware that he has a conflict of interest in the subject matter of an appeal must not sit, or continue to sit, on the hearing of the appeal.
- (11) There must be a rehearing of an appeal *de novo* where at any stage during the hearing of an appeal an Appeal Commissioner dies, resigns, is removed, or becomes otherwise incapacitated.
- (12) An Appeal Commissioner whose term of office expires or who resigns his office continues, for the sole purpose of deciding an appeal that was wholly heard before the expiration of his term of office or before his resignation took effect, to be a member of the Commission.

- (13) An Appeal Commissioner must, before entering upon the exercise of the duties of his office, take and subscribe an oath before a judge of the Supreme Court that he will faithfully and impartially perform the duties of his office.
- (14) No appointment under paragraph (c) of subsection (7), and no act done by any person by virtue of such appointment, shall in any proceeding be questioned on the ground that the occasion of the appointment had not arisen or had ceased.
- (15) No person appointed as a member of the Commission, including a person appointed pursuant to paragraph (c) of subsection (7), shall be held personally liable for any act done or omitted to be done by him in good faith in pursuance or intended pursuance of his powers and authorities under this Act.
- (16) The VAT Appeal Commission shall have a seal which shall be judicially noted in all courts.

**83. Hearing of appeals by Appeals Commission.**

- (1) An objector aggrieved with the Comptroller's decision, or deemed decision, on an objection pursuant to subsections (8) and (9) of section 81 may appeal to the VAT Appeal Commission against such decision within thirty calendar days after —
  - (a) service of a notice of decision on such objector; or
  - (b) the expiration of the ninety calendar day period referred to in subsection (9) during which the Comptroller has failed to serve a notice of decision.
- (2) The VAT Appeal Commission may accept an objection lodged after the time specified in subsection (1) where the Commission is satisfied that there has been no unreasonable delay on the part of the appellant in lodging the appeal due to —
  - (a) absence from The Bahamas;
  - (b) sickness; or
  - (c) other reasonable cause.
- (3) An appeal to the VAT Appeal Commission must —
  - (a) be by notice of appeal, in the prescribed form and manner, filed with the Commission; and
  - (b) specify in detail the grounds on which the appeal is made.
- (4) An appellant is limited to the grounds specified in the notice of appeal unless the Appeals Commissioners grant leave to add new grounds.

- (5) The VAT Appeal Commission, where it hears an appeal, must serve notice of the hearing on the appellant in the form and manner prescribed in regulations.
- (6) The Commission may consider an appeal against the Comptroller's decision on an objection to an assessment where the Comptroller certifies that the appellant —
  - (a) has paid the full amount of tax due under the assessment; or
  - (b) has given sufficient security acceptable to the Comptroller for the amount of the tax that is unpaid and any interest and penalty that may become payable.
- (7) The Commission may on an appeal —
  - (a) in case of an assessment under appeal, confirm, vary, or set aside the Comptroller's assessment; or
  - (b) in any other case, set the Comptroller's decision aside and remit the matter back to the Comptroller for reconsideration in accordance with the directions of the Commission.
- (8) The Commission must, within ninety calendar days after an appeal has been lodged, hear and decide the appeal and serve a notice of decision in writing.
- (9) An appellant may, where ninety calendar days have passed since an appeal was lodged and the Commission has not served a notice of decision referred to in subsection (8), further appeal the matter to the Supreme Court under section 84 as if the Commission had made a decision disallowing the appeal.

#### **84. Appeal to the Supreme Court.**

An appellant who is aggrieved with a decision of the VAT Appeal Commission may appeal the decision, on matters of law only, to the Supreme Court within twenty-one days after —

- (a) service on the appellant of a notice of decision under subsection (8) of section 83; or
- (b) the expiration of the ninety calendar day period referred to in subsection (9) of section 83 during which the Commission has failed to serve a notice of decision.

## **PART XII – MISCELLANEOUS**

#### **85. VAT or taxpayer identification number.**

- (1) A registrant must include in any VAT return, notice or other document prescribed or used for the purposes of this Act the tax identification

number issued to the registrant pursuant to paragraph (a) of subsection (3) of section 23.

- (2) The Comptroller may issue a taxpayer identification number to any person liable to pay tax under this or any other Act and require such person to include such number in any application, notice, declaration or other document prescribed or used for the purposes of this Act .
- (3) A person must not in any document prescribed or used for the purposes of this Act include a taxpayer identification number that has not been issued to such person by the Comptroller.

## **86. Officers of unincorporated bodies.**

For the purposes of this Act —

- (a) a liability or obligation imposed by or under this Act or the regulations on an unincorporated body is imposed, jointly and severally, on —
  - (i) the body; and
  - (ii) each of the persons who are officers of the body at the time the obligation or liability is imposed;
- (b) a taxable supply or taxable importation made or received by an unincorporated body, or a taxable activity carried on by such a body, is a supply or importation of or an activity carried on by the body and not by a member or officer who makes such a supply or importation, or carries on such activity, in his capacity as a member or officer of such body;
- (c) the existence of an unincorporated body, and a taxable activity carried on by such body, is not affected by any change in the members or officers of the body;
- (d) a document served on an unincorporated body is treated as served on the body and the the officers of the body;
- (e) a contravention or non-compliance or an offence committed by an unincorporated body is treated as having been committed by the officers of the unincorporated body;
- (f) an officer of an unincorporated body means —
  - (i) a partner of a partnership;
  - (ii) a participant in a joint venture;
  - (iii) a trustee of a trust; and
  - (iv) in any other case —
    - (A) a person who holds office in the body as chairman, president, treasurer, secretary, or any other similar office;

- (B) where there is no officer of the body, a member of a committee responsible for management of the affairs of the body; or
  - (C) where (A) or (B) does not apply, a member of the body; and
- (g) an unincorporated body includes an unincorporated association.

**87. Dissolution of partnerships and other unincorporated bodies or associations.**

On the dissolution of a partnership or other unincorporated body or association —

- (a) where one or more, but not all, of the partners or members retire or withdraw or a new partner or member is admitted;
- (b) where a new partnership or unincorporated body or association comes into existence consisting of the remaining members and one or more new members; and
- (c) where the new entity referred to in paragraph (b) continues to carry on the taxable activity carried on by the dissolved entity,

the dissolved entity and the new entity are treated under this Act as one and the same unless the Comptroller, having regard to the circumstances of the case, otherwise directs.

**88. Death or insolvency of taxable person.**

After the death of a taxable person or the sequestration of the estate of a taxable person —

- (a) where a taxable activity previously carried on by the taxable person is carried on by, or on behalf of, the executor or trustee of the person's estate; or
- (b) where anything is done in connection with the termination of the taxable activity,

the estate of the taxable person, as represented by the executor or trustee, is under this Act treated as the taxable person in respect of the taxable activity.

**89. Mortgagee in possession, trustee.**

- (1) For the purposes of this Act, a mortgagee in possession —
  - (a) of land or other property previously mortgaged by a mortgagor who is a taxable person; and
  - (b) who carries on a taxable activity in relation to the land or other property,is the taxable person carrying on the taxable activity —

- (i) from the date the mortgagee took possession of the land or other property;
  - (ii) until such time as the mortgagee ceases to be in possession of the land or other property.
- (2) A person who is a trustee in more than one capacity is, under this Act, a separate person in relation to each capacity.

## **90. Variation of cost on a change in VAT rate.**

- (1) A registrant who enters into an agreement to make a supply of goods or services —
  - (a) which is not a taxable supply, or, is a taxable supply borne at a specific rate; and
  - (b) where subsequent to entering into the agreement, the supply of the goods or services becomes a taxable supply, or value added tax is imposed on the supply at an increased rate,is liable for and must recover from the recipient of the supply, unless the agreement expressly provides to the contrary, the additional amount equal to the amount of tax imposed, or the amount by which tax was increased, on the supply.
- (2) A registrant who has entered into an agreement to make a taxable supply where, subsequent to entering into the agreement, value added tax is imposed on the supply at a reduced rate, or the supply is no longer classified as a taxable supply, must unless the agreement expressly provides to the contrary reduce the amount payable by the recipient of the supply by an amount equal to —
  - (a) the amount by which tax was decreased on the supply; or
  - (b) the amount of tax withdrawn in relation to the supply.
- (3) Subsections (1) and (2) apply to a supply which is subject to a fee charge or other amount —
  - (a) whether or not a fixed, maximum, or minimum fee charge or other amount; and
  - (b) notwithstanding such fee charge or other amount is prescribed by or determined pursuant to a provision of any other law,so that the fee, charge or other amount may be increased or decreased, as the case may be, in accordance with those subsections except where —
  - (i) such other law takes into account an imposition, variation or withdrawal of VAT under this Act; or
  - (ii) the fee charge or other amount to which the supply is subject is calculated as a fraction or percentage of an amount which represents the consideration in money for a taxable supply.

- (4) An unregistered taxable person who enters into an agreement referred to in subsection (1) —
  - (a) may not collect tax from the recipient of a supply made by him; and
  - (b) remains liable for payment to the Value Added Tax Department of all tax chargeable in relation to the taxable supply.

#### **91. Application of payments.**

The Value Added Tax Department must apply a payment made by a person, where interest, a penalty or fine is payable by such person on or in respect of tax payable by him, in order of priority to —

- (a) the interest;
- (b) where payment exceeds the amount of the interest, the penalty; and
- (c) where payment exceeds the amount of the interest and penalty, the fine; and
- (d) where payment exceeds the amount of the interest, penalty and fine, the tax.

#### **92. Making of false or misleading statements.**

- (1) A person must not knowingly or recklessly —
  - (a) make a statement to the Comptroller or a VAT officer or authorised person that is false or misleading in a material particular; or
  - (b) omit from a statement made to the Comptroller or a VAT officer or authorised person any matter or thing without which the statement is misleading in a material particular.
- (2) A statement referred to in subsection (1) may be made orally, in writing, or in any other form to the Comptroller or officer or authorised person acting in the performance of their respective duties under this Act and the regulations and includes a statement made —
  - (a) in a document or information made, prepared, given, filed, lodged or furnished under this Act or the regulations;
  - (b) in a document or information furnished to the Comptroller or officer or authorised person otherwise than pursuant to this Act or the regulations;
  - (c) in an answer to a question asked of a person by the Comptroller or officer or authorised person; or
  - (d) to another person with the knowledge or reasonable expectation that the statement would be conveyed to the Comptroller or officer or authorised person.

**93. Remission of tax.**

- (1) The Value Added Tax Department may by order extinguish a liability of a person to pay tax as a debt due to the Government in any case where —
  - (a) the Comptroller is, after exercising the enforcement powers available to the Comptroller under Part IX, unable to recover an amount of tax, penalty, fine or interest due and payable by such person;
  - (b) a minimum period of seven years have elapsed since the Comptroller completed the exercise of the final enforcement power available to the Comptroller in relation to the amount due and payable; and
  - (c) the amount due and payable does not exceed fifteen hundred dollars.
- (2) The Value Added Tax Department may revoke an order and reinstate a liability extinguished under subsection (1) where the Comptroller determines, within the three year period after the order extinguishing the debt, that the person whose debt was extinguished has assets that may be attached to recover the unpaid tax, penalty and interest specified in the order.
- (3) An order under subsection (1), and a revocation under subsection (2), must be made in the form and manner prescribed by regulations.

**94. Contravention of tax laws.**

A person must not, for the the purpose of evading the assessment, payment, or collection of value added tax, or otherwise impeding tax administration, contravene or fail to comply with any provision of this Act or the regulations.

**95. Confidentiality.**

- (1) Subject to this section, an officer or employee of the VAT Department or authorised person must not, except in the exercise and performance of such person's powers or duties under this Act, or by order of a court of competent jurisdiction —
  - (a) disclose to any person any matter in respect of any other person that may come to such officer's knowledge in the the exercise and performance of such powers and duties;
  - (b) permit any person to have access to any records in the possession or custody of the VAT Department.
- (2) The Comptroller may disclose, or authorise disclosure of, documents or information under this Act —



- (a) to any person, where such disclosure is necessary for the purposes of —
    - (i) the administration and enforcement of this Act;
    - (ii) assisting a Government entity in the administration and enforcement of any other fiscal laws;
  - (b) to a person authorised by any law in force in The Bahamas to receive such information;
  - (c) to the competent authority of the government of another country with which The Bahamas has entered into an agreement for the avoidance of double taxation or the exchange of information, to the extent permitted under such agreement or by any law; or
  - (d) where such documents or information do not identify a specific person, to a person in the service of the Government in a revenue or statistical department in respect of which such disclosure is necessary for the performance of such person's official duties.
- (3) The Comptroller may disclose, or authorise disclosure of, documents or information concerning the affairs of a person in relation to value added tax where —
- (a) the person consents in writing that such disclosure may be made to another specified person; or
  - (b) a person claims to be the taxpayer or the authorised representative of such taxpayer and the Comptroller has obtained reasonable assurance of the authenticity of the claim.
- (4) The VAT Department may, where the Comptroller determines it to be necessary or convenient for the exercise of the Comptroller's powers under subsection (2) —
- (a) enter into a memorandum of understanding with any Government entity, or the competent authority of the government of another country, setting out the terms and conditions to which any disclosure by the Comptroller of documents or information is subject; and
  - (b) disclose documents or information obtained by the Comptroller in the exercise and performance of the Comptroller's duties and powers under this Act only in accordance with the memorandum of understanding referred to in paragraph (a).
- (5) A person receiving documents or information under subsection (2) must keep such documents or information secret and confidential, except to the minimum extent necessary to achieve the purpose for which the disclosure is made.

**96. Regulations.**

- (1) The Minister may from time to time make regulations for carrying out all or any of the purposes of this Act in accordance with the powers and duties conferred or imposed on the Minister by this Act.
- (2) Without prejudice to the generality of subsection (1), the Minister may in particular make regulations prescribing the —
  - (a) form and content of the certificate of registration referred to in section 23;
  - (b) definitions and criteria for determining the meaning of key words and phrases used and not defined in this Act;
  - (c) fees payable in respect of services performed by the VAT Department under this Act;
  - (d) administrative procedures, standards, and protocols for the assessment, payment and collection of tax under this Act;
  - (e) method of calculation of input tax deduction;
  - (f) documents, records and other information an applicant for registration under Part IV must submit with the application;
  - (g) content of the public register of registrants and the manner in which the register may be rectified, amended and maintained;
  - (h) offences, and limitation periods for such offences, in relation to —
    - (i) a contravention of or non-compliance with a provision of this Act, including the penalties not exceeding five hundred thousand dollars to be imposed for such offences;
    - (ii) a contravention of or non-compliance with a provision of a regulation or VAT Rules made pursuant to this Act, including penalties not exceeding three hundred thousand dollars to be imposed for such offences;
  - (i) requirements, procedures and forms for the imposition of administrative fines, not exceeding one hundred fifty thousand dollars, imposed pursuant to this Act or regulations or VAT Rules made pursuant to this Act;
  - (j) methods of displaying prices of goods or services offered by taxable persons;
  - (k) the providers of professional services required to register under this Act; and
  - (l) nature of anything required under this Act, or that the Minister considers necessary or desirable, to be prescribed in order to —
    - (i) facilitate and illustrate the application and meaning of provisions or terms used in this Act; and

- (ii) determine the value, time, and place of transactions for the purpose of applying this Act to such transactions.
- (3) The Minister must, pursuant to section 82, within twenty-one days of the coming into force of this Act make regulations establishing the Value Added Tax Appeal Commission.

**97. Electronic communications.**

An application, notice, declaration, return, or other form required to be filed, made, given or otherwise provided pursuant to this Act or the regulations may be so provided by electronic means in accordance with the Electronic Communications and Transactions Act (*Ch. 337A*).

**98. Transitional provisions.**

- (1) A supplier may —
  - (a) where a contract was concluded before the entry into force of this Act and no provision relating to tax was made in such contract; and
  - (b) where the supplier after the entry into force of this Act becomes a registrant and makes taxable supplies under the contract,  
recover from the recipient of a taxable supply made after the entry into force of this Act the tax due on the supply.
- (2) An unregistered taxable person may not, until he is registered in accordance with Part IV, recover from a recipient tax due on taxable supplies made after the entry into force of this Act but the unregistered taxable person remains liable for payment of output tax on such supplies.
- (3) The contract price, in relation to a contract concluded after the date this Act comes into force which does not provide for tax, is deemed to include tax and a taxable person who makes a taxable supply under such contract must pay and account for output tax chargeable on the supply.
- (4) Subject to subsection (9), a payment in connection with a taxable supply is, for the purpose of determining the tax period in which the supply occurs or an input tax deduction is allowed, treated as made or an invoice as issued on the date this Act comes into force where —
  - (a) title to the goods passes, or delivery of the goods is made, or services are rendered, after the date this Act comes into force; and
  - (b) payment is received, or an invoice is issued, within a period of six months before the date this Act comes into force.
- (5) Tax is imposed, in relation to a taxable supply referred to in subsections (8) and (16) of section 32 which is made periodically or successively —
  - (a) subject to paragraph (b), on the portion of the consideration that relates to a supply made after the date this Act comes into force; and

- (b) where the consideration for a supply made before the date this Act comes into force is paid more than four months after the date this Act comes into force, on such consideration which is treated as consideration for a supply made on the day after the end of the four month period.
- (6) Notwithstanding subsection (5), tax is imposed —
  - (a) where a written agreement for the supply of construction goods and services is executed before the date this Act comes into force; and
  - (b) where the services are performed and the goods or property made available to the recipient after the date this Act comes into force,  
only on the value of the supply made or performed after the date this Act comes into force if the value of the supply on the day prior to this Act coming into force is —
    - (i) determined in a manner approved by the Comptroller; and
    - (ii) submitted to the Comptroller by the end of the registrant supplier's first tax period after this Act comes into force.
- (7) The consideration for a rental of real property under a rental agreement, for a period commencing before and ending after the date this Act comes into force, does not include the amount attributable to the portion of the period that ends before the date this Act comes into force.
- (8) A person who will on the date this Act comes into force be a taxable person must, a minimum of one month prior to such date, apply for registration under section 19.
- (9) For purposes of this section, a contract is concluded when the parties execute the contract.
- (10) Hotel bookings concluded before or after the coming into force of this Act are not subject to VAT until such time as the repeal of sections 16, 17, 18 and 20 of the Hotels Act (*Ch. 288*) in respect of the hotel guest tax takes effect.

## **99. Repeals.**

Sections 16, 17, 18 and 20 of the Hotels Act (*Ch. 288*) are repealed.

**FIRST SCHEDULE (Section 6)****ZERO RATED SUPPLIES AND IMPORTATIONS****PART I****ZERO RATED SUPPLIES OF GOODS**

1. Exports where —
  - (1) the registrant supplier has entered the goods for export in accordance with the Customs Management Act and the goods are, in fact, exported by the registrant supplier; and
  - (2) the Comptroller is satisfied that the goods have been exported from The Bahamas and were not used after they were entered for export except such use as was necessary for, or incidental to, the export of the goods.
2. A supply of goods where the goods are not —
  - (1) situated in The Bahamas at the time of supply; and
  - (2) to be entered by the registrant supplier for home consumption in accordance with the Customs Management Act.
3. A supply of goods, used exclusively in an export country, under —
  - (1) a rental agreement;
  - (2) a charter party; or
  - (3) an agreement for chartering.
4. A supply of goods in the course of repair, renovation, modification, or treatment, of goods to which subparagraphs (b) or (c) of sub-paragraph (2) of paragraph 1 of Part II applies where the goods supplied —
  - (1) are wrought into, affixed or attached to, or otherwise form part of those goods to which subparagraph (b) or subparagraph (c) applies; or
  - (2) being consumable goods, become unusable or worthless as a direct result of being used in such repair, renovation, modification, or treatment process.
5. A supply by a registrant to another registrant of a taxable activity, or part of such activity, as a going concern where the provisions of this Act and the regulations are satisfied.
6. A supply of goods in the course of repairing, renovating, modifying, or treating —

- (1) goods temporarily imported into The Bahamas under the Customs Management Act; and
- (2) foreign-going vessels and aircraft.

## **PART II**

### **ZERO RATED SUPPLIES OF SERVICES**

1. A supply of services directly —
  - (1) in connection with land, or an improvement to land, situated outside The Bahamas;
  - (2) in respect of —
    - (a) personal property situated outside The Bahamas at the time the services are rendered;
    - (b) goods temporarily imported into The Bahamas pursuant to the Customs Management Act; or
    - (c) the repair, maintenance, cleaning, outfitting, refurbishment, or improvement of a foreign-going aircraft or foreign-going vessel.
2. A supply of freight and insurance directly attributable to a supply of goods exported from the Bahamas in accordance with regulations.
3. A supply of services to a person resident outside The Bahamas who is not a taxable person where such supply is made directly, and not made through an agent or other person, and comprises —
  - (1) the storage, repair, maintenance, cleaning, management, or arranging the provision of a container temporarily imported under the Customs Management Act; or
  - (2) arranging the supply of a service referred to in sub-paragraph (1).
4. A supply of services by —
  - (1) a port authority within the meaning of section 2 of the Port Authorities Act (*Ch. 269*) to a foreign-going vessel, or an airport or an airport authority to the owner or operator of a ship or aircraft, where —
    - (a) such owner or operator is a person resident outside The Bahamas;
    - (b) the ship or aircraft is used by such owner or operator in international commercial service; and
    - (c) the supply of services is for consumption or use in connection with such ship or aircraft.
  - (2) any person to a foreign-going vessel.
5. A supply of services to a person resident outside The Bahamas who is not a

- taxable person comprising the arrangement for such person of an export from The Bahamas of movable goods in accordance with the regulations.
6. A supply of services to a telecommunication carrier not conducting business in The Bahamas comprising the transmission of calls and other telecommunication services through The Bahamas —
    - (1) that have their origin and destination outside The Bahamas;
    - (2) that are not for the consumption or use of persons in The Bahamas; and
    - (3) where the registrant supplier does not charge an interconnection fee for providing the services.
  7. A supply of consumable goods for commercially scheduled foreign-going vessels and foreign-going aircraft.
  8. A supply by a registrant supplier to a registrant recipient of a taxable activity, or part of a taxable activity, as a going concern where —
    - (1) the supply complies with sections 26(2), 29(2) and 31(8) of the Act;
    - (2) a notice in writing signed by the transferor and transferee is furnished to the Comptroller within twenty-one calendar days after the supply takes place; and
    - (3) the notice referred to in sub-paragraph (2) contains the details of the supply.
  9. A supply of professional services listed below to the extent that such services, in accordance with the place of supply rules pursuant to this Act and the regulations, are used or the benefit or advantage is obtained outside The Bahamas —
 

(a) Legal services	lawyers, barristers and solicitors
(b) Engineering, architectural services	architects, surveyors, engineers, and survey services draftsmen
(c) Consultancy services	a business rendering consultancy services and not registered as a company
(d) Engineering services	a business rendering engineering services
(e) Accountancy services	certified or chartered public accountants or auditor accountants
(f) Insurance services	insurance adjuster, assessor, agent or any other business carrying on the business of insurance and is not registered as a company

- |     |                       |  |
|-----|-----------------------|--|
| (g) | Advisory services     | a business rendering advisory services and not registered as a company   |
| (h) | Professional services | a business, not within categories (a) through (g), rendering professional services and not registered as a company |
10. A supply of services comprising —
- (1) The filing, prosecution, grant, maintenance, transfer, assignment, licensing, or enforcement of any intellectual property rights for use outside The Bahamas.
  - (2) Incidental services necessary for the supply of services referred to in paragraph (1).
  - (3) The acceptance by a person of an obligation to refrain from pursuing or exercising, in whole or in part, any intellectual property rights for use outside The Bahamas.
11. Subject to regulations, services provided to, or for the benefit or advantage of, a person treated as a non-resident for purposes of the Exchange Control Regulations<sup>1</sup>.

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<sup>1</sup>*Sub. Leg., Vol VI, Ch. 360*



**SECOND SCHEDULE (Section 7)****EXEMPT SUPPLIES AND IMPORTATIONS****PART I****EXEMPT SUPPLIES OF SERVICES**

An exempt supply of services is a supply of, or a transaction comprising —

- (1) Insurance services in the course of carrying on an insurance business in or from The Bahamas performed by persons permitted to perform such services under or pursuant to the Insurance Act (*Ch. 347*) —
  - (a) commencing on the 1<sup>st</sup> January 2015 and ending on the 30<sup>th</sup> June 2015; and
  - (b) after 30<sup>th</sup> June 2015, limited to life insurance, annuities and savings products.
- (2) Subject to the regulations, financial services other than —
  - (a) the financial services referred to in paragraph 11 of Part II of the *First Schedule*; or
  - (b) domestic financial services provided for an explicit fee.
- (3) Medical services where supplied by a public health care facility to a public patient in accordance with the regulations.
- (4) Education services funded by tuition costs in a course of study as prescribed in regulations.
- (5) The sale or rental of a dwelling.
- (6) The transfer of vacant land.
- (7) A lease of land to the extent that such land is principally used, or intended for use, for accommodation as a dwelling which is erected or to be erected on such land.
- (8) Any services by a ministry, department, statutory body, agency, local government council, or other entity of Government, in connection with a taxable activity where the consideration for such services is —
  - (a) nominal in amount; or
  - (b) not intended to recover the cost of such goods or services.
- (9) Services rendered by a daycare business, including the provision of after-school care.
- (10) Services provided directly by a facility to persons in need of care, being persons who are —
  - (a) aged;
  - (b) indigent;

- (c) infirm;
  - (d) disabled;
  - (e) handicapped.
- (11) Services directly, and not through an agent or other person, to a person resident outside The Bahamas who is not a taxable person —
- (a) comprising the handling, pilotage, salvage, or towage, of any foreign-going aircraft while situated within The Bahamas; or
  - (b) provided in connection with the operation or management of any foreign-going aircraft or foreign-going vessel.
- (12) Religious services by an institution of religious worship.
- (13) Services by a recognized charity to the extent that such services relate directly to the charitable function of the charity.
- (14) Games of chance, gambling and lotteries within the meaning of the Lotteries and Gaming Act (*Ch. 387*).

## PART II

### EXEMPT IMPORTS OF GOODS

1. An import of goods —
- (1) intended as an unconditional gift to an approved charitable organisation, other than for purposes of re-sale by such organisation; and
  - (2) where the Comptroller of Customs is in receipt of a written notification from the Comptroller of VAT, prior to entry of such goods, that the goods are to be exempt from a charge of VAT.
2. An unconditional gift of goods, other than for purposes of re-sale, consigned to the Government, or a ministry, department, statutory body, agency, local government council, or other entity of Government, where the Comptroller of Customs has written notification from the Comptroller of VAT, prior to entry of such goods, that the goods are to be exempt from a charge of VAT.
3. An import that is a *bona fide*, unsolicited gift which —
- (1) does not exceed one thousand dollars in value;
  - (2) is not contained in a passenger's baggage; and
  - (3) does not comprise wine, spirits or manufactured tobacco.
4. Goods which are shipped or conveyed to The Bahamas for transshipment or conveyance to another country.
5. Subject to the regulations, goods imported by a national who is returning home for permanent residence, limited to new or used personal effects including clothing

and footwear.