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TAX ADVISORY

# Review of the Value Added Tax Bill and Regulations 2014 of The Bahamas

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# Introduction

Dear Reader:

The Value Added Tax Bill 2014 ("VAT Bill") and the Value Added Tax Regulations 2014 ("VAT Regulations") have now been tabled in Parliament. The VAT Bill and VAT Regulations will come into force on January 1, 2015. We have reviewed both and provide in this document what KPMG considers to be the key facts and considerations.

(References made are references to the VAT Bill unless otherwise stated)

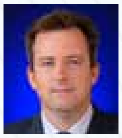
VAT is to be administered and enforced by the Comptroller of VAT ("Comptroller"), who will head the VAT Department, a department of the Ministry of Finance. The Comptroller will report to the Financial Secretary in the Ministry of Finance.

This is a summary only of the key facts and does not provide all the detail.

Please do not hesitate to contact us to discuss how VAT could impact your business.

Sincerely,

**Tracy E. Knowles**
**Head of Tax**



**Simon Townend**
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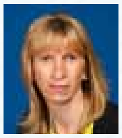

**Sandra Skuszka**
**Head of VAT**

# What is VAT?

Value Added Tax ("VAT") was first conceived by a German businessman, Dr. Wilhelm von Siemens in 1918 and was first implemented in France in 1954 where it remains a very large contributor to revenues of the state. VAT is a form of consumption tax which is a tax on spending on goods and services. It is the buyer who pays the tax, the supplier of the goods or services merely collects the tax on behalf of the government. VAT systems have now been implemented in over 160 countries worldwide including 28 Member States of the EU with Croatia being the most recent country to introduce VAT. The rates range between 0% to 27% with most standard rates being within the 10% - 20% range. In many developing countries VAT is becoming a key revenue source for governments although it is widely recognised that when introducing a VAT regime there is a fine balance required between the interests of government and businesses.

## What is subject to VAT?

For VAT to apply to goods or services in The Bahamas, the goods or services have to be supplied by a "taxable person" undertaking, by way of business, a "taxable activity". (Supplies may also be categorized as Exempt).

A "taxable person" is any person who carries on a taxable activity and is registered or required to be registered for VAT.

A "taxable activity" is any activity carried on in the form of a business continuously or regularly, whether for a profit or not which, for a consideration, involves or intends to involve the supply or importation of taxable goods or services.

Therefore, for a supply of goods or services in The Bahamas to be subject to VAT it needs to be supplied by way of a business. However, for an importation to be subject to VAT there is no requirement for the person importing the goods or services to be in business or to be a taxable person. So, by way of example, if a business or individual uses a non-resident professional advisor, VAT would be payable on that service, as it would for the use of a local advisor. Similarly if a business or individual imports a product, and the product is subject to VAT in The Bahamas, then VAT would be payable on the product.

As a general rule a taxable supply, whether domestic or an import will be subject to VAT at the standard rate of 7.5% unless it is stated in the VAT Bill or VAT Regulations that it is subject to the zero rate or is exempt from VAT.

An explanation of what VAT rates will apply is provided later in this summary, however, there are a couple of important points for a business to consider at this stage:

- Supplies between a company and a branch of that company are not subject to VAT provided they are supplies made within the same entity. Supplies between related companies in a group are potentially subject to VAT. A company and its subsidiaries are considered separate entities for VAT under the legislation, unless approved by the Comptroller as a group.
- In the case of a group of companies that are related parties (i.e. common ownership, subsidiaries, etc.) the Comptroller may allow the group to be registered as a single entity with a single tax identification number ("TIN"). As such, transactions between VAT group members would not be subject to VAT.
- As a general rule, for a supply to be taxable, there needs to be some form of payment for the supply either in money or in kind. However, a supply between two related parties can still be subject to VAT even if there is no transfer of funds or payment in kind (VAT Regulations Part I section 3).

However, a non-resident entity cannot join a VAT group in The Bahamas and a Port licensee and a non-Port licensee, cannot be members of the same VAT group.

## Who is responsible for accounting for VAT?

The supplier of goods or services is ordinarily responsible for accounting for any VAT due to the Comptroller. In respect of imported goods it is the importer who is responsible for paying the VAT; however, where services are imported it is both the importer and the recipient of the services who are jointly responsible for paying any VAT due.

## What are the rates of VAT?

The standard rate of VAT (7.5%) will apply to all taxable supplies of goods or services other than those that will be subject to the zero rate (0%). VAT will not apply to a supply of goods or services that are exempt from VAT.

Although no VAT is charged on goods or services that are exempt from VAT, or to which the zero rate of VAT applies, there is an important distinction between these supplies. A business making exempt supplies cannot recover any VAT it incurs on purchases made in relation to making those supplies whereas a business making zero rated supplies can recover VAT it incurs on purchases acquired in relation to making zero rated supplies.

## Zero rate of VAT

The zero rate of VAT applies to specific goods and services a summary of which is as follows:

**Goods**

- A supply of goods where the goods are not situated in The Bahamas at the time of supply and are not going to enter The Bahamas for home consumption in accordance with the Customs Management Act.
- A supply of goods used exclusively in an export country under a rental or charter agreement.
- Goods used in the course of repair, renovation, modification, or treatment, of Personal property situated outside The Bahamas
- Goods under temporary importation in The Bahamas; or
- Foreign-going aircraft or vessels.

**Services**

The zero rate of VAT will apply to a supply of services directly relating to the following:

- Land or improvement to land situated outside the Bahamas.
- Personal property situated outside The Bahamas.

- Goods under temporary importation in The Bahamas.
- The repair, maintenance, cleaning, outfitting, refurbishment or improvement of foreign-going aircraft or vessels.
- A supply of freight and insurance directly related to goods to be exported.
- A supply of services made directly to a person resident outside The Bahamas relating to the storage, maintenance etc. of containers, including the arranging of the supply of containers.
- Supplies of specific services by the port authorities and manager of an airport or airport authority in relation to foreign-going vessels and aircraft.
- The movement of goods for a non-resident.
- A supply of certain services to a telecommunication carrier not conducting business in The Bahamas.
- Certain services in respect of international transport services.
- Services supplied as part of a transfer of a going concern (there are a large number of conditions listed in the regulations).
- Certain professional services to the extent the services are used or the benefit or advantage is obtained outside The Bahamas including legal, engineering, architectural, consulting, advisory, accounting or insurance services.
- Certain services in relation to the supply of intellectual property.
- International services, including financial services, provided to a person treated as a non-resident for exchange control.

## VAT Exempt

There are no domestic supplies of goods that are exempt from VAT although there are some imported goods that are exempt from VAT such as gifts for approved charities, Government or a bona fide unsolicited gift under $1,000 in value (except wine and tobacco), goods being transhipped to another country, and personal effects of a national returning to take up residence.

The Second Schedule of the VAT Bill lists exempt supplies of services. These include:

- Insurance services provided by persons permitted to perform such services under the Insurance Act. However, after June 30, 2015, exemption will apply only to the supply of life insurance, annuities and savings products. All other insurance supplies will become taxable after that date at the standard rate of VAT.
- Financial services other than international financial services; or domestic financial services provided for an explicit fee.
- Medical services, but only when provided by a public health care facility to a public patient. A public patient is a person who is either indigent, under 18 years old, over 65 years old, a Bahamas Government employee or entitled to receive such services by the Ministry of Health. Private healthcare supply and veterinary services are taxable at the standard rate.
- Education services funded by the cost of tuition but limited to course instruction, books and other materials. This includes pre-school, primary, secondary or tertiary schools (resulting in a degree). Personal development, seminars, tutoring and separate fees for other services and amenities at schools are not exempt
- The sale or rental of a dwelling.
- Transfer of vacant land.
- Land leased in relation to a dwelling or where the intention is to construct a dwelling on the land.
- Services supplied by certain government bodies where the consideration is a nominal amount or not intended to cover the cost of such goods or services.
- Daycare and after-school care.
- Services provided by a facility to persons in need of care (i.e. aged, infirmed, disabled).
- Certain services in relation to foreign-going aircraft and vessels provided directly to a person resident outside The Bahamas who is not a taxable person.
- Religious services by an institution of religious worship.
- Services provided by a charity that directly relate to a charitable activity.
- Games of chance, gambling and lotteries within the meaning of the Lotteries and Gaming Act.

## What are the "place of supply" rules for services?

To determine whether the sale of goods or services is subject to VAT in The Bahamas it is necessary to consider whether the supply takes place in The Bahamas. The place of supply of goods is quite straight forward as it normally depends on where the goods are delivered or made available to the customer; however, how do you determine where a service takes place?

The rules on the place of supply can be found in Part V section 33 and section 34. The basic rule is that a supply of services takes place in The Bahamas where the place of business of the supplier is in The Bahamas.

The exceptions to this rule under Part V section 33 are:

- Services comprising of cultural, artistic, sporting, educational, or similar activities; or services connected with tangible personal property are subject to VAT where the service is physically performed.
- Services relating to real property take place where the property is located.
- Services that are incidental to transport take place where the transport occurs.

Section 34 takes precedent over section 33 and the exceptions under section 34 are:

- The place of supply of the following services is where the recipient uses or obtains a benefit or advantage of services comprising of:
  - 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 similar services;
  - c) advertising services;
  - d) 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).

The previous services are treated as an export of services which are taxable in The Bahamas in accordance with Part I section 2 however, some of the services are specifically subject to VAT at the zero rate rather than the standard rate of 7.5%. Other services may fall within "international services" which are also subject to VAT at the zero rate when exported.

## VAT Registration

VAT registration is mandatory where a person makes taxable supplies or taxable importations by way of business and

- the value of which exceeds the VAT registration threshold of $100,000 in any 12 month period or less; or
- there are reasonable grounds to expect that the turnover of the taxable supplies will exceed the VAT registration threshold within a 365 day period; or
- where a person is a promoter of public entertainment; or licensee or proprietor of a place of public entertainment, reasonably expects within a 12 month period to exceed the registration threshold; or
- holds a temporary license under section 5 of the Business License Act

VAT registration must be applied for within 14 days of meeting the requirements specified above.

A person may voluntarily apply for registration if the $100,000 threshold is not met.

A public entertainer however, must apply for VAT registration a minimum of 48 hours prior to the public entertainment being promoted and a diplomatic mission or international organisation must apply prior to claiming a refund.

A person is not required to be registered for VAT if the Comptroller is satisfied that the threshold is breached solely due to the sale of a capital item, or that a business is permanently ceasing or reducing the scale of taxable activities.

When considering whether a person should be registered for VAT, the Comptroller can take into consideration taxable supplies or taxable imports made by a related person, or a person acting in concert in making taxable supplies. This is to prevent a business being artificially split to avoid VAT registration.

Following an application to register for VAT the Comptroller will issue a VAT registration certificate and TIN within 21 days. The business will then be VAT registered from the first day of the month immediately following the date on which the certificate was issued. The Comptroller can however, determine a different effective date of registration in specific circumstances.

The registration certificate must be displayed in a conspicuous place at each location of business of the registrant.

## Charging VAT

The price of a retail product subject to VAT must be displayed inclusive of VAT. VAT must then be stated separately on the VAT invoice or sales receipt. If you make retail sales you can issue a simplified VAT invoice whereby items subject to VAT (or not) can be identified on the receipt with a symbol such as an asterisk or similar method of identification provided the total amount of VAT is clearly shown on the receipt.

All businesses that will be required to charge VAT will need to consider their pricing and invoicing systems to ensure that they can comply with the above.

## Filing frequency

The frequency of filing is referred to as a 'tax period'. There will be three filing periods. Businesses with taxable supplies:

- greater than $5 million per annum must file monthly;
- between $0.4 million and $5 million may file quarterly; and
- below $0.4 million may file semi-annually

## When is the VAT due for payment?

When payment is due is determined by the "time of supply". If the "time of supply" falls within a VAT period then the VAT due should be declared on the VAT return for that VAT period. The submission of the return and payment of any VAT is due 28 days following the last day of the VAT period.

The time of supply is the earliest of

- the issue of an invoice;
- receipt of payment in whole or in part;
- the time the goods are delivered or made available to the recipient; or
- the completion of services performed.

Part V section 32 sets out additional rules on the time of supply that apply in certain circumstances.

## The calculation of VAT due

VAT charged on a taxable supply by a taxable person is referred to as "output tax". VAT incurred on purchases made by a taxable person is referred to as "input tax". In essence, the amount of VAT due to the Comptroller is the output tax less the input tax in the relevant tax period, subject to a number of adjustments. If the input tax is more than the output tax then a repayment from the Comptroller is due. Where the tax period is one month, this repayment amount should be carried forward to be offset against any payment due in the next tax period. If the repayment is carried forward for three consecutive tax periods then a claim can be submitted for the repayment of any VAT remaining that has not been offset. The Comptroller then has one calendar month in which to make a repayment provided no further enquiries are necessary.

If over 50 percent of your supplies are subject to the zero rate of VAT, or your tax period is three months or longer (for example of you are filing quarterly or biannual returns), you do not need to wait three months to put in a claim (Part VII section 56 (5)).

It should be noted that if you owe any tax, interest, or any other unpaid tax such as property tax, the Comptroller can offset repayment against the unpaid taxes.

## What happens if you make both taxable and exempt supplies?

As input tax cannot be recovered on costs directly relating to or directly allocable to an exempt supply, Part V section 31 of the VAT Regulations requires an apportionment of any input tax that cannot be directly attributable to either exempt or taxable supplies. There is a standard formula for calculating this apportionment; however, the Comptroller can consider a different method where it is deemed reasonable in a particular case.

Financial institutions are treated differently as outlined in Part V section 32 of the VAT Regulations.

A financial service provider that makes both taxable and exempt supplies can only claim input tax on purchases and imports used in making taxable supplies. A bank or other Financial Institution can only claim input tax where the purchases or imports directly relate and are used wholly for the making of taxable supplies. A financial institution is defined in the VAT Bill as a financial institution within the meaning of the Financial Transactions Reporting Act which includes companies carrying on life assurance or insurance business.

This will have an impact on banks and financial institutions including insurance companies as although they may make taxable supplies, either in respect of fixed fee services or services provided to non-residents that are zero rated, most of the costs they incur will be overheads and it will be difficult to attribute them directly to a certain service provided.

Hotels that also provide gaming services (i.e. also have a casino) will also provide both exempt and taxable supplies and will only be able to recover a portion of the VAT incurred on their overhead costs.

We would suggest that these types of businesses consider proposing to and agreeing with the Comptroller a special method of apportionment that will give them a fair recovery of VAT on all costs.

Part IV section 26 of the VAT Regulations details how to treat a supply if it is a mixed supply or import that consists of both a taxable element and an exempt element.

## Exports

In accordance with the First Schedule Part I an export of goods from a place of business in The Bahamas is a supply made in The Bahamas and is subject to VAT at the zero rate where the goods are exported in accordance with the Customs Management Act by or on behalf of a taxable person and made in the course of a taxable activity.

In respect of services, Part II of the First Schedule section 6 lists services that can be zero rated when exported. These include professional services such as legal, accountancy and consultancy services but also most notably includes insurance services and financial services that are ordinarily exempt from VAT when provided in The Bahamas.

## Imports

Part VI deals with VAT on imported goods and services.

An importation of goods occurs at the time the goods are entered for home consumption whereas the importation of services occurs at the time the invoice is raised, or payment is made, or the service is completed, whichever event occurs first.

The value of the import of goods is the same as for customs duty under the Customs Management Act plus

- any customs duty, excise duty, environmental levy, or any other fiscal charge other than VAT; and
- any customs service charge payable.

The value of an imported service is generally the consideration paid in money or money's worth less any discounts or rebates. However, the value of a taxable importation of services is considered to be the "fair market value" where a person makes an importation of services for no consideration or less than market value and the supplier and the recipient are related persons.

VAT is due for payment at the time the goods enter home use and is payable by the importer or agent.

Both an importer and recipient (if different persons) are jointly and severally liable for the payment of VAT on the importation of a service. On completion of the service a VAT return must be submitted to the Comptroller and VAT paid:

- within 7 days of import if the recipient is not a taxable person; or
- where the recipient is an unregistered taxable person - by the date stated on the notice of assessment, or
- where the recipient is registered for VAT - within 28 days after the tax period in which the services were imported.

Part VI section 45 (5) states that import VAT is payable on imported goods or services "notwithstanding that the recipient of a supply of services is a registrant, if the importation of services is not for use in making taxable supplies".

## Special cases

There are specific regulations in relation to the following:

**Charities**

The Minister may approve a charity resident in The Bahamas during the tax year to be exempt from VAT to the extent that the services provided relate directly to the charitable function of the charity. The charity must distribute more than 50% of the funds received and no more than 50% of funds received can come from one source.

Under criteria prescribed by the Minister of Finance (and the VAT Rules) a charity may be able to recover VAT incurred on "qualifying goods and services" it receives in respect of its charitable activities.

**Auctioneers**

An auctioneer must apply for VAT registration from the date they become an auctioneer. In this respect the VAT registration limits do not apply.

An auctioneer must add VAT on to the amount of a successful bid or in the case of a sale out-of-hand, the purchase price.

**Diplomatic Missions and International Organisations**

Such organisations may, in relation to a transaction in respect of which they are exempt persons, claim a refund of VAT (but must register with the Comptroller).

**New businesses**

The Comptroller may, under Part VII section 51, register a person investing in a new business to carry on a taxable activity that has not yet commenced, who wishes to reclaim input tax in respect of the new investment made prior to registration. The claim for input tax deduction must relate to input tax paid only in the 24 months preceding registration.

**Second-hand car dealers**

A person who deals in second-hand cars and who is registered for VAT will need to apply the VAT fraction 3/43) to 70% of the selling price of a second-hand vehicle to calculate the amount of output tax due on the sale where

- when he purchased the car he was not charged VAT; and
- he charges VAT on the sale of the car at the standard rate.

A second-hand car dealer must also keep an accurate stock record for VAT purposes.

**Airport and ports**

The zero rate of VAT will apply to services in connection with a commercial ship or aircraft provided by a port authority, manager of an airport or airport authority to a non-resident person.

**Transfer of a going concern ("TOGC")**

The zero rate of VAT applies to the transfer of assets and services as part of a transfer of a going concern that undertakes a taxable activity provided the Comptroller is notified 14 calendar days prior to the sale or transfer of title and the conditions outlined in Part II section 16 of the VAT Regulations are complied with.

## What happens if you get it wrong?

The Comptroller has a range of powers at their disposal to recover any VAT that is due but remains unpaid. This includes the power to:

- seize goods and vehicles where such goods are considered to comprise of a taxable supply;
- commence distress proceedings;
- restrict the registration of registerable goods;
- recover the tax from the recipient of a supply in the case of fraud or misrepresentation by the recipient;
- require another person to act as agent for a supplier and recover sums from the agent in respect of VAT owed to the extent the agent owes money to the person liable or holds funds or property for the person liable;
- require payment from a receiver;
- make a representative responsible for payment of the VAT due; and
- temporarily close business premises.

It should also be noted that in accordance with Part IX section 76 a director or similar officer of a company is jointly and severally liable together with the company to pay VAT payable by the company, unless the Comptroller is satisfied that such a person exercised the degree of care, diligence and skill that a prudent person would exercise. To protect the directors from being liable for a VAT debt it will be necessary to be able to demonstrate a degree of care in the preparation of the returns, maintenance of accurate books and records in accordance with Part X, and, ensuring all returns and payments are made on time.

In addition, a person planning to leave The Bahamas for an indefinite or prolonged period of time who has an outstanding liability to pay VAT may not be permitted to leave the country without paying the tax or making satisfactory arrangements with the Comptroller.

The VAT Department can place a lien on any assets held by Customs or other Government departments until VAT is paid.

There is an appeals process although there is a time limit for lodging an objection and in most cases the lodging of an objection does not suspend the duty to pay the VAT due or assessed.

Offences, penalties, administrative fines and warning letters are all outlined in Part VIII of the VAT Regulations. The amount of a fine will depend on whether an offence is "minor", "serious" or "very serious". An offence can also result in imprisonment.

Interest is also due on any amount of VAT not paid by the due date

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## Additional guidance

It is envisaged that the Comptroller will be issuing a variety of more detailed rules and guidance including VAT guidance notes, VAT recommended practices and procedures, VAT practice directions and VAT Rules (which will have the force of law).

Businesses should stay current with such guidance and rules which may change on a more regular basis than the VAT Bill (and impending VAT Act) and VAT Regulations.

## KPMG Comment

This document contains a summary of the key points for businesses to consider. The real issues for individual businesses are in the detail. Each business will need to undertake:

- A complete review of the **legislation**, guidance notes, rules and other documents issued by the VAT Department to ensure that they thoroughly understand the legislation and regulations and how it will affect their specific business. Even businesses within the same industry are structured differently and something that will be an issue for one business may not be an issue for another.
- **Training** - It is important that all relevant personnel in an organisation understand the legislation so that they can implement it properly. For large organisations it will likely be necessary to implement a training program.
- A review of the business **structure** - is important to ensure that inter-company charges do not create a VAT cost and it may be possible to change the structure prior to the implementation of the regulations to prevent this. This might include applying for a group registration.
- A review of current **contracts** for all sales and purchases to understand how these will be treated once the business becomes VAT registered.
- A review of the **processes** and accounting infrastructure to ensure that the invoicing and sales receipt requirements can be complied with and that the necessary records are kept to complete the VAT returns accurately. The processes need to be robust with risk management checks put in place.
- A **quantification** of impact – some businesses will not be able to recover all the VAT they incur on purchases and this will create a cost to the business which will need to be financed.
- **Implementation** plan – considering the short time left before January 1, 2015, the effective date, a clear plan needs to be in place to ensure that all those involved recognise what needs to be done.

KPMG has established resources with extensive VAT experience to help businesses review and prepare should they wish.

## Contact us

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