

VALUE ADDED TAX (AMENDMENT) BILL, 2021

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VALUE ADDED TAX (AMENDMENT) BILL, 2021

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, 2014 (*No. 32 of 2014*), may be cited as the Value Added Tax (Amendment) Act, 2021.
- (2) This Act shall come into force on the 1st day of July, 2021.

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 “international commercial service” by the insertion, immediately after the word “goods” of the words “except that any trade or trade related service provided within The Bahamas shall not be regarded as international commercial service”; and
- (b) by the insertion, in the appropriate alphabetical order, of the following definitions—

“approved project” means a project approved under the provisions of the Hotels Encouragement Act (*Ch. 289*), the Industries Encouragement Act (*Ch. 326*) or Hawksbill;

“approved transaction” means a transaction entered into in the normal course of business between VAT registrants participating in the same approved project;

“mortgage” includes —

- (a) any mortgage, whether legal or equitable;
- (b) debenture creating a charge, whether fixed or floating;

- (c) any promissory note made supplemental to, or in connection with any mortgage or charge; and
- (d) any other charge or encumbrance otherwise than a charge created by statute or arising from any order of a court;"

3. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended by the insertion immediately after subsection 2 of the following new subsections —

- “(2A) A marketplace shall be liable to pay and account for VAT in respect of a vacation home rental and any services offered as part of that rental based on the total value of the rental and services and the commission earned by the marketplace.
- (2B) Subject to rules as prescribed by the Comptroller, a non-Bahamian homeowner that supplies a vacation home rental and any services offered as part of that rental and does not utilize a marketplace for the supply of that rental shall be liable to pay and account for VAT on the total value of all rentals and services.”

4. Amendment of section 19 of the principal Act.

Subsection (2) of section 19 of the principal Act is amended —

- (a) by the deletion of the word “or” appearing at the end of paragraph (a);
- (b) by the substitution of the full stop appearing at the end of paragraph (b) with a semi-colon; and
- (c) by the insertion immediately after paragraph (b) of the following new paragraph —
 - “(c) a non-Bahamian homeowner, who supplies a vacation rental and does not utilize a marketplace for the supply of that rental.”

5. Amendment of section 31 of the principal Act.

Section 31 of the principal Act is amended by the insertion immediately after subsection 9 of the following new subsection —

- “(9A) A supply of a vacation home rental by a non-Bahamian homeowner of a residential accommodation, where the homeowner does not utilize a marketplace for the supply of that rental, is a taxable supply.”

6. Amendment of section 44 of the principal Act.

Subsection (4) of section 44 of the principal Act is amended by the deletion of paragraph (a) and the substitution of the following—

- “(a) conditions subject to which a registrant may defer payment of VAT on the taxable importation of goods intended for use in the course or furtherance of a taxable supply carried on by the registrant;”.

7. Insertion of new section 46A into the principal Act.

The principal Act is amended by the insertion, immediately after section 46 of the following—

“46A. Permission for accounting of tax arising from an approved project.

- "(1) Upon a joint application by the recipient and supplier of a taxable supply in relation to an approved transaction for an approved project, the Comptroller may grant permission for the tax arising therefrom to be accounted for in a manner as prescribed in the VAT rules and regulations.
- (2) The provisions of this section shall not derogate from the liability of a supplier to pay and account for value added tax under section 5.
- (3) Where either the recipient or supplier fails to comply with any provision of this Act or the VAT rules or regulations, the Comptroller may withdraw permission to account for supplies in accordance with this section and require VAT to be accounted for on all transactions in accordance with the provisions of this Act.”.

8. Amendment of section 60 of the principal Act.

Subsection (3) of section 60 of the principal Act is amended by deletion of the words “ or wilful default” and substitution of the words “, wilful default or wilful misstatement”.

9. Amendment of First Schedule to the principal Act.

- (1) Part I of the First Schedule to the principal Act is amended—
- (a) in item 7, by the insertion in the table, in the appropriate tariff numerical order of the following—
- “Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles of any material: 96.19**
- Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles of any material: 9619.00

- Napkins and Napkin liners for infants 9619.0010
- Feminine sanitary towels and tampons 9619.0020
- Other disposable under garments 9619.0030”;

- (b) in item 9 —
 - (i) by the deletion of the words “the following supplies of real property”;
 - (ii) in paragraph (j), by the insertion, immediately after the words “(No. 9 of 2015)” of the words “ ”or any other instrument in relation to real property executed by or on behalf of co-operative credit unions registered under The Bahamas Co-operative Credit Unions Act, 2015 (No. 9 of 2015) or executed by an officer or member relating to the business of the co-operative credit union”;
 - (iii) in paragraph (l), delete the full stop and substitute a semicolon;
 - (iv) by the insertion immediately after paragraph (l), of the following new paragraphs —
 - “(m) a charge or encumbrance on real property created by statute or arising from an order of a court;
 - (n) where approved by the Minister, a deed of conveyance of property to an entity registered under the Non-profit Organisations Act, or a government educational institution registered with the Ministry of Education provided that the entity does not transfer the property for 10 years and where the use of the property and fixtures thereon is limited to religious, social, educational or civic undertakings.”;
- (c) by the insertion immediately after item 11, of the following —
 - “12. The importation of replaced or repaired goods where —
 - (a) the goods are still under the manufacturers' warranty;
 - (b) proof is provided that the importation is to replace damaged goods that were returned to the manufacturer, except that, VAT is payable on that part of the value of the replaced or repaired goods that is in excess of the value of the original goods that were imported.
 - 13. The supply of any goods or service stipulated in section 3A of the Family Island Development Encouragement Act (*Ch. 328A*) for the period of time and the conditions specified therein.”.

(2) Part II of the First Schedule to the principal Act is amended by the insertion immediately after item 18, of the following new item —

“19. The commission earned as a result of the supply of the Central Bank of The Bahamas digital service.”.

10. Amendment to Second Schedule of the principal Act.

The Second Schedule to the principal Act is amended by the insertion immediately after item 16 of the following new item —

“(17) A supply of services relating to the authorized collection of government revenue on behalf of the government.”.

11. Amendment to Third Schedule of the principal Act.

The Third Schedule to the principal Act is amended —

- (a) in item 1, by the deletion of the words “deed of conveyance” in the first column;
- (b) by the insertion immediately after item 1, of the following new item —

1A. Every deed of conveyance on the sale of real property	<ul style="list-style-type: none"> (a) 2½ % where the value is \$100,000 or less; or (b) 10 % where the value exceeds \$100,000 and up to \$2 million and where the value exceeds \$2 million, 12% on that part which exceeds \$2 million
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- (c) in item 3, by the deletion of paragraph (b) in the second column and the substitution of the following —
 - “(b) 10 % where the value exceeds \$100,000 and up to \$2 million, and where the value exceeds \$2 million, 12% on that part which exceeds \$2 million”;
- (d) in item 4, by the deletion of paragraph (b) in the second column and the substitution of the following —
 - “(b) 10 % where the value exceeds \$100,000 and up to \$2 million, and where the value exceeds \$2 million, 12% on that part which exceeds \$2 million”;
- (e) in item 7, by the deletion of the words “or both”; and
- (f) in item 9, by the deletion of paragraph (b) in the second column and the substitution of the following —
 - “(b) 10 % where the value exceeds \$100,000 and up to \$2 million, and where the value exceeds \$2 million, 12% on that part which exceeds \$2 million”.

12. VAT exemption on collection of government revenue.

Any supply of services relating to the authorized collection of government revenue on behalf of the government from the 1st day of July, 2020 is exempt from VAT.

13. Amendment of section 1 of No. 31 of 2019.

Subsection (2) of section 1 of the Value Added Tax (Amendment) Act, 2019 (*No. 31 of 2019*) is deleted and substituted as follows —

“(2) This Act shall be deemed to have come into force on the 1st day of July, 2019.”.

14. Validation of acts performed.

Any act performed by any person under and in reliance on the Value Added Tax (Amendment) Act, 2019 between 1st day of July, 2019 and the date of the commencement of this Act, shall be deemed to be validly performed.

OBJECTS AND REASONS

This Bill seeks to amend the Value Added Tax Act, 2014 to include a number of new measures into the Act

Clauses 1 and 2 of the Bill provides for the short title, commencement and an amendment to section 2 of the principal Act inserting new definitions of “approved project”, “approved transaction” and “mortgage”.

Clause 3 of the Bill seeks to amend section 5 of the Act to ensure —

- (a) that a marketplace is accountable and liable to pay VAT on the total value of the rental and services in relation to each home and not just its commission;
- (b) that where a non-Bahamian homeowner supplies a vacation home rental without utilizing a marketplace that homeowner—
 - (i) is accountable and liable to pay VAT on the gross value of all rentals and services he offers; and
 - (ii) complies with section 10 of the Real Property Tax Act (*Ch. 375*).

Clause 4 of the Bill seeks to provide that a supply of vacation home rental, by a non-Bahamian who does not utilize a marketplace, is a taxable supply

Clause 5 of the Bill seeks to clarify where the Comptroller of VAT may make rules for circumstances where a registrant may defer the payment of VAT on the importation of taxable goods.

Clause 6 of the Bill seeks to insert a new section into the Act to provide for application to be made and permission may be granted for the tax arising from an approved project to be accounted for in a manner prescribed in VAT rules and regulations.

Clause 7 of the Bill seeks to amend section 60 of the Act to include that where the Comptroller makes an assessment of a registrant who defaults in making a return but the default was not due to, inter alia a wilful misstatement it must be done within five years.

Clause 8 of the Bill seeks to amend Part 1 of the First Schedule to the Act to provide for feminine hygiene products, adult diapers, baby diapers, conveyance to a non-profit and a charge on real property created by statute or an order of the court, the importation of repaired or replacement goods, and the supply of goods and services under the Family Island Development Encouragement Act (*Ch. 328A*) to be zero rated.

Clause 9 of the Bill also seeks to amend Part I of the First Schedule to provide for the commission earned as a result of the supply of the Central Bank of The Bahamas digital service to be zero rated.

Clause 10 of the Bill also seeks to amend Part II of the Second Schedule to provide for exemption from VAT of the services relating to the authorized collection of government revenue by a third party.

Clause 11 of the Bill seeks to amend the Third Schedule in item 7 to correct a typographical error and to provide an increase in the payment of VAT on certain transactions involving real property.

Clause 12 of the Bill seeks to provide for the exemption of services related to the authorized collection of government revenue by a third party from the 1st June, 2020.

Clause 13 of the Bill deems the 1st day of July, 2019 to be the effective date of commencement of the Value Added Tax (Amendment) Act, 2019.

Clause 14 of the Bill validates all acts done in reliance on the Value Added Tax (Amendment) Act, 2019 during the period 1st day of July, 2019 to the date of the commencement of this Act.