

VALUE ADDED TAX (AMENDMENT) BILL, 2020

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VALUE ADDED TAX (AMENDMENT) BILL, 2020

A BILL FOR AN ACT TO AMEND THE VALUE ADDED TAX ACT

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Value Added Tax Act, may be cited as the Value Added Tax (Amendment) Act, 2020.
- (2) This Act shall come into force on the 1st day of July, 2020.

2. Amendment of section 2 of the principal Act.

Subsection (1) of section 2 of the principal Act is amended—

- (a) in the definition of “value added tax” or “VAT”, by the insertion immediately after the words “for the purposes of this Act” the words “or collected by a person as or on account of VAT”;
- (b) by the deletion of the definition “zero-rated supply” and the substitution of the following —
“**zero-rated supply**” means—
 - (a) a taxable supply of goods and services of a description specified in the *First Schedule* —
 - (i) that is chargeable to VAT at a zero percent rate;
 - (ii) where, subject to section 50, a registrant is allowed to make a claim for input tax deduction in relation to the supply; or
 - (b) a supply of real property at a zero percent rate in accordance with the *First Schedule*;”;
- (c) by the insertion in the appropriate alphabetical order of the following new definitions—

“**disposition of a business**” includes the sale, exchange or other transfer or disposition, in whole or in part of the goodwill or other property comprised in a business either directly or indirectly to another person and includes the transfer of shares in a company that owns the property of that business;

“**transaction comprising the disposition of a business**” includes one or more parts or stages of a transaction or a series of transactions irrespective of whether the parties are uniformly the same in each instance and any reference to the stamping of a transaction means the stamping of the documents effecting or evidencing that transaction or the memorandum of transaction mentioned in section 38F;”.

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended—

- (a) in subsection (1) —
 - (i) by the deletion of the full stop appearing at the end of paragraph (c) and the substitution of the words “; and”; and
 - (ii) by the insertion immediately after paragraph (c) of the following new paragraph (d) —
 - “(d) transaction comprising the disposition of a business to any person.”; and
- (b) in subsection (4), by the insertion immediately after the words “do not include” of the words “real property or”.

4. Amendment of section 4 of the principal Act.

Subsection (1) of section 4 of the principal Act is amended—

- (a) in paragraph (b), by the deletion of the word “and”;
- (b) in paragraph (c), by the deletion of the full stop and the substitution of the words “; and”; and
- (c) by the insertion immediately after paragraph (c) of the new paragraph—
 - “(d) transaction comprising the disposition of a business to any person.”.

5. Amendment of section 5 of the principal Act.

Subsection (1) of section 5 of the principal Act is amended—

- (a) in paragraph (c), by the deletion of the word “and”;
- (b) in paragraph (d), by the deletion of the full stop and the substitution of the words “; and”; and

- (c) by the the insertion immediately after paragraph (d) of the new paragraph—
- “(e) in the case of a transaction comprising the disposition of a business, falls jointly and severally on the supplier and recipient.”.

6. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsections —

- “(3) Value added tax imposed under section 4 on a transaction comprising the disposition of a business in so far as it relates to assets, other than cash, deposit accounts and real property is, subject to such conditions as may be prescribed in the regulations or VAT rules, chargeable at a six percent rate on the value attributable to the such assets.
- (4) For the avoidance of doubt, where a transaction comprising the disposition of a business involves the transfer of both real property and other assets, the VAT chargeable as it relates to the supply of real property, shall be in accordance with the rates in the *Third Schedule*.”.

7. Amendment of section 19 of the principal Act.

Subsection (1) of section 19 of the principal Act is amended in paragraph (e) by the insertion immediately after the words “person provides,” of the words “either directly or”.

8. Amendment of section 29 of the principal Act.

Section 29 of the principal Act is amended by the deletion of subsections (2) and (3) and the substitution of the following—

- “(2) A transaction comprising the disposition of a business is a supply of goods.”

9. Amendment of section 31 of the principal Act.

Section 31 of the principal Act is amended by the insertion immediately after subsection (12) of the following new subsection—

- “(13) Where a registrant receives a payment that represents a reimbursement, recovery or indemnification under a contract for taxable insurance services in respect of loss of or damage to goods or services acquired for use in the course or furtherance of a taxable activity carried on by the registrant —

- (a) that registrant shall be deemed to have made a taxable supply;
- (b) the payment shall be deemed to be the consideration for that supply; and
- (c) the payment shall be deemed to be inclusive of VAT.”.

10. Amendment of section 38C of the principal Act.

Section 38C of the principal Act is amended by the insertion immediately after the words “real property” of the words "or instrument containing or evidencing a transaction comprising the disposition of a business".

11. Amendment of section 38D of the principal Act.

Section 38D of the principal Act is amended by the insertion immediately after the words “real property” wherever it appears of the words “or a transaction comprising the disposition of a business”.

12. Insertion of new section 38E and 38F into the principal Act.

The principal Act is amended by the insertion immediately after section 38D of the following new section—

“38E. Assessment of VAT on disposition of a business.

- (1) Where a transaction comprising the disposition of a business occurs, it shall be the responsibility of the Comptroller to assess and collect the value added tax due and payable on the supply.
- (2) Every instrument containing or evidencing a transaction comprising a disposition of a business shall be presented to the VAT Department within ninety days of the completion of the transaction for the assessment and payment of VAT due on the supply.
- (3) A person aggrieved by an assessment of the Comptroller under subsection (1), may object to the decision under Part XI.

38F. Memorandum of transaction.

- (1) Where —
 - (a) a supply of real property or transaction for the disposition of a business chargeable for VAT under this Act is not contained in or evidenced by any instrument; or
 - (b) the parties to the supply have determined in good faith that the instrument evidencing the supply is not in a

form suitable for the impressing of a VAT stamp thereon,

it shall be the joint and several obligation of the parties to the supply to execute a memorandum of transaction setting out the consideration and all other facts and circumstances affecting the VAT chargeable in respect of the supply.

- (2) A memorandum of transaction shall be submitted to the Comptroller for VAT to be assessed and collected on the supply within the time prescribed in section 38A and 38E respectively.
- (3) The Comptroller may require the production of an instrument or intended instrument or a memorandum or intended memorandum of transaction as described in this section to be furnished with such other documents as he may deem necessary, to satisfy himself that all the facts and circumstances affecting the liability of the instrument or transaction to VAT, or the amount of the VAT chargeable thereon, are fully and truly disclosed.
- (4) A person aggrieved by an assessment of the Comptroller under this section, may object to the decision under Part XI.”.

13. Amendment of section 50 of the principal Act.

Subsection (1) of section 50 of the principal Act is amended—

- (a) in paragraph (k), by the deletion of the full stop and the substitution of a semi-colon; and
- (b) by the insertion immediately after paragraph (k), of the following new paragraph—
 - “(1) the supply to which the claim relates is a transaction comprising a disposition of a business.”.

14. Insertion of section 61B into the principal Act.

The principal Act is amended by the insertion immediately after section 61A of the following new section —

“ **61B. Assessment of real property and disposition of a business.**

VAT due on a supply of real property or a transaction for the disposition of a business may be assessed by the Comptroller at any time.”.

15. Amendment of section 81 of the principal Act.

Section 81 of the principal Act is amended —

- (a) in subsection (8), by the deletion of the words “VAT Appeal Commission pursuant to section 83” and the substitution of the words “Tax Appeal Commission”
- (b) in subsection (9), by the deletion of the words “VAT Appeal Commission” and the substitution of the words “Tax Appeal Commission”.

16. Repeal of section 84 of the principal Act.

Section 84 of the principal Act is hereby repealed.

17. Insertion of new section 96A into the principal Act.

The principal Act is amended by the insertion immediately after section 96 of the following new section—

“96A. Minister may make order to amend zero rated and exempt schedules and to defer VAT.

- (1) The Minister may by order published in the Gazette amend the First Schedule or Second Schedule or defer payment of tax on the supply within The Bahamas of any goods or service.
- (2) An order under subsection (1) shall —
 - (a) be in effect for not more than 30 days; and
 - (b) not be made more than two times per calendar year, unless approved by affirmative resolution of the House of Assembly.”.

18. Amendment of First Schedule to the principal Act.

Part I of the First Schedule to the principal Act is amended—

- (a) by the deletion of item 5;
- (b) in item 9 —
 - (i) in paragraph (a), by the deletion of subparagraph (i);
 - (ii) in paragraph (g), by the insertion immediately after the words “confirmatory conveyance of real property” of the words “, affidavit of loss, declaration of trust, deed of variation or any other document in relation to real property”; and
 - (iii) in paragraph (i), delete the full stop and substitute a semi-colon;
 - (iv) by the insertion immediately after paragraph (i) of the following new paragraphs —

- “(j) instruments or transactions relating to any loan in relation to real property granted under the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*);
 - (k) grants, leases, writs or other instruments issued by and on behalf of the Crown and The Bahamas in relation to a supply of real property other than a crown lease;
 - (l) where there is no change in beneficial ownership.”; and
- (c) by the insertion immediately after item 9 of the following new items —
- "10. The import of any goods stipulated in a relief order or an exigency notice made under—
- (i) the Tariff Act, 2018 (*No. 21 of 2018*);
 - (ii) section 27B(b) of the Disaster Preparedness and Response Act (*Ch. 34A*); and
 - (iii) section 22(2) of the Disaster Reconstruction Authority Act, 2019,
- for the period of time and subject to any condition specified in order or the notice;
11. The supply of any goods or service stipulated in an order made under —
- (i) section 27B(b) of the Disaster Preparedness and Response Act (*Ch. 34A*); and
 - (ii) section 22(2) of the Disaster Reconstruction Authority Act, 2019,
- for the period of time specified in the order and subject to any conditions in the order."

19. Amendment to Second Schedule of the principal Act.

Part I of the Second Schedule to the principal Act is amended by the deletion of paragraph (2) and the substitution of the following —

- “(2) Subject to the regulations, financial services other than domestic financial services provided for an explicit fee.”.

OBJECTS AND REASONS

This Bill seeks to amend the Value Added Tax Act, 2014 to add clarity to a number of provisions relating to the application of VAT to the supply of real estate and the disposition of a business. It further seeks to empower the Minister to make an order to amend the First or Second Schedule or defer the payment of VAT for not more than 30 days and not more than twice a year which effectively provides for a tax holiday in certain circumstances.