CHAPTER 333A
VALUE ADDED TAX ACT

• Act • Subsidiary Legislation •

ACT

Act No. 23 of 2009

Amended by

Act No. 7 of 2011

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CHAPTER 333A
VALUE ADDED TAX ACT

An Act to introduce a broad based tax on the consumption of goods and services in Grenada, by providing for the imposition and collection of a value added tax, and for related matters.

[Act No. 23 of 2009 amended by Act No. 7 of 2011.]

[*To be proclaimed.*]

PART I

Preliminary

1. Short title and commencement

(1) This Act may be cited as the Value Added Tax Act.

(2) Subject to subsection (3), this Act comes into force on such day as the Minister may by Order appoint.

(3) To the extent necessary to give effect to the Value Added Tax (Transitional Provisions) Act, 2009, and to prepare for the implementation of VAT, this Act comes into force on the day the Act receives Royal assent.

2. Interpretation

(1) In this Act—

"acquisition", in relation to the recipient of a supply, means—

(*a*) the receipt of goods or services supplied to the recipient by the supplier;

(*b*) the receipt of goods or services by another person at the instigation of the recipient or under an agreement between the supplier and the recipient; and

(*c*) if another person is treated as making a supply to the person under this Act or the Regulations, a corresponding receipt of that supply;

"address", in relation to a supply of telecommunication services, has the meaning given in section 18(9);

"aircraft's stores" means stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft;

"ancillary transport services" means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and the storage of transported goods or goods to be transported;

"Appeal Commissioners" means the Appeal Commissioners appointed under section 88 of the Income Tax Act, Chapter 194;

"approved form" means a form approved under this Act or under any Act dealing with the administration of this Act;

"approved non-profit body" means a person designated as such in the Regulations;

"body of persons" means—

(*a*) a body politic, corporate, or collegiate; and

(*b*) a company, fraternity, fellowship, partnership, or society of persons, whether corporate or unincorporated, and includes a joint venture and a trust;

"business" includes any profession, vocation, trade, manufacture, venture or undertaking, any provision of personal services or technical and managerial skills, and any adventure or concern in the nature of trade;

"capital asset" means an asset, whether tangible or intangible, acquired by a person for use in the person's taxable activity but does not include—

(*a*) consumables or raw materials; or

(*b*) an asset acquired for the principal purpose of resale in the ordinary course of carrying on the person's taxable activity, whether or not the asset is to be sold in the form or state in which it was acquired;

"Common External Tariff" means the CARICOM Common External Tariff (SRO 37 of 1999) as set out in the Fifth Schedule to the Customs Act;

"company" means a company registered under the Companies Act, Chapter 58A;

"Comptroller" has the meaning given in the Income Tax Act, Chapter 149;

"Comptroller of Customs" has the meaning given in the Customs Act;

"condominium corporation" means a corporation created under section 13 of the Condominium Act, Chapter 60;

"consideration" has the meaning given in section 3;

"Customs Act" means the Customs Act, 1960;

"customs laws" means the Customs Act and any other law relating to customs, and includes a proclamation, rule, regulation, resolution, or order made under the authority of a law relating to customs;

"entertainment" has the meaning given in section 33(1);

"exempt", in relation to a supply or import, means—

(*a*) a supply or import that is specified as exempt under this Act, in a Schedule to this Act, or under the Regulations; or

(*b*) a supply of a right or option to receive a supply that will be exempt;

"exempt use" means the use of goods or services to make an exempt supply including where—

(*a*) goods or services initially acquired for the purpose of making supplies other than exempt supplies, or purposes including such purposes, are in fact used or consumed wholly in making exempt supplies; or

(*b*) goods or services are initially used wholly or partly for making non-exempt supplies, but at a later point in time (the time of the exempt use) an intention is formed to use them thereafter wholly in making exempt supplies,

and for this purpose, a wholly exempt use includes a use predominantly to make exempt supplies, if any use for other purposes of the taxable activity will constitute less than ten per cent of the use of the goods or services;

"export", in relation to a supply of goods, means the goods are delivered to, or made available at, an address outside Grenada, and for this purpose evidence of—

"exporter" has the meaning given to it under the Customs Act—

(*a*) the consignment or delivery of goods to an address outside Grenada; or

(*b*) the delivery of the goods to the owner, charterer, or operator of a ship or aircraft engaged in international transport for the purpose of carrying the goods outside Grenada is considered sufficient evidence that the goods have been exported, in the absence of proof to the contrary;

"face value", in relation to a voucher, means a monetary amount stated on the voucher (whether visibly, electronically, or otherwise) or associated with the voucher, (whether by means of a unique identification number or some other means of linking the voucher with the amount), including an amount added by recharging the voucher, where the amount represents the value of supplies of goods or services for which the voucher is redeemable;

"face value voucher" means a voucher which entitles the holder to receive a supply or supplies of goods or services up to the face value of the voucher;

"fair market value" has the meaning given in section 4;

"finance lease" means—

(*a*) a hire purchase agreement; or

(*b*) a lease, other than a lease of land, that is treated as a finance lease under international financial reporting standards;

"gambling event" means—

(*a*) the conduct of a lottery or raffle, or similar undertaking; or

(*b*) a race, game, sporting event, or any other event which has or is intended to have an outcome;

"gambling supply" means—

(*a*) a supply of a ticket (however described) in a lottery, raffle or similar undertaking; or

(*b*) the acceptance of a bet (however described) relating to the outcome of a gambling event;

"goods" means real property or tangible personal property, but does not include money;

"government entity" means—

(*a*) the Government of Grenada or a department, division, or agency of Government;

(*b*) a body, agency, or authority owned or operated by the Government of Grenada; or

(*c*) a local authority, council, or similar body, whether or not that department, division, agency, body, authority, or council would otherwise be treated as a separate person;

"holiday or hotel accommodation" means—

(*a*) a supply of accommodation in a building, part of a building, or a group of buildings (including all structures within the curtilage thereof) that constitute a hotel, motel, boarding house, guest house, hostel, an inn, a villa, or similar establishment in which lodging is regularly or normally provided to four or more persons at a daily, weekly, monthly, or other periodic charge; or

(*b*) a supply of accommodation not covered by paragraph (*a*), if the accommodation is held out for use for short-term occupation by individuals other than as their main residence;

"home use" means that goods have completed the required customs clearance formalities, are no longer subject to customs control and are therefore available for free circulation in Grenada;

"import" has the meaning given in the Customs Act;

"importer" has the meaning given in the Customs Act;

"individual" means a natural person;

"input tax" means—

(*a*) in relation to an acquisition by a person, the VAT chargeable on the supply to the person, of the goods or services acquired;

(*b*) in relation to an import of goods by a person, the VAT chargeable on that import; and

(*c*) any amount that is treated as input tax under this Act or the Regulations;

"input tax credit" means a credit for input tax allowed under section 34 or under any other provision of this Act or the Regulations;

"international assistance agreement" means an agreement between the Government and a foreign government or public international organisation for the provision of financial, technical, humanitarian, or administrative assistance to the Government;

"international transport" means—

(*a*) the services, other than ancillary transport services, of transporting passengers or goods by road, water, or air—

(i) from a place outside Grenada to another place outside Grenada,

(ii) from a place outside Grenada to a place in Grenada, or

(iii) from a place in Grenada to a place outside Grenada;

(*b*) the services of transporting passengers from a place in Grenada to another place in Grenada to the extent that those services are supplied, as part of the supply of services to which paragraph (*a*) applies and by the same supplier;

(*c*) the services, including ancillary transport services, of transporting goods from a place in Grenada to another place in Grenada to the extent that those services are supplied as part of the supply of services to which paragraph (*a*) applies and by the same supplier; or

"invoice" means a document notifying an obligation to make a payment;

"lay-away agreement" has the meaning given in section 25(1);

"Minister" means the Minister with responsibility for finance;

"money" means—

(*a*) any coin or paper currency (whether of Grenada or of another country);

(*b*) a negotiable instrument used or circulated, or intended for use or circulation, as currency (whether of Grenada or of another country);

(*c*) a bill of exchange, promissory note, bank draft, postal order, money order, or similar instrument; or

(*d*) whatever is supplied as payment by way of—

(i) credit card or debit card, or

(ii) crediting or debiting an account,

but does not include a collector's piece or an item of numismatic interest;

"non-resident" means—

(*a*) a person who is not resident in Grenada; and

(*b*) a person referred to in paragraph (*d*) of the definition of resident, to the extent that the person is not treated as a resident by that paragraph;

"officer" of an unincorporated body means—

(*a*) in the case of a partnership, a partner of the partnership;

(*b*) in the case of a trust, a trustee of the trust; and

(*c*) in the case of any other unincorporated body—

(i) a person who holds office as chairperson, president, treasurer, secretary, or similar office of the body,

(ii) if there is no such officer, a member of a committee that has management of the affairs of the body, or

(iii) if no person can be identified under subparagraph (i) or (ii), a member of the body;

"output tax", in relation to a person, means—

(*a*) the VAT chargeable in respect of a taxable supply made or treated as having been made by the person; and

(*b*) any amount that is required, under this Act or the Regulations, to be treated as output tax of the person;

"partnership" means two or more persons carrying on a taxable activity jointly;

"passenger vehicle" has the meaning given in section 33(1);

"person" means an individual, a company or other body of persons, a government entity, a foreign government;

"phone card" means a card or other item in whatever form it is issued, including electronically, which entitles the holder to receive telecommunications services, whether or not it also entitles the holder to receive other goods or services, and includes a prepaid mobile phone card, a rechargeable card or similar item, and a unique identification number or other identifier that represents a payment or prepayment for airtime;

"prepaid telecommunications account" means a prepaid mobile phone account or any other account with a telecommunications supplier that records amounts that have been prepaid by a customer and can be used by the customer to pay for telecommunication services, including an account that can also be used to pay for supplies of goods or services other than telecommunications services;

"progressive or periodic supply" means—

(*a*) a supply of goods or services made progressively or periodically under an agreement or law that provides for progressive or periodic payments; or

(*b*) a supply of goods by way of a lease, hire, or licence (including a finance lease);

"Promoter of public entertainment" means a person who arranges the staging of entertainment to which the general public is invited, but does not include—

(*a*) an educational institution [illegible] item 9 of paragraph (1) of the Fourth Schedule or the board of management or a parent teacher association [illegible] institution;

(*b*) a person who provides entertainment on a daily or weekly basis;

(*c*) a church incorporated by statute or approved by the Minister; or

(*d*) an approved non-profit body;

"Public entertainment" including musical entertainment, theatrical performances, comedy performances, circus show connected with a similar event to which the public is invited for a fee;

"real property" includes an estate, interest, easement, or right, whether equitable or legal, in, to, or out of land, including anything attached to land or things permanently fastened to anything attached to land;

"recipient" means the person to whom a supply is made;

"registered" in relation to a person, means that the person is registered for VAT;

"registration threshold" means the threshold set out in section 9(2);

"Regulations" means Regulations made under this Act;

"related persons" has the meaning given in section 5;

"repealed taxes" has the meaning given in the Value Added Tax (Transitional Provisions) Act, Chapter 333B;

"representative" means, in the case of—

(*a*) an individual under a legal disability – a guardian or manager who receives or is entitled to receive income on behalf of, or for the benefit of, the individual;

(*b*) a company, other than a company in liquidation – the chief executive officer of the company;

(*c*) an unincorporated association or body – a member of the committee of management of the association or body;

(*d*) a government entity – an individual responsible for accounting for the receipt or payment of monies or funds on behalf of the entity;

(*e*) a local authority, council, or similar body – an individual responsible for accounting for the receipt or payment of monies or funds on behalf of the authority, council, or body;

(*f*) a partnership – a partner in the partnership;

(*g*) a trust, including an estate of a deceased person – a trustee of the trust or an executor or administrator of the estate;

(*h*) a foreign government or a political subdivision of a foreign government an individual responsible for accounting for the receipt or payment of monies or funds in Grenada on behalf of that government or political subdivision of government;

(*i*) any other body of persons not mentioned above – a person who is responsible for accounting for the receipt or payment of monies or funds on behalf of the body;

(*j*) a non-resident person – a person controlling the person's affairs in Grenada, including a manager of a business of such person in Grenada;

(*k*) any person – a receiver or agent of the person; and

(*l*) any person – a person that the Comptroller has, by notice in writing, declared to be a representative of the person for the purposes of this Act;

"resident" means—

(*a*) a government entity or a Grenadian local government authority, council, or similar body;

(*b*) a person resident in Grenada for the year in question for the purposes of the Income Tax Act, Chapter 149;

(*c*) a person, other than an individual, formed or created under a law of Grenada or managed and controlled in Grenada (whether or not that person is resident in Grenada for the year in question, for the purposes of the Income Tax Act, Chapter 149); or

(*d*) any other person to the extent that the person carries on a taxable activity through a fixed place in Grenada;

"residential premises" means land or a building that is occupied or capable of being occupied as a residence, but a supply of hotel or holiday accommodation is not a supply of residential premises;

"reverse charge", in relation to an acquisition of services, means that the recipient of the supply is liable for VAT on the supply of the services under section 22;

"reviewable decision" means a decision that may be objected to or appealed under Part XVIII;

"sales receipt" means a document that a supplier is required to issue under section 38;

"services", in the context of a supply, has the meaning given in section 6(2);

"ship's stores" means stores for the use of the passengers or crew of a ship, or for the service of a ship;

"stores" in the definitions of "aircraft's stores" and "ship's stores", includes goods (for use in the aircraft or ship), fuel, and spare parts, and other articles or equipment, whether or not for immediate fitting;

"supplier", in relation to a supply, means the person or persons who make the supply;

"supply" means a supply of goods or services as defined in section 6;

"taxable person" means—

(*a*) a person who is registered; and

(*b*) subject to the limitations set out in section 9(7), 10(3) or 11(3), whichever is applicable, a person who is required to be registered;

"taxable supply" means—

(*a*) a supply made in Grenada by a taxable person in the course or furtherance of a taxable activity, except to the extent that the supply is an exempt supply; and

(*b*) a supply on which VAT is required to be reverse charged under section 22;

"tax fraction" has the meaning given in section 19(1);

"tax period" means a calendar month;

"taxable acquisition" means the acquisition of a taxable supply;

"taxable activity" has the meaning given in section 7;

"taxable import" means an import of goods other than an exempt import;

"taxation officer" means a person acting on the behalf of the Comptroller or the Comptroller of Customs;

"taxpayer identification number" or "TIN" means the number issued by the Comptroller to a person for the purposes of the person's registration under this Act;

"telecommunications services" means the transmission, emission, or reception of signals, writing, images, sounds or information of any kind by wire, radio, optical, or other electromagnetic systems, and includes—

(*a*) the related transfer or assignment of the right to use capacity for such transmission, emission, or reception; and

(*b*) the provision of access to global or local information networks, but does not include the supply of the underlying writing, images, sounds, or information;

"telecommunications supplier" means a supplier of telecommunications services;

"thing"—

(*a*) in the context of a supply or acquisition means the goods or services that are the subject matter of the supply or acquisition;

(*b*) in the context of an import, means the goods imported;

"total amounts wagered" has the meaning given in section 24(1);

"total monetary prizes" has the meaning given in section 24(1);

"travel agent" means an agent, tour operator, hotel operator, or person acting in a similar capacity, who makes supplies of rights to receive accommodation, meals, tours, entertainment, or similar goods or services commonly provided to tourists or international visitors (whether alone or as part of a holiday or tour package);

"trust", in the context of the definition of a person, means the person or persons acting from time to time in the capacity of trustee of a particular trust estate;

"trust estate", means property held by a person or persons acting as trustee;

"value"—

(*a*) in relation to a supply, has the meaning given in section 19; and

(*b*) in relation to an import, has the meaning given in section 31;

"VAT" or "Value Added Tax" means the tax imposed under this Act, and includes any amount to the extent that it is treated as VAT for the purposes of this Act;

"VAT adjustment event" has the meaning given in section 20(1), including as affected by section 21;

"VAT commencement day" means the day on which the Act comes into force under section 1(2);

"VAT credit note" or "credit note" means a document that a supplier is required to issue under section 39(1);

"VAT debit note" or "debit note" means a document that a supplier is required to issue under section 39(2);

"VAT-exclusive fair market value" means the fair market value of a supply or thing, reduced, if it were worked out on the basis that the transaction price would include VAT, by an amount equal to the tax fraction of that value;

"VAT invoice" means a document that a supplier is required to issue under section 37(1);

"VAT properly chargeable", in the context of a VAT adjustment event, means the VAT that would have been chargeable—

(*a*) where the VAT adjustment event has the effect of cancelling the supply, if the goods or services returned had not been supplied; or

(*b*) in any other case, if the VAT adjustment event had taken place before the value of the supply was calculated for the purposes of issuing the tax invoice or receipt that was, or should have been, issued for the supply;

"VAT return" means a return, including an amended return, that a taxable person is required to lodge under Division 1 of Part X or under any other provision of this Act or any Act dealing with the administration of this Act;

"voucher" means a government issued voucher, stamp, token, coupon, or similar article, including an article issued electronically, that can be redeemed by the holder for supplies of goods or services, and includes a phone card and a prepaid telecommunications account but does not include a postage stamp;

"zero-rated" in relation to a supply or import, means—

(*a*) a supply or import that is specified as zero-rated under this Act, in a Schedule to this Act, or under the Regulations; or

(*b*) a supply of a right or option to receive a zero-rated supply.

(2) In the Schedules to this Act, the classification and description of goods which bear heading numbers designated in the Common External Tariff, as set out in the Fifth Schedule to the Customs Act, are to be interpreted in accordance with the General Rules for Interpretation of the Harmonised System set out in that Schedule.

3. Consideration

(1) Consideration, in relation to a supply or an acquisition, means the total of the following amounts—

(*a*) the amount in money paid or payable by any person, whether directly or indirectly, in respect of, in response to, or for the inducement of the supply; and

(*b*) the fair market value of anything paid or payable in kind, whether directly or indirectly, by any person in respect of, in response to, or for the inducement of the supply,

reduced by any price discounts or rebates allowed and accounted for at the time of the supply.

(2) Examples of amounts included in consideration under subsection (1) are amounts paid to reimburse the supplier for duties, levies, fees, charges, and taxes (including VAT), paid or payable by the supplier on, or by reason of, the supply.

(3) For the avoidance of doubt, consideration does not include anything given by a person as an unconditional gift to an approved non-profit body.

(4) The Minister may prescribe that a payment made to a government entity in relation to a particular class of transactions, is not to be treated as consideration for a supply by the government entity.

4. Fair market value

(1) The fair market value of a supply of goods or services, including anything provided as in-kind consideration for another supply, is—

(*a*) the consideration the supply would fetch in an open market transaction freely made between unrelated persons; or

(*b*) if it is not possible to determine an amount under paragraph (*a*), the consideration a similar supply would fetch in an open market transaction freely made between unrelated persons, adjusted to take account of the differences between such supply and the actual supply,

determined on the basis of the market conditions, including the registration status of the supplier, prevailing at the time and place of the actual supply.

(2) For the purpose of subsection (1)(*b*), one supply is similar to another if it is the same as, or closely resembles, the other supply in character, quality, quantity, functionality, materials, and reputation.

(3) If the fair market value of a supply cannot be determined under subsection (1), it may be determined using any method approved by the Comptroller, for calculating an objective approximation of the consideration the supply would fetch in an open market transaction freely made between unrelated persons.

(4) If a provision of this Act requires the fair market value to be determined for particular goods or services, or for a particular asset, that value is worked out under this section by reference to the value that a supply of those goods or services, or that asset, would fetch in a transaction freely made under appropriate market conditions.

5. Related persons

(1) Persons are "related persons" if—

(*a*) they are officers or directors of one another's business;

(*b*) in the case of a partnership, they are a partner and that partnership, and the partner, either alone or together with persons who are related to the partner under another paragraph of this definition, owns twenty-five per cent or more of the rights to income or capital of the partnership;

(*c*) they are a shareholder and a company limited by shares in which the shareholder, either alone or together with persons who are related to the shareholder under another paragraph of this definition—

(i) controls twenty-five per cent or more of the voting power in the company, or

(ii) owns twenty-five per cent or more of the rights to distributions of income or capital by the company;

(*d*) in the case of two companies, a person directly or indirectly, either alone or together with persons who are related to the person under another paragraph of this definition, owns, controls, or holds twenty-five per cent or more of the voting power or the rights to distributions of income or capital in both of them;

(*e*) one of them directly or indirectly controls the other;

(*f*) both of them are directly or indirectly controlled by a third person;

(*g*) together they directly or indirectly control a third person;

(*h*) they are members of the same family; or

(*i*) in the case of a trust, they are the trust and a person who is or may be a beneficiary of that trust or, in the case of an individual, whose relative is or may be a beneficiary of the trust.

(2) Persons who are associated in business with one another in that one is the sole agent, sole distributor, or sole concessionaire, however described, of the other, are related persons only if they fall within the criteria of subsection (1).

(3) For the purposes of this section, one person controls another if the former is legally or operationally in a position to exercise direction over the latter.

(3A) For the purposes of subsection (1) (*h*) family means—

(*a*) a parent

(*b*) a sibling

(*c*) a child by blood, adoption or marriage; or

(*d*) a spouse.

6. Supplies

(1) A supply of goods means—

(*a*) a sale, exchange, or other transfer of the right to dispose of goods as owner;

(*b*) a lease, hire, or other right of use granted in relation to goods, including a supply of goods under a finance lease; or

(*c*) anything that is deemed to be a supply of goods by this Act or by the Regulations.

(2) Anything that is not a supply of goods or money is a supply of services, including—

(*a*) the grant, assignment, termination, or surrender of a right;

(*b*) the making available of a facility, opportunity, or advantage;

(*c*) refraining from or tolerating an activity, a situation, or the doing of an act;

(*d*) the issue of a licence, permit, certificate, concession, authorisation, or similar document; or

(*e*) anything that is deemed to be a supply of services by this Act or by the Regulations.

(3) A progressive or periodic supply is treated as a series of separate supplies as follows—

(*a*) if the supply is made progressively or periodically under an agreement or law that provides for progressive or periodic payments—

(i) each progressive or periodic part of the supply is treated as a separate supply, or

(ii) if the progressive or periodic parts of such a supply are not readily identifiable, each separate supply corresponds to the proportion of the supply to which each separate part of the consideration relates;

(*b*) if the supply involves a lease or hire of goods—

(i) if payment is made progressively or periodically, each separate supply corresponds to the proportion of the supply to which each separate part of the consideration relates, or

(ii) in any other case, each separate supply corresponds to each tax period, to the extent that the period of the lease or hire occurs during that tax period.

(4) If a taxable person is or has been allowed an input tax credit in respect of part or all of the input tax incurred on the acquisition or importation of the goods or services, and the person—

(*a*) applies goods or services wholly to a private or exempt use; or

(*b*) having used goods wholly or partly in its taxable activity, applies them in the manner described in paragraph (*a*) from a particular time onwards,

the application is treated as a supply of the goods or services.

(5) A supply of a particular kind ("the incidental supply") that is ancillary or incidental to a supply of another kind ("the principal supply"), is treated as part of the principal supply.

(6) A supply that is ancillary or incidental to an import of goods is treated as part of the import of goods.

(7) Subject to subsections (5) and (6), the Minister may prescribe that a supply of goods and services is treated as a supply of goods or a supply of services, or that a supply consists of multiple supplies.

(8) The Minister may prescribe that something that would otherwise be a supply is not a supply, or *vice versa*, for the purposes of this Act.

7. Taxable activity

(1) Taxable activity means an activity carried on continuously or regularly by a person, whether or not for profit, if the activity involves or is intended to involve the supply of goods or services to another person, and includes the carrying on of any business, but does not include—

(*a*) the activities of an employee providing services in that capacity to an employer;

(*b*) activities performed as a director of a company except where, in carrying on any business, the person accepts an office and supplies services as the holder of that office, in which case those services are regarded as being supplied in the course or furtherance of the business;

(*c*) an activity carried on by an individual as a private recreational pursuit or hobby;

(*d*) an activity carried on by a person other than an individual which, if carried on by an individual, would fall within paragraph (*c*);

(*e*) an activity carried on by a government entity, except to the extent that the activity involves making supplies of goods or services that are also supplied,

or likely to be supplied, in Grenada by at least one person for profit who is not a government entity.

(2) A taxable activity includes anything done or undertaken during the commencement or termination of a taxable activity.

PART II

Imposition of Value Added Tax

8. Imposition of Value Added Tax and persons liable

(1) Value Added Tax is levied on—

(*a*) a taxable supply; and

(*b*) a taxable import.

(2) The amount of VAT chargeable on a taxable supply or import is computed by applying the rate specified in subsection (3) to the value of the taxable supply or import.

(3) The rate of VAT applicable to a taxable supply or import is—

(*a*) if the supply or import is zero-rated, zero per cent;

(*b*) if the supply is a supply of hotel or holiday accommodation, or is a taxable supply, however, in accordance with paragraph (2) of the Fourth Schedule, the supplier chooses not to treat the supply as exempt under item 6 or 7 of paragraph (1) of that Schedule, ten per cent; or

(*c*) to the extent provided in the Regulations, ten per cent of the value of a taxable supply by a taxable person of the dive activity portion of a dive package;

(*d*) if the supply or an import is of a kind for which a special rate is specified in another Act or in the Regulations, that rate;

(*e*) in any other case, fifteen per cent.

(4) The VAT chargeable—

(*a*) on a taxable supply, is the liability of the supplier and must be accounted for to the Comptroller according to the formula in section 32, unless otherwise specified under this Act; and

(*b*) on a taxable import, must be paid to the Comptroller of Customs by the importer at the time of import.

(5) For the purposes of subsection (4), if a non-resident principal makes a taxable supply or a taxable import through a resident agent, the VAT payable under that subsection is payable by the resident agent and not by the non-resident principal.

(6) Subsection (5) does not apply if the non-resident agent is a person who carries on a taxable activity through a fixed place in Grenada, and is a taxable person under this Act at the time of the supply.

(7) Notwithstanding subsection (5), the Comptroller may, under Part XVII of this Act or under any other Act providing for recovery of VAT under this Act, recover all or part of the VAT payable, including any penalties and interest thereon, against either or both of the principal and the agent, but may not recover more than the full amount properly payable under this Act.

(8) No person, class of persons, transaction, class of transactions, import, or class of imports is exempt from VAT, except as provided by this Act or the Regulations—

(*a*) exemptions of a general nature or application should be provided for in this Act or the Regulations; and

(*b*) exemptions of an isolated or specific nature, or in relation to a particular transaction or event, may be provided for in a law specifically dealing with the person, event, or transaction for which the exemption is granted.

PART III

Registration

9. Persons exceeding threshold required to be registered

(1) A person is required to be registered under this Act if on the last day of any month—

(*a*) the person exceeds the registration threshold in the period of twelve months ending on that day;

(*b*) the person exceeds one-third of the registration threshold in the period of four months ending on that day, unless there are reasonable grounds to expect, that in that period and the following eight months, the person will not exceed the registration threshold; or

(*c*) there are reasonable grounds to expect that the person will exceed the registration threshold in the twelve month period commencing on the following day.

(2) A person exceeds the registration threshold in a particular period if the total value of supplies made or likely to be made, by the person in the course or furtherance of a taxable activity during that period, is equal to, or greater than, one hundred and twenty thousand dollars.

(3) (*a*) In determining whether a person exceeds the registration threshold under subsection (2) the value of supplies made by the person is treated as if it did not include—

(i) the value of a supply that is not taxable or that would not be a taxable supply if the person were registered,

(ii) the value of a supply by way of sale of one or more capital assets of the person,

(iii) the value of a supply made solely as a consequence of the person selling the person's taxable activity or part of that taxable activity, or

(iv) the value of supplies made solely as a consequence of the person permanently ceasing to carry on its taxable activity,

(*b*) the value of supplies made by the person includes the value of goods and services acquired by the person if the person would, if registered, be required to reverse charge the VAT on those supplies under section 22; and

(*c*) the Comptroller may require the person to treat the value of supplies made by that person, as including the value of supplies made by a related person, if the Comptroller is satisfied that it is appropriate to do so due to the nature of the activities carried out by the related person, the way in which the taxable activities of the taxable person and the related person are carried on, the connections between those persons or between the activities carried on by them, or any other relevant factors.

(4) A person who is required to be registered under this section, shall apply for registration to the Comptroller in the prescribed form no later than fourteen days after the day on which the person became required to be registered.

(5) A resident agent acting on behalf of a non-resident principal is required to be registered under subsection (1), if the non-resident principal is required to be registered under that subsection.

(6) A non-resident supplier who is required to be registered, may choose not to apply for registration, if all the taxable supplies or imports made by the supplier are made through one or more resident agents who are registered.

(7) Paragraph (*b*) of the definition of a taxable person does not apply to a person—

(*a*) on or before the day on which an application for registration is required to be made, as specified in subsection (4); nor

(*b*) if the person submitted an application for registration on or before the required day, but the application has not yet been processed by the Comptroller, and for this purpose, a defective application is treated as properly submitted, so long as the defects do not prevent the Comptroller from clearly identifying the applicant.

(8) A person who is required to register because of subsection (3)(*c*), is treated as being required to register on the last day of the month in which the person receives a notice from the Comptroller applying that paragraph to the person.

10. Suppliers of public entertainment required to be registered

(1) A person who is a promoter of public entertainment, or a licensee or proprietor of a place of public entertainment, is required to be registered whether or not the person exceeds the registration threshold.

(2) A person who is required to be registered under subsection (1), must lodge an application for registration with the Comptroller in the approved form no later than one month before the day on which the person first makes a supply in relation to the entertainment, including but not limited to—

(*a*) a supply of a ticket, right of entry, or other right entitling a person to receive the proposed entertainment;

(*b*) a supply of merchandising products relating to the entertainment;

(*c*) a supply of a lease, licence, or other right to occupy or use a place for public entertainment;

(*d*) a supply in the nature of advertising or promotional services or rights, including a supply in the nature of sponsorship of the event; and

(*e*) a supply of the right to sell goods or services at a place of public entertainment, at or around the time when the entertainment is to be provided.

(3) For the purposes of paragraph (*b*) of the definition of taxable person, a person who is required to be registered under subsection (1), but is not registered, is treated as a taxable person from the day before the first day on which the person makes any form of supply in relation to the entertainment.

(4) A person who is required to be registered under subsection (1) is prohibited from making a supply in relation to the entertainment, including a supply specifically listed in subsection (2), before the person is registered.

(5) For the purposes of applying subsections (2), (3) and (4) and any provisions of this Act or the Regulations imposing penalties or offences in relation to those subsections, the time at which a supply is made is the earliest of the time when—

(*a*) an invoice for the supply is issued by the supplier;

(*b*) any of the consideration for the supply is paid by the recipient; or

(*c*) the supply actually takes place, being—

(i) for a supply of goods, when the goods are delivered or made available, or

(ii) for a supply of services, when the services are performed,

and, for the avoidance of doubt, the supply of a ticket is a supply of services, being the grant of a right, and is performed when the ticket is given to the recipient or to any person at the direction of the recipient, or is put aside by the supplier to be held for the recipient.

11. Government entities and local authorities required to be registered

(1) A government entity that carries on a taxable activity through which it makes supplies that would be taxable if the person were registered, is required to be registered, and shall apply for registration irrespective of whether it exceeds the registration threshold.

(2) A person who is required to be registered under subsection (1), shall apply for registration no later than one month before the day on which the person becomes required to be registered.

(3) For the purposes of paragraph (*b*) of the definition of taxable person, a person who is required to be registered under subsection (1), but does not apply within the required time, is treated as a taxable person from the later of the VAT commencement day, or the day on which the person becomes required to be registered.

12. Registration of person wishing to carry on investment

(1) Where a person intends to make a taxable supply by means of an investment pursuant to the provisions of the Grenada Investment Promotion Act, Chapter 131B, and such person does not exceed the registration threshold, he or she shall be required to be registered pursuant to the provisions of this Act.

(2) For the purposes of this section, "investment" means the direct contribution of foreign or domestic capital by an investor, including the creation or acquisition of business assets by, or for a business enterprise, and includes the expansion, restructuring, improvement or rehabilitation of a business enterprise; and the word "invest" shall be construed accordingly.

13. Voluntary registration

(1) A person who is not required under this Act to be registered, may apply for registration at any time if the person makes, or intends to make, supplies that would be taxable if the person were registered and shall, in addition to an application in the approved form, provide the Comptroller with such additional information, if any, in relation to the application as the Comptroller reasonably requests.

(2) Where the Comptroller is satisfied that—

(*a*) the person is making, or will make, supplies that would be taxable if the person were registered;

(*b*) the person has a fixed place at which the person's taxable activity is carried on;

(*c*) there are reasonable grounds to believe that the person will keep proper records and lodge regular and reliable VAT returns; and

(*d*) if the person has commenced carrying on a taxable activity, the person has—

(i) kept proper records in relation to its taxable activity, and

(ii) complied with its obligations under other taxation laws, including the customs laws,

he or she may register the person in accordance with the provisions of this Act.

(3) If a person makes an application under this section and the Comptroller is satisfied that the person is required to be registered, the Comptroller shall treat the application as made under section 14.

14. Registration

(1) If a person applies for registration and the Comptroller is satisfied that the person is required to be registered, the Comptroller shall—

(*a*) register the person; and

(*b*) within twenty-one days after the day on which the application was made, notify the person in writing of the registration, the day on which it takes effect, and of the TIN issued to the person.

(2) Where the Comptroller registers a person under subsection (1), the registration takes effect on the first day of the month commencing at least fourteen days after the day on which the Comptroller notifies the person of the registration, unless the registered person agrees to an earlier date of effect.

(3) If the Comptroller has reasonable grounds to believe that a person other than a non-resident to whom section 9(6) applies is required to be registered, he or she shall issue a notice in writing to the person to that effect and shall—

(*a*) register the person; and

(*b*) no later than twenty-one days before the day on which the registration takes effect, notify the person in writing of the registration, the day on which it takes effect, and the TIN issued to the person.

(4) Where the Comptroller registers a person under subsection (3), the registration takes effect on the day specified in the notice of registration given by the Comptroller to the person, provided that the registration must not take effect before the day on which, subject to section 9(7), 10(3) or 11(3), whichever is applicable, the person is treated as a taxable person under paragraph (*b*) of the definition of taxable person.

(5) A notice given under subsection (3) must clearly state the information from which the Comptroller has concluded that reasonable grounds exist for believing that the person is required to be registered.

(6) A notice given under subsection (5) may be revoked by the Comptroller at any time by a later notice in writing given to the person, and the declaration in the original notice shall cease to have effect from the date specified in the revocation notice.

(7) Where a person who is not required to be registered applies for registration under section 13—

(*a*) the Comptroller shall, within twenty-one days, notify the person in writing of the decision on the application; and

(*b*) if the Comptroller decides to register the person—

(i) the notice shall state the day on which the registration takes effect and the TIN issued to the person, and

(ii) the registration shall take effect on the day requested by the person in the application, or such later day as the Comptroller reasonably determines to be the day on which the person will commence carrying on a taxable activity, but unless the person agrees to an earlier date, shall not take effect less than fourteen days after the day on which notice is given to the person.

(8) The Comptroller shall issue a registered person with a Value Added Tax Registration Certificate in the approved form, stating the day on which the registration takes effect and the person's TIN.

(9) If the Comptroller decides not to register a person who applies for registration, the Comptroller shall, within twenty-one days of receiving the application, notify the person by notice in writing, stating the reasons for the decision and outlining the person's rights to object and appeal against the decision under Part XVIII.

(10) A registered person shall display in a prominent position—

(*a*) at the principal place at which the person carries on its taxable activity, the person's original VAT registration certificate; and

(*b*) at every other place from which the person carries on its taxable activity, a certified copy of the certificate, which must be obtained from the Comptroller.

(11) A registered person shall notify the Comptroller in writing of a change in the name (including business name or other trading name), address, place of business, nature, pursuant to paragraph (*b*) [illegible] circumstances of the taxable activity carried on by the person within twenty-one days of the change occurring.

15. Cancellation of registration

(1) A registered person who ceases to make taxable supplies shall, within fourteen days of the date on which the person ceased making taxable supplies, apply to the Comptroller for a cancellation of its registration.

(2) A registered person, who is no longer required to be registered but continues to make taxable supplies, may apply to the Comptroller for a cancellation of its registration.

(3) The Comptroller shall, by notice in writing, cancel the registration of a person who makes an application under subsection (1) or (2), if the Comptroller is satisfied that the person is no longer eligible to be registered under the Act.

(4) Notwithstanding subsections (1), (2) and (5), the Comptroller shall, by notice in writing, cancel the registration of a person who has not applied for cancellation if the Comptroller is satisfied that the person has ceased making taxable supplies.

(5) The Comptroller may cancel the registration of a person who is no longer required to be registered, if the Comptroller is satisfied that—

(*a*) the person does not have a fixed place at which the person's taxable activity is carried on;

(*b*) the person has not kept proper records of its business;

(*c*) the person has not lodged regular and reliable VAT returns; or

(*d*) the person has not complied with its obligations under other taxation laws, including the customs laws, and there are reasonable grounds to believe that the person will not keep proper records or lodge regular and reliable VAT returns.

(6) The cancellation of a person's registration takes effect from the day set out in the notice of cancellation, which must not be less than two years after the day on which the registration commenced unless the person has ceased making taxable supplies or the Comptroller considers it appropriate that the cancellation should take effect from an earlier day.

(7) A person whose registration is cancelled is treated as having made a taxable supply of goods or services on hand at the time the registration is cancelled, but only if the person was allowed an input tax credit in respect of the acquisition or importation of those goods or services, or in respect of the acquisition of goods or services which have been subsumed into those goods or services.

(8) The taxable supply referred to in subsection (7) is treated as having been made—

(*a*) immediately before the cancellation of the person's registration; and

(*b*) for a value equal to—

(i) if the goods or services have been used in the person's taxable activity, the lesser of the fair market value of the goods on that day, or the consideration paid or payable for the acquisition of the goods or services by the person, reduced, in either case, by the tax fraction of that amount, or

(ii)if the goods or services have not been used in the person's taxable activity, the consideration paid or payable for the acquisition of the goods or services by the person, reduced by the tax fraction of that amount;and to the extent that the deemed supply relates to goods imported by the person, references in this paragraph to the consideration paid or payable by the person for the acquisition of the goods, should be taken to refer to the value of the import.

(9) If a person's registration is cancelled, the person shall—

(*a*) immediately cease to hold out in any way that the person is a registered person;

(*b*) immediately cease to use any documents (including VAT invoices, receipts, credit notes, and debit notes) that identify the person as a registered person;

(*c*) immediately return the person's VAT Registration Certificate, and any certified copies thereof, to the Comptroller; and

(*d*) within twenty days after the date of cancellation of the person's registration, lodge a final VAT return and pay all VAT due, including VAT, if any, due as a result of subsection (7).

(10) An application for cancellation of registration shall be in the prescribed form.

16. Register of persons registered for VAT

(1) The Comptroller shall maintain a register of persons registered for VAT, which must include an accurate and up-to-date record of all registered persons and must state—

(*a*) the name and address of the registered person;

(*b*) the trading name or names, if any, under which the registered person carries on its taxable activities;

(*c*) the TIN of that person; and

(*d*) the date on which the registration commenced.

(2) If the Comptroller cancels the registration of a person—

(*a*) the Comptroller shall ensure that the person's entry remains in the Register for at least six months after the date of cancellation, and that the Register clearly shows that the registration has been cancelled and the date from which it was cancelled; and

(*b*) after six months the Comptroller may remove the person's entry from the Register, provided that the Comptroller retains full and accurate historical records of persons removed from the Register.

(3) The Register under subsection (1) shall be published by the Comptroller.

(4) For the purposes of complying with obligations arising under this Act or the Regulations—

(*a*) it shall not be reasonable for a taxable person to believe that another person is registered for VAT, if that other person is not listed as registered on the published Register; and

(*b*) where the other person is not so listed, if the taxable person has, or should have reason to suspect, that a person not listed is in fact registered, the taxable person may request the Comptroller in writing to confirm the other person's registration status and shall be entitled to rely on the Comptroller's response.

PART IV

Basic Rules Relating to Supplies

17. Time of supply

(1) Except as otherwise provided, a supply of goods or services is treated as being made at the earlier of the time when—

(*a*) an invoice for the supply is issued by the supplier; or

(*b*) any of the consideration for the supply is received.

(2) Notwithstanding subsection (1), if the supplier and recipient are related persons, or if the Comptroller is of the opinion that a supplier and recipient have colluded to defer the time of payment for VAT, by deferring the issue of an invoice or the payment of consideration, a supply of goods or services is treated as being made at the earliest of the date determined under subsection (1), or the date on which—

(*a*) for a supply of goods, the goods are delivered or made available; or

(*b*) for a supply of services, the services are performed.

(3) An application of goods or services to a private or exempt use, that is treated as a supply of goods or services under section 6(4), is treated as being made on the date the goods or services are first applied to such use.

(4) Where a progressive or periodic supply is treated, under section 6(3), as a series of separate supplies made successively, each successive supply is treated as being made on the earliest of—

(*a*) the date on which an invoice for the progressive or periodic payment corresponding to the supply is issued by the supplier, but only if a separate invoice is issued for each such supply;

(*b*) the date on which the progressive or periodic payment corresponding to the supply is due;

(*c*) the date on which any of the progressive or periodic payment corresponding to the supply is received;

(*d*) the first day of the period, if any, to which the progressive or periodic payment relates; or

(*e*) the first day on which the recipient is able to commence use or enjoyment of the successive part of the actual supply which corresponds to the supply.

(5) Where a person becomes registered or ceases to be registered, for the purpose of working out whether a supply made by the person is a taxable supply, or whether an acquisition made by the person gives rise to an entitlement to input tax credits, a supply or acquisition is treated as being made when—

(*a*) for a supply of goods, the goods are delivered or made available; or

(*b*) for a supply of services, the services are performed.

(6) Where, because of subsection (5), a supply or acquisition is treated as being made by a person while the person was registered, but the time referred to in subsection (1) occurred before the person became registered, for the purpose of determining in which

tax period the person should account for the VAT or input tax credit under section 32, the supply or acquisition is treated as being made in the first tax period in which the person is registered.

(7) Where, because of subsection (5), a supply or acquisition is treated as being made by a person while the person was registered, but the time referred to in subsection (1) occurred after the person ceased to be registered, for the purpose of determining in which tax period the person should account for the VAT or input tax credit under section 32, the supply or acquisition is treated as being made in the last tax period in which the person is registered.

(8) The Minister may prescribe the time at which a particular kind of supply is treated as being made.

18. Place of supply

(1) Except as otherwise provided in this Act or the Regulations, a supply of goods or services is regarded as taking place in Grenada if—

(*a*) the supplier is a resident; or

(*b*) the supplier is a non-resident and—

(i) in the case of a supply of goods, the goods supplied are located in Grenada at the time of the supply, or

(ii) in the case of a supply of services, the services are physically performed in Grenada by any person who is in Grenada at the time the services are performed.

(2) Except as provided in subsections (1)(*b*), (5) and (7), a supply of goods or services are not regarded as taking place in Grenada if the supplier is a non-resident.

(3) Where a supplier who is not resident in Grenada and is not a registered person who acquired the goods and services for his or her taxable activity makes a supply of goods or services referred to in subsections (1)(*b*), (5) and (7), to a recipient who is a registered person, the supply is deemed to take place outside Grenada, unless the supplier and recipient have agreed in writing that this subsection will not apply.

(4) Where a person makes a supply of imported goods after the goods are imported but before the goods are entered for home use, the goods are deemed to have been located outside Grenada at the time of supply.

(5) Where a supply by a non-resident is of the lease, hire, or licence of goods, including under a charter party or agreement for chartering, for the purposes of subsection (1)(*b*)(i), the goods are treated as located in Grenada at the time of supply during any period in which—

(*a*) the goods are for use, or are used, wholly or partly in Grenada; or

(*b*) the goods are used in international territory, if immediately before and after that use, the goods are used in Grenada.

(6) For the avoidance of doubt, in the case of a progressive or periodic supply, including a supply referred to in subsection (5) of this section, that is deemed to be a series of separate supplies because of section 6(3), the place where each such supply takes place is determined separately.

(7) A supply of telecommunications services is regarded as taking place in Grenada if the supplier is a non-resident and a person, physically in Grenada, initiates the supply from a telecommunications supplier, whether or not the person initiates the supply on behalf of another person.

(8) For the purposes of this Act, the person who initiates a supply of telecommunications services is—

(*a*) the person who is identified by the supplier of the services as being—

(i) the person who controls the commencement of the supply,

(ii) the person who pays for the services, or

(iii) the person who contracts for the supply; and

(*b*) if more than one person satisfies paragraph (*a*), the person who appears highest on the list in that paragraph.

(9) If a telecommunications supplier cannot apply subsection (7) because it is impractical for the supplier to determine the physical location of a person due to the type of service or the class of customer to which the person belongs, the supplier shall treat the supply of telecommunications services as taking place in Grenada, if the person's address for receiving invoices from the supplier is in Grenada.

(10) For the purposes of subsection (9), "address" does not include a post office box number.

(11) Subject to subsection (12), if subsection (9) applies, the telecommunications supplier shall apply subsection (9) for all supplies of telecommunications services made for that type of service or class of customer.

(12) Subsections (7) and (9) do not apply to supplies made between telecommunications suppliers.

(13) A supply of services consisting of a licence, permit, certificate, concession, authorisation, or other right to do something in Grenada occurs in Grenada regardless of where it is issued.

(14) The Minister may prescribe the place of supply for a particular kind of supply.

19. Value of supply

(1) "Tax fraction", in relation to a taxable supply, means the fraction calculated in accordance with the following formula—

R/(1+R)

where R is the rate of VAT applicable to the supply as determined under section 8(3).

(2) Subject to this section—

(*a*) the value of a taxable supply is, the consideration for the supply reduced by an amount equal to that sum multiplied by the tax fraction; and

(*b*) the value of a supply that is not a taxable supply, is the consideration for the supply.

(3) If a person has applied goods or services to a private or exempt use and the application is treated as a supply under section 6(4), the value of the supply is—

(*a*) if the application is of goods imported by the person, the lesser of—

(i) the value of the import for the purposes of this Act, or

(ii) if only part of the input tax was allowed as a credit to the taxable person, the value of the import reduced by an amount reflecting the extent to which no input tax credit was allowed; or

(*b*) in any other case, the lesser of—

(i) the consideration paid or payable by the person for the acquisition of the goods or services, reduced by an amount equal to the input tax incurred on that acquisition, or

(ii) if only part of the input tax was allowed as a credit to the taxable person, that amount reduced by an amount reflecting the extent to which no input tax credit was allowed.

(4) If, in a situation to which subsection (3) applies, before the goods or services are applied to a private or exempt use, the taxable person has used them in its taxable activity for a purpose other than making exempt supplies, the value of the supply is the lesser of—

(*a*) the amount determined under subsection (3); or

(*b*) the VAT-exclusive fair market value of the goods or services at the time they are first applied to the private or exempt use, reduced, in a case to which subsection (3)(*a*)(ii) or (*b*)(ii) applies, by an appropriate amount reflecting the extent to which no input tax credit was allowed.

(5) The value of a supply of goods under a finance lease does not include an amount payable in relation to a supply of credit under the lease agreement if the credit for the goods is provided for a separate charge and the charge is disclosed to the recipient of the goods.

(6) If a taxable person makes a supply for no consideration, or for consideration that is less than the fair market value of the supply, to a related person who would not be entitled to a full input tax credit for the acquisition of the thing supplied, the value of the supply is the VAT-exclusive fair market value of the supply.

(7) Except as provided otherwise, the value of a supply of goods or services for no consideration is nil.

(8) The value of an unconditional gift given to an approved non-profit body is nil, provided that anything received by the donor in respect of the gift is insignificant, such as a recognition or acknowledgement of the gift.

(9) The Minister may prescribe methods, including methods different from those set out in this section, for determining the value of particular kinds of supply.

20. Post-supply adjustments for VAT adjustment events

(1) A VAT adjustment event occurs if—

(*a*) a taxable supply is cancelled;

(*b*) the consideration for a taxable supply is altered;

(*c*) goods or services (or part thereof) that were the subject, or one of the subjects, of a taxable supply are returned to the supplier; or

(*d*) the nature of a supply is fundamentally varied or altered in such a way that the supply becomes, or ceases to be, a taxable supply.

(2) If a VAT adjustment event occurs and the VAT actually accounted for by the supplier, is less than the VAT properly chargeable in respect of the supply, the amount of the difference is treated as output tax of the supplier in the tax period in which the VAT adjustment event occurred.

(3) If subsection (2) applies and the supplier has issued a VAT debit note to the recipient of the supply in accordance with section 39(2), the recipient of the supply may treat the additional VAT specified in the VAT debit note as input tax in the tax period in which the VAT debit note is received.

(4) If a VAT adjustment event occurs, and the VAT actually accounted for by the supplier exceeds VAT properly chargeable in respect of the supply, the supplier may treat the amount of the excess as input tax in the tax period in which the VAT adjustment event occurred, but only if the supplier has issued a VAT credit note to the recipient of the supply if required to do so under section 39(1).

(5) If subsection (4) applies and the recipient is a taxable person, the following amount is treated as output tax of the recipient in the tax period in which the credit note is received—

(*a*) if the recipient were entitled to a credit for all of the input tax in relation to the acquisition, the amount of additional VAT specified in the VAT credit note;

(*b*) if the recipient were entitled to a credit for only a proportion of the input tax in relation to the acquisition, the same proportion of the amount of additional VAT specified in the VAT credit note; or

(*c*) if the recipient were not entitled to a credit for the input tax in relation to the acquisition, nil.

(6) If the recipient of a supply to which subsection (4) applies is unregistered, no VAT credit note may be issued and no input tax credit is allowed under that subsection until the supplier has repaid the excess VAT to the recipient of the supply, whether in cash or as a credit against any amount owing to the supplier by the recipient.

21. Post-supply adjustments for bad debts

(1) If all or part of the consideration for a supply has not been received by the supplier, this section provides for section 20 to be applied in certain circumstances, and in each case, the section is taken to apply as if a VAT adjustment event referred to in section 20(1)(*b*) had occurred in relation to the supply.

(2) If the amount referred to in subsection (1) has been overdue for more than twelve months from the date on which it was due to be paid, section 20 applies to both the supplier and the recipient, provided that if the supplier has, in writing, granted additional time to pay, the period of twelve months is taken to commence when the additional time has expired.

(3) If, after section 20 has applied in relation to a supply because of subsection (2) of this section, the supplier later receives one or more payments for the supply, section 20 applies again to both the supplier and the recipient to the extent of each such additional payment.

(4) If, before the time referred to in subsection (2), the supplier has, in its books of account, written off an amount in respect of all or part of the amount not received, section 20 applies to the supplier but not the recipient.

(5) If, after section 20 has applied in relation to a supply because of subsection (4) of this section, the supplier later receives one or more payments for the supply, section 20 applies again to the supplier to the extent of each such additional payment and the supplier is not required to give the recipient an VAT credit note.

(6) For the avoidance of doubt, a supplier cannot apply both subsections (2) and (4) in relation to the same amount outstanding on a supply.

(7) For the purposes of a VAT adjustment event that arises because of this section—

(*a*) the supplier is not required to give the recipient a VAT debit or credit note; and

(*b*) for the purposes of section 34(8), neither the supplier nor the recipient is required to hold a copy of a VAT debit or credit note,

but in a case to which subsection (4) applies, the supplier must hold documentary evidence establishing that it has written off the debt and the reasons why the debt was written off, and in any other case to which this section applies, each party must be able to substantiate the extent to which payments have been made or received and the basis of the adjustments made under section 20 because of this section.

22. Reverse charge on imported services

(1) The purpose of this section is—

(*a*) to remove the incentive for persons to acquire services from non-residents, including offshore branches of the person, in preference to using local suppliers whose services would be taxable;

(*b*) to achieve this by requiring persons to reverse charge VAT when they acquire services from non-residents;

(*c*) to limit reverse charging to services for which the person would not have been entitled, to a full input tax credit if the supply of the services had otherwise been taxable; and

(*d*) to ensure that reverse charged VAT is subject to the same post-supply adjustment rules as locally purchased services.

(2) A supply of services is a taxable supply if—

(*a*) the services are supplied in Grenada to a person by a non-resident person, otherwise than through a resident agent;

(*b*) the supply is not a taxable supply but would have been taxable at a rate other than zero, if it had been made through a taxable activity carried on by a resident who was registered for VAT; and

(*c*) the recipient of the supply will use the services acquired wholly or partly—

(i) to make exempt supplies, if that will constitute more than ten per cent of the total use of the services;

(ii) for private or domestic use, or a use that would be private or domestic if the recipient were an individual, or

(iii) for any other purpose for which input tax credits would be denied.

(3) The VAT chargeable on a taxable supply referred to in subsection (2) is the liability of the recipient of the supply, and [illegible] for—

(*a*) by a taxable person to the Comptroller [illegible] output tax of the recipient; and

(*b*) by any other person as provided by the Comptroller.

(4) Where VAT is chargeable on a supply that is taxable because of subsection (2)—

(*a*) the value of the supply is—

(i) if the supplier and recipient are related persons, the VAT-exclusive fair market value of the actual supply, or

(ii) in any other case, the consideration for the actual supply,

where "actual supply" means the supply made to the recipient; and

(*b*) the VAT payable by the recipient is also input tax of the recipient, within the meaning of paragraph (*a*) of the definition of input tax.

(5) If a VAT adjustment event occurs in relation to a supply that is, or would be because of the VAT adjustment event, taxable under subsection (2), and the event would cause the VAT properly chargeable in respect of the supply to exceed the VAT actually accounted for by the recipient, the amount of the excess is treated as output tax of the recipient in the tax period in which the VAT adjustment event occurs.

(6) If a VAT adjustment event occurs in relation to a supply that is taxable under subsection (2), and the event would cause the VAT actually accounted for by the recipient to exceed the VAT properly chargeable in respect of the supply, the recipient is allowed an input tax credit for the amount of the excess in the tax period in which the VAT adjustment event occurs.

(7) For the purposes of this section, if a person carries on activities at a fixed place inside Grenada and a fixed place outside Grenada—

(*a*) the person is treated as if it were two separate persons corresponding respectively to the taxable activities the person carries on at each place;

(*b*) the person outside Grenada is deemed to have made a supply to the person inside Grenada, consisting of any benefit in the nature of services (as defined for the purposes of this Act), that is received by the person in Grenada through, or as a result of, the activities carried on by the person outside Grenada;

(*c*) the time of the supply is worked out under section 17(2)(*b*) on the assumption that a supply has been made; and

(*d*) the value of the supply is worked out under subsection (4)(*a*)(i), on the assumption that the supply was made by a non-resident outside Grenada to a related person inside Grenada.

PART V

Special Rules Relating to Supplies

23. Rights, options, and vouchers

(1) If a right or option is exercised, the consideration for the supply made on exercise of the right or option is limited to the additional consideration, if any, for that supply, or in connection with the exercise of the right or option.

(2) Subsection (1) applies to a supply made on redemption of a face value voucher unless—

(*a*) the Minister prescribes otherwise; or

(*b*) the supply made on redemption of the voucher is a taxable supply, and the supply of the voucher was not a taxable supply.

24. Gambling supplies

(1) In this section—

"total amounts wagered", in relation to a taxable person and a tax period, is the sum of—

(*a*) the consideration for all of the gambling supplies made by the taxable person in that tax period; and

(*b*) any amounts recovered by the taxable person during the tax period in respect of an amount written off in the current or a previous tax period, which was included in total monetary prizes under paragraph (*d*) of the definition of that term; and

"total monetary prizes", in relation to a taxable person and a tax period, is the sum of the following amounts, whether or not the relevant gambling event, gambling supply, or gambling loss occurred during the tax period—

(*a*) the monetary prizes paid by the person during the tax period because of the outcome of gambling events;

(*b*) any amounts of money paid during the tax period by the person to a recipient of the person's gambling supplies, because of an agreement between them requiring the person to repay a proportion of the recipient's losses from those supplies;

(*c*) a negative amount, if any, resulting from the calculation under subsection (3) in the immediately preceding tax period; and

(*d*) an amount the person writes off as a bad debt in relation to all, or part of the consideration for a gambling supply made by the person, that is due as a debt to the person, and has not been received.

(2) Notwithstanding section 8(2), the amount of VAT chargeable on gambling supplies made by a taxable person, is determined on a global basis under this section for each tax period, rather than for each gambling supply.

(3) In each tax period, an amount calculated according to the following formula is treated as output tax of a person who makes gambling supplies—

((Total amounts wagered – Total monetary prizes) x the tax fraction)

(4) If, in any tax period, the amount calculated under subsection (3) is a negative amount, that amount is not treated as output tax of the taxable person.

(5) Section 21, which deals with bad debts, does not apply in relation to a gambling supply.

(6) A payment of a kind referred to in paragraph (*b*) of the definition of "total monetary prizes" is treated as if it were not consideration for a supply or acquisition.

(7) Notwithstanding sections 37 and 38, a registered person—

(*a*) shall not issue a VAT invoice for a gambling supply; and

(*b*) may issue a sales receipt for the supply, but is not required to do so.

25. Lay-away agreement

(1) In this section, "lay-away agreement" means a purchase agreement for goods under which—

(*a*) the purchase price is payable by at least one additional payment after the payment of a deposit;

(*b*) delivery of the goods takes place at a time after payment of the deposit; and

(*c*) ownership of the goods is transferred by delivery.

(2) A supply of goods under a lay-away agreement occurs on the date the goods are delivered to the purchaser.

(3) If a lay-away agreement is cancelled and the person who would have been the supplier (referred to herein as the supplier), retains an amount paid as consideration for the cancelled supply, or recovers an amount owing by the person who would have been the recipient under the agreement (referred to herein as the recipient)—

(*a*) the cancellation of the agreement is treated as a supply of services by the supplier to the recipient;

(*b*) the value of the supply is the amount retained or recovered by the supplier, reduced by an amount equal to that amount multiplied by the tax fraction;

(*c*) to the extent, if any, that an amount is retained, the supply is treated as being made at the time of cancellation; and

(*d*) to the extent, if any, that an amount is recovered from the recipient under the agreement, the supply is treated as being made at the time when the amount is recovered.

26. Vending machines

A supply of goods through a vending machine, meter, or other automatic device, (not including a pay telephone), that is operated by a coin, note, or token is treated as being made on the date the coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.

27. Supply as part of the transfer of a going concern

(1) For the purposes of this section—

(*a*) a transfer of a taxable activity includes a transfer of part of a taxable activity, if that part is capable of separate operation;

(*b*) a transfer of a taxable activity as a going concern is treated as occurring if—

(i) all the goods and services necessary for the continued operation of that taxable activity are supplied to the person to whom the taxable activity is transferred, and

(ii) the supplier carries on the taxable activity until the day of the transfer.

(2) A supply of goods or services as part of the transfer of a taxable activity as a going concern by a registered person to another registered person is zero-rated, but only if—

(*a*) the supply would otherwise have been a taxable supply that was not a zero-rated supply; and

(*b*) the supplier and the recipient have—

(i) agreed in writing and notified the Comptroller within fourteen days of the date of the agreement in writing that the taxable activity is to be treated as transferred as a going concern for the purposes of this section,

(ii) included in their agreement the details of the supplies to be treated as zero-rated under this section because of the transfer, including the quantities and values of the things supplied, and

(iii) provided a copy of the agreement to the Comptroller no later than twenty days after the end of the tax period in which the taxable activity is transferred.

(3) If the recipient of a supply that has been treated as zero-rated under this section uses or intends to use the thing acquired to make exempt supplies, or for a private or domestic purpose, and the extent of that use will constitute more than ten per cent of the total use of the thing acquired—

(*a*) the recipient is, in the tax period in which the acquisition was made, treated as having an amount of output tax equal to the tax rate specified in section 8(3)(*d*) multiplied by the consideration for the acquisition; and

(*b*) for the purposes of applying this Act, other than this section, to the recipient, the amount treated as output tax under paragraph (*a*) is treated as input tax of the recipient, as if it had been imposed on the supplier in relation to the supply.

28. Travel agents and tour operators acting as principal

(1) Section 18(1)(*b*) does not apply to a supply by a non-resident, including, but not limited to a non-resident travel agent, of a right to receive, in Grenada, accommodation, meals, tours, services, entertainment, or similar goods or services commonly provided to tourists or visitors to Grenada (whether alone or as part of a holiday or tour package).

(2) Section 23(2)(*b*) does not apply to a supply in Grenada, to a tourist or visitor to Grenada, to the extent, if any, that the consideration for the supply includes the redemption of a face value voucher if—

(*a*) the supply is of accommodation, meals, tours, services, entertainment, or similar goods or services commonly provided to tourists or visitors to Grenada (whether alone or as part of a holiday or tour package); and

(*b*) the supply of the voucher to the tourist or visitor was not a taxable supply because of subsection (1).

(3) Despite anything in the First or Second Schedule, a taxable supply by a resident travel agent is not zero-rated if the supply is a supply of a right to receive, outside Grenada, accommodation, meals, tours, services, entertainment, or similar goods or services commonly provided to tourists or visitors to foreign countries (whether alone or as part of a holiday or tour package).

(4) Where one or more taxable supplies made by a resident travel agent is not zero-rated because of subsection (3), the value of those supplies is calculated on a global basis for each tax period and is equal to the amount calculated accordingly to the following formula—

(C-P) x (1-T)

where—

(*a*) **C** is the consideration for all taxable supplies of goods and services made by the taxable person in that tax period that are not zero-rated because of subsection (3);

(*b*) **P** is the consideration paid by the person for the acquisition in that tax period of such goods and services for the purpose of on-supply; and

(*c*) **T** is the tax fraction.

(5) If **P** exceeds **C** in the calculation in subsection (4) for a particular tax period, the excess is included in the value of **P** for the following tax period.

(6) For the avoidance of doubt, this section applies only to supplies made by a travel agent as principal, not for supplies made as an agent arranging for supplies to be made by other persons.

29. Value of employee fringe benefits

(1) The value of a taxable supply by an employer to an employee is limited to the amount of consideration in money, if any, payable by the employee for the supply, reduced by the tax fraction of that amount, if the supply is of—

(*a*) accommodation for a period not exceeding an aggregate of forty-five days in any calendar year; or

(*b*) meals.

(2) The value of a supply by an employer to an employee, other than a supply referred to in subsection (1), is—

(*a*) where the supply is of goods imported by the employer and on-supplied to the employee in essentially the same form in which the goods were imported—

(i) the value of the import for the purposes of this Act, or

(ii) if only part of the input tax was allowed as a credit to the employer, the value of the import is reduced by an amount reflecting the extent to which no input tax credit was allowed;

(*b*) where the supply is of goods or services acquired by the employer and on-supplied to the employee in essentially the same form and manner as they were acquired—

(i) the consideration paid or payable by the employer for the goods or services, reduced by the VAT, if any, is chargeable on their supply to the employer, or

(ii) if the employer was allowed to deduct only a proportion of the input tax incurred on the acquisition, the amount is calculated under sub-paragraph (i) multiplied by that proportion; and

(*c*) in any other case, the VAT-exclusive market value of the goods or services supplied to the employee.

(3) Except where subsection (1) applies, the value of a supply by an employer to an employee for which the employee pays consideration in money is the greater of—

(*a*) the value worked out under subsection (2); or

(*b*) the consideration paid in money, minus the tax fraction of that consideration.

(4) Where a taxable acquisition or importation by an employer is used by the employer to provide a taxable fringe benefit to an employee for the purposes of the Income Tax Act, section 33 does not prevent the employer claiming an input tax credit for the acquisition or importation, so long as—

(*a*) the employer keeps detailed records showing the extent of the credit claimed, the extent to which the thing acquired or imported is used to supply fringe benefits, the output tax paid by the employer in respect of the fringe benefits; and

(*b*) the input tax credits allowed because of this subsection do not exceed the output tax payable by the employer for the fringe benefits.

PART VI

Basic Rules Relating to Imports

30. Time of import

An import of goods occurs—

(*a*) if the goods are entered for home use under the customs laws, on the day on which they are so entered; or

(*b*) in any other case where goods are imported for use in Grenada, on the day the goods are brought into Grenada.

31. Value of import

(1) The value of an import of goods is the sum of—

(*a*) the value of the goods for the purposes of customs duty under the customs laws, whether or not duty is payable on the import;

(*b*) to the extent not included under paragraph (*a*)—

(i) the cost of insurance and freight incurred in bringing the goods to Grenada, and

(ii) the cost of services that have been treated as part of the import of the goods because of section 6(6); and

(*c*) the amounts, if any, of customs duty, customs service charge, excise tax, or other tax, levy, or fiscal charge (other than VAT) payable on the importation of the goods.

(2) Where goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, the value of the import of the goods is the amount of the increase in their value that is attributable to the repair, renovation, or improvement process, so long as the form or character of the goods has not been changed by the repair, renovation, or improvement.

(3) The Minister may prescribe the way in which the value of a particular kind of import is determined.

PART VII

Calculation and Payment of VAT Net Amount

32. Net amount of VAT to be remitted in a tax period

(1) The amount of VAT that a taxable person must remit to the Comptroller for a tax period is the net amount calculated according to the following formula—

A-B

where—

(*a*) **A** is the sum of all the amounts of output tax chargeable to the person in respect of taxable supplies made or treated as having been made by the person in that tax period, and all other amounts required to be treated as output tax of the person in that tax period; and

(*b*) **B** is the total input tax credits allowed to the person under sections 20, 21, 34, 35, 36, 49, 50, 51 and 52 in respect of that tax period.

(2) Where the net amount calculated under subsection (1) is a positive amount, that amount is the VAT payable to the Comptroller for the tax period and must be paid to the Comptroller in accordance with section 46.

(3) Where the net amount calculated under subsection (1) is a negative amount, that amount shall be dealt with in accordance with section 49.

PART VIII

Input Tax Credits

33. Goods or services for which no input tax credits are allowable

(1) In this section—

"entertainment" means the provision of food, beverages, tobacco, amusement, recreation, or hospitality of any kind, including gambling; and

"passenger vehicle" include motor passenger vehicles principally designed for the transportation of people including station wagon vehicles but excluding double cabs and vehicles but excluding double trucks exclusively used for the further [illegible] taxable activity.

(2) Notwithstanding any other provision in this Act, no entitlement to an input tax credit arises for a person in relation to a taxable acquisition or import by the person to the extent that—

(*a*) the acquisition or import is not made in the course or furtherance (including commencement or termination) of the person's taxable activity;

(*b*) the acquisition or import of a passenger vehicle, or of spare parts or repair and maintenance services for such vehicle, unless the person's taxable activity

involves dealing in or hiring out such vehicles, and the vehicle was acquired for that purpose;

(*c*) the acquisition or import is used to provide entertainment, to the extent of that use, unless the person's taxable activity involves providing entertainment, and the entertainment is provided in the ordinary course of that taxable activity and is not supplied to a related person or employee;

(*d*) the acquisition is of a membership or right or entry for any person in a club, association, or society of a sporting, social, or recreational nature; or

(*e*) the acquisition or import is of a private or domestic nature.

(3) An acquisition by a person deemed to be of a private or domestic nature, if the acquisition would have been private or domestic if made by an individual, or if the acquisition is for the private purposes of the person.

34. Input tax credits for acquisitions and imports

(1) If all of the supplies made by a taxable person during a tax period are taxable supplies, the person is allowed input tax credits for all of the input tax chargeable on acquisitions or imports made by the person during that tax period.

(2) Except as otherwise [illegible] supplies made by a taxable [illegible] period are taxable supplies, the person is allowed input tax credits for the input tax allowed on taxable acquisitions or imports on taxable [illegible] person during that period.

(3) Where subsection (1) does not apply to a taxable person during a tax period, for that tax period—

(*a*) if an acquisition or import by the person relates wholly to making taxable supplies, an input tax credit is allowed for the full amount of input tax chargeable in respect of the acquisition or import;

(*b*) if an acquisition or import by the person relates wholly to making supplies that are not taxable, no input tax credit is allowed for the input tax chargeable in respect of that acquisition or import;

(*c*) for acquisitions or imports by the person that relate, whether directly or indirectly, partly to making taxable supplies and partly to making other supplies, the sum of the input tax credits allowed for such supplies or imports during the tax period is calculated according to the following formula—

A x B/C

where—

(i) **A** is the total amount of input tax chargeable in respect of imports or acquisitions made by the person during the period, less the input tax accounted for under subsection (3)(*a*) and (*b*),

(ii) **B** is the value of all taxable supplies made by the taxable person during the period, and

(iii) **C** is the value of all supplies made by the taxable person during the period, other than supplies made through a taxable activity carried on by the person outside Grenada.

(4) Notwithstanding subsection (3)—

(*a*) if the fraction **B/C** in subsection (3)(*c*) is more than 0.90, the taxable person is allowed input tax credits for all of the input tax chargeable on acquisitions or imports made by the person during that tax period;

(*b*) if the fraction **B/C** in subsection (3)(*c*) is less than 0.10, the taxable person is not allowed input tax credits for acquisitions or imports made by the person during that tax period;

(*c*) if the taxable person is a bank or other financial institution making both exempt and taxable supplies, whether or not the person makes any exempt supplies in the particular tax period, subsection (3)(*c*) does not apply;

(*d*) if the Minister prescribes a different way for a particular class of taxable person to calculate the amount of input tax allowed for a tax period in which subsection (1) does not apply, the person shall use that method to calculate the input tax credits it is allowed for that period.

(5) If section 20(3) allows a taxable person to treat an amount as input tax in a tax period because a VAT adjustment event occurred during that period in relation to an acquisition made by the person, the amount of the input tax credit the person is allowed for the input tax is determined by reference to the extent that the person was entitled to an input tax credit for the original acquisition.

(6) If section 20(4) allows a taxable person to treat an amount as input tax in a tax period because a VAT adjustment event occurred during that period in relation to a supply made by that person, the person is entitled to an input tax credit for that amount.

(7) If, at the time the person submits a VAT return for a tax period, the person does not, in relation to an acquisition or importation made in that tax period, hold the documentation referred to in subsection (8)—

(*a*) the person is not allowed the input tax credit which would otherwise have been allowed for that acquisition or importation in that tax period; but

(*b*) the person is allowed the input tax credit in the first subsequent tax period in which the person holds the documentation,

provided that if the person does not hold the documentation before the end of the tax period ending six months after the date on which the return was due, no input tax credit is allowed for the acquisition or importation.

(8) The documentation required for the purposes of subsection (7) is—

(*a*) in the case of a taxable acquisition, the VAT invoice issued by the supplier for the supply, or for a low value supply to which section 37(3) applied, the sales receipt issued by the supplier for the supply;

(*b*) in the case of a taxable import, a bill of entry or other document prescribed under the customs laws for the import;

(*c*) in the case of an input tax credit allowed under section 20(3) because of a VAT adjustment event for an acquisition, the VAT debit note issued by the supplier in respect of that event; or

(*d*) in the case of an input tax credit allowed under section 20(4) because of a VAT adjustment event for a supply, a copy of the VAT credit note issued to the recipient of the supply in respect of that event.

(9) Subsection (7) does not alter the way in which the amount of an input tax credit for an acquisition or importation made in a tax period is calculated under this section.

(10) Whether an acquisition or importation made in a tax period relates to making a particular kind of supply, should be determined on the basis of the taxable person's intention at the time of the acquisition or importation, but the taxable person may take account of actual use or a change in intention that occurs before the date on which the VAT return for that tax period is required to be lodged.

(11) Where a person ("the registrant") becomes newly registered under the Act and makes an application in writing to the Comptroller within six months of becoming

registered, the Comptroller may allow the person an input tax credit for an acquisition or importation made in the three months preceding the date of effect of the registration if—

(*a*) the registrant has the goods or services acquired or imported on hand at the date of effect of the registration, and has provided sufficient documentary evidence of this fact to the Comptroller;

(*b*) the registrant provides sufficient documentary evidence, including sales receipts and import documentation, to show the amount of VAT that was included in the price of the acquisitions or that was paid by the registrant on importation;

(*c*) the Comptroller is satisfied that the VAT referred to in paragraph (*b*) has in fact been accounted for by the supplier as required under this Act, or paid to the Comptroller of Customs at the time of import by the registrant;

(*d*) the registrant has provided such other evidence as is necessary to establish the extent to which the thing acquired has been used in the registrant's taxable activity, prior to the date of effect of the registration; and

(*e*) the registrant would have been entitled to an input tax credit if the acquisition or importation had been made when the person was registered.

(12) Where an input tax credit is allowed under subsection (11)—

(*a*) The amount of the input tax credit is reduced in proportion to the extent to which the thing acquired or imported was used by the registrant prior to the date of effect of the registration, and to the extent that the registrant would not have been entitled to an input tax credit, if the acquisition or importation had been made while the person was registered;

(*b*) the registrant is not required to hold a VAT invoice in relation to an acquisition for which a credit has been allowed.

(13) Where a person makes an application under subsection (11)—

(*a*) the Comptroller shall notify the applicant of his decision within two months of receiving the application, stating the amount, if any, of the input tax credit to which the person is entitled; and

(*b*) the input tax credit, if any, is allowed in the earlier of the tax period in which the person receives the notice, or the tax period ending eight months after the date of effect of the registration.

35. Acquisitions or imports by resident agent

(1) For the purposes of section 34, if a non-resident principal makes an acquisition or import through a resident agent, any input tax credit allowed under that section is allowed to the resident agent and not to the non-resident principal.

(2) Subsection (1) does not apply if the non-resident principal is treated to any extent as a resident because of paragraph (*d*) of the definition of resident, and the principal is registered for VAT under this Act at the time of the acquisition or import.

36. Regulations relating to input tax credit entitlements

(1) The Minister may prescribe rules requiring a taxable person to treat an amount as output tax or input tax in one or more tax periods if—

(*a*) the value of a particular acquisition or importation, or of a related group of acquisitions or importations, exceeds ten thousand dollars; or

(*b*) the acquisition is of a capital asset of the person,

and the way in which the person has used the acquisition or importation is different from the way in which it intended to use the acquisition or importation.

(2) The Regulations may provide additional rules allowing or denying input tax credits, in order to ensure that the amount of input tax credits allowed to a taxable person reflects the extent to which its acquisitions or importations are used to make taxable supplies.

(3) Except to the extent of the limitations in subsection (1)(*a*) and (*b*), this section does not limit the Minister's power to make Regulations under this Act.

PART IX

VAT Documentation

37. VAT invoices

(1) A registered supplier who makes a taxable supply to a registered recipient shall, at the time of the supply, issue the recipient with an original VAT invoice for the supply.

(2) A VAT invoice must contain the information prescribed by the Regulations.

(3) A registered supplier making a taxable supply to a registered recipient may issue a sales receipt in lieu of a VAT invoice, if the consideration for the taxable supply is paid in money and does not exceed fifty dollars.

38. Sales receipts

(1) A registered supplier who makes a taxable supply to a recipient who is not registered may not issue a VAT invoice to the recipient, but shall, at the time of the supply, issue a sales receipt to the recipient.

(1A) Subsection (1) does not apply to any [illegible] which does not exceed Five Dollars.

(2) A sales receipt must contain the information prescribed in the Regulations.

39. VAT credit and debit notes

(1) If—

(*a*) a registered supplier has made a taxable supply to a registered recipient;

(*b*) a VAT adjustment event has occurred in relation to the supply;

(*c*) at the time of the supply, the supplier issued an original VAT invoice to the recipient; and

(*d*) the amount shown on that invoice as the VAT charged, exceeds the VAT properly chargeable in respect of the supply,

the supplier shall provide the recipient with an original VAT credit note.

(2) If—

(*a*) a registered supplier has made a taxable supply to a registered recipient;

(*b*) a VAT adjustment event has occurred in relation to the supply;

(*c*) at the time of the supply, the supplier issued an original VAT invoice to the recipient; and

(*d*) the VAT properly chargeable in respect of the supply, exceeds the amount shown on that invoice as the VAT charged,

the supplier shall provide the recipient with an original VAT debit note.

(3) A VAT credit or debit note must contain the information prescribed by the Regulations.

40. Documentation issued by or to agents

(1) If a taxable supply is made by or to an agent on behalf of a principal and both the agent and principal are registered under this Act, any documentation required to be issued by or to the principal, including a VAT credit or debit note, may be issued by or to the agent, using the name, address, and TIN of the agent.

(2) If a taxable supply is made by or to an agent on behalf of a principal, and the principal is registered under this Act but the agent is not registered, any documentation required to be issued by or to the principal, including a VAT credit or debit note, may be issued by or to the agent, but must be issued using the name, address, and TIN of the principal.

(3) If a taxable supply is made by or to an agent on behalf of a non-resident principal who is not registered under this Act, any documentation required to be issued by or to the principal, including a VAT credit or debit note, must be issued by or to the agent, using the name, address and TIN of the agent.

(4) If a taxable supply is made by or to an agent on behalf of a principal, any documentation required to be issued must be issued only once, and must not be issued by or to both the agent and the principal.

(5) A document issued by or to an agent in accordance with this Act, is treated as issued by or to the principal for the purposes of this Act.

41. Requests for VAT documentation

(1) A registered recipient who has not received a VAT invoice, VAT credit note, or VAT debit note that the supplier was required to issue, may make a written request to the supplier to issue the document.

(2) A registered supplier shall comply with a request under subsection (1) within twenty-one days of receiving the request.

(3) A request under subsection (1) cannot be made—

(*a*) for a VAT invoice, more than two months after the date on which the supply occurred; or

(*b*) for a VAT credit or debit note, more than two months after the VAT adjustment event to which the credit or debit note relates.

42. Prohibitions

(1) If the Minister makes Regulations prescribing that prior approval from the Comptroller is required before VAT invoices, debit notes, or credit notes are issued, whether electronically or otherwise, no such document may be issued until the approval is obtained.

(2) Only one original VAT invoice may be issued for a taxable supply, but the person who issued the original may provide a copy clearly marked as such, to a registered recipient who claims to have lost the original.

(3) Only one original VAT credit or debit note may be issued for a particular VAT adjustment event in relation to a supply, but the person who issued the original, may provide a copy clearly marked as such, to a registered recipient who claims to have lost the original.

43. Retention of records

A person shall, in relation to any period during which the person was registered, retain the following documents for the purposes of Part XVIII of this Act—

(*a*) a copy of all VAT invoices, VAT credit notes, and VAT debit notes issued by the person, maintained in chronological order;

(*b*) all VAT invoices, VAT credit notes, and VAT debit notes received by the person, whether originals or copies;

(*c*) all customs documentation relating to imports and exports of goods by the person; and

(*d*) in relation to all imported services to which section 22 applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for particular purposes.

PART X

VAT Returns and Payments

Division 1: VAT Payable on Returns

44. VAT returns

(1) A taxable person shall lodge a VAT return for each tax period no later than twenty days after the end of the period.

(2) A VAT return must—

(*a*) be lodged with the Comptroller;

(*b*) be in the form prescribed by the Comptroller; and

(*c*) contain the information specified in that form.

(3) A person who fails to file a VAT return within the stipulated date provided under subclause (1) shall be liable to pay a late fee of ten thousand dollars.

(4) Where the Comptroller has granted an extension of time to file a VAT return, the tax payer's liability if any, for a late filing fee under subclause (3) shall be waived.

(5) On application in writing by a taxable person, the Comptroller may grant that person permission to lodge a VAT return after the date specified in subsection (1).

(6) A permission granted under subsection (4) does not alter the due date for payment of VAT under section 46.

(7) The Comptroller may, by notice in writing, require a person, whether on that person's own behalf or as agent or trustee of another person, to file, within such time as the Comptroller considers appropriate, such fuller or additional returns for a tax period as the Comptroller requires, and such notice may be given, even if the taxable person has not lodged a VAT return for the period.

(EDITORIAL NOTE: Amendment for subsection (7) could not be effected due to corrupt file.)

45. Amended returns

(1) If a taxable person who has lodged a VAT return requests the Comptroller to amend the return, the Comptroller shall amend the original return or accept lodgement of an amended return.

(2) The request must be in writing, specifying in detail the grounds on which it is made, and must be made within three years after the end of the tax period to which the return relates.

46. Due date for payment of VAT for a tax period

(1) The VAT payable by a taxable person to the Comptroller under section 32 is due and payable by the due date for lodgement of the VAT return for the tax period.

(2) The liability to pay an amount of VAT arises by operation of this section, and does not depend on the Comptroller making an assessment of the VAT due.

(3) A person who fails to pay all or part of the VAT due and payable for a tax period by the due date shall be liable to pay a late payment fee equal to twenty per cent of the amount of VAT due but not paid.

(4) A taxable person may request the Comptroller in writing to grant an extension, or a further extension, of time to pay the VAT due for a tax period, and, if the Comptroller thinks it appropriate in the circumstances, the Comptroller may grant the requested extension, or a different extension, or make other arrangements to ensure payment of the VAT, including arrangements requiring the person to pay the amount due in such instalments as the Comptroller determines.

(5) If a person makes an application under subsection (4), the Comptroller shall notify the person of his or her decision in writing within fourteen days of receiving the application.

(6) If the Comptroller has granted an extension of time to pay an amount of VAT, or made other arrangements for payment of the VAT, the taxpayer's liability, if any, for a late payment penalty under subsection (3) shall be waived.

(7) The grant of an extension of time, or the grant of permission to pay VAT due by instalments, does not prevent a liability for interest arising under section 68 from the original date the VAT was due for payment.

(8) If a taxpayer is permitted to pay VAT by instalments and the taxpayer defaults in payment of an instalment, the whole balance of the VAT outstanding at the time of the default becomes immediately payable.

(9) If the Comptroller has reasonable grounds to believe that a taxpayer may leave Grenada for an extended period before the due date for payment of an amount of VAT, the VAT is due on such earlier date as the Comptroller may specify in writing to the taxable person.

Division 2: VAT Payable on Imports

47. Due date for payment of VAT on imports

(1) The VAT payable by an importer to the Comptroller of Customs in respect of a taxable import is due and payable at the time of the import.

(2) Notwithstanding subsection (1), if taxable imports are stored in a custom warehouse, the tax shall be paid at the time being entered for home use.

(3) The liability to pay an amount of VAT arises by operation of this section and does not depend on the making of an assessment of the VAT due.

48. VAT payable on imports

(1) The Comptroller of Customs—

(*a*) shall collect the VAT due under this Act on an import of goods at the time of import, and shall at that time obtain the name and TIN for VAT purposes, if

any, of the importer, the import declaration, and the invoice values in respect of the import; and

(*b*) may make arrangements for such functions to be performed on his or her behalf in respect of imports through the postal services.

(2) An importer of goods is required, on entry of the goods into Grenada, to furnish the Comptroller of Customs with an import declaration and pay any VAT due on the import.

(3) An import declaration required under subsection (2) must—

(*a*) be in the form prescribed by the Comptroller of Customs;

(*b*) state the information necessary to calculate the VAT payable in respect of the import; and

(*c*) be furnished in the manner prescribed by the Comptroller of Customs.

(4) Unless a contrary intention appears, in relation to goods imported into the State, the provisions of the customs laws apply, so far as they are relevant, and with such exceptions, modifications, and adaptations as are necessary, as if VAT were an import duty.

(5) The Comptroller of Customs may exercise any power conferred on the Comptroller of Customs by the customs laws, as if a reference to duty in that legislation included a reference to VAT charged under this Act on an import of goods.

PART XI

Refunds

49. Refund of negative net amount of VAT for a tax period

(1) If, in any tax period, the calculation under section 32 results in a negative amount, because the sum of all the input tax credits allowed in the tax period, exceeds the sum of all the amounts of output tax for the tax period—

(*a*) the excess is carried forward and allowed as an input tax credit in the following tax period, and any remaining amount not credited in that period is carried forward to the next tax period, and this process continues until either—

(i) no amount remains, or

(ii) the amount, or part of it, has been carried forward for three consecutive tax periods after the tax period in which the excess arose; and

(*b*) if any amount has not been credited after those three months—

(i) and such amount does not exceed two hundred and fifty dollars, the amount continues to be carried forward into consecutive tax periods until it is reduced to nil, or

(ii) in any other case, the Comptroller shall refund the amount, on application in the form and manner prescribed by the Comptroller, within two calendar months after the date of the application.

(2) If, in a particular tax period, a taxable person is allowed input tax credits because of more than one excess carried forward under subsection (1) from an earlier tax period, the excess credit from the earliest tax period is allowed first.

(3) Despite subsection (1), the Comptroller shall, on application in the form and manner the Comptroller prescribes, refund an excess exceeding two hundred and fifty dollars within two calendar months after the date of the application—

(*a*) if, considering the person's turnover or predicted turnover from supplies made or to be made during the period of twelve calendar months consisting of the current month, the previous five months, and the following six calendar months—

(i) fifty per cent or more of the person's turnover is from supplies that are zero-rated or are exports, or

(ii) fifty per cent or more of the person's expenditure on inputs, is from acquisitions or imports that relate to making supplies that are zero-rated or are exports; or

(*b*) in any other case, the excess is due to some other feature of the taxable person's business that the Comptroller is satisfied, regularly results in excess input tax credits.

(4) An application for a refund under this section cannot be made before the VAT return is lodged for the relevant tax period, which is—

(*a*) in the case of a refund under subsection (1), the third tax period after the period in which the negative net amount arose; or

(*b*) in the case of a refund under subsection (3), the tax period in which the negative net amount arose.

50. Refunds of VAT erroneously overpaid

(1) A taxable person who has erroneously overpaid VAT for a tax period may, within three years from the end of that tax period, apply in writing to the Comptroller for an input tax credit equal to the amount overpaid.

(2) If a taxable person makes an application for an input tax credit under subsection (1), the Comptroller shall, within two months of the date of the application—

(*a*) make a decision in relation to the application and notify the taxable person of the decision; and

(*b*) if the Comptroller is satisfied that all or part of the amount was erroneously overpaid, include in the notice, a statement of the amount refundable,

provided that this subsection does not apply if, on or before the expiry of the two months, the Comptroller commences an audit of the taxpayer in relation to that tax period.

(3) If, within two months after receiving an application for a refund under subsection (1), sections 49 and 51, the Comptroller commences an audit of the taxpayer in relation to that tax period, the Comptroller shall—

(*a*) notify the taxable person of the audit within two months of the date on which the application was made;

(*b*) make a decision on the audit and in relation to the application within one year of the date on which the person lodged the application;

(*c*) notify the taxable person of the decision within one month of making the decision; and

(*d*) if the Comptroller is satisfied that all or part of the amount was erroneously overpaid, include in the notice a statement of the amount refundable.

(4) Subject to subsection (5)—

(*a*) where the Comptroller has determined that an amount is refundable to a taxable person under subsection (2), the taxable person is allowed an input tax credit for the amount refundable, in the tax period in which the Comptroller notifies the person of the decision and such amounts shall be treated in the same manner as provided for under section 49;

(*b*) where the Comptroller has determined that an amount is refundable to a taxable person under subsection (3)—

(i) if the amount refundable exceeds two hundred and fifty dollars, the Comptroller shall pay the amount to the person within two months of the date on which the Comptroller notifies the person of the decision, or

(ii) in any other case, the taxable person is allowed an input tax credit for the amount refundable, in the tax period in which the Comptroller notifies the person of the decision.

(5) Where the reason why a taxable person erroneously overpaid VAT for a tax period was because the taxable person erroneously treated a supply as taxable, or erroneously treated a supply as taxable at a higher rate than the rate applicable to the supply, none of the amount overpaid is refundable unless—

(*a*) if the recipient of the supply was a registered person, the Comptroller is satisfied that the taxable person has refunded, or will refund, the amount of overpaid VAT to the recipient of the supply, or has otherwise satisfied the Comptroller that the recipient was not disadvantaged and the taxable person was not advantaged by the mistake; or

(*b*) if the recipient of the supply was not a registered person, or it is not feasible for the taxable person to identify the recipient of the supply in order to refund the overpaid VAT, the Comptroller is satisfied that the taxable person will in some other way, such as through a short-term discount offer, provide compensation for the previously overpaid VAT to the class of persons likely to include or have included the recipient.

51. Refunds to diplomats, approved non-profit bodies, and other international bodies

(1) Notwithstanding section 49(3), the Comptroller may authorise at an earlier period, subject to appropriate conditions and restrictions, the granting of a refund or part or all of the VAT incurred in relation to a taxable acquisition or a taxable import made by—

(*a*) an approved non-profit body;

(*b*) a public international organisation, foreign government, or any other person to the extent that organisation, government, or person is entitled to exemption;(*c*) from VAT under an international assistance agreement, if that organisation, government, or person is listed in the Regulations;

(*d*) a person to the extent that the person is entitled to exemption for VAT under the Vienna Convention on Diplomatic Relations, or under another international treaty or convention having force of law in Grenada or to which Grenada is a signatory, or the recognised principles of international law;

(*e*) a diplomatic or consular mission of a foreign country established in Grenada, relating to transactions concluded for the official purposes of such mission;

(*f*) a person who intends to make a taxable supply by means of an investment pursuant to the provisions of the Grenada Investment Promotion Act, Chapter 131B; or

(*g*) an exporter who makes a taxable supply to the extent provided in section 49(3)(*a*)(i) and (ii).

(2) A claim for a refund under subsection (1) must be made in the form and manner, and at the time prescribed by the Comptroller, and must be accompanied by such supporting documentation as the Comptroller may require, including but not limited to—

(*a*) evidence that the VAT for which a refund was sought was incurred by the person, including customs documents, sales receipts, or other appropriate evidence;

(*b*) evidence of the person's entitlement to make the claim.

(3) The Comptroller shall within two months after the date on which an application for a refund is made under this section—

(*a*) make a decision in relation to the application and give the applicant notice in writing of the decision, stating the amount refundable, and providing reasons for any difference between that amount and the amount for which a refund was requested; and

(*b*) pay the amount refundable to the applicant.

52. Application and payment of refunds

(1) No refund is payable to a person under section 49 or 50 unless, and until the applicant has lodged all VAT returns it was required to lodge for tax periods falling between the tax period to which the application relates, and the tax period in which the application for the refund is made.

(2) If a refund is payable to a person under section 49 or 50, the Comptroller may apply the refund first in reduction of any interest or penalty payable by the person under this Act, or against payment of any other taxes, levies, or duties collected by the Comptroller, and any unpaid amounts under the repealed taxes.

(3) If the amount remaining after applying subsection (1) does not exceed two hundred and fifty dollars, the Comptroller shall not refund the amount, and the taxable person is instead allowed an input tax credit in the tax period in which the refund would otherwise have been required to be paid.

(4) Where the Comptroller does not pay a refund arising under this Part within the time required, interest is payable by the Comptroller on the amount outstanding at the rate of one and one half per cent per month.

PART XII

Assessments

53. Assessments

(1) The Comptroller may make an assessment of the VAT payable by a taxable person if—

(*a*) the Comptroller is not satisfied as to the accuracy of a VAT return lodged by the person;

(*b*) the person fails to lodge a VAT return as required under this Act; or

(*c*) the person has been paid a refund or allowed an input tax credit under section 49 to which the person is not entitled.

(2) If a person, other than a taxable person, makes a supply of goods or services and represents to the recipient that VAT is chargeable on the supply, the Comptroller may make an assessment of VAT payable by the person in relation to that supply, as if the person were a taxable person and the supply were a taxable supply, with VAT chargeable in accordance with the amount represented.

(3) If a taxable person makes a supply of goods or services and represents to the recipient—

(*a*) that the supply is taxable when it is not; or

(*b*) that the rate of tax chargeable on the supply is higher than the rate in fact chargeable, the Comptroller may make an assessment of VAT on the taxable person as if the supply were a taxable supply, with VAT chargeable at the rate represented, provided that the Comptroller shall not make an assessment under this subsection if, in the tax return lodged for the relevant tax period—

(i) the taxable person reported the VAT chargeable on the supply, in accordance with the way it was represented, and

(ii) either—

(*aa*) before the commencement of an audit in relation to a tax period in which the representation came to light, the person applied under section 50 for a refund of the tax erroneously overpaid; or

(*bb*) the Comptroller is satisfied that it would be appropriate to deal with the amount erroneously overpaid under section 50.

(4) An amount assessed under subsection (2) or (3) is treated, for all purposes of this Act, as VAT chargeable under this Act.

(5) The Comptroller may, within three years after making an assessment ("the original assessment"), amend the assessment by making such alterations or additions to the assessment as the Comptroller considers necessary, and if an amended assessment is made, shall serve a notice of the amended assessment on the person assessed.

(6) An amended assessment is treated in all respects as an assessment under this Act.

(7) For the purposes of making an assessment under this section, the Comptroller may estimate the amount of VAT payable by a person based on the information available to him or her.

(8) The Comptroller may not make an assessment, including an amended assessment—

(*a*) in the case of an assessment under subsection (1)(*a*), more than six years after the end of the tax period to which the assessment relates; or

(*b*) in the case of an assessment under subsection (1)(*c*), more than six years after the date on which the refund was paid, or, if an input tax credit was allowed for the amount refundable, more than six years after the end of the tax period in which the credit was allowed,

unless, in either case, the taxable person committed fraud or wilful neglect in furnishing the return for the tax period or in applying for the refund.

(9) The Comptroller may make an assessment at any time if the assessment is made under subsection (1)(*b*) or under subsection (2) or (3).

(10) Nothing in subsection (8) prevents the amendment of an assessment to give effect to a decision of the Appeal Commissioners or a court.

(11) The Comptroller shall, within twenty-one days of making an assessment serve notice of the assessment on the person assessed, stating—

(*a*) the reason for the assessment, the amount of VAT payable as a result of the assessment, and the basis on which that amount was determined;

(*b*) the date on which that VAT is due and payable, which should be no less than twenty-one days after the date on which the notice is served; and

(*c*) the time, place, and manner of appealing the assessment.

(12) Nothing in this section prevents any interest or penalty payable—

(*a*) in respect of VAT assessed under subsection (1)(*a*) or (*b*), from being computed from the original due date for payment of the VAT as determined under section 46;

(*b*) in respect of VAT assessed under subsection (1)(*c*), in relation to an application for a refund, from being computed from—

(i) the date on which a refund was paid to the person, or

(ii) if an input tax credit was allowed for the amount refundable, the date on which the VAT return was required to be lodged for the tax period in which the input tax credit was allowed; or

(*c*) in respect of VAT assessed under subsection (2) or (3), from being computed from the date on which payment of the VAT would have been due under section 45, if the supply had been a taxable supply.

54. Assessment of recipient

(1) If a supplier incorrectly treats a taxable supply as an exempt or zero-rated supply because of fraudulent misrepresentation by the recipient of the supply, the Comptroller may assess the recipient of the supply for payment of the VAT due in respect of the supply, including any interest or penalty payable as a result of the late payment of the VAT, and the assessment is treated as an assessment of VAT payable by the recipient for all purposes of this Act, whether or not the recipient is a taxable person.

(2) The Comptroller shall serve notice of the assessment on the recipient specifying—

(*a*) the reason for the assessment;

(*b*) the amount of VAT payable as a result of the assessment;

(*c*) the date on which that VAT is due and payable; and

(*d*) the time, place and manner of objecting against the assessment.

(3) Subsection (1) does not preclude the Comptroller from recovering from the supplier the VAT, interest, or penalty due in respect of the supply and—

(*a*) the Comptroller may recover part of the VAT payable on the supply from the supplier and part from the recipient; but

(*b*) the Comptroller shall not recover more than the total amount of VAT, interest, and penalty payable in relation to the supply.

(4) If a supplier who incorrectly treated a taxable supply as an exempt or zero-rated supply, because of misrepresentation or fraud by the recipient of the supply, has paid to the Comptroller any amount of the VAT, interest or penalty in respect of the supply, the supplier may recover that amount from the recipient of the supply.

55. Negation of tax benefit from a scheme

(1) In this section—

"scheme" includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking, whether expressed or implied and whether or not legally enforceable; and

"tax benefit" includes—

(*a*) a reduction in the liability of a person to pay VAT;

(*b*) an increase in the entitlement of a person to an input tax credit, including an increase in an excess carried forward;

(*c*) an entitlement to a refund;

(*d*) a postponement of liability for the payment of VAT;

(*e*) an acceleration of entitlement to a deduction for input tax;

(*f*) any other benefit arising because of a delay in payment of output tax, or an acceleration of entitlement to a deduction for input tax;

(*g*) anything that causes what is in substance and effect a taxable supply or import, not to be a taxable supply or import; or

(*h*) anything that gives rise to an input tax credit entitlement for an acquisition or import that is in substance and effect an acquisition used or to be used, for a purpose other than that of making taxable supplies.

(2) Notwithstanding anything in this Act, if the Comptroller is satisfied that a scheme has been entered into or carried out and—

(*a*) a person has obtained a tax benefit in connection with the scheme in a manner that constitutes a misuse or abuse of the provisions of this Act; and

(*b*) having regard to the substance of the scheme, it would be concluded 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 to obtain the tax benefit,

the Comptroller may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as the Comptroller considers appropriate for the prevention or reduction of the tax benefit.

(3) For the purposes of determining a person's liability under subsection (2), and for the purposes of ensuring the prevention or reduction of the tax benefit, the Comptroller may do any of the following—

(*a*) treat a particular event that actually happened as not having happened;

(*b*) treat a particular event that did not actually happen as having happened and, if appropriate, treat the event as—

(i) having happened at a particular time, and

(ii) having involved particular action by a particular person;

(*c*) treat a particular event that actually happened as—

(i) having happened at a time different from the time it actually happened, or

(ii) having involved particular action by a particular person (whether or not the event actually involved any action by that person).

(4) The Comptroller shall notify a person whose liability the Comptroller has determined under subsection (2), of the determination, either by serving notice of the determination on the person or by issuing an assessment to the person in relation to one or more tax periods.

56. General provisions relating to assessments

(1) The original or a certified copy of a notice of assessment is receivable in proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings in relation to the assessment under Part XVIII of this Act, that the amount and all particulars of the assessment are correct.

(2) No assessment purporting to be made, issued or executed under this Act may be—

(*a*) quashed or deemed to be void or voidable for want of form; or

(*b*) affected by reason of mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with this Act, and the person assessed or intended to be assessed is designated in it according to common understanding.

PART XIII

Powers and Duties of the Comptroller

57. Powers and duties of the Comptroller and the Comptroller of Customs

(1) The Comptroller has the responsibility for the general administration of this Act and for carrying out the provisions of this Act.

(2) The power to carry out a duty or function required of the Comptroller under this Act, including that of carrying out the responsibilities under subsection (1), is conferred on the Comptroller.

(3) The Comptroller may prepare documents outlining the way in which this Act will be administered, including documents outlining the Comptroller's understanding of how the Act applies, and may designate such documents as being only for internal use by taxation officers or, if the Comptroller thinks appropriate, publish such documents for the information of taxpayers.

(4) A document referred to in subsection (3) is not binding for the purposes of this Act, and in the performance of his or her responsibilities under this Act, the Comptroller may at any time withdraw the document in whole or in part, or administer this Act in a manner that is not in conformity with the document.

(5) The Comptroller of Customs has the responsibility for the administration and enforcement of this Act in respect of VAT payable on imports, and for carrying out the provisions of this Act in that respect.

58. Co-operation and information exchange

`1) Notwithstanding anything in this law, the customs laws, or any other law, the Comptroller of Customs shall provide the Comptroller with such information as the Comptroller reasonably requests, in order to enable the Comptroller to carry out the responsibilities imposed on the Comptroller by this Act.

(2) Notwithstanding anything in this law, the Income Tax Act, Chapter 149, or any other law, the Comptroller shall provide the Comptroller of Customs with such information as the Comptroller of Customs reasonably requests, in order to enable the Comptroller of Customs to carry out the responsibilities imposed on the Comptroller of Customs by this Act.

(3) For the purposes of giving effect to this section, the Comptroller and the Comptroller of Customs shall enter into a Memorandum of Understanding to govern, amongst other matters—

(*a*) the exchange of information relevant to the administration of this Act;

(*b*) procedures to be followed in exchanging such information;

(*c*) procedures for regular exchanges of information without specific request;

(*d*) procedures for requesting and providing additional information;

(*e*) co-operation in the conduct of audits and other investigations;

(*f*) protection of confidentiality and related issues;

(*g*) situations in which a request for information may be refused; and

(*h*) any other matter required to enable the Comptroller or the Comptroller of Customs to fulfil the responsibilities imposed under this Act.

(4) Where any law requires the Comptroller or the Comptroller of Customs, or an officer acting under the authority of either of them, to protect or maintain the secrecy or confidentiality of information about a person, it is not a breach of that law for the Comptroller and the Comptroller of Customs to exchange information for the purposes of this Act.

(5) A memorandum made for the purposes of this Act may relate to matters other than and in addition to those relevant to this Act.

59. Secrecy

(1) Except as provided in this section, the Comptroller, the Comptroller of Customs, or an officer acting under the authority of either of them in carrying out the provisions of this Act shall not—

(*a*) disclose to a person any matter in respect of another person that may come to the knowledge of the relevant Comptroller or officer in the exercise of his or her powers, or the performance of his or her duties, under this Act; nor

(*b*) permit a person to have access to records in the possession or custody of the Comptroller, the Comptroller of Customs, or the officer, except in the exercise of powers, or the performance of duties, under this Act, or by order of a court.

(2) Nothing in this section prevents the Comptroller or the Comptroller of Customs from—

(*a*) disclosing information to a person in the service of a revenue or statistical department of the Government of Grenada, so long as the Comptroller is satisfied that such disclosure is necessary for the performance of that person's official duties and the information disclosed does not identify a specific person; or

(*b*) disclosing documents or information—

(i) if the disclosure is necessary for the purposes of this Act or another revenue law,

(ii) if a person is authorised by an enactment to receive such information, or

(iii) if the information is disclosed to the competent authority of the government of another country with which Grenada has entered into an agreement, for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement or under a law.

(3) A person receiving documents and information disclosed in accordance with subsection (2), shall keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure was made.

(4) The Comptroller and the Comptroller of Customs may use documents or information obtained in the performance of their duties under this Act, for the purposes of any other revenue law administered by either of them, or by any other agency or Department falling under the Portfolio of the Minister.

(5) If a person consents in writing, information concerning that person may be disclosed to another person.

(6) The Comptroller or the Comptroller of Customs may disclose information concerning a taxpayer's affairs to a person claiming to be the taxpayer or the taxpayer's authorised representative, only after obtaining written evidence of the authenticity of the claim.

(7) Nothing in this section should be taken to limit the powers granted, and obligations imposed, under sections 57 and 58.

60. Power to require security

(1) For the purposes of securing payment of VAT that is or may become due, the Comptroller may, by notice in writing, require a person to give security in such amount and manner as the Comptroller thinks fit, by the date specified in the notice.

(2) A person who is required to give security under subsection (1), shall give the security in the amount and manner and on the date specified in the notice.

(3) If security has been given in cash and the Comptroller is satisfied that the security is no longer required, the Comptroller shall apply the amount of the security in the following order—

(*a*) first in reduction of any interest or penalty payable by the person under this Act;

(*b*) then against any VAT due and payable by the person;

(*c*) then against payment of any other taxes, levies, or duties collected by the Comptroller, including any unpaid amounts under the repealed taxes,

and shall refund any remaining amount to the person who gave the security.

(4) A decision under subsection (1) may be challenged only under Part XVIII of this Act.

61. Power to seize goods

(1) The Comptroller may, in the execution of a warrant signed by a Magistrate or a Justice of the Peace, enter a place and seize goods in respect of which the Comptroller has reasonable grounds to believe that VAT that is, or will become payable in respect of the supply or import of the goods, has not been or will not be paid.

(2) Goods seized under subsection (1) must be stored in a place approved by the Comptroller for that purpose.

(3) As soon as practicable after a seizure of goods under subsection (1), the Comptroller shall serve notice of the seizure on—

(*a*) either—

(i) the owner of the goods, or

(ii) the person who had custody or control of the goods immediately before seizure; or

(*b*) a person claiming the goods who provides sufficient information to enable such notice to be served if, after making reasonable enquiries, the Comptroller cannot obtain sufficient information to identify a person referred to in paragraph (*a*), and if no such person claims the goods, the Comptroller is not required to serve the notice.

(4) A notice under subsection (3) must be in writing and must—

(*a*) identify the goods seized;

(*b*) state that the goods have been seized under this section and the reason for the seizure; and

(*c*) set out the terms of subsections (5), (6) and (7).

(5) The Comptroller may authorise the delivery of goods seized under subsection (1) to the person on whom a notice under subsection (3) has been served, if that person has, to the satisfaction of the Comptroller—

(*a*) given, or made an arrangement to give, security for payment of the VAT that is due, or may become payable in respect of the supply or import of the goods; or

(*b*) agreed to pay by instalments, the VAT that is due or may become payable in respect of the supply or import of the goods.

(6) If subsection (5) does not apply, the Comptroller may detain the goods seized under subsection (1)—

(*a*) in the case of perishable goods, for such period as the Comptroller considers reasonable, having regard to the condition of the goods; or

(*b*) in any other case, for twenty-one days after the seizure of the goods,

and thereafter the Comptroller may sell the goods by public auction or in such other manner as the Comptroller may determine.

(7) The Comptroller shall apply the proceeds of a disposal of goods under subsection (6) as follows—

(*a*) first toward the cost of seizing, keeping, and selling the goods;

(*b*) then towards payment of the VAT due in respect of the supply or import of the goods seized, including any interest or penalties thereon;

(*c*) then towards payment of any other taxes, levies, or duties collected by the Comptroller, including any unpaid amounts under the repealed taxes; and

(*d*) the balance, if any, to be paid to the owner of the goods.

(8) Nothing in this section precludes the Comptroller from proceeding under Part XVI of this Act with respect to any balance owed, if the proceeds of disposal are not sufficient to meet the costs referred to in subsection (7)(*a*) and (*b*).

62. Delegation

(1) The Comptroller may delegate in writing a duty, power, or function conferred on him or her under this Act other than—

(*a*) the power of delegation conferred by this subsection; and

(*b*) the power to sanction prosecutions conferred by section 70.

(2) A delegation under this section does not prevent the exercise of such power, duty, or function by the Comptroller himself or herself.

(3) The Comptroller may, at any time, revoke in writing, a delegation under this section.

PART XIV

Miscellaneous

63. Branches and divisions

(1) A person who conducts more than one taxable activity, or who conducts one or more taxable activities through branches or divisions, must be registered in the name of the person and not in the names of the activities, branches, or divisions.

(2) Subsection (1) does not prevent a person being treated as if he or she were two separate persons for the purposes of section 22(7).

64. Actions of partners, trustees and members of unincorporated persons

(1) For the purposes of this Act, anything done or engaged in by a person in the capacity as an officer of an unincorporated body of persons, is treated as being done by the unincorporated body and not by the officer.

(2) Without limiting subsection (1), examples of things done or engaged in by a person include—

(*a*) carrying on a taxable activity or part of the activity;

(*b*) making a supply, import, or acquisition in the course or furtherance of the taxable activity carried on by the body;

(*c*) receiving service of a notice;

(*d*) lodging a return; or

(*e*) providing information.

65. Currency

(1) An amount taken into account under this Act must be expressed in Eastern Caribbean Currency.

(2) If an amount is expressed or paid in a currency other than Eastern Caribbean Currency—

(*a*) if the amount relates to an import of goods, it must be converted into Eastern Caribbean Currency at the exchange rate applicable under the customs laws, for the purposes of computing the customs duty payable on the import; and

(*b*) if no such provisions apply, and in any other case, the amount must be converted to Eastern Caribbean Currency at the Eastern Caribbean Central Bank mid-exchange rate applying between the foreign currency and Eastern Caribbean Currency, on the date the amount is taken into account for the purposes of this Act.

66. VAT-inclusive pricing

(1) A price charged by a taxable person in respect of a taxable supply includes an amount representing the VAT chargeable on that supply, whether or not the person includes an amount for VAT when determining the price, states that the price includes an amount for VAT, or otherwise takes VAT into account in setting the price.

(2) A price advertised or quoted by a taxable person in respect of a taxable supply must be VAT-inclusive, and the advertisement or quote must clearly state that the price includes VAT, unless the supply is a zero-rated supply, in which case the advertisement or quote must indicate that no VAT is payable on the supply.

(3) Despite subsection (2), price tickets on goods need not separately state that VAT is included in the price, if a notice stating that prices include VAT is prominently displayed at or near the entrance to the premises where the goods are offered for sale and at the place where payments are effected.

(4) A taxable person advertising or quoting a price, may include a statement of the VAT-exclusive price in the advertisement or quotation, only if the VAT-inclusive price is stated with equal or greater prominence.

(5) The Comptroller may, in relation to a taxable person or a class of taxable persons, approve another method of displaying prices for taxable supplies, including, but only in the case of supplies made to other taxable persons, a method involving VAT-exclusive pricing.

67. Regulations

(1) The Minister may make Regulations—

(*a*) for any matter that this Act requires or allows to be prescribed by Regulations; or

(*b*) for any matter that is necessary or convenient to be prescribed in order to better carry out or give effect to the purposes of the Act.

(2) Without limiting the generality of subsection (1), such Regulations may provide for—

(*a*) transitional or saving provisions consequent on the coming into force of the Act, or on any change in the VAT rate or the tax base under the Act;

(*b*) the collection of output tax in respect of taxable supplies made by retailers;

(*c*) provisions to remedy (in manner and or form), any deficiency in this Act arising from the absence or insufficiency of provisions to deal with any thing that is necessary to give effect to the Act;

(*d*) ensuring that the provisions of the Act do not inappropriately result in the application of VAT more than once (or, unless clearly intended by the Act, less than once) to a particular type of transaction;

(*e*) ensuring that this Act operates as a multi-stage, value added tax on consumption in Grenada, at the appropriate rate of VAT;

(*f*) prescribing the duties and functions of officers and other persons appointed or employed under the Act;

(*g*) prescribing the form of returns to be made, the particulars to be included in the returns, the persons by whom, and the time when or within which such returns are to be made;

(*h*) prescribing the forms of assessments, notices, and other documents that are referred to in the Act, or are necessary in order to give effect to the Act;

(*i*) providing for any matter that is contemplated by or necessary for giving full effect to the provisions of the Act, and for the due administration under the Act.

(3) Subject to subsection (1), Regulations made under this Act are subject to an affirmative resolution of the Parliament.

(4) The specification and description of the nature and form of filing and documentation requirements and approved forms, may be issued by the Minister as Regulations, or by way of notice in the *Gazette*.

PART XV

Interest, Penalties and Offences

Division 1: Interest

68. Interest on late payments

(1) A person who fails to pay VAT payable to the Comptroller or the Comptroller of Customs under this Act on or before the due date for payment, is liable to interest on the amount unpaid at the rate of one and one half per cent per month or part thereof, calculated from the date the payment was due to the date the payment is made.

(2) Interest payable by a person under subsection (1) may be recovered by the Comptroller as if it were VAT payable by the person.

(3) If a person has paid interest under subsection (1), and an amount to which the interest relates is found not to have been payable, the interest paid on that amount must be refunded to the person.

(4) The Comptroller may, on application in writing by a person liable to pay interest under this section, remit the interest in whole or part if the Comptroller is satisfied that there is good cause to do so.

69. Penalties or offences for acts or omissions by companies

(1) Subsection (2) applies if—

(*a*) an act has been committed, or an omission has been made, by a company; and

(*b*) because of the act or omission, the company is liable to an administrative penalty or to prosecution for an offence in relation to the act or omission.

(2) Every person who, at the time of the act or omission referred to in subsection (1)—

(*a*) was a director or other similar officer of the company; or

(*b*) was acting or purporting to act in such capacity,

is liable to a penalty and may be prosecuted for an offence under Division 2, as if the person were the company.

70. Aiding and abetting

A person who aids, abets, assists, counsels, incites, or induces a contravention of the Act or the commission of an offence under the Act, commits that contravention or offence, and is liable to the same penalty, fine, or term of imprisonment as a person committing the offence.

71. Independent application of penalties and offences

(1) Where, in respect of a single act, omission, or course of conduct, a fixed penalty may be imposed on a person under more than one section in Division 2, the person's liability for a penalty under each such section is separate and distinct from the person's liability under each other such section.

(2) Where, in respect of a single act, omission, or course of conduct, a person is convicted of more than one offence under Division 2—

(*a*) the maximum term of imprisonment imposed for the offences shall not exceed a term of five years; and

(*b*) the person shall not subsequently be prosecuted for additional offences in relation to the same act, omission, or course of conduct.

(3) No fixed penalty is payable under a section in Division 2 in respect of an act, omission, or course of conduct by a person if—

(*a*) the person has been convicted of an offence under that section in respect of the same act, omission, or course of conduct; or

(*b*) the offence has been compounded by the Director of Public Prosecutions.

72. Fines and penalties are in addition to tax payable

For the avoidance of doubt—

(*a*) the liability of a person to pay tax due under Part VII, or tax assessed under Part XII, is independent of the person's liability to pay a penalty or fine imposed under this Part; and

(*b*) where a penalty or fine is calculated by reference to the amount of VAT payable, that penalty or fine is payable in addition to the VAT payable.

Division 2: Penalties and Offences

73. Failure to apply for registration

(1) A person who is required to be registered and does not apply for registration within the required time, commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years.

(2) This section does not apply to a non-resident supplier to which section 9(6) applies, if in the case of taxable supplies made by the supplier through one or more resident agents, either—

(*a*) all of the agents are registered under this Act at the time the supplies were made; or

(*b*) at the time the supplies were made, the supplier believed on reasonable grounds that all of the agents were registered under this Act.

(3) If a person is required to be registered only because he is a resident agent acting for a non-resident who is registered—

(*a*) a fixed penalty payable by the agent pursuant to the provisions of Part XVI, or a fine payable under subsection (1), is payable only in respect of supplies made by the agent in his own right, and does not apply to the supplies made by the agent on behalf of the principal; and

(*b*) the principal is liable to a fixed penalty pursuant to the provisions of Part XVI, or a fine payable under subsection (1), in respect of supplies made by the agent on his behalf during that period, unless, at the time the supplies were made, the principal believed on reasonable grounds that the agent was registered under this Act.

74. Failure to display registration certificate

A person who fails to display, as required by section 14(10), his or her Value Added Tax Registration Certificate, or a certified copy thereof issued by the Comptroller, whichever is applicable, commits an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars, or to a term of imprisonment not exceeding eighteen months.

75. Failure to notify changes affecting registration, or to apply for cancellation of registration

A person who fails to notify the Comptroller as required by section 14(11), or to apply for cancellation of his or her registration as required by section 15(1), commits an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars, or to a term of imprisonment not exceeding eighteen months.

76. Failure to comply with requirements after cancellation of registration

A person who fails to comply with section 15(9)(*a*), (*b*) or (*c*) commits an offence, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding two years.

77. Public entertainment supplies by unregistered persons

A promoter of public entertainment, or a licensee or proprietor of a place of public entertainment who, in contravention of section 10(4), makes a supply in relation to public entertainment while not registered, commits an offence and is liable, on summary conviction, to a fine not exceeding twenty thousand dollars, or to a term of imprisonment not exceeding three years.

78. False documentation or TIN

(1) A person shall not—

(*a*) use a false TIN or a TIN that does not apply to the person;

(*b*) issue a false VAT invoice, VAT credit note, VAT debit note, or sales receipt; or

(*c*) provide, or fail to provide, a VAT invoice, VAT credit note, VAT debit note, or sales receipt otherwise than as provided for in Part IX.

(2) A person who contravenes subsection (1) (*a*) and (*b*) commits an offence and is liable, on summary, conviction to a fine not exceeding twenty-five thousand dollars, or to a term of imprisonment not exceeding three years.

(2A) A person who contravenes subsection (11) (*c*) shall be liable to a fixed penalty as [illegible] for in the Schedule.

(3) For the purposes of subsection (1)(*b*) or (*c*), a supplier does not contravene the Act or commit an offence only because information relating to the recipient of the supply, which is relevant to the issue of, or required to be included in, the VAT invoice, debit or credit note, or sales receipt (including, but not limited to, information about the registration status or TIN of the person) is incorrect, if the person, having exercised all due care, believes on reasonable grounds that the information relating to the recipient is accurate.

(4) For the purposes of subsection (1)(*c*), a supplier does not contravene the Act or commit an offence if the person, having exercised all due care, believes on reasonable grounds, that the recipient of the supply for which a VAT invoice, debit or credit note, or sales receipt is required to be issued, is or is not a registered person.

79. Failure to file return or pay net amount due

A person who fails to file a VAT return by the due date commits an offence, and is liable, on summary conviction, to a fine not exceeding twenty thousand dollars, or to a term of imprisonment not exceeding three years.

80. Failure to comply with notice for recovery of VAT

A person who fails to comply with a notice issued under Part XI of the Income Tax Act, Chapter 149, in relation to an amount of VAT payable under this Act, contravenes the Act and commits an offence, and is liable, on summary conviction, to a fine not exceeding thirty thousand dollars, or to a term of imprisonment not exceeding three years.

81. Failure to keep records

A person who fails to maintain proper records as required by sections 43 and 111 contravenes the Act and commits an offence, and is liable, on summary conviction, to a fine not exceeding five thousand dollars or a term of imprisonment not exceeding eighteen months.

82. Failure to comply with notice to give information

A person who fails to comply with a notice issued under section 105(1) within the specified time contravenes the Act and commits an offence, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or a term of imprisonment not exceeding two years.

83. Non-compliance with VAT-inclusive price quotation requirements

A person who contravenes the requirements of section 66 in relation to the advertising or quotation of prices for taxable supplies contravenes the Act and commits an offence, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding eighteen months.

84. False or misleading statements

(1) A person who makes a statement to a taxation officer that is false or misleading in a material particular contravenes the Act and commits an offence, if an amount properly payable by the person under this Act exceeds the amount that would be payable, if the person was assessed on the basis that the statement was true.

(2) Subsection (1) shall apply if the person who made the statement did not know, and could not reasonably be expected to know, that the statement was false or misleading in a material particular.

(3) A reference in this section to a statement made to a taxation officer, includes a reference to a statement made orally, in writing, or in another form, to that officer acting in the performance of the officer's duties under this Act, and includes a statement made—

(*a*) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;

(*b*) in any information required to be furnished under this Act;

(*c*) in a document furnished to a taxation officer otherwise than pursuant to this Act;

(*d*) in an answer to a question asked of a person by a taxation officer; or

(*e*) to another person, with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

(4) A reference in this section to a statement that is misleading in a material particular, includes a reference to a statement that is so because of the omission of any matter or thing from the statement.

85. Understatement of tax payable or improper claim for refund

In relation to a particular tax period, a person commits an offence if the person does one or more of the following—

(*a*) understates or omits to include an amount of output tax in a return submitted to the Comptroller for the tax period;

(*b*) overstates the input tax credits allowed in a return submitted to the Comptroller for the tax period; or

(*c*) improperly claims a refund under Part XI in relation to the tax period,

and is liable, on summary conviction, to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding two years.

86. Failure to pay security

A person who is required to pay security under section 60 and does not do so by the required day, contravenes the Act and commits an offence, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or a term of imprisonment not exceeding two years.

87. Impeding tax administration

(1) A person who impedes or attempts to impede the Comptroller in the administration of this Act, commits an offence, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or a term of imprisonment not exceeding two years.

(2) For the purposes of subsection (1), a person impedes the administration of this Act if the person—

(*a*) fails to comply with a lawful request by a taxation officer to examine documents, records, or data within the control of the person;

(*b*) fails to comply with a lawful request by the Comptroller to have the person appear before a taxation officer authorised by the Comptroller;

(*c*) interferes with the lawful right of a taxation officer to enter onto a business premises or a dwelling unit; or

(*d*) otherwise impedes the determination, assessment, or collection of VAT.

88. VAT evasion

A person who wilfully evades, or attempts to evade the assessment, payment, or collection of VAT commits an offence and is liable, on summary conviction, to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding three years.

89. Failure to preserve secrecy

A person who contravenes the requirements of section 59 commits an offence, and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years.

90. Offences by taxation officers

(1) A taxation officer commits an offence if the officer, in carrying out the provisions of this Act—

(*a*) directly or indirectly asks for, or takes, in connection with the officer's duties, a payment or reward, whether pecuniary or otherwise, or a promise or security for such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or

(*b*) enters into or acquiesces in an agreement to do, abstain from doing, permit, conceal, or connive at an act or thing that is contrary to the provisions of this Act or to the proper execution of the officer's duty, or that has the effect that the VAT revenue is or may be defrauded,

and is liable, on summary conviction, to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding three years.

(2) This section applies in addition to and does not limit the operation of the Integrity in Public Life Act, 2007, Chapter 150A.

(3) In addition to imposing a fine under subsection (1), the Court may order the convicted person to pay to the Comptroller an amount of VAT that has not been paid as a result of the officer's wrongdoing, and which cannot be recovered from the person liable to pay the VAT.

91. General penalties and offences

(1) A person commits an offence if the person—

(*a*) without lawful excuse fails to comply with a requirement made under this Act or the Regulations; or

(*b*) knowingly provides any information required by or under this Act or the Regulations that are false or misleading in any material particular,

and is liable, on summary conviction, to a fine not exceeding five thousand dollars or a term of imprisonment not exceeding six months.

(2) This section applies to an act or omission that constitutes a contravention of, or offence against, the Regulations, unless the Regulations themselves specify a particular penalty, fine or term of imprisonment in relation to the act or omission.

PART XVI

Fixed Penalty

92. Interpretation

For the purpose of this Part—

"authorised officer" means the Comptroller or any person employed in Inland Revenue Department authorised in writing by the Comptroller, to perform the functions under this Part;

"fixed penalty notice" means a notice in the form set out in the Seventh Schedule, offering the opportunity of the discharge of any liability to conviction of the offence to which the notice relates, by payments of a fixed penalty in accordance with this Part;

"fixed penalty offence" means an offence listed in the First Column of the Sixth Schedule, an offence being created under the section of this Act or the Value Added Tax (Transitional Provisions) Act, 2009, Chapter 333B, specified in the Second Column of the Schedule and attracting the fixed penalty set out in the Third Column of the Schedule.

93. Fixed penalty notices

(1) Where an authorised officer has reason to believe that a person has committed an offence specified under the First Column of the Sixth Schedule, he or she may serve on such a person a fixed penalty notice in the manner specified in the Seventh Schedule, informing the person that if he does not wish to be prosecuted for the alleged offence in court, he or she may pay to an officer specified, in the fixed penalty notice, within the time specified, the amount of the penalty prescribed for the offence, if dealt with under this section.

(2) A fixed penalty notice may be served on a person personally, or by posting it to him or her within thirty days after the occurrence giving rise to the allegation of the offence.

(3) A person who receives a fixed penalty notice may decline to be dealt with under the provisions of this Part, and where he or she fails to pay the fixed penalty as provided under the Sixth Schedule within the time specified in the fixed penalty notice, or within such further time as may, in any particular case, be allowed, he or she is deemed to have declined to be dealt with under the provisions of this Part.

94. Particulars to be specified in fixed penalty notice

A fixed penalty notice shall be signed by an authorised officer and shall specify—

(*a*) the date, time and place of the giving or affixing of the notice;

(*b*) the section of the Act creating the offence alleged, and such particulars of the offence as are required under this Act;

(*c*) the time within which the fixed penalty may be paid in accordance with section 95(2);

(*d*) the amount of the fixed penalty;

(*e*) the clerk of the Magistrate's Court to whom, and the address at or to which, the fixed penalty may be paid or remitted; and

(*f*) the address of the Magistrate's Court at which the person is required to appear in the event of his or her failure to pay the fixed penalty within the specified time, and the date and time of such appearance.

95. Payment of fixed penalty precludes prosecution

(1) Where a fixed penalty notice has been given under section 94, the person to whom the notice is issued, may pay the fixed penalty in accordance with the penalty notice.

(2) The time within which a fixed penalty is payable is thirty-one (31) days from the date of the notice, and where payment reaches the clerk of the Magistrate's Court after that time, it shall be returned to the sender.

(3) Where the fixed penalty is paid in accordance with the notice, no person shall then be liable to be convicted for the offence in respect of which the notice was given, and the proceedings instituted by the notice shall be deemed to have been dismissed.

96. Amount of fixed penalty payable

(1) The fixed penalty for an offence shall be the amount specified in the Third Column of the Sixth Schedule for that offence.

(2) Notwithstanding anything to the contrary contained in this Act or any other law, where in respect of an offence attracting a fixed penalty, a person is served with a fixed penalty notice under section 94 requiring him or her to pay the fixed penalty or to appear at the court specified, but he or she does not pay the fixed penalty and instead is proceeded against in court, if he or she is convicted of the offence and the court decides to impose a fine, that fine shall not be less than the sum that is the fixed penalty attached to that offence by the Sixth Schedule.

97. Payment of fixed penalty

(1) Payment of the fixed penalty shall be made to the clerk of the Magistrate's Court as stated in the notice given pursuant to section 94, and shall be dealt with in the same manner as payment of a fine imposed for an offence under the Criminal Procedure Code.

(2) Payment of the fixed penalty shall be accompanied by the notice which shall be completed by the person to whom the notice is issued.

(3) The clerk of the Magistrate's Court to whom a fixed penalty has been paid, shall in writing in the prescribed manner, inform the Comptroller that the fixed penalty had been paid.

98. Certificate of payment or non-payment of fixed penalty

In any proceedings, a certificate that payment of the fixed penalty was or was not made to the clerk of the Magistrate's Court by the date specified in the certificate shall, if the certificate purports to be signed by such clerk, be sufficient evidence of the facts stated, unless the contrary is proved.

99. Consequence of failure to pay or to appear

Where a fixed penalty is not paid within the time specified in the notice to which section 94 refers; being the time within which it should be paid in accordance with section 95(2), proceedings in respect of the offence specified in the notice shall thereafter proceed in the manner prescribed by the Criminal Procedure Code.

100. Amendment and replacement of Sixth Schedule

The Minister may, from time to time, by Regulations—

(*a*) add offence to the Sixth Schedule;

(*b*) remove any offence from the Sixth Schedule; or

(*c*) replace the Sixth Schedule in whole or in part.

101. Special Regulations

The Minister may by Regulations make provisions respecting any matter incidental to the operation of this Part and in particular for prescribing the duties of the clerk of the Magistrate's Court, and the information to be supplied to such clerk by the person on whom the fixed penalty is imposed.

PART XVII

Collection and Recovery

102. Recovery of VAT

(1) An amount due and payable under this Act, including a net amount payable under section 31, interest payable under the Act, a penalty applied under Division 1 of Part XV, and any other amount payable under this Act, is a debt due to the Crown and payable to the Comptroller, and for the purpose of recovering the debt, except to the extent of any inconsistency, sections 98, 99, 105, 106, 107 and 107A of the Income Tax Act, Chapter 149, apply as if the amount owing under this Act were income tax.

(2) An amount is not considered to be payable for the purposes of subsection (1) unless—

(*a*) the amount is shown as a positive net amount on a return and remains unpaid; or

(*b*) the amount is shown in a notice of assessment served on the taxpayer and the taxpayer has failed to pay it within the deadline specified in the notice.

(3) In addition to the powers under subsection (1) but subject to section 116(4), where money or property of a person who is liable to pay an amount under this Act ("the person liable") is, or will be, in the possession or control of a representative—

(*a*) to the extent of the amount owed by the person liable, the Comptroller may, by notice in writing, require the representative to pay part or all of the money held, or to transfer all or part of the property, to the Comptroller within twenty-one days of the date of service of the notice or, in the case of money or property that will come into the possession or control of the representative at a later date, within twenty-one days of that date; and

(*b*) in paying the amount or transferring the property, the representative is deemed to have acted under the authority of the person liable and of all other persons concerned, and is indemnified in respect of the payment.

(4) If the Comptroller is unable to recover an amount of VAT, interest or penalty due and payable by a person under this Act, the Minister may, on approval by Cabinet, order the extinguishment of the liability as a debt due to the Crown.

(5) If the Comptroller determines that a person whose debt was extinguished under subsection (4) has assets that may be attached to recover all or part of the unpaid amounts, the liability for the debt may be reinstated by an order of the Minister, approved by Cabinet, revoking the order made under subsection (4).

(6) This section does not apply to VAT collected by the Comptroller of Customs, which is recoverable under procedures for recovery of customs duty.

103. Allocation of payments

If, in addition to an amount of VAT which is due and payable by a person under this Act, an amount of interest is payable, a payment made by the person in respect of the VAT, interest, which is less than the total amount due, must be applied in the following order—

(*a*) first, to reduce the amount of interest due and payable;

(*b*) then, to the extent that the payment exceeds the sum of the interest, to reduce the amount of VAT due and payable.

104. Recovery of VAT from persons leaving Grenada

(1) If the Comptroller has reasonable grounds to believe that any person may leave Grenada without paying all VAT due under this Act from the person, or from a company or other body of persons controlled by the person, the Comptroller may, by notice in writing served on that person, require the person within the time frame specified in the notice to—

(*a*) make payment in full; or

(*b*) make arrangements satisfactory to the Comptroller for the payment of the VAT or to secure the amount that is or will become owing.

(2) If any person fails to make payment in full or give satisfactory security as required under subsection (1), the Comptroller may issue a Certificate of Non-Compliance, stating that the person has an outstanding VAT debt, and a copy of the certificate must be given to the person and to the Chief Immigration Officer, who shall not permit the person to leave Grenada until the Comptroller revokes the certificate because the debt is paid or appropriate security is given.

(3) Where a certificate is given under subsection (2)—

(*a*) the Comptroller may revoke the certificate at any time; and

(*b*) the Comptroller shall revoke the certificate within twenty-four hours of the person complying with the notice given under subsection (1).

(4) Nothing in this section prevents the Chief Immigration Officer from allowing the person to leave Grenada if, in his or her view, there are compelling circumstances justifying a decision to allow the person to leave.

PART XVIII

Objections and Appeals

105. Reviewable decisions

(1) The following decisions made under this Act are reviewable decisions—

(*a*) a decision under Part III to register or not register a person under this Act, including—

(i) a decision in relation to the date of commencement of registration,

(ii) a declaration under section 14(5) that reasonable grounds exist for believing that the person is required to be registered;

(*b*) a decision under section 15 to cancel or not to cancel a person's registration under this Act, including a decision in relation to the date of cessation of registration;

(*c*) a decision under section 44(3) not to allow a person permission for late lodgement of a return;

(*d*) a decision under section 44(5) to require a person to lodge fuller or additional returns;

(*e*) a decision under section 46(3) on a request for an extension of time to pay, including a decision not to grant the request, to require payment sooner than requested, or to require a taxpayer to comply with other payment arrangements;

(*f*) a decision under section 46(5) not to waive a late lodgement penalty;

(*g*) a decision under Part XI not to pay a refund or allow an input tax credit;

(*h*) the issue of an assessment under Part XII;

(*i*) a decision under section 55 to make a determination in relation to a taxpayer's liability for an amount;

(*j*) a decision under section 60 to require a person to give security;

(*k*) a decision under section 68(4) not to remit all or part of the interest payable under section 68;

(*l*) a decision under section 115 to appoint a person as a representative of a taxable person;

(*m*) a decision under section 34(11), (12) and (13) to allow or not allow an input tax credit to a registered person, including a decision as to the amount of any input tax credit allowed.

(2) A decision is a reviewable decision if another provision of this Act states that it is a reviewable decision, whether or not the decision is listed in subsection (1).

106. Objections to the Comptroller

(1) A person may, by notice in writing to the Comptroller, lodge a notice of objection to a reviewable decision, requesting the Comptroller to reconsider his decision and giving reasons for the request.

(2) A notice of objection under subsection (1) must be given to the Comptroller within one month after the date of service of the notice of assessment, or of the date on which the decision was made, whichever is applicable, or within such further time as the Comptroller for good cause allows.

(3) The Comptroller shall consider a valid objection made under subsection (1) and may disallow or allow it, either wholly or in part, and inform the objector of his or her decision by notice in writing as soon as practicable after making his or her decision, and of any effect that decision has on the amount of VAT payable by the objector under this Act.

(4) If, within three months of the date on which a request was given to the Comptroller under subsection (1), the Comptroller has not served notice of his or her decision to the objector, whether because no decision has been made, or because a

decision has been made but has not been notified to the objector, for the purpose of allowing the person to appeal, the Comptroller is deemed to have disallowed the objection, and a notice of the disallowance is deemed to have been served on the person seven days after the expiration of the three month period.

(5) If, within the time frame allowed by subsection (1), a person lodges an objection against an assessment or other decision of the Comptroller which has the effect that an amount is payable by the person to the Comptroller, the person's obligation to pay fifty per cent of the amount assessed is suspended until notice of the Comptroller's decision on the objection is served on the person.

(6) Nothing in this section alters the way in which interest accrues on an amount payable, or changes the date from which interest would otherwise begin to accrue.

107. Appeals to the Appeal Commissioners

(1) A person who is aggrieved by a decision of the Comptroller under section 106 on an objection against a reviewable decision may, by notice of appeal, appeal from the decision to the Appeal Commissioners.

(2) A notice of appeal, a copy of which must be lodged with the Comptroller, must be made in writing and lodged with the Secretary to the Appeal Commissioners within thirty days of the date of service of the Comptroller's decision on the objection, or within such further time as the Tribunal may for good cause allow.

(3) The Appeal Commissioners shall hear an appeal made under this section and shall make a decision in accordance with the provisions of this Act—

(*a*) affirming the decision under review;

(*b*) varying the decision under review; or

(*c*) setting aside the decision under review; and—

(i) making a decision in substitution for the decision set aside, or

(ii) remitting the matter for reconsideration by the Comptroller in accordance with any directions or recommendations of the Appeal Commissioners.

(4) The provisions of Part XI of the Income Tax Act, Chapter 149, apply, to the extent relevant, to the hearing and determination of appeals by the Appeal Commissioners under this Act.

108. Right of further appeal

(1) The Comptroller or the appellant may appeal to the High Court from any decision of the Appeal Commissioners which involves a question of law, including a question of mixed fact and law.

(2) The Comptroller or the appellant may appeal to the Court of Appeal from any decision of the High Court (being a decision of the High Court on an appeal from the Appeal Commissioners) which involves a question of law, including a question of mixed fact and law.

(3) On any further appeal to which this section relates, the High Court or the Court of Appeal, as the case may be—

(*a*) may confirm, increase or order the reduction of any assessment;

(*b*) may make such other order as it thinks fit; and

(*c*) may make such order as to costs as it thinks fit.

109. Payment not suspended by objection or appeal

(1) A notice of objection or appeal against a reviewable decision does not suspend an obligation to pay—

(*a*) any tax chargeable on a return or under an assessment;

(*b*) any penalty imposed under this Act; or

(*c*) any interest imposed under this Act,

and the tax, penalty or interest may be recovered as if no such objection or appeal had been lodged.

(2) Despite subsection (1), the Comptroller may, at the Comptroller's discretion and subject to such terms and conditions as the Comptroller thinks appropriate, suspend recovery of any amount pending the determination of an objection or appeal.

PART XIX

Record Keeping and Information Collection

110. Maintenance of accounts and records

(1) Every taxable person shall maintain in Grenada such accounts, documents, and other records, including records referred to in section 43, as required under this Act or under any Act dealing with the administration of this Act, and such accounts, documents, and the records must be maintained by the taxpayer for seven years after the end of the tax period to which they relate.

(2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty stipulated under section 81.

111. Power to require provision of information

(1) The Comptroller may, for the purposes of administering this Act, by notice in writing, require a person to—

(*a*) furnish, within the time specified in the notice, information that may be required by the notice; or

(*b*) attend, at the time and place designated in the notice, to be examined by the Comptroller, or a taxation officer authorised in writing by the Comptroller, concerning the tax affairs of that person or another person, and for that purpose, the Comptroller or the authorised taxation officer, may require the person examined to produce a book, record, or computer-stored information under the control of the person.

(2) A notice issued under this section must be personally served on the person to whom it is directed or left at his last known usual place of business or abode, and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

(3) This section has effect notwithstanding—

(*a*) any Act relating to privacy, privilege, or the public interest with respect to the giving of information or the production of books, records, or computer-stored information; or

(*b*) any contractual duty of confidentiality.

(4) A person who contravenes the provisions of this section commits an offence and is liable, on summary conviction, to the penalty stipulated under section 82.

(4A) The provisions of section 62 (2) of the Income Tax Act, Chapter 149, save and except for paragraph (*c*) of that section, shall apply *mutatis mutandis* to this part.

112. Power to enter and search

(1) If the Comptroller has reasonable grounds to suspect a breach of this Act has occurred, or is not satisfied with the information provided in response to a request under section 111, for the purposes of investigating the suspected breach, the Comptroller, or a taxation officer authorised in writing by the Comptroller—

(*a*) is entitled to have, at all times and without notice, full and free access to any premises, place, property, book, record, or computer;

(*b*) may make an extract or copy of a book, record, or computer-stored information to which access is obtained under paragraph (*a*);

(*c*) may seize a book, record, or other document that, in the opinion of the Comptroller or authorised taxation officer, affords evidence that may be material in determining the VAT liability of a taxpayer;

(*d*) may retain a book, record, or document seized under paragraph (*c*) for as long as it may be required for determining a taxpayer's VAT liability, or for proceeding under this Act; and

(*e*) may, if a hard copy or electronic copy of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.

(2) A taxation officer is not entitled to enter or remain on premises or a place if, on request by the owner or lawful occupier, the officer is unable to produce a warrant, issued by a Magistrate or a Justice of the Peace, permitting the officer to exercise powers under subsection (1).

(3) The Comptroller shall require a police officer to be present for the purposes of exercising powers under this section.

(4) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates, shall provide all reasonable facilities and assistance to the Comptroller or authorised officer.

(5) A person whose books, records, or computer have been seized under subsection (1) may examine them and make copies, at his or her expense, during office hours.

(6) The Comptroller or authorised officer shall sign for all records, books, or computers removed and retained under this section and shall return them to the owner within twenty-one days of the conclusion of the investigation or related proceedings.

(7) This section has effect notwithstanding—

(*a*) any Act relating to privacy, privilege, or the public interest with respect to access to premises or places, or the production of property, books, records, or computer-stored information; or

(*b*) any contractual duty of confidentiality.

(8) Pursuant to this section a person who fails to provide a taxation officer with reasonable facilities and assistant as required commits and offence and is liable, on sundry conviction, to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding six months.

113. Translation of records

If a book, record, or computer-stored information referred to in this Act is not in English, the Comptroller may, by notice in writing, require the taxable person keeping the book, record, or computer-stored information to provide, at the person's expense, a certified translation into English.

PART XX

Taxpayer Identification Number

114. Taxpayer identification number

(1) The Comptroller shall issue every registered person with a unique taxpayer identification number for VAT purposes, which number may be the same as or related to the number, if any, used to identify the person for the purposes of income tax or another tax administered by the Comptroller.

(2) Every taxable person shall include its TIN in a return, notice, or other document prescribed or used for the purposes of this Act.

(3) A person whose registration is cancelled under this Act and who is later re-registered, shall be required to use its previous TIN unless the Comptroller considers it inappropriate to do so.

PART XXI

Representatives

115. Power to appoint representatives

(1) The Comptroller may, by notice in writing, declare an individual to be a representative of a person for the purposes of this Act.

(2) Without limiting subsection (1), the Comptroller may declare a person to be a representative of another person who is liable to pay an amount to the Comptroller under this Act ("the person liable"), if—

(*a*) the person owes or may owe money to the person liable;

(*b*) the person has authority from some other person to pay money to the person liable; or

(*c*) the person is in possession of property of the person liable.

116. Liabilities and obligations of representatives

(1) Every representative of a person is responsible for performing duties or obligations imposed by this Act on that person, including the payment of amounts due and payable under this Act.

(2) Subject to subsection (4), an amount that, by virtue of subsection (1), is payable by a representative of a person, is recoverable from the representative only to the extent of assets, if any, of the person that are in the possession or under the control of the representative.

(3) Every representative is personally liable for the payment of amounts due from the representative in that capacity if, while the amount remains unpaid, the representative—

(*a*) alienates, charges or disposes of money received or accrued in respect of which the amount is payable; or

(*b*) disposes of or parts with money or funds belonging to the person that are in the possession of the representative, or which come to the representative after the amount is payable, if such amount could legally have been paid from, or out of, such money or funds.

(4) Nothing in this section relieves a person from performing duties or obligations imposed on the person by this Act, that the representative of the person has failed to perform.

(5) If there are two or more representatives of a person, the duties or obligations referred to in this section apply, jointly and severally to the representatives but may be discharged by any of them.

(6) The powers of the Comptroller under Part XII of the Income Tax Act, Chapter 149, apply, as if a person appointed as a representative under this Act were a representative of a taxpayer under that Act.

(7) This section does not apply to a person who is a representative only because of section 115 and paragraph (*l*) of the definition of representative, unless and until the Comptroller gives notice to the person that the person has been declared to be a representative, and includes in the notice a statement that one consequence of the declaration is, that this section will apply.

117. Duties of receivers

(1) In this section, "receiver" means a person who, with respect to an asset in Grenada is—

(*a*) a liquidator of a company;

(*b*) a receiver appointed out of court or by a 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 who is legally incapacitated.

(2) A receiver shall notify the Comptroller in writing within twenty-one days after the earlier of being appointed to the position or taking possession of an asset of a person liable to VAT in Grenada.

(3) The Comptroller may in writing notify a receiver of the amount which appears to the Comptroller to be sufficient to provide for VAT, which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver—

(*a*) shall set aside, out of the proceeds of sale of an asset of the person who is legally incapacitated, the amount notified by the Comptroller under subsection (3), or such lesser amount as is subsequently agreed on by the Comptroller;

(*b*) shall be liable, to the extent of the amount set aside, for the VAT payable by the person who owned the asset; and

(*c*) may pay a debt that has priority over the VAT referred to in this section notwithstanding any provision of this section.

(5) A receiver shall be personally liable, to the extent of an amount required to be set aside under subsection (4), for the VAT referred to in subsection (3) if, and to the extent that, the receiver fails to comply with the requirements of this section.

118. Directors of companies

(1) If a company fails to pay an amount required to be paid by this Act, the persons who were directors of the company at the time the company was required to pay the

amount are jointly and severally liable, together with the company, to pay that amount and any interest thereon and penalties relating thereto.

(2) A director of a company is not liable under subsection (1) to pay an amount the company failed to pay if the director exercised the degree of care, diligence, and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) A director of a company may not be assessed for an amount under this section more than five years after the end of the tax period in which the import, supply or VAT adjustment event to which the amount relates occurred, or in the case where an assessment had been made, not more than five years after the date of the assessment.

(4) A director who makes a payment under this section is entitled to a contribution from the other directors who were liable to make the payment.

119. Officers of unincorporated bodies

(1) A liability or obligation imposed by or under this Act or the Regulations on an unincorporated body, is imposed on the body and on any person who is an officer of the body, at the time the liability or obligation is imposed, and the body and each such officer is jointly and severally liable for that liability or obligation.

(2) For the purposes of this Act, the existence of an unincorporated body and any taxable activity carried on by the unincorporated body are deemed not to be affected by any change in its members or officers.

(3) A document which is required to be served on an unincorporated body under this Act or the Regulations, may be served on an officer of the body.

(4) An offence under this Act committed by an unincorporated body is taken to have been committed by the officers of the unincorporated body.

120. Continuity of partnerships or unincorporated associations

If—

(*a*) a partnership or other unincorporated association or body is dissolved or otherwise ceases to exist because of the retirement or withdrawal of one or more, but not all, of its partners or members, or because of the admission of a new partner or member; and

(*b*) apart from the provisions of this Act a new partnership, association, or body, consisting of the remaining members, or of the existing or remaining members and one or more new members, thereby comes into existence; and

(*c*) the new partnership, association, or body continues to carry on the taxable activity that was carried on by the dissolved partnership, association, or body,

the dissolved partnership, association, or body and the new partnership, association, or body, are for the purposes of this Act, deemed to be one and the same, unless the Comptroller, having regard to the circumstances of the case, otherwise directs.

121. Death or insolvency of taxable person; mortgagee in possession

(1) If, after the death of a taxable person or the sequestration of a taxable person's estate—

(*a*) 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*) 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 deemed for the purposes of this Act, to be the taxable person in respect of the taxable activity.

(2) If a mortgagee takes possession of land or other property previously mortgaged by a mortgagor who is a taxable person and, while in possession of the land or property, the mortgagee carries on the taxable activity previously carried on by the mortgagor in relation to the land or other property, the mortgagee shall, to the extent and for the duration that it carries on that taxable activity, be deemed to be the mortgagor.

122. Trustee

For the purposes of this Act, if a person is a trustee in more than one capacity, the person is treated as a separate person in relation to each of those capacities.

PART XXII

Forms and Notices

123. Forms, notices and authentication of documents

(1) Forms, notices, returns, and other documents prescribed or published by the Comptroller for the purposes of the Act, may be in such form as the Comptroller determines for the efficient administration of the Act, and is valid whether or not published in the *Gazette*.

(2) The Comptroller shall make the documents referred to in subsection (1) available to the public at the offices of the Inland Revenue Department, and may also make the documents available by any other means and at any other locations the Comptroller thinks appropriate, including but not limited to—

(*a*) posting electronic versions of the documents on an official website of the Government of Grenada, the Inland Revenue Department or the Department of Customs; or

(*b*) making hard copies available for collection from District Revenue Offices.

(3) A notice or other document issued, served, or given by the Comptroller under this Act, is sufficiently authenticated if the name or title of the Comptroller, or a taxation officer authorised for that purpose, is printed, stamped, or written on the document.

124. Service of notices

(1) Subject to this Act, a notice or other document required to be served on a person for the purposes of this Act, is treated as properly served on the person if it is—

(*a*) personally served on the person or his representative;

(*b*) left at the person's usual or last known place of abode or business in Grenada; or

(*c*) sent by registered post to his last known address.

(2) The validity of service of a notice under this Act may not be challenged after the notice has been wholly or partly complied with.

125. Validity of documents

No document purporting to be made, issued, or executed under this Act may be—

(*a*) quashed or deemed to be void or voidable for want of form; or

(*b*) affected by reason of mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with this Act and the person affected by the document is designated in it according to common understanding.

PART XXIII

Principles of Interpretation

126. Purposive interpretation and extrinsic materials

(1) The following shall be considered to be part of this Act—

(*a*) the headings of the sections, Parts, Divisions, and Subdivisions into which the Act is divided; and

(*b*) the Schedules to the Act.

(2) In interpreting a provision of this Act, a construction that would promote the purpose or object underlying the provision or the Act (whether that purpose or object is expressly stated in the Act or not), should be preferred to a construction that would not promote that purpose or object.

(3) Subject to subsection (5), in interpreting a provision of this Act, if any material that does not form part of the Act is capable of assisting in ascertaining the meaning of the provision, consideration may be given to that material—

(*a*) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision, taking into account its context in the Act and the purpose or object underlying the Act; or

(*b*) to determine the meaning of the provision when—

(i) the provision is ambiguous or obscure, or

(ii) the ordinary meaning conveyed by the text and taking into account its context in the Act and the purpose or object underlying the Act, leads to a result that is manifestly absurd or is unreasonable.

(4) Without limiting the generality of subsection (3), the material that may be considered in interpreting a provision of this Act includes—

(*a*) all matters not forming part of the Act that are set out in the document containing the text of the Act, as printed by the Government Printer;

(*b*) any treaty or other international agreement or international assistance agreement that is referred to in the Act;

(*c*) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of either House of the Parliament, by a Minister, before the time when the provision was enacted;

(*d*) the speech made to a House of the Parliament by a Minister on the occasion of the moving, by that Minister, of a motion that the Bill containing the provision be read a second time in that House;

(*e*) any document (whether or not a document, to which a preceding paragraph applies) that is declared by the Act to be a relevant document for the purposes of this section; and

(*f*) any relevant material in any official record of proceedings of debates in the Parliament or either House of the Parliament.

(4A) For the avoidance of doubt, [illegible] material that may be [illegible] provision of the Act as provided for in subsection (4) appears to be in [illegible] provisions of this Act shall prevail.

(5) In determining whether consideration should be given to any material in accordance with subsection (3), or in considering the weight to be given to any such material, regard should be had, in addition to any other relevant matters, to—

(*a*) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and

(*b*) the need to avoid prolonging legal or other proceedings without compensating advantage.

First Schedule

VALUE ADDED TAX ACT

Zero-rated Supplies: Exported Goods and other Supplies of Goods for Consumption Outside Grenada

(1) A taxable supply of goods is zero-rated for the purposes of this Act if it is listed in one of the items below—

Item No.	*Description*
1.	A supply of goods, if the supplier has entered or will enter the goods for export under the customs laws and the goods have been or will be exported.
2.	A supply of goods, if the Comptroller is satisfied that the goods have been or will be exported from Grenada by the supplier.
3.	A supply of goods, if— (*a*) the goods are supplied in Grenada to a non-resident recipient who is not a taxable person, or to the agent of that recipient; and
	(*b*) the goods are or will be exported without being altered or used in any way between the time they are delivered or made available to the recipient, and the time they are exported, except to the extent, if any, necessary to prepare them for export, but only if, within 3 months of the date on which the goods are delivered or made available by the supplier to the recipient, the supplier holds sufficient documentary evidence to establish that the recipient or agent entered the goods for export under the customs laws.
4.	A supply of goods to a tourist or visitor, if the supplier is a licensed duty-free vendor who holds documentary evidence, collected at the time of the supply, which establishes that the goods are to be removed from Grenada without being effectively used or enjoyed in Grenada.
5.	A supply of goods in the course of repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting other goods referred to in items 3, 4, 5, or 13 in paragraph (1) of the Second Schedule, if the goods supplied are— (*a*) attached to or become part of those other goods; or (*b*) become unusable or worthless as a direct result of being used to repair, renovate, modify or treat the other goods.
6.	A supply of goods if the goods are located outside Grenada at the time of supply, and will not be imported into Grenada by the supplier.
7.	A supply of real property relating to land located outside Grenada.

(2) A supply of goods is not zero-rated under paragraph (1), if the goods have been or will be re-imported into Grenada by the supplier.

(3) Where a supply by a resident is of the lease, hire, or licence of goods, including under a charter party or agreement for chartering, for the purposes of item 6 of paragraph (1)—

(*a*) the goods are treated as located outside Grenada at the time of supply during any period in which the goods are for use, or are used, wholly or partly outside Grenada; and

(*b*) it is assumed that the supplier will not import the goods during the relevant period, if the goods are outside Grenada during that period.

Second Schedule

VALUE ADDED TAX ACT

Zero-rated Supplies: Exported Services and other Supplies of Services for Consumption outside Grenada

(1) A taxable supply is zero-rated for the purposes of this Act if it is listed in one of the items below—

Item No.	*Description*
SERVICES CONNECTED WITH EXPORTED GOODS:	
1.	A supply of services directly in connection with land, or improvements to land, situated outside Grenada.
2.	A supply of services directly in connection with goods, (other than goods covered by item 1), situated outside Grenada at the time the services are performed.
3.	A supply of services directly in connection with goods (including containers suitable for repetitive use) temporarily imported into Grenada under the special regime for temporary imports specified in the Customs Act, or any other provision of the customs laws dealing with temporary imports.
4.	A supply of services directly in connection with a container temporarily imported under the special regime for temporary imports specified in the Customs Act.
5.	A supply of the services of repairing, maintaining, cleaning, renovating, modifying, or treating goods brought temporarily into Grenada for the purposes of receiving the services, so long as the goods are removed from Grenada after the services have been performed, and have not been used in Grenada for any purpose other than to enable the services to be performed.
6.	A supply of services directly in connection with— (*a*) a supply of goods referred to in items 1, 2, 5 or 6 in paragraph (1) of the First Schedule; or (*b*) a supply of services referred to in item 4 or 5 of this paragraph, including a supply that consists of arranging for, or is ancillary or incidental to, such supply.
7.	A supply of services to a non-resident who is not a taxable person, if the supply is directly in connection with a supply referred to in: (*a*) item 3 in paragraph (1) of the First Schedule, or (*b*) items 1, 2, or 3 of this paragraph, including a supply that consists of arranging for, or is ancillary or incidental to, such supply.
SERVICES CONSUMED OUTSIDE GRENADA:	

8.	A supply of services that are physically performed outside Grenada, if the services are of a kind that are effectively used or enjoyed at the time and place where they are performed.
9.	A supply of services, other than services— (*a*) directly in connection with land, or improvements to land, situated in Grenada; (*b*) directly in connection with goods situated in Grenada at the time the services are performed; or (*c*) that consist of refraining from or tolerating an activity, a situation, or the doing of an act in Grenada, if the restraint or toleration is for effective use or enjoyment in Grenada, If— (*d*) the services are supplied to a non-resident person who is outside Grenada at the time the services are performed; or (*e*) the services are supplied to a resident person who is outside Grenada at the time the services are performed, and the services are for effective use or enjoyment outside Grenada.
10.	A supply of services that consist of— (*a*) the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of intellectual property rights for use outside Grenada; (*b*) incidental services necessary for the supply of services referred to in paragraph (*a*); or (*c*) the acceptance by a person of an obligation to refrain from pursuing or exercising, in whole or part, intellectual property rights for use outside Grenada.
11.	A supply of telecommunications services by a resident telecommunications supplier to a non-resident telecommunications supplier.
12.	A supply of telecommunications services that are provided to a person other than another telecommunications supplier, if the telecommunications service is initiated outside Grenada.
13.	A supply of services relating to goods under warranty to the extent that the services are— (*a*) provided under the warranty; (*b*) supplied to the warrantor, who is a non-resident and is not a registered person, for consideration given by that warrantor; and (*c*) in respect of goods that were subject to tax under section 8(1)(*b*).

(2) A supply of services is not zero-rated under items 9, 11 or 12 of paragraph (1), if the supply is a supply of a right or option to receive a supply of goods or services in Grenada, unless the supply to be received would be zero-rated if it were made in Grenada.

(3) Without limiting paragraph (2), a supply of services is not zero-rated under items 9, 11 or 12 of paragraph (1) if the services are supplied under an agreement that is entered into, whether directly or indirectly, with a person who is a non-resident, if—

(*a*) the performance of the services is, or it is reasonably foreseeable at the time the agreement is entered into, that the performance of the services will be received in Grenada by another person; and

(*b*) it is reasonably foreseeable, at the time the agreement is entered into, that the other person will not be a taxable person when he receives the performance of the services,

and for the avoidance of doubt, if the supply is a supply of a right or option to receive goods or services, the performance of the services referred to in this paragraph is the performance of the supply of goods or services when the right or option is exercised, rather than the granting of the right or option.

(4) A supply of telecommunications services is not zero-rated under any item in paragraph (1) other than item 11 or 12.

Third Schedule

VALUE ADDED TAX ACT

Zero-rated Supplies and Imports: Other

(1) A supply or import listed in one of the items below is a zero-rated supply or import for the purposes of this Act—

Item No.	*Description*
1.	A supply or import of food for human consumption to the extent provided in the Regulations: – Flour; – Sugar; – Rice; – Milk; – Infant preparations.
2.	A supply of water by NAWASA if— (*a*) provided to reside [illegible] domestic use. (*b*) . . . . .
3.	A supply of electricity by GRENLEC provided to residential premises for domestic use, provided that in each tax period only the first 99 kilowatt hours of electricity supplied to a single household is zero-rated.
4.	A supply of stamps by the Grenada Postal Corporation.
5.	A supply of motor spirit (gasoline), diesel, LPG cooking gas, or Kerosene, if it is subject to tax under the Petrol Tax Act, 2005, Chapter 238A.
5A.	A supply of text books as may be prescribed by regulations.

Fourth Schedule

VALUE ADDED TAX ACT

Exempt Supplies

(1) A supply listed in one of the items below is an exempt supply for the purposes of this Act—

Item No.	*Description*
1.	A supply of the following "financial services"— (*a*) granting, negotiating, and dealing with loans, credit, credit guarantees, and security for money, including management of loans, credit, or credit guarantees by the grantor; (*b*) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring;

	(*c*) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
	(*d*) transactions relating to shares, stocks, bonds, and other securities, but not including custody services; (*e*) management of investment funds; (*f*) provision, or transfer of ownership, of an insurance contract or the provision of reinsurance in respect of such contract; (*g*) provision, or transfer of ownership, of an interest in a scheme, whereby provision is made for the payment or granting of benefits by a benefit fund, provident fund, pension fund, retirement annuity fund or preservation fund; (*h*) a supply of credit under a finance lease, if the credit for the goods is provided for a separate charge and the charge is disclosed to the recipient of the goods; or (*i*) the arranging of any of the services in paragraphs (*a*) to (*h*).
2.	A supply of goods, if the goods were used by the taxable person solely in connection with making exempt supplies, or if the goods are a passenger vehicle on which the person incurred input tax and was denied a credit under section 33(2)(*b*).
3.	The following supplies of real property— (*a*) a supply of vacant land; or (*b*) a supply of land to the extent that it is to be used for agricultural purposes.
4.	A supply of real property, to the extent that the property relates to or is residential premises, including land that is reasonably attributable to such premises.
5.	A lease, licence, hire, rental or other form of supply, to the extent that it is a supply of the right to occupy or be accommodated in residential premises.
6.	A supply of holiday or hotel accommodation, if the accommodation is provided to an individual (alone or together with other individuals) who resides therein under terms consistent with a landlord and tenant agreement, and for a continuous period of more than forty-five days, (counting the first day on which the person is supplied the accommodation and disregarding the day on which the person ceases to be provided with the accommodation).
7.	A supply of accommodation in, or the right to occupy as a residence, a caravan, houseboat, camping site, boat or similar place, on terms commensurate with those of landlord and tenant, if the accommodation is provided to an individual (alone or together with other individuals) for a continuous period of more than forty-five days, (counting the first day on which the person is supplied the accommodation, and disregarding the day on which the person ceases to be provided with the accommodation).
8.	A supply by a condominium corporation to a member of the corporation, if the unit that is owned by the member, or the property the member, is entitled to occupy as a consequence of its membership, constitutes residential premises (including any garage, storage space, or other space associated with the premises, so long as that space is of a type commonly considered to be part of residential premises).
9.	A supply of "education services," consisting of tuition or instruction for students provided by an institution duly registered by the Minister of Education, being— (*a*) a pre-primary, primary, or secondary school; (*b*) a technical college, community college, or university; (*c*) an educational institution established for the promotion of adult education, vocational training, improved literacy, or technical education; (*d*) an institution established for the education or training of physically or mentally handicapped persons; or (*e*) an institution established for the training of sports persons.
10.	A supply of medical, surgical, psychotherapeutic, dental, nursing, convalescent, rehabilitation, midwifery, paramedical, optical, or other similar services where the services are provided— (*a*) by an institution regulated by the Minister of Health; or (*b*) by, or under the supervision and control of, a person who is registered as being

	qualified to perform that service under a law of Grenada or whose qualifications to perform the services are recognised by the Government of Grenada.
11.	A supply of services in a nursing home or residential care facility for aged, indigent, infirm, or disabled persons who need permanent care.
12.	A supply of veterinary services by a person who is licensed or recognised by the Grenada Medical, Dental, and Veterinary Surgeons Regulatory Board.
13.	A supply of goods or services by an approved non-profit body, as prescribed by the Minister, if the supply is made for a prescribed purpose.
14.	A gambling supply conducted by an approved non-profit body.
15.	A supply of a ticket in a lottery conducted by the Grenada National Lottery Authority or the Windward Islands Lotteries Commission.
16.	A supply of the transportation of passengers within Grenada by taxi, bus or ferry, including a supply of a chartered tour of a kind ordinarily provided to tourists or other visitors to Grenada.
17.	A supply of unprocessed agricultural produce may be prescribed by regulations.
18.	. . . . .
18A.	A supply of agricultural or fishing inputs as may be prescribed by regulations.
19.	A supply of aircraft's stores or ship's stores, or of spare parts for an aircraft or ship, if the stores or parts are for use, consumption, or sale on the aircraft or ship during a flight or voyage that constitutes international transport.
20.	A supply of the services of repairing, maintaining, cleaning, renovating, modifying, or treating an aircraft or ship engaged in international transport.
21.	A supply to a non-resident who is not a taxable person of services that— (*a*) consist of the handling, pilotage, salvage, or towage of a ship or aircraft engaged in international transport; or (*b*) are provided directly in connection with the operation or management of a ship or aircraft engaged in international transport.
22.	A supply of international transport services.
23.	A supply of insuring, arranging for the insurance of, or arranging for, the international transport.
23A.	A supply of bread of wheat flour as may be prescribed by regulations.
23B.	A supply of medicines for chronic [illegible] as my be prescribed by regulations.
23C.	A supply of chicken drummettes and wings, fresh, chilled, frozen as may be specified in regulations.
23D.	A supplyof other meat of poultry, chilled as may be specified in regulations.
23E.	A supply of other meats [illegible] may be specified in regulations.
23F.	A supply of energy saving devices [illegible] be prescribed by regulations.
23G.	A supply of hurricane mitigating [illegible] may be prescribed by regulations.
23H.	A supply of microcomputers, software accessories as may be prescribed by regulations.
23I.	A supply of marine berth and dockage.
23J.	The payment known as service [illegible] payment [illegible] hotels, guest houses and restaurants.
23K.	A supply of newspapers as may be prescribed in regulation.

(2) A supply is not exempt under item 6 or 7 of paragraph (1) for the first forty-five days of occupation, and thereafter is not exempt, if the supplier chooses instead to treat the supply as taxable at the rate set out in section 8(3)(*b*).

(3) If, but for this paragraph, a supply, other than a supply covered by item 19 or 21 in paragraph (1), would be both exempt and zero-rated, the supply is zero-rated rather than exempt.

Fifth Schedule

VALUE ADDED TAX ACT

Exempt Imports

(a) An import listed in one of the items below is an exempt import for the purposes of this Act—

Item No.	*Description*
1.	An import of goods if a supply of the goods in Grenada would be an exempt supply.
2.	An import of goods given otherwise than for the purposes of sale as an unconditional gift— (*a*) to an approved non-profit organisation, or to an institution referred to in item 9 or 10(*a*) of paragraph (1) in the Fourth Schedule; or (*b*) to the State, if the Comptroller of Customs has written notification from the Minister of Finance that the goods are to be exempt from VAT.
3.	An import of goods to the extent provided in the Regulations and if it is exempt from customs duty under one of the items in the List of Conditional Duty Exemptions in the Common External Tariff specified below— (*a*) Agricultural inputs falling under item 3(*a*), 3(*b*), 3(*c*), 3(*d*), or 3(*e*); (*a*) goods imported by returning Grenadian nationals who are assigned by the Government [illegible] regional or international organisation to which Grenada is a member; (*b*) Goods imported by the Blind and Disabled item 7(*a*) or 7(*b*); (*c*) Coverings or packages falling under item 12(*a*) or 12(*b*); (*d*) Goods imported for Cultural Activities item 13(*a*), 13(*b*), 13(*c*), or 13(*d*); (*e*) Goods imported by Diplomatic, Consular and other representatives of foreign states and falling under item 14(*a*), 14(*b*) or 14(*c*); (*f*) Goods imported for Economic and Social Development item 16(*a*) or 16(*b*); (*g*) Inputs to commercial fisheries falling under item 20; (*h*) Charitable gifts falling under item 21(*a*); (*i*) Goods imported by the Governor-General falling under item 22; (*j*) Goods imported by the Handicap, Mentally or Physically, falling under item 25; (*k*) Household effects falling under item 27(*a*), 27(*b*) or 27(*c*); (*l*) Donated clothing for indigent children falling under item 28; (*m*) Goods imported by the Peace-Corps falling under item 32; (*n*) Personal effects falling under item 33(*a*), 33(*b*) or 33(*c*); (*o*) Goods and items imported by Public and Contract officers under item 36(*a*), 36(*b*) or 36(*c*); (*p*) Goods imported by Red Cross Society item 39; (*q*) Goods for relief from natural disasters, falling under item 40; (*r*) Goods imported by Religious Bodies item 41(*a*), 41(*b*), 41(*c*), 41(*d*), 41(*e*) or 41(*f*); (*s*) Samples item 42; (*t*) Goods imported by Schools falling under item 43(*a*), 43(*b*) or 43(*c*); (*u*) Sporting Goods and Equipments item 44; (*v*) Goods imported by St. John's Ambulance Brigade item 45; (*w*) Goods imported by students studying in Grenada, or returning Grenadian students falling under item 47(*a*) or 47(*b*); (*x*) Items in relation to foreign technical assistance provided to Grenada, falling under item 48; (*y*) Trophies falling under item 52;
	(*z*) Goods imported by Youth and other Organisations falling under item 53.
4.	An import of goods (including an import of a container) that have been exported and

	then returned to Grenada by any person without having been subjected to any process of manufacture or adaptation and without a permanent change of ownership, but not if at the time when the goods were exported— (*a*) they were the subject of a supply that was zero-rated; or (*b*) they were the subject of a supply that, for the purposes of the Value Added Tax (Transitional Provisions) Act, 2009, Chapter 333B, occurred before this Act commenced.
5.	An import of goods shipped or conveyed to Grenada for transshipment or conveyance to any other country.
6.	An import of goods made available free of charge by a foreign government or an international institution, with a view to assisting the economic development of Grenada, as approved by the Minister of Finance.
7.	An import of clothing donated for free distribution in Grenada, as approved by the Minister of Finance.
8.	. . . . .

Sixth Schedule

VALUE ADDED TAX ACT

List of Offences

[Sections 73, 74, 75, 76, 77, 80, 81, 82, 83, 86 and 112.]

Offence	*Section*	*Fixed penalty*
1. Failure to apply for Registration.	73	$5,000.00
2. Failure to display VAT registration certificate.	74	$2,500.00
3. Failure to notify changes affecting registration or to apply for cancellation of registration.	75	$2,500.00
4. Failure to comply with requirements after cancellation of registration.	76	$5,000.00
5. Making a supply in relation to Public entertainment in contravention of section 10(4).	77 78	$10,000.00
6. Failure to comply with notice for recovery of VAT.	80	$2,500.00
7. Failure to keep records.	81	$2,500.00
8. Failure to comply with notice to give information.	82	$5,000.00
9. Non-compliance with VAT-Inclusive price quotation requirements.	83	$5,000.00
10. Failure to pay security.	86	$5,000.00
11. Failure to provide facilities.	112	$1,500.00
12. Making a regulated supply for an excessive price.	12 of the Value Added Tax (Transitional Provisions) Act, 2009, Chapter 333B	$5,000.00
12A. Failure to provide, a VAT invoice, VAT credit note, VAT debit note or sales receipt otherwise that as provided for in Part IX	78	$5,00.00

Seventh Schedule

VALUE ADDED TAX ACT

Notice of Opportunity to Pay Fixed Penalty

[Section 93.]

Note.—(It is an offence for anyone, other than the person liable for the under-mentioned offence, to remove or interfere with this notice without authority).

Take Notice that, I, ...,

(name of authorised officer)

have reason to believe that an offence, particulars of which are given overleaf, has been committed. The fixed penalty for the offence is .....

(penalty in words and figures)

If this amount is paid to the Clerk of the Magistrate's Court within thirty-one (31) days from the date of this notice, that is to say, not later than ..... no proceedings will be taken and any liability to conviction of the offence will be discharged. The offence carries a maximum fine of $ .....

In paying the fixed penalty, the following conditions shall be observed—

(1) The fixed penalty shall be accompanied by this notice on which shall be inserted in the space provided the VAT registration number of the person liable for the offence.

(2) Where payment of the fixed penalty is made otherwise than in conformity with the VAT Act made thereunder, the Clerk shall as soon as practicable after payment return the amount paid to the sender, and thereafter proceedings in respect of the alleged offence shall begin.

(3) Payment of the fixed penalty shall be made or remitted to—

"The Clerk of the Magistrate's Court" at the following address—

.....

Should you fail to pay the fixed penalty not later than ....., you are hereby required to attend the Magistrate's Court on the ..... day of ....., 20 ..... , at 9.00 o'clock in the forenoon at the under-mentioned address, as the defendant in the matter in respect of which this notice was issued.

.....

(State name and address of court)

This notice was given/affixed at .....

(state location)

on ....., 20 ..... , at ..... a.m./p.m.

(state date) (state time)

PARTICULARS OF OFFENCE

At ..... a.m./p.m. on the ..... day of ....., 20 .....

at .....

you .....

.....

Contrary to .....

(state section/regulation contravened)

of the .....

(state Act/regulation)

.....

Signature of authorised officer

CHAPTER 333A
VALUE ADDED TAX ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Explanatory Memorandum
2. Value Added Tax Regulations

Explanatory Memorandum

I. Introduction

The Value Added Tax Bill, 2009 ("the Bill") provides for the imposition, collection, and administration of a broad-based tax on consumption in Grenada, which will replace a number of existing, less-efficient taxes. The tax, to be known as the Value Added Tax, or "VAT" is modelled on the credit invoice, value added type consumption taxes in use in over one hundred and twenty countries around the world, including many of the countries in the Caribbean region.

VAT is a single rate, broad-based, multi-stage tax transaction tax, imposed and collected at each stage in the chain of production and distribution. Although the tax will be imposed on, and collected by businesses, the final tax burden is intended to fall on domestic consumers. The broad base of the tax will limit the distortions produced by the current taxation regime, by spreading the indirect tax burden across all aspects of the economy, rather than concentrating it on imported goods. VAT will also provide for simpler compliance and administration than the existing taxes being replaced.

While both VAT and the taxes it will replace are ultimately borne by consumers, the structure of VAT is intended to relieve the effects of tax cascading. Tax cascading occurs when tax is imposed on tax, and often arises in single-stage taxes when there are business to business ("B2B") transactions and both businesses are liable for tax. For example, cascading will occur under a wholesale sales tax if one wholesaler sells to another, unless transactions between wholesalers are treated as exempt. In such situations, not only will the same value be taxed twice, but if the first wholesaler passes on the burden of the tax, the second wholesaler will apply tax on that passed on tax. Thus, cascading includes both double taxation and tax on tax. This is why single-stage consumption taxes often operate a "ring system", under which transactions between vendors within the ring of registered producers and distributors are exempt from tax.

In contrast, a value added tax is a multi-stage tax, under which all transactions are taxed. There is no ring fencing and there are no exempt taxpayers. Instead, tax cascading is avoided by having an input tax credit mechanism for registered businesses. Under a VAT regime, registered persons are required to pay VAT on their taxable supplies, on the presumption that they have collected the amount of VAT payable by including an allowance for it in the prices they charge for those supplies. VAT applies whether or not the customer is another registered person, but customers who are registered will generally be allowed to deduct most of the VAT incurred on their business inputs. For each registered taxpayer, the tax payable on business outputs is netted off against the tax incurred on business inputs (which includes both local, taxed purchases and taxed imports). The result is that at each stage in the chain of production and distribution, and for each registered business, the net tax imposed equates to the value added at that stage or by that business. Across the whole economy, the result is that the final tax burden on

supplies of goods or services equals the prevailing rate of VAT, with the tax having been collected piecemeal at each step in the chain.

VAT is a tax on domestic consumption, not on exports

Under the Grenadian VAT regime, both imports and domestic transactions will be taxed. This will ensure that there is no bias to consumer goods produced outside Grenada. VAT is payable on all imports (other than a limited number of imports that are exempt) regardless of whether or not the importer is registered for VAT. The VAT payable on imported goods is collected at the time of importation, along with any customs duty and excise taxes, and is paid on the sum of the customs value of the goods (including the costs of transport and insurance to get the goods to Grenada) plus any customs duty, customs service tax, and excise tax payable on the import. Customs duties and taxes are included in the tax base for VAT on imports because they form part of the consumer's consumption cost in respect of the goods imported. For end consumers, the VAT on imports will be a final tax. However, as with VAT on domestic purchases, a registered person who imports goods will generally be allowed an input tax credit for the VAT paid on importation, in order to prevent tax cascading.

While imports are taxed, exports are "zero-rated" which means that no tax is paid on exports by registered persons while any input tax relating to those exports remains deductible and can be credited against the output tax on any taxable supplies made by the person. One of the key advantages of a value added type tax is that exports are not taxed. This feature of the VAT will increase the competitiveness of Grenadian exporters, enhancing the opportunities for growth in export markets.

Calculating the amount of VAT to be paid

VAT will be charged at the rate of 15 per cent. A taxable person (a person who is, or is required to be, registered) will be required to calculate the amount of VAT he or she must pay in each tax period (a calendar month) in the following way—

(i) First, he or she must pay VAT on any taxable imports it makes. This VAT is paid to the Comptroller of Customs, who administers the collection of VAT on imports and collects the VAT at the same time and place as any customs duty payable in relation to the import;

(ii) Second, VAT ("output tax") is charged on all the "taxable supplies" he or she makes – these are the person's domestic supplies of goods and services. It is presumed that the person's prices for taxable supplies have been calculated to include the VAT, if any, payable on those supplies;

(iii) Thirdly, the net amount of VAT payable to the Comptroller of Taxation is worked out for each tax period by reducing the total amount of output tax collected by the registered person at Step (ii) by the amount of VAT the person has incurred on its business inputs (referred to as the person's "input tax credits"). The deduction for input tax credits will include both VAT included in the price of goods or services acquired from another registered person and VAT paid on imports made by the person in the course of the business. Thus, the tax paid to the Comptroller of Customs at Step (i) reduces the amount of tax paid to the Comptroller of Taxation at this Step.

In broad terms, the difference between the total output tax and total input tax of a registered person for a month, is the net amount of VAT payable on the person's value added for the month. This is the amount the taxable person must account for to the Comptroller at the end of each month.

Who will be registered?

Only those persons whose annual turnover of taxable supplies exceeds the specified threshold will be registered for VAT. The threshold is one hundred and twenty thousand dollars, which is measured by reference to the annual turnover of the person. Small businesses are effectively treated as if they are end consumers: they are not required to pay

VAT on their outputs, and when VAT is included in the price of their inputs, they cannot reclaim that VAT in the form of input tax credits. Input tax that cannot be reclaimed through input tax credits is referred to as "blocked" input tax. Because VAT becomes a cost of doing business for small businesses, they will pass on their blocked input tax in the prices they charge to consumers. Thus, although it appears that there is no VAT included in the price of supplies by small businesses, in fact, the effective VAT burden on consumers who buy from unregistered small businesses is somewhere between zero and the prevailing rate of VAT, because though the value added by small businesses is not subject to VAT, the price of goods and services supplied by such businesses include the VAT on their inputs. Goods and services purchased from unregistered businesses are thus partially taxed (or "input taxed").

Future directions

The Government recognises that the exclusion of small businesses contributes to tax cascading, when such businesses make B2B supplies to registered persons and pass on the cost of their blocked input tax to those customers. Because this problem is exacerbated if there is a high registration threshold, most value added tax regimes allow small businesses to choose to voluntarily register. To deal with this problem, the Government intends, after an initial period, to introduce an option for voluntary registration once sufficient time has elapsed to strengthen capacity to administer a VAT with a larger number of registrants. The option of voluntary registration will be of particular interest to small exporters and to those who primarily make B2B supplies to registered persons. Small exporters will be able to claim refunds of VAT on the inputs used to make exports, so they will not need to treat that input VAT as a cost element in the prices of their exports. Those supplying to other registered persons will also be able to claim input tax credits, and although their value added will be taxed once they become registered, their customers will be able to claim input tax credits for the VAT included in their prices, which would not have been the case if the small business person was unregistered.

Self-policing aspects of VAT

Value added taxes such as VAT are said to be largely self-policing. This is because of the reliance on documentation as a vital element of the effective operation of the tax. Whenever a taxable person (the supplier) makes a taxable supply to another registered person, the supplier is required to issue a VAT invoice stating, amongst other things, the amount of VAT included in the price of the supply. Claims for input tax credits on domestic acquisitions are not allowed, unless the claimant holds a VAT invoice issued by the supplier. The requirement for VAT invoices to support input tax credits encourages the disclosure of sales throughout the distribution chain, while the imposition of the tax at each stage ensures that the Government receives at least partial tax if a subsequent sale is unreported. Similarly, to ensure that end consumers are aware of the tax they are bearing, and to strengthen the audit trail for tax administrators, registered persons must issue sales receipts clearly stating the amount of VAT included in the price of all taxable supplies of goods and services they make to end consumers or unregistered persons.

II. Commentary

The following clause-by-clause commentary provides a detailed explanation of the Value Added Tax Bill, 2009. The commentary focuses on those core parts of the legislation that deal with the imposition of the tax. The later parts of the Bill, which deal with the administration of the tax, are discussed more briefly.

PART I

Preliminary

1. Short title and commencement

This clause provides that the Bill, when passed, may be cited as the Value Added Tax Act, 2009, Chapter 333A. (Hereafter, the Bill is referred to as "the Act" or "the VAT Act.") The Act will come into force on the day appointed by the Minister. For limited purposes, the Act will come into effect on the day it receives assent. This will enable the Comptroller to give effect to the Value Added Tax (Transitional Provisions) Act, 2009, Chapter 333B, which will be enacted at the same time as the VAT Act, Chapter 333A, so as to enable the registration of persons prior to the date on which they must begin to collect VAT, and also more generally to grant the necessary administrative powers prior to the commencement of the tax.

2. Interpretation

This clause provides definitions of commonly used terms in the Act. These definitions apply unless the context otherwise requires. The main definitions are discussed below; the other definitions are self-explanatory.

"acquisition": An acquisition is the counter-point to a supply. Because VAT is a transaction tax, it is structured on the presumption that each transaction involves a supplier who supplies something (the goods or services supplied) to a recipient. The recipient is the person to whom the supply is made under the agreement between the supplier and recipient, or under any other form of obligation (such as a statutory obligation) under which the supplier makes the supply. The recipient makes an acquisition from the supplier. This does not mean that the goods or services must be provided to the recipient. Sometimes, they are provided to a third party, for example where one person contracts for a supply to be provided to another person (such as an employer contracting to have services provided to an employee, or a parent contracting to have services provided to a child). It is the person contracting for the supply, not the person to whom the supply is provided, who is the recipient of the supply. If the Act deems a supply to be made by one entity to another, a corresponding acquisition is generally taken to have been made by the appropriate recipient, unless the context suggests otherwise;

"body of persons": This definition is relevant to the definitions of "person" and "company". It is persons who are required to be registered under the Act, persons on whom VAT liability is imposed, and persons to whom input tax credit entitlements are allowed. "Body of persons" is a widely defined term. It includes both incorporated and unincorporated bodies, and it includes partnerships, joint ventures, and trusts. Thus, the concept goes well beyond what would be treated as a "legal person" for the purposes of having standing in a Court;

"capital asset": This fairly broad definition of a capital asset is relevant to the registration requirements. When a person calculates whether it is required to be registered, it must measure its annual turnover. Sales of capital assets do not need to be included in the calculation of turnover. This ensures that a small business will not inappropriately be required to be registered when it briefly exceeds the threshold because it makes a taxable supply by selling a capital asset, but then returns to its normal turnover.

"company": This definition is relevant to the definition of "person," which includes a company. It is particularly relevant to registration because it is persons who are required to be registered under the Act, persons on whom VAT liability is imposed, and persons to whom input tax credit entitlements are allowed;

"Company" is defined broadly to mean an association or body of persons, whether or not the body is incorporated, if it is formed or recognised under a law in force in Grenada or elsewhere. A corporate body of persons includes an incorporated company and a statutory corporation. The inclusion of unincorporated bodies or associations of persons in the definition means that entities such as co-operatives, societies, fellowships and clubs are treated as companies for the purposes of VAT. Even where

such a body is not a company, it will be a person, if it is covered in the definition of a "body of persons". A partnership is not a company, but is a "body of persons".

The Act effectively divides taxable persons (other than Government entities) into categories: individuals, partnerships, trusts, companies, other bodies of persons. The differences lie in determining who the representatives of the person are, for the purposes of administering the Act.

This does not necessarily mean that all unincorporated bodies and associations of persons will be registered for VAT. Only those bodies and associations carrying on a taxable activity and having an annual turnover above the registration threshold set out in clause 9 will be required to apply to be registered for VAT.

"exempt": Exempt supplies are supplies on which no VAT is charged. Exemption applies to a limited range of domestic supplies in order to achieve social policy objectives, but the main exemptions are for financial services (which are difficult to tax) and residential property (in order to achieve parity of treatment between home owners and renters). Registered persons are not required to pay VAT on exempt supplies, and cannot claim input tax credits for acquisitions or imports that are used in making those exempt supplies. Some imported goods will be exempt if a local supply of such goods would be exempt or if the goods are not being brought into Grenada for the purposes of being ultimately consumed here (for example some temporary imports);

"exempt use"; An exempt use is a use of goods or services to make one or more exempt supplies. The term is relevant when a taxable person who acquires or imports goods or services does not initially intend to use the goods or services for the purpose of making exempt supplies, but later does actually use them for such a purpose. At the time of the initial acquisition or import, the taxable person would have been entitled to input tax credits in respect of the acquisition or import, but since the goods are in fact used to make exempt supplies, it is no longer appropriate for the person to have been allowed those input tax credits. Clauses 6(4), 17(3), 19(3) and 19(4) treat the application of goods to an exempt use as a taxable supply for a value equal to the lesser of the original consideration for the goods or services or, if the person has used the goods or services in making supplies that were not exempt, the market value of the goods or services at the time of the exempt use. This has the effect of reversing the initial input tax credit, or part of the input tax credit, if the goods have initially been used for making taxable or other non-exempt supplies. This ensures that the person is not inappropriately entitled to input tax credits. It is not intended that these provisions apply where an acquisition or import was made partly for private or exempt use, and partly for use in making taxable or other non-exempt supplies and continues to be partly used in that way. Such situations are dealt with in the apportionment formula in clause 34(3)(*c*);

"finance lease": This definition is relevant to clauses 6(1)(*b*), 18(5), and item 1(*h*) in paragraph (1) of the Fourth Schedule. Unlike income tax, in the case of finance leases, VAT follows the form of the transaction, rather than its economic reality, treating a supply of goods under a finance lease like any other lease of goods. To the extent that a finance lease agreement includes payments of interest, those payments are excluded from the definition of "value" of the supply, and are instead treated as payments for a separate exempt supply of a financial service.

A finance lease is defined by reference to international accounting standards, which adopt a substance over form approach, to classifying leases as finance or operating leases. The objective of the international accounting standards, is to identify those leases that in substance, amount to an acquisition of the asset by the lessee. For VAT purposes, a finance lease is defined to include a hire purchase agreement. A hire purchase agreement is an agreement for hire with an option to purchase. Thus, even if a particular hire purchase agreement would not be treated as a finance lease under international accounting standards, it will be a finance lease for VAT purposes.

Because a finance lease is treated as a lease, rather than as a sale, it will be included in the definition of a "progressive and periodic supply". Thus, VAT on both operating leases and finance leases, is paid (and credited) in accordance with the separate payments made under the lease agreement.

"goods": This definition is primarily relevant to clauses 6 and 17, and the First Schedule. Clause 6 explains the concept of a "supply" for the purposes of the Act and divides supplies into two categories: supplies of "goods" and supplies of "services." The definitions of "goods" and "services" are both mutually exclusive and exhaustive (i.e. something cannot be both goods and services at the same time, and everything that adds value is treated as either a supply of goods or a supply of services).

The concept of "goods" is defined broadly to mean all real or tangible personal property. Personal property includes trading stock and capital equipment, such as plant and machinery. The definition is confined to tangible property. A supply of intangible property is not treated as a supply of goods and is therefore a supply of services. Examples of intangible property include intellectual or industrial property such as copyrights, patents, trademarks and the like, and choses in action, including shares and securities.

A supply of money is neither a supply of goods nor a supply of services. This is because money is a measure of value under the VAT. Money can be consideration for a supply, but it cannot be the subject matter of a supply in itself.

Whether a supply is categorised as being a supply of goods or a supply of services is particularly important when applying the jurisdictional rules, which distinguish between transactions leading to domestic consumption and those that will be consumed outside Grenada. These rules include the place of supply rules and the zero-rating of exports (see clause 18 for the place of supply rules and the First Schedule for the zero-rating of exports of goods).

"government entity": This definition is relevant to the definition of "person", which includes a government entity. Only a person can make supplies, be registered, claim input tax credits, and so forth. Without a specific inclusion, some government entities might not be treated as persons, or might only be treated as part of a larger person. A government entity that carries on a taxable activity is required to apply for registration even if it does not exceed the registration threshold;

"holiday or hotel accommodation": The primary function of this definition is to make a distinction between the supplies of accommodation that are intended to be treated as exempt (private residences) and those that are intended to be treated as taxable (commercial accommodation). Sales and leases of residential premises for occupation as private dwellings are exempt. This treatment does not extend to sales, leases, or licences to occupy commercial accommodation, i.e. holiday and hotel accommodation. Where supplies of holiday or hotel accommodation are taxable, they are subject to a lower rate of VAT (see clause 8(3)(*b*), which imposes VAT at the concessional rate of 10%). However, where holiday or hotel accommodation is supplied long-term, and on conditions commensurate with a landlord and tenant relationship, the taxpayer has the option to choose whether to continue treating the supplies as taxable at the rate of 10% under clause 8(3)(*b*) or as exempt (see Fourth Schedule, paragraph (1), items 6 and 7, and paragraph (2)). For many hotels, it will be easier to continue to tax long-term stays, because exemption would require the taxpayer to apportion its input tax credits between taxable short-term stays and exempt long-term stays;

"input tax" and "input tax credit": These definitions are primarily relevant to Parts VII and VIII, under which the net amount of VAT payable by a registered person to the Comptroller of Taxation for a tax period, is calculated by subtracting the person's total input tax credits for the period, from the total output tax payable on taxable supplies made by the person during that period (clause 32). The credit for

input tax is the key mechanism for ensuring that, from the perspective of a taxable person, VAT operates as a tax on consumption, and a tax on value added;

"Input tax" is the VAT payable in respect of a taxable supply to, or a taxable import by, a person. It also includes anything treated as input tax under the Act or Regulations; while

"input tax" is defined broadly to encompass all business inputs that are subject to VAT, not all input tax will be creditable/deductible under clause 31. Part VIII contains the main provisions dealing with input tax credit entitlements. Although some provisions of the Act treat amounts of penalties or interest as if they are VAT payable for a taxable supply made by a taxable person, there are no corresponding provisions treating them as input tax. Thus, no input tax credits are allowed for penalties, interest, or taxes other than VAT;

"international transport": This definition is relevant to the zero-rating and exemption provisions in the Schedules to the Act;

"invoice": An invoice is to be distinguished from a VAT invoice. The former, a document notifying an obligation to pay, is relevant to the time of supply rules in clause 17, which determine the tax period in which a liability for VAT or an entitlement to an input tax credit arises. The latter is a document that creates a documentary trail in relation to taxable supplies between registered persons. Holding a VAT invoiceis a prerequisite for an input tax credit entitlement to arise. While a VAT invoice may also be used as an invoice (i.e. it may serve the function of notifying an obligation to pay) it is not necessary that it does so. In many cases, a VAT invoice is as likely to be a receipt as it is to be an invoice.

The distinction is important because a taxable person cannot issue a VAT invoice to an unregistered person, yet there may still be an invoice notifying an obligation to make a payment, and this will be one of the potential time of supply triggers.

Similarly, a taxable person making a supply to a registered person, cannot defer the time of supply simply by deferring the issue of a VAT invoice. It is the invoice that is relevant to time of supply, not the VAT invoice.

"money": This term is relevant to the definitions of "goods" and "services" and to the concept of "consideration", which is defined in clause 3. A supply of money is neither a supply of goods nor a supply of services. The amount of money spent by a consumer on goods or services is used as one of the measures of consumption under a value added tax. Since money is something given in return for a supply of goods or services, the way in which the law identifies it as a measure of consumption, is by using it as a measure of the value of a supply for the purposes of VAT (see clause 19);

"Money" is defined to mean coin or paper currency, and includes the Eastern Caribbean Currency issued as legal tender by the Eastern Caribbean Central Bank, as well as the currency of other nations. Money does not include collector's pieces, coins, or paper currency that are of numismatic interest. These items are excluded from the concept of money, because they are normally traded at a value in excess of their face value and are treated by buyers and sellers as objects for consumption rather than as a means of payment for other goods and services. Since they are tangible personal property, they are included in the definition of "goods" for VAT purposes.

The definition of "money" also includes money equivalents, such as a bill of exchange, promissory note, bank draft, postal order, or money order and any amount provided by way of payment using a credit or debit account, or by debiting or crediting an account. Thus, when a recipient uses a credit card to make a purchase, for the purpose of timing and valuation rules, the supplier is treated as having received payment of the relevant amount in money, not in any non-monetary form.

Non-monetary payments are also treated as part of the value of a supply, but are not excluded from the definition of "goods" and "services". In a B2B context, two

businesses may engage in a barter transaction. In such cases, each party to the transaction has both supplied something in the course of the business and acquired something for the purposes of the business. It is therefore appropriate for each supply to be treated as both a supply and consideration. In contrast, if one business supplies goods or services, and the other pays money as consideration, only one supply has been made, and it is appropriate to exclude money from the definition of "goods" or "services".

"output tax" This definition is primarily relevant to clause 32, which specifies how to calculate the net amount of VAT payable by a registered person for a tax period. Under that clause, the VAT payable by a registered person for a tax period is the amount of that person's output tax for that period (which includes both output tax payable on taxable supplies made by the person during the tax period, and other amounts required to be treated as output tax for that period), less the person's total input tax credits allowed for that tax period;

"Output tax" is defined to include both the VAT chargeable in respect of taxable supplies made or treated as having been made by a person (this is the tax charged under clause 8(1)(*a*)) and other amounts that are treated as output tax for that period, for example; certain amounts for post-supply adjustments dealt with in clause 20.

VAT payable on taxable imports is not "output tax" because the tax on imports is collected separately by the Comptroller of Customs at the time of import.

"partnership": The definition of partnership is wider than that used for income tax or partnership law. This is because the concept of a taxable activity is wider than the concept of a business carried on for a profit, the mutual intent to make a profit, normally being a prerequisite to the formation of a partnership. For VAT purposes, a partnership exists if two or more persons carry on a taxable activity jointly. Thus, if two persons ("the lessors") own a commercial property and lease that property to a third person, the lessors are jointly carrying on a taxable activity and so are treated as a partnership for VAT purposes. Thus, the liability for VAT is not separately collected from each of the lessors, but is collected from the body that is the partnership;

"person": The concept of a person is central to the requirement to apply for registration for VAT under clause 9. The concept of a person includes entities that are not legal persons. Any entity that can be used to carry on a taxable activity through which supplies may be made, is treated as a person for VAT purposes. As well as individuals (i.e. natural persons), "person" is defined to include a company (a concept that includes unincorporated associations, bodies, or entities), an "other body of persons" (a concept that includes bodies of persons not treated as companies, including partnerships, trusts, and joint ventures), government, parts of government, government bodies, foreign governments and local government bodies.

The person itself, and not the owners or members of the person, is the relevant taxpayer for the purposes of VAT. Thus, a partnership is treated as a person and, if all other requirements are met, it is the partnership that will be registered and pay VAT, although the responsibility for ensuring that the partnership complies with the VAT law will, of necessity, fall on the partners because the partnership has no separate existence at law. Thus, the Act includes provisions which deem the actions of partners, trustees and members of unincorporated bodies to be the actions of the partnership, trust or body (see clause 64).

Separate definitions of "company", "partnership" and "government entity" also appear in clause 2. Although at law a trust is merely a relationship, it is common practice to speak of a business being carried on by or through a trust. For VAT purposes, the trust is treated as the taxpaying entity. A trust is defined to mean the person or persons acting from time to time in the capacity of trustee of a particular trust estate. The concept of a trust relationship has its ordinary meaning as determined under the law of equity.

Although person is defined broadly, only those persons who carry on a taxable activity and have an annual turnover above the registration threshold are required, or entitled, to apply for registration.

"progressive or periodic supply": This definition is relevant to clauses 6(3), 17(4) and 18(6). A progressive or periodic supply is one where the goods or services are delivered, performed or made available over a period of time and the payments for the supply are also progressive or periodic. Normally, the "time of supply" rules in clause 17 require a taxable person to account for VAT in the tax period in which either an invoice is issued or any part of the consideration for the supply is received. If this approach were applied to progressive or periodic supplies, all of the VAT due in relation to a supply that will be delivered over two years would need to be paid up front when either the first invoice was issued or the consideration for the first part of the supply was paid. The rules on progressive or periodic supplies mitigate the harshness of this requirement by treating each progressive or periodic part of the supply as if it were a separate supply. Even though leases are, in reality, granted at the outset when the lease agreement is entered into, for VAT purposes they are treated as progressive or periodic supplies made over the period of the agreement. This affords them the same concessional treatment under the time of supply rules as other supplies made for a period;

"registered": "Registered," in relation to a person, it means that the person is registered for VAT. The main registration requirements are set out in Part III of the Act. The definition of registered person is used to identify a "taxable person," which is defined to mean a person who is registered or is treated as being registered (for example, a person who is required to apply for registration but has not done so).

Only a taxable person can make a taxable supply, which means that only taxable persons are liable for VAT on supplies. Similarly, only a taxable person is entitled to claim input tax credits for VAT paid on acquisitions or importations.

"resident": The definition of a resident is relevant for the cross-border coverage of the VAT. The place of supply rules are based on the residency of the supplier (clause 18) and the zero-rating rules for exports frequently refer to the residence of the recipient of the supply. A person is a resident if it is a resident for income tax purposes, a Grenadian government or local government entity, a body formed under a Grenadian law, a body managed or controlled in Grenada, or any other person to the extent that the person carries on a taxable activity through a fixed place in Grenada. When combined with the definition of a "non-resident," it can be seen that, for example, a company formed, managed and controlled outside Grenada, but which has a branch in Grenada through which it carries on a taxable activity, will be a resident to the extent of the local branch, and otherwise remains a non-resident. This does not mean that the person is treated as if it were two separate persons. It does, however, mean that a resident person making a supply of services to the local branch will not be able to treat that supply as an "export of services" supplied to a non-resident;

"supplier" The concept of a supplier is one of the key concepts in VAT. The person who makes a supply of goods or services is the supplier of those goods or services. See also the definitions of "supply", "acquisition" and "recipient."

"tax period": The concept of a "tax period" appears regularly throughout the Act. A "tax period" is relevant to the reporting and payment of VAT on domestic supplies, and to the claiming of input tax credits for both domestic acquisitions and imports (see clauses 32, 44 and 46 in particular). The tax period for VAT is each calendar month;

"taxable import": This definition is primarily relevant to clause 8(1)(*b*), which imposes VAT on taxable imports. All imports of goods into Grenada are taxable imports unless they are specifically listed as exempt. Under clause 8(4)(*b*), the VAT charged on an import is payable by the importer to the Comptroller of Customs at the time of import. Unlike taxable supplies, there is no requirement for an importer to be registered for the import to be taxable;

"taxable person": "Taxable person" is a central concept in the Act. VAT is generally only payable on taxable supplies, and supplies are not taxable unless they are made by a taxable person. In most cases, a taxable person will be a "registered person". However, a person will also be a taxable person if the person is required to apply for registration but does not do so within the required time frame. In such cases, the person is treated as a taxable person from the first day of the month commencing two months after the day on which the person was required to be registered – see clause 9(8). After that date, the person will be liable for VAT on any taxable supplies it makes, even though the person is not actually registered, and even if the person has not specifically taken VAT into account in setting the price for the supplies it makes.

Where a person applies to the Comptroller to be registered under the Act, the person is not treated as a taxable person while the Comptroller is dealing with the application. This is because an unregistered person cannot issue VAT invoices, is not required to pay VAT on its supplies, and is not entitled to claim to its customers that VAT is charged on its supplies. A person who complies with its obligations by applying for registration within the appropriate time limits, does not become a taxable person until the Comptroller has processed the application for registration and notified the person of the date on which the registration commences – see clause 9(7).

"taxable supply": The concept of a "taxable supply" is central to the operation of the VAT. Taxable supplies are supplies on which VAT is charged. They include most domestic supplies and also, in some limited cases, services acquired from outside Grenada, which may be taxed in order to ensure that domestic suppliers are not disadvantaged compared with offshore service providers;

A "taxable supply" is defined in paragraph (*a*) as a supply (other than to the extent that it is an exempt supply) made in Grenada by a taxable person in the course or furtherance of a taxable activity. This definition can be broken down into a number of elements—

There must be a supply. The concept of a supply is defined in clause 6 to be a supply of goods or a supply of services—

(iv) *The supplier must be a taxable person*. The concept of a taxable person is discussed above.

(v) *The supply must take place in Grenada*. This means that only domestic supplies are taxable supplies under the VAT. Clause 18 provides the "place of supply" rules for locating the place of a supply. These place of supply rules are critical to establishing whether or not a particular supply is a taxable supply.

(vi) *The supply must be made in the course or furtherance of a taxable activity*. A supply made in the context of a purely private activity (such as a hobby or recreational pursuit), or a purely investment activity, is not a taxable supply. Even if a person carries on a taxable activity, only those supplies sufficiently connected to the taxable activity will be taxable supplies. For example, a person's taxable activity may involve dealing in used cars. If the person sells his or her own car privately, the sale is not connected with the person's taxable activity and is not a taxable supply, so no VAT is charged on the sale. Clause 7(2) provides that anything done in the course of the commencement or termination of a taxable activity, is part of the taxable activity. This means that a person can make taxable supplies when starting up or terminating a taxable activity. It also means that input tax credits are potentially deductible during the start-up or termination phase of the taxable activity.

(vii) *The supply must not be an exempt supply*. A supply is not a taxable supply if, or to the extent that, it is an exempt supply. Certain supplies are specifically defined to be exempt from VAT (see the definition of "exempt" and the list of

exempt supplies in the Fourth Schedule). Zero-rated supplies are different from exempt supplies – they are taxable supplies, but they are taxed at the rate of zero per cent.

(Editorial Note: Numbering as per *Gazette*.)

If any one of these five requirements is not met, there is no taxable supply. Thus, the following will not be taxable supplies—

- supplies made outside Grenada, as determined under the place of supply rules in clause 18 (for example, a supply made by a non-resident);
- a supply by a person who is not carrying on a taxable activity;
- a supply by a person who is carrying on a taxable activity, if the supply is not made in the course or furtherance (including commencement and termination) of that taxable activity;
- a supply by a person who is carrying on a taxable activity, if the supplier is not a taxable person, for example, if the person is under the threshold for registration;
- an exempt supply, or part of a supply, if that part is exempt;
- transactions that do not involve the making of a supply.

If part of the income of a taxable person does not relate to supplies made by the person, the payments that are the source of that income will not be consideration for a supply/supplies, and the person will not be required to remit VAT out of the amount received.

Examples of transactions that do not involve a supply include—

- the payment of a dividend by a company to its shareholders;
- many compensation payments, such as the payment of compensation for damages caused to the payee by the negligence of the payer;
- the payment or giving of unconditional subsidies, grants or gifts; or
- a contribution of capital in money by the members of a person, such as an injection of funds by the shareholders of a company, or the settlement of money on a trust.

Whether or not compensation payments are consideration for a supply is a question of fact, which depends on the circumstances of the transaction and the reason why the damages are awarded (in the case of a court judgement) or agreed to (in the case of an out-of-Court settlement). For example, damages for breach of contract for failure to make a delivery are not consideration for a supply because no supply has been made. On the other hand, where damages are awarded in a suit for breach of contract involving a failure to pay the price for goods that were delivered, the damages stand in the place of the price of the goods and are therefore consideration for the supply of those goods.

"Taxable supply" is also defined in paragraph (*b*) to mean a supply on which VAT is required to be reverse charged under clause 22. Under clause 22, a Grenadian VAT-registered person may be required to pay VAT on an acquisition of services from a non-resident, where the supply of the services by the non-resident is not taxable. Reverse charging is only required if a local supply of such services would have been taxable, and the recipient would not have been entitled to full input tax credits for the acquisition;

"VAT": Throughout the Act, the acronym "VAT", meaning "Value Added Tax" is used to identify the tax imposed under the Act;

"VAT credit note", "VAT debit note" and "VAT tax invoice": These are the three critical forms of documentation that must be issued by suppliers in relation to taxable supplies. Without these documents, registered recipients are unable to claim input tax

credits for their acquisitions. It is this restriction that helps to make VAT such an effective tax, because it is in the interest of recipients to ensure that suppliers are complying with their obligations to issue these documents, which create an effective audit trail for tax administrators

"VAT properly chargeable" This is the amount of VAT that should have been charged on a supply. Sometimes, subsequent events will change this amount and suppliers will need to adjust their VAT to account for the difference between what was paid initially, and what should have been paid. Similarly, recipients will need to adjust the amount of input tax credit they have deducted in relation to the acquisition. Such changes are dealt with in the post-supply adjustment rules in clauses 20 and 21;

"zero-rated": Zero-rated supplies are supplies on which the rate of tax is reduced to nil (zero %). Zero-rating applies to a limited range of domestic supplies that are zero-rated to achieve social policy objectives, but is mainly applicable to the jurisdictional rules, which ensure that supplies made or consumed outside Grenada are not subjected to VAT. Registered persons may claim input tax credits for acquisitions or imports that are used in making zero-rated supplies. Some imports will be zero-rated if a local supply of the goods imported are zero-rated. Other imports will be zero-rated if the goods are not to be consumed in Grenada, for example, certain temporary imports.

Key zero-rated items are specified in the First and Third Schedules. Others may be specified in the Act itself, the Regulations, or in any other Act.

3. Consideration

The concept of consideration is fundamental to VAT, because it represents the value of the consumption that is to be taxed. Rather than taxing consumption itself, a value added type tax is imposed on the amount paid in order to consume goods or services. Thus, the primary role of the definition of "consideration" is in determining the value of supplies, particularly under clause 19. It is also relevant to the determination of whether a person exceeds the threshold for registration, because the value of supplies is used to calculate a person's turnover. The timing of the payment of consideration is also important, because payment of part or all of the consideration is one of the factors in the "time of supply" rules in clause 17, which determine the time at which the obligation to pay VAT for a supply arises.

There are two components to the definition of "consideration". First, consideration includes the total amount paid or payable in money by any person, directly or indirectly, for a supply of goods or services. Secondly, consideration includes the fair market value of any amount paid or payable in kind by any person, directly or indirectly, for a supply of goods or services. Barter transactions are therefore brought within the VAT regime, because the consideration for each supply is the supply made by the other party to the transaction. The definition of "supply" is sufficiently wide to cover the provision of any type of in-kind payment. The fair market value of a supply (including a supply made as consideration in kind) is determined under clause 4.

The definition of "consideration" in subclause (1) is sufficiently broad to cover any amounts paid to reimburse the supplier for any duties, levies, fees, charges, and taxes paid by the supplier in relation to the supply. Such a reimbursement would fall within the words "paid or payable, by any person whether directly or indirectly, in respect of, in response to, or for the inducement of the supply," which appear in both subclause (1)(*a*), dealing with monetary consideration, and paragraph (*b*), dealing with non-monetary consideration. However, to avoid doubt, subclause (2) confirms that such amounts are included when calculating the amount of VAT payable in relation to a supply. Subclause (2) lists such reimbursements as examples of things included in the subclause (1) definition of "consideration". The reason for applying VAT on top of other taxes or charges payable, if any, is because VAT is intended to operate as a tax on consumption, which means it should be charged at the appropriate rate on the full cost to the consumer of consuming the thing acquired.

Just as goods and services can be supplied to a recipient even though they are provided to another person under the terms of the supply agreement, the money or in kind consideration for a supply, includes amounts paid or given by any person in respect of the supply, which may include amounts paid or given by the recipient of the supply or by another person. Similarly, the money or in kind consideration for a supply, includes all amounts paid or given for the supply (and not just amounts paid or given to the supplier). If amounts are paid by or to third parties, the supplier must account for VAT on the total consideration for the supply. VAT liability cannot be avoided or reduced by directing that payments be re-routed to another person. In such situations, the common law concept of constructive receipt would often apply, but even if it would not, the definition of "consideration" is drafted sufficiently broadly to ensure that the supplier's liability for VAT includes all amounts payable in respect of the supply.

The consideration for a supply is taken to include the VAT chargeable on the supply. In other words, consideration (which is effectively the price of the supply) is a tax-inclusive amount for the purposes of the tax. This ensures that suppliers who neglect to take VAT into account when setting their prices, are nonetheless taken to have collected VAT if the supply is a taxable supply.

Price discounts or rebates accounted for at the time of the supply reduce the amount of the consideration. This may apply, for example, if the supplier gives a trade discount, or honours an advertised discount offer. Any price discounts or rebates given at a later time (such as a prompt payment discount or a retrospective volume discount) are dealt with under clause 19 (post-supply adjustments).

4. Fair market value

This clause defines fair market value for the purposes of the Act. The definition is primarily relevant to the determination of the value of a taxable supply under clause 18, and is also relevant to valuing non-monetary consideration (see the definition of "consideration" in clause 2).

Subclause (1) sets out the basic rules. The fair market value of a supply is the open market value of that supply (i.e. the amount that the supply would ordinarily fetch in the open market) at that time. If it is not possible to work out a fair market value for the actual supply, the fair market value of a similar supply may be used, adjusted to take account of the differences between the actual supply and the similar supply. In either case, the fair market value is determined on the market conditions prevailing at the time and place of the actual supply, including conditions such as the registration status of the supplier. This is because the consideration for a supply is taken to include the VAT payable on a supply, so a person determining fair market value should include an amount for the VAT, if any, payable on the supply. The relevant market may differ depending on the nature of the transaction; it may be a retail market, a wholesale market, or some specialist market in which the supplier and recipient are operating.

Subclause (2) explains, for the purpose of subclause (1)(*b*), what it means for one supply to be similar to another. In general, it is expected that this definition merely clarifies the ordinary meaning of "similar" in this context, rather than altering the meaning of the words.

Subclause (3) empowers the Comptroller to approve alternative ways of working out the fair market value of a supply, if it is not possible to determine the fair market value under subclause (1). This may be required if, for example, there is no market for this type of supply other than between the particular supplier and recipient.

Subclause (4) ensures that this clause applies where the Act requires the fair market value of particular goods or services to be worked out in circumstances where a supply may not have taken place. For example, clause 6(4) treats a person as having made a taxable supply if the person applies goods or services to a private or exempt use, and the person had previously claimed input tax credits for those goods or services. Similarly,

clause 15(7) treats a person who cancels its registration as having made a taxable supply of any goods or services on hand at the time of cancellation, if the person was previously entitled to input tax credits in relation to those goods or services. Under clauses 19(3) and 15(8) respectively, the values of those deemed supplies are calculated by reference to the fair market value of the goods or services at the time of application or cancellation (as appropriate). In each case, clause 4(4) ensures that the value of the goods, services, or asset can be determined under clause 4. The appropriate market referred to in clause 4(4) will depend upon the particular facts, but in general it would be expected that the value of goods applied to a private use, or of goods on hand when registration is cancelled because the supplier has ceased carrying on its taxable activity, would be determined under normal retail market conditions. In contrast, the value of goods applied to an exempt use, or of goods on hand at cancellation of registration of a person who will continue carrying on a taxable activity, might be an appropriate wholesale market.

5. Related person

This definition is relevant to a number of provisions of an anti-avoidance nature, the most important of which are outlined below.

The concept of a "related person" is used in the definition of "fair market value" in clause 4, which is then used in defining the value of certain supplies made between related persons: see clause 19(6)—

(viii) The definition may also be relevant to determining whether a person is required to be registered, because clause 9(3)(*c*) allows the value of supplies made by related persons to be taken into account when measuring a person's turnover, if the Comptroller thinks it appropriate. This prevents suppliers avoiding VAT by dividing their taxable activity between more than one person in order to remain below the threshold.

(ix) Similarly, under clause 17(2), the time of a supply (and therefore the time for payment of VAT on the supply) is brought forward for related parties if the supply is actually made, in the sense of the goods being delivered or the services performed, before the supplier issues an invoice or the recipient makes a payment for the supply.

(Editorial Note: Numbering as per *Gazette*.)

6. Supplies

Clause 6 defines the concept of supply for the purposes of VAT. This is central to the operation of the VAT because a fundamental requirement for VAT to be imposed in relation to domestic transactions is, that there must be a supply of either goods or services (see the definition of "taxable supply" in clause 2). Because the Act applies VAT to a wider range of transactions than simply sales, the term "supply" is used to refer to the various forms of transaction to which tax may be applied. This terminology is in keeping with value added taxes around the globe. Supplies are subdivided into two types: "supplies of goods" and "supplies of services." The term "supply" on its own probably adds nothing to these separate definitions, but it is used on its own throughout the Act to refer to both supplies of goods and supplies of services.

Between them, the two categories of supply are both mutually exclusive and exhaustive. Something cannot be both a supply of goods and a supply of services at the same time and everything that adds value is treated as either a supply of goods or a supply of services. The breadth of the combined definitions is intended to reinforce the fact that VAT is a broad-based transaction tax. The definitions of a supply of goods or services are intended to cover any situation in which something (the subject matter of the supply) passes from one person (the supplier) to another (the recipient of the supply). They also include those situations where the thing supplied is created or arises because of the supply, even though it does not actually pass from supplier to recipient. For example, if

one person grants an option to purchase property to another person, the option is the thing supplied and it arises out of the contract between the supplier and recipient.

Within the framework of the two definitions, the word "supply" essentially takes its ordinary meaning, which (depending on the context) means to provide something to another person, the provision of something to another person, or the thing supplied.

Subclause (1) defines a supply of goods (see also the definition of "goods" in clause 2, which excludes money from being goods). Generally, any form of supply of goods is a supply of goods. Thus, supplies of goods include both sale and exchange transactions, in which there is a transfer of the right to dispose of goods as the owner, and the provision of lesser interests, including leases, licences or other rights to use goods. Essentially, if what a recipient receives is effectively a right to use or consume goods, the transaction involves a supply of goods.

Subclause (2) defines a supply of services. In addition to what is normally understood as services (the performance of services by one person for another), the concept of a supply of services is effectively a catch-all concept, which covers the provision of any benefit other than a supply of goods or money.

To reinforce the broad-based nature of the definition, subclause (2) spells out certain things that are included in the concept of a supply of services—

- the grant, assignment, termination, or surrender of a right;
- the making available of a facility, opportunity or advantage;
- refraining from or tolerating an activity, a situation or the doing of an act; and
- the issue of a licence, permit, certificate, concession, authorisation or other document by a licensing authority.

Obviously, simply refraining from or tolerating an act would not, in itself, normally amount to a supply, mainly because to be a supply, there must be a recipient to whom the supply is made. However, it is possible to make a supply of these things if you enter into an agreement with another person to do so. In such situations, a contractual obligation to refrain from or tolerate the activity is created by the supplier, and a contractual right to enforce that obligation is received by the recipient. The means of supply is the creation of the contractual rights, the subject matter of the supply (the thing supplied) is the refraining or toleration. A common example of this is a restraint of trade or restrictive covenant agreement.

The definitions also provide that supplies of goods or services include anything that is deemed to be a supply of goods or services elsewhere in the Act or Regulations. For instance, a compulsory acquisition of land by the Government would not normally fall within the concept of a supply of that land by the person from whom it is compulsorily acquired. Regulations might provide that a compulsory acquisition in return for compensation is a supply for consideration. In the absence of such a rule, the way in which the compulsory acquisition is effected, might not otherwise have fallen within the definition of supply.

The concept of a supply is independent from the concept of consideration, although both may be required before a supply will be taxable (see the clause 2 definitions of "consideration" and "taxable supply", and also clause 19). Thus, a supply can include a gift, although the value of the supply may be zero: see clause 19(8) and (9), subject to the limitations relating to supplies to related persons in clause 19(6). Note also that the gift can be a "taxable supply", because the definition of taxable supply in clause 2 does not require the supply to be made for consideration (some transactions between related persons). Thus, if a taxable person buys goods to give away in the course of its taxable activity (for example, trade samples, promotional items, Christmas cards to customers), the person may be entitled to input tax credits for the acquisitions. Although this means that in such situations input tax credits will be claimed and no VAT remitted on the gift itself, one would expect the value of the promotional items to be factored into the cost of

other goods or services sold, so that in economic reality VAT is collected on the goods given away.

Similarly, a transfer of goods or services to a person in a representative capacity is technically a supply, but as the supply is not made for consideration, no VAT consequences will follow (see clause 19(8)), although any services provided by the person acting in the representative capacity, will be the subject matter of a separate supply. In the same way, while the settlement of money on a trust is not a supply, the settlement of property (other than money) on a trust may be a supply, but such a supply would not be "for consideration", because a trustee does not provide consideration for the supply merely by accepting the settlement.

Subclause (3) treats "progressive or periodic supplies" (defined in clause 2) as if each part of the supply were in fact a separate supply. Leases and many licences are included in the concept of a progressive or periodic supply. By law, a right to occupy land under a lease contract would arise when the right was created, i.e. when the lease agreement is entered into. For VAT purposes, the focus is on the use/consumption of the land, so it is more appropriate to treat the supply as if it were a supply of goods, and as if those goods were supplied throughout the period during which the rights to use it will exist. Thus, for example, a lease for a two year period, with monthly rental payments, will be treated as twenty-four separate leases, one for each month. If the lease is provided for quarterly rent payments, it will be treated as eight separate leases, one for each of the eight quarters in the two-year period. There are specific provisions clarifying how to work out the time of supply, (clause 17(4)) and the place of supply (clause 18(5) and 18(6)), for a progressive or periodic supply. There is also a special rule for determining when a progressive or periodic supply may be treated as zero-rated: see the First Schedule, paragraph (3).

In general, a supply is progressive or periodic, only if it is supplied progressively or periodically, and the payments are made progressively or periodically. However, clause 6(3)(*b*)(ii) treats a lease as a progressive or periodic supply, even if the payments are not progressive or periodic. Generally, because of the way the time of supply rules in clause 17 operates, the Act will apply to such a lease in the same way it would apply if the supply were treated as being made when the lease is granted. However, in some circumstances, the fact that such a lease is treated as progressive or periodic will change the way VAT would otherwise have applied. For example, if leased property is used partly in Grenada and partly outside Grenada, the lease will be treated as separate supplies for each tax period, and VAT will only apply in the tax periods where it is used in Grenada (see clause 18 and the First Schedule).

Subclause (4) provides that an application of goods or services by a person to a private or exempt use is a taxable supply. This Rule applies only if the person was allowed an input tax credit in respect of the acquisition or importation of the goods or services. An example of the application to a private use is where a trader takes goods out of inventory for personal consumption. "Exempt use" is defined in clause 2 to mean use in the making of an exempt supply. Thus, subclause (4) applies if, having originally acquired or imported goods or services for the purposes of making taxable or other non-exempt supplies, the registered person uses the goods or services for the purpose of making an exempt supply. The concept of an application to exempt use, is intended to cover situations where goods or services are given over entirely or predominantly to exempt use at a particular point in time. It is not intended to cover those situations where a taxable person acquires something with the intention of using it partly for making exempt supplies and continues to do so, albeit that the extent to which the goods or services are used in making exempt supplies is not the same as that initially intended.

While the application of goods to own or exempt use is treated as a supply, whether the taxable person will be required to pay VAT on the supply will depend on the nature of the goods or services. If a supply of those goods or services would normally be exempt or zero-rated, the same treatment will flow through to the deemed supply.

Subclause (5) provides rules for applying the Act to transactions/supplies that involve more than one element, each of which would, if viewed separately, have a different character. For example, a supply of repair services may include both a supply of goods and a supply of services. If the Act applies in the same way to all elements of the supply, it will generally be unnecessary for suppliers to consider the effect of these Rules. However, where the tax treatment of particular elements would be different depending on how they are characterised, it is necessary to decide whether the elements must be dealt with separately, or are essentially a single supply of a particular character. Viewed individually, the elements of the transaction could be taxable, exempt, zero-rated or out-of-scope, whereas if they are viewed as one supply taking its character from its principal element, all elements of the supply would share the same tax treatment. This can arise not only because of the classification of particular supplies as exempt or zero-rated in the Schedules to the Act, but also if the place of supply or time of supply rules apply differently to each element of the supply.

The application of subclause (5) requires a consideration of whether there is a single supply of a particular character or two, or more distinct and separate supplies. A supply is a single supply if one or more parts are ancillary or incidental to another part of the supply. This codifies the approach that has been taken to this issue when it has arisen in other jurisdictions. It has generally been accepted in other value added tax regimes, that the question of whether a transaction in which a number of different elements are supplied should be seen as a single supply or as two separate supplies is a question of fact, which must be determined by considering all the circumstances in order to determine the true or essential character of the transaction. In general, every supply should be treated as a separate supply. However, if from an economic point of view the supply is essentially a single supply, it would be artificial to split the supply into its constituent elements for the purpose of applying the Act to each element.

A particular element of a transaction will be ancillary to a principal element if it does not constitute an aim in itself, but is merely a means by which the recipient can better enjoy the principal supply. In contrast, if circumstances indicate that what the recipient intended to purchase was two or more distinct supplies, and if these supplies are made for a single consideration, it will be necessary to apportion the single price between those elements of the transaction. The method of apportionment should give a true reflection of the comparative values of each of the separate supplies, keeping in mind the need for the apportionment method to be simple and practical for the supplier to use.

Subclause (6) provides a similar rule in relation to an import of goods. If a supply of services is incidental to an import of goods, the supply of services is treated as part of the import of the goods. Clause 31(1)(*b*)(ii) ensures that the taxable value of imported goods includes the value of incidental services to which subclause (6) applies.

Subclause (7) allows the Minister to make Regulations regarding particular types of mixed supplies, so long as those Regulations do not override the legislative requirements in subclause (5) to treat ancillary or incidental elements of a supply as part of the main supply.

Subclause (8) allows the Minister to make Regulations providing that something should be treated as not being a supply, even if it otherwise would be a supply for the purposes of this Act. Such Regulations might be necessary if a particular type of supply does not lead to consumption, or where taxing a particular supply would lead to double taxation of consumption. For example, the Minister may prescribe that something is a supply for VAT purposes, even though it would not otherwise be a supply. In many countries, compulsory acquisitions of land by Government are effected in a way that does not technically involve the supply of that land by the landowner to the Government. If compensation is paid that reflects the market value of the land, it may be desirable to have Regulations deeming a compulsory acquisition to be a supply.

7. Taxable activity

The concept of a "taxable activity" is used to define the borderline between consumption (which is the object of the tax), and productive activities that ultimately lead to consumption. This is achieved in three main ways—

(i) the most important way in which the concept of taxable activity targets VAT to end consumption is through the denial of input tax credits. A taxable person can claim input tax credits for acquisitions or imports, only if they are made in the course or furtherance of a taxable activity – see clause 33(2)(*a*). Acquisitions or imports made otherwise than in carrying on a taxable activity are treated as end consumption for the purposes of VAT;

(ii) similarly, supplies can be taxable only if they are made in the course or furtherance of a taxable activity (see the definition of "taxable supply" in clause 2). Thus, any value added by a person otherwise than in carrying on a taxable activity will not be subject to VAT. For example, a person who knits as a hobby or grows vegetables in the backyard, is not carrying on a taxable activity, even if the person occasionally sells some of the produce;

(iii) finally, a person can be registered (and therefore liable for VAT on taxable supplies), only if the person makes supplies in the course or furtherance of its taxable activity (see clauses 9, 10 and 15).

The definition of "taxable activity" is both inclusive and exclusive. The initial, inclusive aspect of the definition is extremely broad, and covers any continuous or regular activity that involves or is intended to involve the making of supplies to another person, whether or not the activity is done for profit. The definition includes a business, trade, manufacture or commerce, but goes further than that to include an adventure in the nature of trade, a concept which essentially encompasses the notion of a one-off profit-making venture.

Because this definition is so wide, it is necessary to narrow it down to specifically exclude those activities that are not generally considered to be value adding activities for VAT purposes. Thus, under paragraph (*a*), the activities of an employee providing services to the employer are excluded. This is because the activities of an employee are generally considered to be part of the value-adding activities of the employer, the value of which is captured in the price charged for supplies made by the employer. This means that employees cannot claim input tax credits for work-related expenses, they are not required to register, and are not charged VAT on their services. Paragraph (*b*) makes a similar exclusion for company Directors, except where the services of acting as a Director are provided as part of some other business. Thus, a lawyer or accountant who accepts office as a company Director in the course of his or her professional activities, will be considered to be making a supply of services to the company, and will be required to pay VAT on the supply of the Director's services. In contrast, an individual acting as director of a company independently of any other activity is not considered to be supplying director's services in the course of a taxable activity.

Paragraphs (*c*) and (*d*) exclude anything done as a private recreational pursuit or hobby. Such activities are considered to be consumption, and so no input tax credits are allowed in relation to those activities and no VAT is collected on any value added by such activities. Paragraph (*d*) ensures that the rule in paragraph (*c*) cannot be avoided simply by routing a transaction through a company, partnership, trust or other non-natural person. Thus, if an activity of a company would, if carried on by an individual, be a hobby or leisure activity, then it cannot be part of any taxable activity that may be carried on by the company.

Paragraph (*e*) distinguishes those activities of government that will be included within the VAT regime (activities involving the supply of goods or services that are also supplied, or likely to be supplied by non-Government persons), from the remaining activities of government (the carrying out by government of its core government activities, such as the administration and performance of government functions, the maintenance of freely provided infrastructure, the provision of goods and services as sole

provider on the domestic market, the granting of licences and other permissions, the provision of defence, the negotiation of international treaties, etc.).

Subclause (2) ensures that activities undertaken in the process of commencing or terminating a taxable activity are included in the concept of a taxable activity. Since the object of VAT is to tax end consumption, it would be inappropriate to deny input tax credits to the start-up operations of a person, just as it would be inappropriate not to apply tax on supplies made during commencement or termination. Thus, supplies made during commencement or termination may be taxable supplies, and input tax credit entitlements may arise in relation to acquisitions or imports made during those times.

PART II

Imposition of Value Added Tax

8. Imposition of Value Added Tax and persons liable

Clause 8 deals with both the subject matter of VAT (taxable supplies and imports) and the person who is responsible for paying the tax (the supplier or importer). Under subclause (1), VAT is imposed on taxable supplies and taxable imports. These represent the two separate means by which the VAT regime effectively taxes consumption. VAT is both a tax on imports of goods (collected by the Comptroller of Customs) and a tax on domestic supplies (collected by the Comptroller of Inland Revenue).

Subclause (1)(*a*) imposes VAT on taxable supplies. A "taxable supply" is defined in clause 2 to mean a supply, other than an exempt supply, of goods or services in Grenada by a taxable person in the course or furtherance of a taxable activity. The VAT payable on taxable supplies is referred to as "output tax" (see the definition in clause 2). Subclause 4(*a*) specifies that this VAT is payable to the Comptroller by the person making the supply, but rather than paying each time a supply is made, the taxable person accounts for output tax to the Comptroller in accordance with clause 32. Under that clause, the amount actually paid to the Comptroller is worked out on a global basis for each tax period (a calendar month), and involves netting of all the input tax credits to which the taxable person is entitled in that month, against all the output tax payable by the taxable person for that month. The difference is the net amount of VAT that must be remitted to the Comptroller for that tax period.

Subclause (1)(*b*) imposes VAT on taxable imports. A "taxable import" is defined in clause 2 to mean an import of goods other than an exempt import. Exempt imports are specified in the Fifth Schedule. The imposition of VAT on imports applies irrespective of whether or not the importer is a taxable person. Registration is not a prerequisite for the imposition of VAT on imports. Thus, imports made by private individuals will be taxable unless they are specified as exempt. The VAT payable on imports is not included in the definition of "output tax" , which means that it is not included in the amounts payable for each tax period to the Comptroller under clause 31. Instead, subclause 4(*b*) specifies that the VAT on taxable imports is payable by the importer to the Comptroller of Customs at the time of the import (as determined under clause 30). "Importer" has the same meaning as for Customs law purposes.

Subclause (2) specifies that the VAT payable in respect of taxable supplies and taxable imports, is calculated by applying the rate of VAT specified in subclause (3) to the "value" of the supply or import. There are separate rules for determining the value of a supply (clause 19), and the value of an import (clause 31).

Subclause (3) specifies the rates of VAT. Paragraph (*e*) sets the standard rate of VAT, which is fifteen per cent. This will apply to all taxable supplies other than those dealt with in paragraph (*a*), which deal with zero-rated supplies, paragraph (*b*), which deals with supplies of holiday or hotel accommodation (including such accommodation provided on a long-term basis, if the supplier chooses not to treat the supply as exempt), paragraph (*c*)

which deals with the value of a taxable supply by a taxable person of the dive authority activity portion of a dive package, or paragraph (*d*), which allows special rates to be prescribed in Regulations or other Acts. Zero-rated supplies are taxable supplies, but the rate of tax is zero per cent, so no tax is collected on such supplies. Supplies of hotel and holiday accommodation are subject to the reduced rate of ten per cent. Supplies taxed at the rates set out in paragraphs (*a*), (*b*) and (*c*) are taxable supplies, even though taxed at a lower rate, and therefore the supplier may be entitled to input tax credits for acquisitions relating to those supplies.

Example 8.1:

The value of a taxable supply or import of goods is one hundred dollars. If the supply or import is zero-rated, the amount of VAT payable on the supply will be nil. If the supply or import is fully taxable, the amount of VAT payable on the supply will be fifteen dollars ($100 x 15%).

Example 8.2:

The price of a supply of long-term accommodation is two thousand dollars per month. For the first forty-five days, the value of the supply (per month) is $2,000 – $260.87 (the tax fraction of the supply, as per clause 18) = $1,739.13. The VAT payable on the supply for the first month is thus $1,739.13 x 15% = $260.87. After the first forty-five days, the value of the supply per month is $2,000 – $181.82 (again, the tax fraction of the supply) = $1,818.18. The VAT payable on the supply is $1,818.18 x 10% = $181.82. Because the price doesn't change but the amount payable in tax does change, the supplier will need to take this into account when initially setting the price. Alternatively, the supplier may alter the price after the first forty-five days.

No VAT is payable on exempt supplies or out-of-scope supplies (such as those made outside Grenada or otherwise, than in the course or furtherance of a taxable activity).

Subclauses (5) and (6) vary the normal rules about who is required to pay the VAT on supplies and imports. Where a taxable supply or import is made by a resident person who is acting as an agent for a non-resident, the liability for accounting for VAT will rest primarily with the resident agent, rather than the non-resident principal. The liability for paying VAT is transferred to the agent in respect of supplies or imports made by that agent. This simplifies administration for the Comptroller, but does not prevent recovery of the tax payable against either the agent or the principal: subclause (7). The power to recover the tax from the non-resident principal is required in case, for any reason, the agent does not comply with its obligations under the Act. However, under subclause (6), liability is not transferred to the resident agent if the non-resident is in fact registered for VAT.

Subclause (8) clarifies that no person is exempt from paying VAT except as provided under the Act. Unlike the previous taxes such as General Consumption Tax, it is normal practice to minimise the number of exempt persons under a VAT system. It is normally particular types of supply or import that are exempt, rather than particular persons. This minimises opportunities for corruption and abuse and simplifies compliance for taxable persons because they do not need to determine and verify the status of their customers.

PART III

Registration

Clauses 9 to 14 set out the rules relating to compulsory and voluntarily registration, including the timing of applications and the means by which applications must be made. Registration for VAT is the means by which the Act distinguishes between those persons who are required to pay VAT and allowed to claim input tax credits, and those who are

considered to be outside the VAT regime, either because they are end consumers, or because the Act treats them as if they were effectively end consumers.

9. Persons exceeding the registration threshold required to be registered

In most cases, whether a person is required to be registered depends on the person's size, as measured by the value of supplies made or to be made by that person over particular time periods. The value of a supply is determined under clause 19 and excludes any VAT that is or would be payable on the supply.

A person is required to be registered if he meets the registration threshold, which is set at one hundred and twenty thousand dollars per annum by subclause (2).

Subclauses (1) to (3) set out the core provisions for compulsory registration of taxpayers who are over the threshold. They outline how a person should determine whether he meets the relevant threshold. A person must measure (or predict) his or her turnover, (the value of the supplies it makes or is likely to make), for the periods specified in (1) (*a*) to (*c*). The first rule is entirely backward-looking, the second rule is partly forward-looking and partly backward-looking, and the third rule is forward-looking and is based on predicted activity. In each case, a person must determine whether it exceeds the threshold, and is therefore required to be registered, at the end of each calendar month.

- Under subclause (1)(*a*), a person is required to be registered if the person exceeded the threshold over the previous twelve calendar months.
- Under subclause (1)(*b*), a person is required to be registered if the person exceeded one third of the relevant threshold in the previous four calendar months and there are no reasonable grounds to expect that in that period and the following eight calendar months, the person will not exceed the registration threshold. Most persons captured by this rule would also be captured by either subclause (1)(*a*) or subclause (1)(*c*). However, because it focuses on the most recent four months and the proceeding eight months, the rule gives some emphasis to the most recent four months' transactions.
- Finally, under subclause (1)(*c*), a person is required to be registered if there are reasonable grounds to expect that the person will exceed the registration threshold in the twelve month period commencing on the first day of the next month. This rule is aimed at new and expanding businesses.

In order to comply with these rules, an unregistered person who is carrying on a taxable activity and is not registered will need to consider, at the end of each tax period, whether it is required to be registered. This will entail calculating the total value of supplies it has made in the past four to twelve months, and predicting the total value of supplies it is likely to make in the next eight to twelve months. This means that unregistered persons must keep the level of their business activities under continuous review. Similarly, registered businesses who are close to falling under the threshold, will also need to monitor their turnover, in case they are required to apply for cancellation of their registration.

Subclause (3) specifies which supplies must be considered when working out whether the person exceeds the relevant threshold. Supplies that would not be taxable if the person were registered are excluded from the calculation: subclause (3)(*a*)(i). In other words, only supplies that meet the remaining requirements of the definition of "taxable supply", other than the registration requirement, need to be considered. This means the person need only count supplies that are—

- made in Grenada;
- in the course or furtherance of a taxable activity; and
- are not exempt supplies.

In calculating its turnover, the person must also exclude the value of a supply by way of sale of one or more capital assets of the person (subclause (3)(*a*)(ii)), the value of a supply

made solely as a consequence of the person selling the person's taxable activity or part of that taxable activity (subclause (3)(*a*)(iii)), and the value of a supply made solely as a consequence of the person permanently ceasing to carry on its taxable activity (subclause (3)(*a*)(iv)). This prevents persons being brought into the VAT regime because of unusual or extraordinary transactions and ensures that the threshold is measured against the normal ongoing turnover of the person.

The person must include in his turnover calculations, the value of any reverse-charged supplies: subclause (3)(*b*). These are services supplied by a non-resident to a resident, for which the recipient would not be entitled to a full input tax credit, even if it were registered, for example, if the services will be applied partly or wholly to a private or exempt use. VAT is payable on such supplies by the taxable person receiving the supply in Grenada (clause 22). Banks, insurance companies, and other providers of financial services (as defined in the Fourth Schedule), will need to take particular notice of this requirement, because they make significant numbers of exempt supplies and are therefore likely to be liable for VAT on reverse-charged supplies.

In calculating his or her turnover, the Comptroller may require a person to include the value of supplies made by related persons in its calculation of turnover, if particular features of the taxable activities carried on by those persons warrant such an approach: subclause (3)(*c*). This requirement prevents the avoidance of VAT by fragmenting taxable activities among related persons in order to keep each person's level of activity under the threshold. The related person's supplies are subject to the same exclusions in subclause (2) as the supplies made by the potential applicant. Thus, only potentially taxable supplies made by related persons will be relevant, and extraordinary transactions will not need to be considered. It is not anticipated that the Comptroller would use this power where the taxable activities of the related persons are genuinely separate activities, and there are obvious business explanations for conducting the operations through separate entities.

The value of a taxable supply is worked out under clause 19. Under that clause, the price of taxable supplies is considered to be VAT-inclusive, and the value of taxable supplies is generally determined by first subtracting the "tax fraction" (the amount of VAT payable on the supply) from the price of the supply. In considering whether it is required to apply for registration, an unregistered person must calculate the value of supplies he or she makes or intends to make. The value of those supplies will be determined under clause 19(2)(*b*). If the person becomes registered, it is anticipated that the person would then increase its prices to recover an amount sufficient to cover the VAT payable on its taxable supplies. This avoids any circularity that would arise if it were assumed that prices would stay the same. (If that were the case, a person who barely exceeded the threshold before he registered, would cease to be required to be registered upon registration, because the value of his supplies would immediately fall by an amount equal to the tax fraction of the supplies.)

Example 9.1:

Person A calculates that in the last four months he has made nine thousand dollars per month of supplies and anticipates that he will continue to make similar levels of supplies. Because A is not registered, nine thousand dollars is both the price and the value of its supplies each month. All of A's supplies are of a kind that would be taxable if A were registered. If A's prices remained the same after registration, their value for VAT purposes would fall, because the price would be taken to include fifteen per cent VAT. The fact of being registered would immediately cause Person A to fall below the threshold again, which would make the calculation process seem circular. This is illustrated in the following table:

Period	*Price*	*VAT*	*Value* (*clause 18*)
Previous 4 months	$36,000	Nil	$36,000

Next month (before registration takes effect)	$9,000	Nil	$9,000
Following 7 months (after registration effective)	$63,000[1]	$8,217[2]	$54,783[3]
Total	$108,000	$8,217	$99,783[4]

1 = $9,000 x 7 months

2 = $63,000 x (0.15/1.15)

3 = $63,000 x (1/1.15)

4 Person A appears to have gone below the threshold immediately after registration because he has not increased his prices to take account of his VAT registered status.

On this basis, A could argue that he or she does not exceed the threshold under section 9(1)(*b*) because he or she has reason to believe it will fall below the threshold once the next eighth months are taken into account. Similarly, A would not exceed the threshold in section 9(1)(*c*) because his or her turnover for the next twelve months would be $108,000 x 1/1.15 = $93,913.

However, because VAT is a consumption tax, which is intended to be passed on to consumers, it is anticipated that Person A will increase his or her prices by somewhere up to fifteen per cent after registration. The exact price increase will depend on A taking account of his entitlement to input tax credits for his or her business acquisitions and imports. If A is a service provider with few inputs, he or she will increase his or her prices by an amount closer to fifteen per cent. If A is a trader in goods, with a low profit margin, high volume of transactions, and few employees, his price increase may be minimal.

Assume, for argument's sake, that A has determined that it will need to increase its prices by ten per cent to remain in the same position (in terms of profit) after registration. In this case, A would calculate its turnover as follows:

Period	*Price*	*VAT*	*Value* (*clause 18*)
Previous 4 months	$36,000	Nil	$36,000
Next month (before registration takes effect)	$9,000	Nil	$9,000
Following 7 months (after registration effective)	$69,300[1]	$9,039[2]	$60,261[3]
Total	$114,300	$9,039	$105,261[4]

1 = $9,000 x 7 months x 110%

2 = $69,300 x (0.15/1.15)

3 = $69,300 x (1/1.15)

4 Person A thus exceeds the section 9(1)(*b*) threshold after registration, because he has increased his prices by ten per cent to cover the net effect of its VAT liability on taxable supplies, and his input tax credit entitlements for his business acquisitions and imports.

A would also exceed the threshold in section 9(1)(*c*) because his turnover for the next twelve months would be $118,800 x 1/1.15 = $103,304.

[Note that if A only needed to increase his or her prices by a lower amount after registration, A might exceed the threshold under section 9(1)(*a*) and/or (*b*), but not under section 9(1)(*c*). In the above example, a price increase of 6% would have this effect. In such circumstances, A is nonetheless required to be registered and cannot apply to cancel his or her registration as it no longer exceeds the registration threshold under any of the paragraphs in subsection 9(1). A is also required to remain registered for at least two years – see section 15(6).]

Subclause (4) provides that a person who is required to be registered must apply for registration no later than 14 days after the day on which the person is required to be registered.

Under subclause (5), a resident agent acting for a non-resident is required to be registered if the non-resident is required to be registered. This enables the Comptroller to collect the VAT from the resident agent, to whom the liability for payment is transferred by clause 8(5). Under subclause 9(6), the non-resident can choose not to apply for registration, if all its VAT obligations are being met by registered resident agents. The fact that the non-resident can choose not to apply for registration does not mean that the non-resident ceases to be required to apply for registration. This is necessary to ensure that, although not actually registered, the non-resident principal is treated as a taxable person despite clause 9(7), so that the choice not to register does not prevent the supplies being taxable supplies. A non-resident who is entitled to choose not to apply for registration will not be subject to penalties or prosecution for failure to register: clause 73(2). The Comptroller may nonetheless collect the tax from the non-resident principal, for example, if the resident agent has failed to pay the VAT payable: clause 8(7).

A person cannot escape its obligations under the Act by simply failing to apply for registration. A person who fails to apply for registration when required to do so, is treated as a taxable person: see the definition of "taxable person" in clause 2. Subclause (9) ensures that a person who is required to be registered is not treated as a taxable person on or before the day on which an application for registration is required to be made, and also that where the person does apply for registration within the required time, the person will not be treated as a taxable person until the Comptroller has processed the application. This ensures that the person's obligations under the VAT law do not commence before it is feasible for the person to become registered. This protection is not available to persons who are required to apply for registration but do not apply within the required time frame. They will be treated as taxable persons after the date on which they should have applied for registration.

Failure to apply for registration as required may result in the imposition of an administrative penalty or prosecution for a criminal offence (clause 73).

10. Suppliers of public entertainment required to be registered

Clause 10 deals with promoters of public entertainment and licensees or proprietors of places of public entertainment. Such persons are required to be registered irrespective of whether they meet the registration thresholds: clause 10(1). Applications must be lodged no later than one month before any supply is made in relation to the entertainment. Subclause (2) lists some of the types of supplies that might be relevant, but the listing is not exhaustive. A person who is required to be registered under clause 10 is not permitted to make a supply in relation to the entertainment unless the person is in fact registered: clause 10(4). Nonetheless, where a person is required to be registered under clause 10, but does not apply for registration, the person will be treated as a taxable person with effect from the day before the day on which the person first made a relevant supply: clause 10(3) and will, in addition, be subject to administrative penalties and/or prosecution for offences under clause 73 (for failure to apply for registration), and clause 77 (for making a supply in relation to entertainment while unregistered).

For the purpose of determining when the application for registration must be made, and for applying the penalty and offence provisions referred to in the preceding paragraph, clause 10(5) specifies that the time at which a supply is made is the earliest of the normal time of supply rules applicable for GST accounting purposes (subclause (5)(*a*) and (*b*), and see also clause 16) and the time at which the supply actually occurs (subclause (5)(*c*)).

11. Government entities required to be registered

Clause 11 requires a government entity to be registered whether or not it exceeds the registration turnover threshold if the person—

- carries on a taxable activity; and

- through that enterprise, makes supplies that would be taxable if the entity were registered.

"Government entity" is defined in clause 2 and includes local government authorities and councils. Note that under clause 7(2)(*e*), a government entity is only considered to be carrying on an enterprise to the extent that its activities involve the making of supplies of goods or services that are also supplied, or likely to be supplied, in Grenada, by at least one person who is not a government entity.

A government entity that is required to be registered must apply for registration no later than one month before the day on which the person becomes required to be registered. Thus, an entity commencing its taxable activity, or commencing to make taxable supplies through its taxable activity, on the VAT commencement day, would need to apply for registration one month before that day. Dates for applying for registration for entities carrying on a taxable activity, and making supplies that would be taxable before the VAT implementation date, are dealt with in the Value Added Tax (Transitional Provisions) Bill, 2009.

Where a government entity is required to be registered but does not apply for registration, it is treated as a taxable person from the date of the VAT commencement day or the day on which the entity becomes required to be registered.

13. Voluntary registration

Clause 13 provides for voluntary registration. A person making taxable supplies who is not required to be registered may apply for registration. An unregistered supplier is not charged VAT on its supplies, but would ordinarily be expected to pass on the costs of its input tax to its customers. Thus, a taxable person may wish to take advantage of the voluntary registration option if the person makes supplies to taxable persons, or if the person is an exporter—

- For unregistered exporters, this means that the exports (which will be consumed outside Grenada) will be partially taxed, even though VAT is intended only to apply to domestic consumption. Voluntary registration enables an exporter that is under the threshold to claim back its input tax, thereby ensuring that the exports are truly free of VAT.
- For unregistered persons making supplies to taxable persons, the result is some level of tax cascading on B2B supplies, because the VAT paid on imports, and the VAT included in the price of domestic acquisitions of goods and services by unregistered persons, is not recoverable as input tax credits by either the unregistered supplier or its registered customer. Voluntary registration enables a person whose turnover is under the threshold to reclaim its input tax and then pass on recoverable VAT in the prices charged for its outputs.

However, as a revenue protection measure, and to allow the Comptroller time to increase capacity in relation to the administration of VAT, voluntary registration will not be permitted in the first years after the Act comes into effect: see the Value Added Tax (Transitional Provisions) Bill, 2009.

A person making only exempt supplies will not be able to apply for voluntary registration, nor will a person who is not carrying on a taxable activity. This prevents registration being used by such persons as a means for claiming input tax credits to which they are not entitled.

Subclause (2) requires the Comptroller to register a person who applies for voluntary registration only if the Comptroller is satisfied of the matters listed in paragraphs (*a*) to (*d*). Essentially, to be entitled to voluntary registration, an applicant will need to satisfy the Comptroller that it—

- is making or will make supplies that would be taxable if the person were registered;
- has a fixed place of business;
- is likely to keep proper records and lodge regular and reliable VAT returns; and
- if relevant, has kept proper records of its taxable activity and complied with its obligations under other taxation or customs laws.

(Editorial Note: Numbering as per *Gazette*.)

14. Registration

Clause 14 specifies how the Comptroller should deal with applications for registration. Subclause (1) obliges the Comptroller to register a person who has applied for registration if the Comptroller is satisfied that the applicant is required to be registered. Notice of the registration, the date of its effect, and the person's TIN must be given to the applicant within twenty-one days of the date on which the person applied to be registered: subclause (1)(*b*). The registration takes effect from the time specified in subclause (2).

Example 13.1:

P is a partnership set up for the purpose of engaging in a small business operation in Grenada. P commenced operation on 1st April, 2009. At the end of June, 2008 the partners of P determine that, based on the spectacular business results in the first few months of operation, P is required to be registered because of clause 9(1)(*c*). They seek advice from their tax advisors to confirm this, and on 10th July, 2009, the partners lodge an application for registration of the partnership with the Comptroller of Inland Revenue. (The application had to be lodged no later than 14th July.) The Comptroller is satisfied that P is required to be registered and on 30th July issues a notice to that effect, noting that the registration will take effect from 1st September, 2009. (The Comptroller was required to issue the notice no later than 4th August. 1st September is the first day of the month that commences at least 14 days after the notice was given.) The Comptroller also issues an original VAT registration certificate and one certified copy, because the application for registration noted that P carries on business at two separate locations. P is not required to pay VAT (and not entitled to input tax credits) until 1st September, 2009.

Had the taxpayer wished to take advantage of an earlier date of effect (for example, for the purpose of claiming input tax credits), the Comptroller and the taxpayer could have agreed to an earlier date.

Under subclause (3), the Comptroller must register a person who has not applied for registration when required to do so, if the Comptroller is satisfied that the person was required to apply for registration. However, the Comptroller may not compulsorily register a non-resident who is entitled to choose not to apply for registration under clause 9(6). Notice of the registration, its date of effect, and the person's TIN must be given to the person no later than twenty-one days before the registration takes effect. Subclause (4) specifies that the date of effect is the date specified in the notice given by the Comptroller. However, the Comptroller may not specify a date before the date on which the person was required to make an application for registration (as specified in clauses 9(7), 10(3) and 11(3)). For the purpose of compulsorily registering, a person who did not apply for registration, subclause (5) allows the Comptroller to give the person a notice declaring that reasonable grounds exist for believing that the person is required to be registered. Under clause105(1)(*a*)(ii), a decision to make such a declaration is a reviewable decision and for the purposes of transparency, subclause (6) requires that the notice must state the information on which the Comptroller has based this conclusion. This ensures that the person understands the decision and is able, if relevant, to object to the

Comptroller against the decision. The Comptroller may at any time revoke a notice given under subclause (5) and the revocation takes effect from the date of the revocation notice.

If the Comptroller registers a person who is not required to be registered but has applied for voluntary registration, notice of the registration, its date of effect, and the person's TIN. The registration takes effect from the day requested by the person on the application for registration, or from a later day, if the Comptroller reasonably determines that the person will not commence carrying on a taxable activity until that later day. However, the registration should not take effect less than fourteen days after the notice is issued, unless the person registered agrees otherwise.

As for other applicants for registration, the Comptroller must notify an applicant for voluntary registration of his decision in relation to the application within twenty-one days, and if the person is to be registered, the notice must state the date of effect of the registration and the person's TIN.

Subclause (8) requires the Comptroller to issue registered persons with VAT registration certificates, stating the date on which the registration takes effect and the person's TIN.

Subclause (9) requires the Comptroller to notify a person within twenty-one days of receiving an application for registration, if the Comptroller has decided not to register the person. This requirement applies to all applicants for registration and ensures that applicants are able to object against decisions relating to registration.

Subclause (10) requires a registered person to display the original certificate at the principal place at which it carries on a taxable activity. A certified copy must be obtained from the Comptroller for display at every other place from which the person carries on its taxable activity. Failure to display a registration certificate as required may result in the imposition of administrative penalty or prosecution for a criminal offence (clause 73).

Finally, subclause (11) requires registered persons to notify the Comptroller in writing within twenty-one days if there is a change in key details relating to the person, including a change in the name, business name, trading name, address, place of business, or nature of the taxable activity carried on by the person. Failure to notify the Comptroller as required may result in the imposition of an administrative penalty, or in prosecution for an offence (see clause 75).

Note that where the Comptroller has the power, registers a person who was required to be registered but did not apply for registration, the registration cannot take effect less than twenty-one days after the Comptroller notifies the person of the registration. Similarly, with applicants for registration, the date of effect of the registration must be at least fourteen days after the notice is issued. These provisions ensure that the person is not obliged to pay VAT, issue VAT invoices, and so forth until it is registered and has a registration certificate available for public display.

A decision to register, or not to register a person under the Act, including a decision as to the date of effect of the registration, is a reviewable decision: clause 105. This means that the person may appeal the decision under the provisions of Part XVII.

Table: Summary of Registration Provisions

The following table summarises the provisions dealing with applications for registration, including the timing of applications, the dates by which the Comptroller must notify persons of matters relating to registration, and the dates from which registrations take effect. The table covers the sections proposed in both the VAT Act and the Value Added Tax (Transitional Provisions) Bill, 2009 ("referred to in the table as the Transition Act").

Type of application	*Application to be made by*	*Notice to given by*	*Date of effect of registration*

Required to be registered because turnover exceeds threshold: s.9(1)	14 days after becoming registered: s.9(4)	21 days after application made: s.14(1)(*b*), 14(3)(*b*), 14(8)(*a*)	• 1st day of the month commencing at least 14 days after the notice is given; or • Earlier date of effect if the registered person agrees
Promoters and others involved in providing public entertainment required to be registered: s.10	1 month before making a supply in relation to the entertainment: s.10(2)		
Government entity, local body, etc., required to be registered: s.11	1 month before required to be registered: s.11(2)		
Resident agent for non-resident: s.9(5) and 9(1)	14 days after becoming required to be registered: s.9(4)		
Voluntary registration when under the threshold: s.13	N/A: person may apply at any time		• Day requested or day on which taxable activity commences (as specified in notice), but not less than 14 days after notice (unless person agrees): s.14(8).
			• Subject to restrictions on voluntary registration in: Transition Bill s 14
Person required to be registered under the Transition Act: s.14(1)(*a*)	At least 2 months before VAT commences: s.14(3)(*a*) Transition Act		VAT commencement day: s.13(3) Transition Bill
Resident agent required to be registered under the Transition Act: s.14(1)(*b*)			
Government entity required to be registered under the Transition Act: s.14(1)(*c*)			
Promoter of public entertainment required to be registered under the Transition Act: s.14(1)(*c*)			
Any person required to be registered under the Transition Act: s.14(2)	At least 1 month before VAT commences: s.14(3)(*b*) Transition Act		
Person registered by		21 days before	Day specified in the

Comptroller because required to be registered but did not apply for registration: s.14(3) s.14(3)(*b*)		registration takes effect:	notice given by the Comptroller or but not before the person was required to apply for registration
Person not registered because Comptroller makes a decision not to register the person		Notice of non-registration 21 days after application made: s.14(10)	N/A

15. Cancellation of registration

This clause provides for cancellation of a person's VAT registration. A cancellation of registration may be made on application by the registered person or on the Comptroller's own motion. An application for cancellation of registration must be in the approved form: subclause (10).

Subclause (1) requires a registered person to apply for cancellation of the person's registration if the person ceases to make taxable supplies. This will apply if the person ceases to carry on a taxable activity, or if the person continues to carry on a taxable activity but ceases to make supplies in Grenada, or makes only exempt supplies. It is mandatory to apply for cancellation under subclause (1). Failure to make such an application may result in an administrative penalty or prosecution for an offence (see clause 75).

Subclause (2) permits a registered person who continues to make taxable supplies to apply for cancellation of registration if the person is no longer required to be registered. A person who continues carrying on a taxable activity but falls below the threshold may wish to cancel its registration for a number of reasons. Its customers may be end consumers who are not able to claim input tax credits, or it may prefer not to incur the compliance costs of being registered. On the other hand, if the person's customers are predominantly other businesses, it may be advantageous to remain registered to prevent tax cascading for those customers.

Although under the Value Added Tax (Transitional Provisions) Bill, 2009, voluntary registration will not be available during the first years of the VAT regime for persons who are under the threshold, there is no corresponding requirement for a person to apply for cancellation during the first years if, having been required to be registered, the person falls under the threshold during the first two years. This is because the person will in any case be required to remain registered for two years: clause 15(6). The main reason for this is to simplify the administration of the Act by preventing persons moving in and out of the VAT regime. The Comptroller can choose to override this rule if it is appropriate to allow the person to cease being registered within the two year time frame.

Subclause (3) requires the Comptroller to cancel the registration of a person who has applied for cancellation, so long as the Comptroller is satisfied that the person is required to, or entitled to, apply to cancel its registration.

Under subclause (4), the Comptroller is required to cancel a person's registration even if the person has not applied for cancellation, if the Comptroller is satisfied that the person has ceased making taxable supplies.

Under subclause (5), the Comptroller has the power to cancel the registration of a person who is registered but is not required to be registered, if the Comptroller is satisfied that one of the listed factors applies. This is because such persons could pose an unacceptable risk to the revenue. However, because persons must stay registered for two years, and because the ban on voluntary registration is only expected to be in place for a few years, the Comptroller does not have the power to cancel a person's registration merely because he believes the person has fallen below the threshold. However, under the general power to administer the Act (clause 57), the Comptroller may be able to cancel a registration issued in error. For example, if in the early stages of the operation of VAT a

person mistakenly believes it is required to be registered, applies for, and is granted registration, on application to the Comptroller, the person may be able to request cancellation of its registration.

In each case where the Comptroller cancels a person's registration the cancellation must be notified in writing to the person. Subclause (6) provides that the date of effect of the cancellation is the date stated in the notice, which should not be less than two years from the date of registration unless the person will no longer make taxable supplies or the Comptroller thinks an earlier cancellation is appropriate.

A decision to cancel, or not to cancel a person's registration, (including a decision as to the date from which the registration will be cancelled), is a reviewable decision (see subclause 105(1)(*b*)), which means that the person may appeal the decision under the provisions of Part XVII.

At the date of cancellation of its registration, a registered person may have assets, including goods such as raw materials, stock, plant and equipment, or buildings, and also certain types of services (for example, licences) for which the person claimed input tax credits while it was registered, but which the person has not fully used up in its business prior to cancelling its registration. However, because VAT is a consumption tax, input tax credits should not be claimable in relation to domestic consumption or anything that the Act treats as equivalent to domestic consumption. Thus, input tax credits are not available for acquisitions or importations that are to be used for private or domestic consumption:

(x) for making exempt supplies (suppliers are treated as akin to end consumers in respect of inputs to exempt supplies they make); or

(xi) by unregistered persons carrying on taxable activities (unregistered persons are also treated as akin to end consumers).

(Editorial Note: Numbering as per *Gazette*.)

The second and third items can be referred to as "quasi-consumption". If a taxable person could cancel its registration without consequences before it had on-supplied or fully used up any goods or services for which it claimed input tax credits, the result would be that the person had been allowed input tax credits for consumption or quasi-consumption (the person's post-cancellation activities). To prevent this, subclauses (7) and (8) require the person to remit VAT in its final tax period to reverse out certain input tax credits previously claimed. This is achieved by deeming the person to have made a taxable supply of any goods or services it has on hand at the time the registration is cancelled, but only if the person was able to claim input tax credits for those goods or services: subclause (7). This applies even if the goods or services acquired have been semi-processed at that date, for example, for partially processed raw materials or for goods that have been affixed to other goods as part of a manufacturing process.

Subclause (8)(*a*) provides that the time of this deemed supply is immediately before cancellation of the person's registration. Under subclause (8)(*b*), the value of the deemed supply depends on whether the person has used the goods or services in its taxable activity, prior to the cancellation of registration. If the goods or services have not been used, the value of the deemed supply is the consideration paid or payable for the acquisition of the goods or services by the person: paragraph (*b*)(ii). This effectively puts the person in the same position as if it had acquired the goods or services after cancellation, while unregistered, which is the time when the person will actually use the goods or services in its business. If the goods or services have been used in the person's taxable activity prior to cancellation, the value of the deemed supply is the lesser of the fair market value of the goods or services (as determined under clause 4), or the consideration paid or payable for the acquisition. Thus, the person is effectively put in the same position as if it purchased the goods or services at the date of cancellation.

Example 15.1:

Paradoxical Tours Pty Ltd ("Paradoxical") is a registered person who provides sailing tours in the waters of Grenada. On 1 January, 2009, Paradoxical imported 1,000 t-shirts printed with its logo, which it hoped to sell to customers. The value of the import for VAT purposes was $4,000 and Paradoxical paid $600 VAT to the Comptroller of Customs. On 28 January, Paradoxical paid $2,875 ($2,500 + $375 VAT) to have advertising brochures designed and printed. In its January, 2009 VAT return, Paradoxical claimed input tax credits for the $600 and $375 VAT it had incurred on the import and acquisition. On 1 February, 2009, Paradoxical purchased a vacuum cleaner, to be used in cleaning its offices, for $690 ($600 + $90 VAT), and claimed an input tax credit for the $90 in its February VAT return.

Subsequently, Paradoxical applied to have its registration cancelled because it was below the threshold, and the Comptroller agreed to cancel the registration from 1 December, 2008. At the end of 30 November, 2009, Paradoxical still had 250 of the t-shirts on hand, 30% of the advertising brochures, and the vacuum cleaner.

As the remaining t-shirts and advertising brochures have not yet been used in Paradoxical's business, it is deemed to have made a supply of them on 30 November, 2009, for the value of $1,000 for the t-shirts (one-quarter of the $4,000 import value) and $750 for the brochures (30% of the $2,500 value of the acquisition). Paradoxical must include 15% VAT for each of these deemed supplies in its final VAT return. The VAT payable is $150 for the deemed supply of the t-shirts ($1,000 x 15%) and $112.50 for the brochures ($750 x 15%).

The vacuum cleaner has been used for 8 months, and Paradoxical determines that its fair market value is now $400. As this is less than the acquisition price, the value of the deemed supply of the vacuum cleaner is $400, and Paradoxical must include a further $400 x 15% = $460 VAT in its calculations under proposed section 31 for its final VAT return.

Subclause (9) sets out certain requirements that arise as a consequence of the cancellation of a person's VAT registration. The person must no longer hold itself out as being a registered person: paragraph (*a*) and must cease to use any documents that identify it as a taxable person: paragraph (*b*). As well as the listed documents, which are specific to the VAT documentation requirements, other documents the person may need to modify include; invoices, business cards, letterheads, envelopes, and customs documentation. Paragraph (*b*) will also require the person to stop displaying its VAT registration certificate and paragraph (*c*) then obliges the person to return the certificate to the Comptroller, along with any certified copies. Failure to comply with subclause (9) may result in prosecution for a criminal offence (see clause 76).

Finally, under subclause (9)(*d*) the person must submit its final VAT return within twenty days after the cancellation and pay any net amount of VAT owed under clause 32 on the same day. Failure to file a return may result in the imposition of an administrative penalty (see clause 81). Tax evasion, which may include not paying any amount due on the final return, may result in prosecution for a criminal offence (see clause 79).

16. Register of persons registered for VAT

The Comptroller must maintain an up to date register of persons registered for VAT. The aim of such a register is to allow members of the public to confirm whether the persons from whom they purchase goods or services are entitled to claim that VAT applies to their supplies. It also allows registered persons to check the registration status of their customers, so that they can know whether they are required to issue VAT invoices and similar documentation as required by Part IX. A registered person making an acquisition may also wish to check whether the supplier is registered and entitled to issue a VAT invoice. To facilitate these purposes, subclause (3) requires the Comptroller to publish the register while subclause (4)(*a*) provides that it is not reasonable for a person to believe that another person is registered for VAT if the person is not listed on the published register but subclause (4)(*b*) entitles a person to check the registration status of the other person with the Comptroller, and to rely on the Comptroller's response.

PART IV

Basic Rules Relating to Supplies

17. Time of supply

Clause 17 sets out the rules for determining when a supply of goods or services occurs. The main function of the time of supply rules, is to determine in which tax period a taxable person should report the output tax on taxable supplies and claim input tax credits for its acquisitions. However, the rules are also relevant to determining the status of a supply as taxable, or whether a person is entitled to input tax credits, because a supply is only taxable (and an acquisition only gives rise to input tax credits), if it is made while the person is registered. Thus, in summary, the "time of supply" rules perform two different functions and it is important to keep these different functions in mind, because some of the clause 17 rules address only one of these two functions. The first, and primary function of the time of supply rules is a tax accounting function, for which the name "time of supply" is really a misnomer; the second function is to determine the time at which supplies actually take place.

The general rule for determining the time of supply is specified in subclause (1). A supply of goods or services occurs at the earlier of the time when the supplier issues an invoice or the time at which any payment for the supply is made. "Invoice" is defined broadly in clause 2 to mean any document notifying an obligation to make a payment. Importantly, the term Invoice, as defined in clause 2, is not the same as the VAT invoice that a registered person is required to issue under clause 37. While a VAT invoice may also operate as an invoice, the type of document that can be an invoice for the purpose of triggering the time of supply under subclause (1) is much broader. The word Document, is intended to be interpreted broadly. Besides an ordinary invoice for a supply, a document notifying an obligation to make a payment could include a creditor's statement or a contract. A broad definition of invoice is necessary, for example, because a VAT invoice cannot be given for a supply made by a registered person to an unregistered person: see clause 38(1).

Under subclause (1)(*b*), the receipt of any of the consideration for a supply will trigger the requirement to account for the whole of the VAT payable on the supply. This means, for example, that if the payment for a supply is by instalments, the payment of the first instalment will trigger the VAT liability on the full value of the supply. However, if both the supply and the consideration are provided progressively or periodically, then the supply will be a progressive or periodic supply and subclause (4) will displace the basic rule in subclause (1).

The aim of the basic rule in subclause (1), which determines when a supply occurs completely independently, of when it takes place in the real world (as opposed to under the VAT Act), is to enable taxable persons to account for VAT on the basis of their accounting systems, rather than having to concern themselves with the real time of supply. This means that many taxable persons will be able to generate their VAT accounting records automatically at the same time they do the data entry for their sales and purchases. However, because this basic rule bears no relationship to the real time of supply, there are times when it would not operate appropriately, and clause 16 includes variations on the basic rule to deal with these situations.

Under subclause (2), the time of supply may occur earlier than the time at which payment or invoice occurs, if either the supplier and recipient are related persons (as defined in clause 5), or the Comptroller is of the opinion that the supplier and recipient have colluded to defer the time for payment of VAT by deferring the issue of an invoice or the payment of consideration. This rule essentially adds an additional "time of supply" – the time at which goods are delivered or made available, or the time at which services are performed. This additional rule is intended to signify the time at which the supply should be considered to have taken place in the real world. The rule essentially identifies

the time at which the recipient of the supply (or any other entity to whom the supply is provided), is able to commence effectively using or enjoying the supply.

Subclause (3) applies where a taxable person has applied goods to private or exempt use, and is required to treat that application as a supply of the goods and services because of clause 6(4), which will be the case if the person were initially entitled to an input tax credit for the acquisition or importation of the goods or services. In such cases, the time of the supply is the date on which the goods or services are first applied to such use.

Subclause (4) varies the normal rule for progressive or periodic supplies, as defined in clause 2. Such supplies are treated as a series of separate supplies under clause 6(3). In the case of each such separate supply, the time of supply is the earliest of the dates listed. These include the subclause (1) time of supply markers – the time of invoice (paragraph (4)(*a*)) or the time of receipt of consideration (paragraph (4)(*c*)). In the case of the time of invoice, this is only if a separate invoice is issued in relation to each part of the actual supply. The reason for this limitation is that in some cases a contract, such as a lease agreement, could meet the definition of an invoice, because it is a document notifying an obligation to pay, which would mean that the invoice for all of the deemed separate supplies would have been issued at the time of entering into the lease agreement, triggering a time of supply for each of the supplies and effectively defeating the purpose of the special rules for progressive or periodic supplies. There are also three additional time of supply markers for progressive or periodic supplies – the date on which payment is due (paragraph (4)(*b*)), the first day of the period to which the supply relates (paragraph (4)(*d*)), or the first day on which the recipient is able to commence consuming the supply (paragraph (4)(*e*)). In the case of the rule in paragraph (4)(*d*), the reference to the first day of the period is a reference to the first day of that part of the periodic supply, not a reference to a tax period.

Subclauses (5) and (6) deal with the timing of supplies and acquisitions when persons become registered or cease to be registered. Subclause (5) applies only for the purpose of determining the status of a supply or acquisition, i.e. it is not relevant to the question of the time at which VAT or input tax credits must be accounted for. Essentially it uses the same "real time of supply" rules that are used in subclause (2) for related party transactions, but in this case without any reference to the basic rules in subclause (1). Thus, if a supply of goods is delivered or made available before the supplier becomes registered, or after the supplier ceases to be registered, then the supply is not a taxable supply. If the supplier is required to be registered but has not applied for registration, then the supplier is a taxable person (see paragraph (*b*) of the definition of "taxable person" in clause 2) and will be making taxable supplies despite not being registered, but only if the supplies are made after the time when the person starts to be treated as a taxable person: see clause 9(10).

Example 17.1:

YK3 is a company carrying on a taxable activity in Grenada. On 30 June, 2009, YK3 acquired photocopy paper for use in its business. The invoice for the paper was not issued until 10 July, 2009, and YK3 did not pay for the paper until 1 August, 2009. The price of the paper was $805 ($700 + $105 VAT). YK3's registration for VAT commenced on 1 July, 2009. Under the rules in subclause (1), the time of supply would have been 10 July, 2009, (the date of invoice) and this would have triggered an entitlement to an input tax credit for YK3. However, under subclause (5), the acquisition of the paper was made on 30 June, 2009, when YK3 was not registered for VAT. As a consequence, YK3 may not be entitled to input tax credits in relation to the acquisition of the paper, even though it used the paper when it was registered. [Note, however, that because the paper was purchased in the 3 months prior to registration, under clause 34(11) but subject to clause 34(12), YK3 may be allowed an input tax credit for any of the paper that it has on hand at the date on which it became registered.]

Example 17.2:

Five years later, YK3 has decided to cancel its registration. It has sold most of its business activities and its turnover from the remaining activities falls well below the threshold. On 21 June, 2014, YK3 issued an invoice to one of its customers seeking prepayment in relation to the next months' services. The customer paid the invoice on 28 June. YK3's registration was cancelled as of 1 July, 2014, and the services to which the invoice related were delivered in July. Even though, under subclause (1), there would have been a time of supply in relation to the services, subclause (5) has the effect that those services are not taxable, because they are not performed until after YK3 ceases to be registered.

Subclause (6) deals with what happens when a prepayment is made, or an invoice is issued in advance for goods or services before they are supplied in real time, and the supplier (or recipient) becomes registered between the time of invoice/payment and the time when the goods or services are actually supplied, as determined under subclause (5). Without subclause (6), there would be no provision determining when the person should account for VAT (if a supplier) or an input tax credit (if a recipient) in such a situation. Subclause (6) provides that only for the purposes of determining when to account under clause 32, the time of supply is the first tax period in which the person is registered. Subclause (7) has the opposite effect when registration is cancelled. Note, however, that in the case of acquisitions, any input tax credit allowed in the last tax period because of subclause (7) will effectively be wholly or partially reversed by subclauses 14(7) and (8).

The effects of clause 16(5) to (7) are summarised in the following table:

Supply delivered, made available, or performed		*Treatment of supply and acquisition*	*Tax period for accounting*
Before registration	After registration	No VAT/Input tax credit (subclause 5)	No VAT/Input tax credit (subclause 5)
After registration	After cancellation	Before cancellation	
Before cancellation	After cancellation	Supply taxable/Input tax deductible	Last tax period registered (subclause 7)
After cancellation	Before cancellation	No VAT/Input tax credit (subclause 5)	No VAT/Input tax credit (subclause 5)

18. Place of supply

This clause provides rules for determining the geographical location of a supply. These rules are primarily relevant in determining whether a supply is a taxable supply. One of the conditions for a supply to be a taxable supply is that the supply takes place in Grenada (see the definition of "taxable supply" in clause 2).

Under paragraph (1)(*a*), the starting point for determining whether a supply is made in Grenada is the same, whether the supply is one of goods or of services. If the supplier is resident in Grenada (as defined in clause 2), then *prima facie* the supply is made in Grenada. However, the supply may nonetheless be zero-rated under the First or Second Schedule if it is an "export," or if the thing supplied is essentially provided outside Grenada, (whether or not it is exported from Grenada in the course of making the supply).

Subclause (2) makes it clear that the basic rule for a supply by a non-resident is, that the supply is not considered to be made in Grenada unless subclause (1)(*b*), (5) or (7) applies. Under subclause (1)(*b*)(i), a supply of goods by a non-resident will be considered to be made in Grenada if the goods are located in Grenada at the time of the supply. Under subclause (1)(*b*)(ii), a supply of services will be considered to be made in Grenada if the services are physically performed by any person who is in Grenada when the services are performed. The person performing the services need not be the supplier. However, subclause (3) modifies the operation of subclause (1)(*b*), by providing that the

latter rule does not apply in a transaction between a non-resident supplier and a local customer who is registered for VAT, unless the parties agree in writing that the supply should be taxable.

Example 18.1:

USCo sub-contracts ResCo to perform services in Grenada for USCo's local client, a private consumer in Grenada. When the services are performed, ResCo, being a local company, is in Grenada and therefore the supply by USCo to its local client is considered to have been made in Grenada. However, if the local client is a VAT-registered person, the supply will be considered to take place outside Grenada, unless the local client and USCo agree in writing that the supply should be treated as taking place in Grenada (and therefore taxable).

One reason why parties might agree that a supply should be treated as taxable is to prevent tax cascading. If a non-resident supplier has incurred costs in Grenada on which VAT has been charged, it will not be entitled to input tax credits and will pass on the cost of the VAT to the local client as part of the price of its supply. However, as the supply by the non-resident is not taxable, the local client cannot claim input tax credits for the tax passed on. In such circumstances, especially if the local client would be entitled to full input tax credits because it makes only taxable supplies, the parties might be better off agreeing that the transaction takes place in Grenada. This will allow the non-resident to register for VAT and be treated as making taxable supplies (provided, of course that, the non-resident exceeds the threshold or, after the early years of VAT, has chosen to register voluntarily).

Subclause (4) provides for the interaction of customs and VAT law by ensuring that if goods are supplied while they are still under customs control (i.e. after the time when they are imported but before the time when they are entered for consumption), the goods are treated as being located outside Grenada at the time of supply. This applies irrespective of whether the supplier is a resident or a non-resident. For non-residents, it will have the effect that subclause (1)(*b*)(i) will not apply; for residents, the supply will still be made in Grenada, but it will be zero-rated under item 6 of paragraph (1) in the First Schedule.

Under subclause (5), the place of supply of a lease or hire of goods supplied by a non-resident is determined by reference to the place where the goods will be used. If the goods are used wholly outside Grenada, the place of supply is outside Grenada. If they are used wholly or partly inside Grenada, the place of supply is inside Grenada. If they are used outside Grenada but before and after that use they are used inside Grenada, then they are treated as being used in Grenada. Subclause (6) makes it clear that for progressive or periodic supplies, all place of supply rules are applied independently for each part of the supply that is treated as a separate supply. Thus, for any lease of goods that is treated as more than one supply, each of those supplies (which are parts of the one overall supply) will be treated as being made inside or outside Grenada according to where the goods are used during that part of the overall supply.

Subclause (5) does not apply to leases of goods by resident suppliers. Such leases are considered to be made in Grenada but under item 6 in paragraph (1) of the First Schedule, as affected by paragraph (3) of that Schedule, where the goods are outside Grenada for the whole of a particular progressive or periodic component of the supply that is treated as a separate supply, that supply will be zero-rated. This ensures that the resident supplier can claim input tax credits for any taxed inputs that relate to the supply of the lease (including imports and general overheads such as rent, power, etc.).

Subclauses (7) to (11) provide special rules for telecommunications supplies. Most value added tax jurisdictions have, in recent years, introduced rules that require telecommunications supplies to be taxed where they are consumed (often referred to as the place of effective use or enjoyment). The Grenadian place of supply rules for telecommunications supplies are aimed at achieving this result by taxing such supplies at the place where a call is initiated. The place of initiation is considered to be an effective

proxy for the place where consumption of the services takes place and the provisions set out a hierarchy of rules for determining the place where a telecommunications supply is initiated. Subclause (7) provides that a supply of telecommunications services by a non-resident is made in Grenada if a person who is physically in Grenada initiates the supply, whether or not on his own behalf. Subclause (8) provides that the person who initiates the supply can be identified by considering who controls the commencement of the supply, who pays for the services, and who contracts for the services. These factors must be considered in the order listed. However, under subclauses (9) and (10), if it is impractical for the supplier to determine the location of the person who initiates the supply, the place of supply can be determined from the billing information of the customer, so long as the same approach is adopted for all supplies of the same type of service or class of customer. This approach might, for example, be used when free calls are bundled with rights of access. For example, for ninety dollars per month a customer may be granted access to the telecommunications network, free calls to customers on the same network outside of business hours, and a certain number of calls or amount of time on the network. As the place of supply may not be the same for each of the things supplied, the supplier may wish to use the billing information of the customer to determine the place of supply for all of the things supplied for the ninety dollars.

Example 18.2:

At any one time, UK Telco has a number of mobile phone customers who are in Grenada. Some of those customers use global roaming services to make calls. Under subclause (8)(*a*), a global roaming customer in Grenada will be considered to initiate a call where the person is located, and UK Telco will be considered to make a supply in Grenada even if the person who pays for the services and contracts for the supplies is the UK employer of the caller.

If a caller, instead of using global roaming, makes a collect (reverse charge) call to the UK, the person who controls the commencement of the supply is in fact the person in the UK who agrees to accept the charges for the call. This is because, if that person did not agree to accept the charges, the supply would not in fact commence. In this case, the customer who controls the commencement of the call, pays for the services, and contracts for the supply is, in fact, the UK person who accepts the charges. That person might not be a client of UK Telco, in which case, the only supply UK Telco will have made will be any supply of arranging for the supply that it may charge to its customer (for example, an operator access charge).

If the roaming customer receives a call from Canada and is also charged for receiving the call, there are two supplies being made. One is made (from a VAT perspective) in Canada by the telecommunications company with whom the Canadian caller has contracted. The other is the supply being made by UK Telco to the roaming customer, which is a supply of receiving the call and this supply is made in Grenada because the roaming customer initiated this supply by answering the phone.

The rules in subclauses (7) to (11) are addressed to non-residents, but the same effect is achieved for resident telecommunications suppliers through the combined effect of subclause (1)(*a*), under which the supply is made in Grenada, and items 11 and 12 in paragraph (1) of the Second Schedule.

Under subclause (13), the rules for telecommunications supplies do not apply to inter-carrier transactions. This is because they are only aimed at end consumers. In addition, many countries do not tax inter-carrier charges in order to comply with international telecommunications treaty obligations, and the Grenadian VAT law has been designed to maintain parity with such rules. [See the final acts of the World Administrative Telegraph and Telephone Conference, 1998 (“the Melbourne Agreement”).]

Under subclause (12), a supply of a licence, permit etc. to do something in Grenada occurs in Grenada no matter where it is issued.

19. Value of a supply

This clause provides rules for determining the value of a supply. The value of a taxable supply is the basis for computing the VAT payable in respect of the supply: clause 8(2). The value of a taxable supply is also relevant in determining whether a person is required to register for VAT (clause 9).

Subclause (1) defines the "tax fraction", which is essentially the proportion of the price of a taxable supply, which represents the VAT payable on the supply. Because VAT is considered to be included in the price of (the consideration for) a supply, it is necessary to exclude it from the definition of value to prevent circularity in the calculation of the amount payable.

Example 19.1:

Under clause 8(3), there are different possible rates of VAT, each of which gives rise to a different "tax fraction".

- For a supply that is taxed at the rate specified in clause 8(3)(*d*), the rate of VAT (R) is 15%, which means that the tax fraction is R/(1+R) = 0.15/(1+0.15) = 0.1304, i.e. 13.04%.
- For a supply that is taxed at the rate specified in clause 8(3)(*b*), the rate of VAT (R) is 10%, which means that the tax fraction is R/(1+R) = 0.10/(1+0.10) = 0.0909, i.e. 9.09%.
- For a supply that is taxed at the rate specified in clause 8(3)(*a*), the rate of VAT (R) is 0%, which means that the tax fraction is R/(1+R) = 0/(1+0) = 0, i.e. 0%, which is logical, since such supplies are "zero-rated".

This means that when a standard rated item is taxed at 15%, the per cent of the price of the supply that represents tax is actually 13.04% not 15%. This follows from the way in which the VAT Act requires pricing to be VAT-inclusive.

Subclause (2)(*a*) states the general rule that the value of a taxable supply is the consideration for the supply, reduced by an amount representing the tax fraction for the supply. Consideration is defined in clause 3, and includes monetary and non-monetary consideration paid or payable in respect of, in response to, or for the inducement of a supply, minus any price rebates or discounts given at the time of the supply.

Example 19.2:

A registered person makes a fully taxable supply of an item of clothing for a payment of $115 cash. The consideration (or price) of the supply is $115. The value of the supply is $115 – $115 x (0.15/(1+0.15) = $115 – $15 = $100. Thus, since the value is $100, under clause 8(3)(*d*), the amount of VAT payable in relation to the supply is $100 x 15% = $15.

Clause 3(2) clarifies that any amounts paid to reimburse the supplier for any taxes, fees, levies, and charges (including VAT) are included in the concept of consideration. This can best be illustrated through a theoretical example.

Example 19.3:

Assume that a supplier is subject to a number of taxes, fees, and charges in relation to a supply, all of which are recovered from the recipient. These include a charge of $2, a fee or $5, and a 1% tax. If the supplier recovers all of these charges from the recipient, but invoices them as if each one were a separate re-charge or reimbursement of the various fees and charges, the VAT (if charged at the standard rate under clause 8(3)(*d*)) will be the tax fraction of the sum of all the amounts paid. Depending on whether the other 1% tax is charged on full price in the same way as VAT (see column A), on the price excluding VAT (column B), or on the price minus all other taxes fees and charges

(column C), the amounts payable by the supplier, the supplier's actual receipts after taxes, and the total effective tax burden on a supply costing $172.50 would be as listed below. In all three cases, the price, VAT, and value remain the same. This is because VAT is a 15% tax on the total cost of consumption from the perspective of the recipient of the supply.

Item	**A**	**B**	**C**
Price	**$172.50**	**$172.50**	**$172.50**
VAT 15%	22.50	22.50	22.50
Value	**150.00**	**150.00**	**150.00**
Other tax 1%	1.42	1.42	1.42
Charge $2	2.00	2.00	2.00
Fee $5	5.00	5.00	5.00
Amount supplier receives after paying all taxes, fees, and charges (R)	$141.29	$141.51	$141.58
T = Total taxes, fees and charges	31.21	30.99	30.92
Effective rate or tax all taxes, fees and charges (T/R x 100)	22.0875%	21.8593%	21.8357%

Note that this example is intended purely as an illustration. These figures are entirely theoretical and are not intended to reflect the actual application of combined taxes, fees, and charges on any particular type of supply made in Grenada. Indeed, the introduction of VAT will be accompanied by the removal of a number of other taxes as part of the consolidation of the taxation system of Grenada, so it is unlikely that any supply would in fact be subject to such a combination of fiscal imposts.

A further aspect of the definition of consideration is that it excludes any price discounts or rebates allowed and accounted for at the time of the supply. (Price discounts or other adjustments taken into account at a later date are dealt with under the post supply adjustment provisions in clauses 19 and 20.) The effect of a discount allowed at the time of supply can be seen in the following variation on Example 18.2.

Example 19.4:

The registered person in Example 18.2 has decided to offer a 25% discount on all clothing in the store as part of its post-Christmas sales programme. A customer wishing to buy an item of clothing that previously would have cost $115 will now only have to pay $115 x 75% = $86.25. Because of the 25% discount, the consideration or price of the supply is $86.25 rather than $115. The value of the supply is $86.25 – $86.25 x (0.15/(1+0.15)) = $86.25 – $11.25 = $75. Thus, since the value is $75, under clause 8(3)(*d*), the amount of VAT payable in relation to the supply is $75 x 15% = $11.25.

The effect of the discount is that the price (consideration), the value (consideration minus tax fraction), and the VAT itself are all reduced by 25%. The registered person does not have to pay VAT calculated on some theoretical price that it had previously anticipated selling for; it is only required to pay VAT on the amount actually paid by the customer.

Subclause (2)(*b*) makes it clear that the value of a supply that is not taxable is the consideration for the supply. Non-taxable supplies include exempt supplies and supplies that are not taxable, because one of the key elements of a taxable supply is absent. Because there is no VAT included in the price of a non-taxable supply, there is no need to reduce the supply by the tax fraction. The value of a non-taxable supply is significant when calculating the proportion of input tax credits a taxable person is entitled to for acquisitions or imports that relate to making both taxable and non-taxable supplies. The apportionment formula in clause 34(3)(*c*) includes the denominator "C", defined as the value of all supplies made by the taxable person in a particular tax period. "C" will necessarily include the value of non-taxable supplies.

The Act does not specifically recognise the idea that a supply can be partly taxable, or taxable at different rates for different parts, although a supply is not taxable to the extent that it is exempt. The words "to the extent that" clearly contemplate a supply being partly taxable and partly exempt. Nonetheless, if a single amount of consideration is paid for what appears to be two different and unrelated items, in circumstances where neither thing is ancillary or incidental to the other in the sense contemplated by clause 6(5), then there are two separate supplies being made, even though they are made for a single amount of consideration. In that case, before the taxpayer can apply clause 18 to determine the value of each supply, the amount of consideration attributable to each of the supplies must be determined.

Example 19.5:

A registered person owns an interest in commercial residential property (an hotel) that is normally let out on a short-term basis to tourists. However, occasionally, longer term leases on terms commensurate with landlord and tenant arrangements are entered into. The registered person rents a hotel suite to a foreign visitor for a six-month period, and as part of the same transaction and for the one single price, supplies the free use of a yacht and marina berth to the tourist. After the first forty-five days of occupation, the supply of the hotel suite may be treated as taxable at the rate specified in clause 8(3)(*b*) or as exempt under item 6 or 7 of paragraph (1) in the Fourth Schedule. The registered person chooses to treat the supply of the suite as exempt, but the overall supply consists of both the suite and the use of the marina berth and yacht. The latter are not exempt under item 7 of paragraph (1) in the Fourth Schedule, because they are not provided for use as accommodation.

In this case, there are three separate supplies made for one consideration, which must be apportioned between the supplies. None of the supplies is ancillary or incidental to the other in the sense contemplated by clause 6(5).

If the consideration paid is $2,400 per month, the registered person must decide, based on the relative market values of each of the supplies, how much of that consideration relates to the suite and how much to the use of the yacht and marina. This will depend entirely on the particular facts of the case. However, if based on appropriate comparison of market values, the registered person concludes that $1,750 relates to the exempt supply of the suite and $650 to the taxable supplies of the use of the yacht and marina, then the value of the suite is $1,750 (as an exempt supply, value is determined under clause 19(2)(*b*) while the value of the supplies of the yacht and marina is $650 – $650 x 0.15/1.15 = $650 – 84.78 = $565.22. The VAT is therefore $565.22 x 15% = $84.78. [Note that as the supplies of the yacht and marina have the same treatment, being fully taxable supplies, it is not necessary for the registered person to determine what proportion of the price or value is attributable to each of these supplies.]

Subclauses (3) to (7) and subclause (9) deal with special cases. In accordance with general rules of statutory interpretation, a more specific provision overrides a more general provision. Thus, if one of these subclauses applies, it will override or modify the basic valuation rule set out in subclause (2).

Subclause (3) applies in the case of an application of goods or services to a private or exempt use. Such an application is treated as a supply if an input tax credit was allowed for the acquisition or importation of the goods, or on the acquisition of the services: clause 6(4). A private or domestic use of goods or services is the final domestic consumption of the goods or services, and the purpose of the Act is to tax such consumption. Under the VAT Act, as under all value added taxes, the use of goods or services to make exempt supplies is treated as a form of quasi-consumption. Because no VAT is payable in relation to the exempt supply, the taxable person making the supply is treated as having "consumed" anything that was used in its business for the purpose of making the supply. Where a taxable person acquires or imports goods or services with the intention of using the things acquired to make taxable supplies, the person will be allowed

to claim input tax credits for the acquisitions or imports (Part VIII). If the taxable person subsequently uses the goods or services for private or exempt purposes, allowing the initial input tax credits to stand would amount to not taxing the private consumption (or quasi-consumption) of those goods and services in Grenada. The purpose of treating an application of goods or services to a private or exempt use as a taxable supply, is to prevent this result by recapturing some or all of the input tax credits that were allowed at the time of acquisition or importation.

Since the purpose is to recapture input tax credits claimed on acquisitions or importations later used for private or exempt purposes, if the goods or services have never been used by the taxable person to make taxable supplies, the value of the deemed taxable supplies should be such that it will recapture all of the input tax credits previously allowed. Thus, in the case of an import of goods for which input tax credits were allowed, subclause (3)(*a*)(i) values the deemed supply using the value of the import, while for acquisitions for which input tax credits were allowed, it values the deemed supply by reference to the consideration paid or payable by the person for the acquisition of the goods or services, reduced by the input tax that was incurred on the acquisition (i.e. the tax fraction of the supply).

In some cases, goods or services may have been acquired or imported partly to make taxable supplies and partly for other purposes (including making exempt supplies, out-of-scope supplies, or for private or domestic purposes). In this case, the import or acquisition would have initially been only partly creditable, in the sense that a credit under Part VIII would have been allowed for only a proportion of the input tax incurred on the acquisition or import. If subsequently the taxable person applies the goods or services to be used thereafter exclusively for taxable and/or exempt purposes, the input tax that needs to be recaptured should not exceed that amount of input tax that was actually allowed as a credit initially. Thus, for imported goods, subclause (3)(*a*)(ii) sets the value of the deemed taxable supply at the import value, but only to the extent of the input tax credit that was actually allowed, while for an acquisition, subclause (3)(*b*)(ii) provides that the value of the deemed supply of the thing acquired is the original consideration, similarly reduced to take account of the extent to which input tax credits were initially denied.

Example 19.6:

If goods costing $1,150 were initially acquired by a taxable person for the purpose of using them in making both taxable and exempt supplies, the taxable person would have been required to determine the percentage of input tax credits it was allowed for the acquisition under clause 34(3)(*c*). Assuming that the calculation under that clause resulted in the taxable person being entitled to 75% of the input tax credits on the acquisition, the person would have claimed $150 x 75% = $112.50. If the goods or services were later used 100% to make exempt supplies, the taxable person will be treated as having made a taxable supply under clause 6(4), and under clause 19(3)(*b*)(ii), the value of that taxable supply will be the original consideration ($1,150) reduced by the input tax incurred on the acquisition ($150) reduced by the extent to which the person was not allowed to claim input tax credits (25%), i.e. $1,000 B – ($1,000 x 25%) = $1,000 – $250 = $750.

As the person is treated as having made a supply with a value of $750, the VAT payable on that supply is $750 x 15% = $112.50. Thus, the tax payable exactly offsets the input tax credit that was allowed at the time of acquisition.

Subclause (4) varies the operation of subclause (3) for those situations where the person has initially used the goods or services at least partly to make taxable supplies. Clause 6(4) treats a person as making a supply when it applies goods or services to a private or exempt use. This means wholly (or at least more than 90%) to such a use from a particular point in time. Where a taxpayer initially imports or acquires goods or services to use them partly for taxable and partly for exempt purposes and that mixed use continues indefinitely, albeit with some fluctuations in the extent of each use, clause 6(4) does not apply. However, where there is an initial period of mixed use, followed by a

more permanent shift to applying the goods or services for private or exempt purposes, clause 6(4) will apply. Subclause (4) allows for only a partial recapture of the input tax credits that were initially allowed to reflect the fact that the goods or services have been partly used in making taxable supplies. This partial recapture is achieved by reducing the value of the clause 6(4) supply to the VAT-exclusive market value of the goods or services, at the time they are supplied (or the appropriate proportion thereof), if that value is less than the amount worked out under subclause (3). Note, that because the VAT-exclusive market value is used, the reduction by reference to the input tax incurred on the acquisition (subclause (3)(*b*)(i)) is not relevant and is not taken into account under sub-clause (4)(*b*). If the goods or services have actually appreciated during the time they are used in the business, the full amount of the initial input tax credits previously claimed is recaptured but there is no need for the taxpayer to value the clause 6(4) supply at the current market value.

Subclause (5) applies in the case of a supply of goods under a finance lease (as defined in clause 2). Such a supply is treated in the same way as any other lease of goods (clause 6(1)(*b*)), except to the extent, if any, that a separate credit charge is explicitly stated in the lease agreement. In that case, the credit charges are excluded from the value of the supply, which is otherwise as worked out under subclause (2). The supply of credit is an exempt financial service: see item 1(*h*) of paragraph (1) in the Fourth Schedule.

Subclause (6) applies to a supply between associates, if the recipient of the supply would not have been entitled to a full input tax credit for the acquisition of the thing supplied, and if the consideration for the supply is less than the fair market value of the supply (as determined under clause 4), including where there is no consideration for the supply. In such cases, the value of the supply is the VAT-exclusive fair market value of the supply. This rule is necessary to prevent related persons from effectively claiming input tax credits for consumption or quasi-consumption. In the absence of this rule, a taxable person who acquired or imported goods or services for the purpose of on-supplying the goods or services to a related person could claim input tax credits (assuming the on-supply was a taxable supply) despite the fact that—

- if the supply was made for no consideration, the person would not be required to pay VAT for the on-supply;
- if the supply was made for consideration that was less than the cost of the acquisition or importation, the person would pay less VAT than it had claimed as input tax credits; or
- if the supply was made for a consideration exceeding the cost of the acquisition or importation but less than the market value of the on-supply, part of the "value added" by the taxable person would escape tax.

Where the recipient is unregistered, or will use the thing supplied for private or exempt purposes, the result would be that part of the value added that should be taxed under the VAT regime, would effectively escape taxation because of the related party transaction. Subclause (6) prevents this from occurring by treating the supply as having been made for fair market value. The rule does not apply if the recipient would be entitled to a full input tax credit, because the effect of the lower (or nil) consideration on the related party transaction will be compensated for when the recipient uses the goods or services to make a taxable supply. To the extent that any value added has escaped taxation because of the related party transaction, the recipient will pay tax on both its own value added and the untaxed value added, (because input tax credits will be available on the related party transaction only to the extent of the consideration actually paid).

Subclause (8) makes it clear that, apart from those situations dealt with in the more specific provisions in subclauses (3) and (4) (application to private or exempt use) and subclause (6) (transaction between related persons), the value of a supply made for no consideration is zero. This would cover, for example, the supply of trade samples, free giveaways, *pro bono* work by law practitioners, or goods or services donated to charities or otherwise given away in the course of a taxable activity. It is considered that the cost

of such free supplies will be effectively captured in the pricing of other supplies made by the taxable person for consideration, i.e. through slightly higher prices. The VAT Act does not second guess a taxable person about what is considered necessary or appropriate in the course of its enterprise, and if it is the policy of a particular taxable person to make certain supplies for free, then unless covered by the more specific provisions, such supplies are not subject to VAT. The consumption cost to the recipients of such supplies is nil and it is therefore appropriate that no tax be paid.

Subclause (9) clarifies that, in the case of a gift to a non-profit body, even if the recipient receives something minor but insignificant in return for the gift, such as public recognition or acknowledgement, the value of the gift is nil. Without this rule, a gift of goods or services to a non-profit body might be seen as taxable, if the giver received something of perceived value in return. Where what is received in return is more than insignificant, for example where it consists of more extensive advertising of the donor's business by the non-profit body, subclause (9) will not apply and the value of the gift will be worked out under the basic rules in subclause (2). This rule is only relevant where the gift is non-monetary – a gift of money would not be a supply (see the definitions of "goods", "services", and "money" in clause 2 and of "supplies" in clause 6).

Subclause (10) allows the Minister to make Regulations specifying or varying the way in which the value of a supply is worked out.

20. and 21. Post supply adjustments for VAT adjustment events and bad debts

These clauses apply where something happens after a supply is made that has the effect of altering the consumption value of the supply. Clause 20 applies where certain changes in circumstances occur after the time of the supply. These changes are referred to as "VAT adjustment events" and include—

(*a*) the cancellation of a taxable supply, which could include a cancellation occurring before the supply actually takes place in the real world but after the time of supply used for the purposes of accounting for VAT (clause 17);

(*b*) a change in the consideration for a supply, for example, the granting of a retrospective volume discount;

(*c*) the return (or part return) of the thing supplied to the supplier, which is essentially a form of cancellation of the supply, but which is more likely to take place after the thing supplied has actually been provided to the recipient; or

(*d*) the nature of a supply is fundamentally varied or altered, for example a supply intended to be a zero-rated export will not in fact be zero-rated if it becomes clear that the goods will not be exported.

In the case of discounts, the clause applies only to discounts accounted for after the supply has occurred. A discount allowed and accounted for at the time of the supply is taken into account in determining the consideration for the supply (see the definition of "consideration" in clause 3).

The effect of clause 20 is to ensure that the correct amount of VAT is accounted for if a VAT adjustment event occurs, and the effect of the event is that the VAT actually accounted for by the supplier, no longer accurately represents the amount of VAT that would have been payable, if the event had occurred before the time of supply (see the definition of "VAT properly chargeable" in clause 2).

Subclauses (2) and (3) apply if the VAT properly chargeable in respect of the supply, (i.e. having regard to the VAT adjustment event), exceeds the VAT that has actually been charged in respect of the supply. In other words, these subclauses apply if VAT has been under-charged compared with what would have been charged if the VAT adjustment event had been taken into account. In this case, subclause (2) provides that the amount of the underpaid VAT must be accounted for by the supplier as output tax payable in the tax

period in which the VAT adjustment event occurred. The amount underpaid will be included as VAT payable by the registered person in the person's VAT return for that period. If the recipient of the supply is a registered person, then the supplier is obliged to issue the recipient with a VAT debit note in accordance with clause 39(2). Subclause (3) allows the recipient of the supply to treat the amount of additional VAT specified in the VAT debit note as input tax in the tax period in which the debit note was received. The amount of input tax credit allowed to the recipient under subclause (3) corresponds to the additional output tax reported by the supplier under subclause (2), subject to the recipient's entitlement to input tax credits under clause 33 for the relevant acquisition.

Example 20.1:

Suppose that a supply has been made for $105, including $13.70 VAT. Suppose further that the recipient was mistakenly allowed a trade discount at the time of the supply when the correct price was in fact $115 (VAT is $15). The recipient later pays an additional $10 to the supplier. Under subclause (2), the difference between the correct VAT ($15) and the VAT actually charged ($13.70) is $1.30, which is treated as output tax payable by the supplier in the tax period in which the adjustment was made (i.e. when the

additional $10 was paid). If the recipient is also a registered person, the supplier must provide the recipient with a VAT debit note for $1.30. If the recipient was allowed an input tax credit for the original acquisition, it will also be allowed a further input tax credit equal to the $1.30 stated in the debit note.

Subclauses (4) to (6) apply if the VAT actually charged in respect of the supply exceeds the VAT properly chargeable having regard to the VAT adjustment event. In other words, these subclauses apply if VAT has been over-charged, taking into account the VAT adjustment event. In this case, subclause (4) provides that the amount of the overpaid VAT is allowed as an input tax credit to the supplier in the tax period in which the VAT adjustment event occurred, but only where—

- if the recipient of the supply is a taxable person, the supplier has issued a VAT credit note to the recipient in accordance with clause 38(1); or
- if the recipient is not a taxable person, if the supplier has refunded the excess VAT to the recipient of the supply: subclause (6).

Under subclause (5), the recipient of the supply will be required to treat the excess specified in the credit note as output tax payable in the tax period in which the credit note is received, but only to the extent that the recipient was entitled to an input tax credit for the initial acquisition. The amount of the additional output tax reported by the recipient under subclause (5) will correspond to the additional input tax allowed to the supplier under subclause (4) if the recipient was entitled to a full input tax credit. In other cases, it will be less than the amount of the input tax credit allowed to the supplier under subclause (4). The fact that the recipient may be required to pay an amount of output tax is the reason why the supplier is required to issue the VAT credit note before it will be entitled to treat the excess VAT as an input tax credit.

Example 20.2:

Edris and Daughters Limited ("Edris") makes a taxable supply to Godwin Dolly Partners (Godwin Dolly) for $1,150. Both Edris and Godwin Dolly are registered for VAT. Godwin Dolly subsequently queries the price, claiming that the products supplied were not of the quality specified in their contract. Both parties agree that it is impractical to cancel the transaction because Godwin Dolly had already used some of the products before realising they were not exactly as ordered. In compensation, Edris agrees to grant Godwin Dolly a 20% discount on the price and pays a refund of $230, making the discounted price $920. Edris issues a VAT credit note to Godwin Dolly and delivers it to Godwin Dolly along with the refund cheque. This can be summarised as follows:

	Price	**VAT**	**Value**

Original transaction	1,150	150	1,000
Adjustment transaction	920	120	800
Refund (= *difference*)	230	30	200

Thus, under subclause (4), because Edris has issued the required VAT credit note to Godwin Dolly, the company is entitled to claim an input tax credit of $30 in the tax period in which the discount was granted. This effectively undoes the excess VAT paid on Edris' VAT return for the tax period in which the original transaction took place.

Godwin Dolly is also required to include an amount of output tax in its VAT return for the period in which the discount was granted. This compensates for the input tax credits previously claimed. The amount of output tax payable depends on the extent to which Godwin Dolly was entitled to an input tax credit for the original acquisition, because it would be inequitable to require Godwin Dolly to pay $30 output tax to undo an input tax credit that it had never been able to claim.

The input tax credits to which Godwin Dolly would have been entitled on the original transaction if it had, respectively, a 100%, 75%, or 0% input tax credit entitlement are as follows:

ITC %	**100%**	**70%**	**0%**
Price of supply	1,150	1,1150	1,150
Value of supply	1,000	1,000	1,000
VAT included in price	150	150	150
ITC amount	150	105	0
Blocked input tax	0	45	150
Effective Cost = (Price – ITC) = (Value + blocked input tax)	1,000	1,045	1,150

For the same scenarios, the input tax credits to which Godwin Dolly would have been entitled if the VAT adjustment event (the discount) had occurred before the original transaction are as follows:

ITC %	**100%**	**70%**	**0%**
Price of supply	920	920	920
Value of supply	800	800	800
VAT included in price	120	120	120
ITC amount	120	84	0
Blocked input tax	0	36	120
Effective Cost = (Price – ITC) = (Value + blocked input tax)	800	836	920

Subclause (5) of clause 19 has the effect of bringing the input tax credits and effective cost for Godwin Dolly into the position that would have applied on the basis of the second table, but by adjusting only for the amount of the over-claimed input tax credit. This is illustrated in the following table:

ITC %	**100%**	**70%**	**0%**
Original price of supply	1,150	1,150	1,150
Original value of supply	1,000	1,000	1,000
Discount paid	230	230	230
Original ITC	150	105	0
Original Blocked ITC	0	45	150
Output tax payable under clause 19(5)	30	21	0
Effective cost	800	836	920

= (*Price – Refund – ITC + s.19*(*5*) *output tax*) = (*Value – Refund + blocked input tax + s19*(*5*) *output tax*)			

Note that, as Example 20.2 makes clear, if the VAT adjustment event is a post-supply discount allowed in the form of a cash rebate, the cash rebate is effectively VAT-inclusive, since it is a discount on the overall tax-inclusive price. Thus, by paying a cash rebate, the supplier has automatically refunded the relevant excess VAT. This fact is also relevant for subclause (6), which prohibits a supplier from issuing a VAT credit note to a recipient who is not registered for VAT, and also denies the supplier an input tax credit under subclause (4), unless the supplier has refunded the excess VAT to the recipient, whether in cash or as a credit against other amounts owed to the supplier by the recipient. Since, like the price of a supply, a cash rebate is automatically presumed to be VAT-inclusive, the fact of paying a cash refund will be sufficient evidence of such a refund. If, in example 20.2, having agreed to pay a 20% discount, Edris had inadvertently calculated the discount on the VAT-exclusive price (the value of the supply), refunding only $200 to Godwin Dolly, the VAT law would treat the refund as a change to the **price**, not the **value**, which would simply mean that, from a VAT perspective, the actual discount granted was in fact only 17.39% ($200/$1,150) rather than the agreed 20%.

If, on the other hand, the VAT adjustment event involves a situation such as where a supply initially intended to be taxable is in fact exported, then the supplier must pay the VAT back to the recipient before it can claim the excess VAT as an input tax credit.

Example 20.3:

Suppose Ginger orders a custom made hammock from a local Grenadian manufacturer, requesting it to be delivered to her home in Grenada. The price of the supply is $575, including $75 VAT, which Ginger pays at the time she orders the hammock. The manufacturer is a registered person and includes the $75 in its VAT return. Subsequently, Ginger, who has always been intending to send the hammock as a Christmas present to her sister in Canada, asks the manufacturer to send it directly to Canada once it is made. The effect is that, having charged a VAT-inclusive price, the manufacturer will actually make a supply that is a zero-rated export of goods (see the First Schedule). However, in order to claim an input tax credit under clause 20(4) for the $75 over-paid VAT, the manufacturer must repay that amount to Ginger. Ginger is aware of this, having attended a public education session on VAT shortly after it was implemented, and requests the refund from the manufacturer. The manufacturer pays her the refund, offsetting the cost of shipment to Canada (which, under the Fourth Schedule, is an exempt supply of international transport). The manufacturer is therefore entitled to include $75 in its input tax in the period in which Ginger requests that the supply be exported to Canada.

There is no such thing as a VAT adjustment event for a taxable import. The value of a taxable import is the customs value of the goods imported. Once VAT has been paid on an import, the VAT law is no longer concerned with any changes in the underlying transaction, if any, to which the import relates. If changes in consideration, such as the trade volume discounts, are to be taken into account, they can be taken into account only if they are relevant in determining the customs value under the customs law.

Clause 21 deals with post-supply adjustments for bad debts. These are essentially dealt with under clause 20, as modified by clause 20. If all or part of the consideration for a supply is not received, the supplier (and recipient) may be required to make adjustments as if a VAT adjustment event referred to in clause 20(1)(*b*) had occurred, i.e. as if the consideration for the supply had been altered (subclause (1)).

Clause 21(2) deals with a situation where part or all of the consideration has been overdue for more than twelve months from the date it was due to be paid (or from a later date if the supplier has granted an extension of time to pay). It is not necessary for the debt to have been written off as bad, for this subclause to apply. Both the supplier and the

recipient must apply clause 20 if clause 21(2) applies, which means that the supplier may claim an input tax credit equal to the tax fraction of the amount outstanding, and the recipient must treat an equal amount of VAT as output tax. If, at some later time, part or all of the amount outstanding is paid to the supplier, clause 20 applies again to both the supplier and the recipient in respect of the amount paid. Thus, the supplier, having reversed part or all of the initial VAT on the supply through the input tax credit allowed under clause 20, because of clause 21(2) will now have to pay an amount of VAT and the recipient will be allowed an input tax credit. The aim of clauses 21(2) and (3) is to ensure that, where some or all of the consideration has not been paid after twelve months, the actual amount of VAT paid (or input tax credits allowed) reflects the tax fraction of the actual amounts paid by the recipient and received by the supplier.

Under clause 21(4), if the supplier writes off a debt (or part thereof) before twelve months have passed, the supplier is allowed to apply clause 20, but the recipient is not required to do so. Although this means that there could be a period of time during which the recipient will still have the benefit of the input tax credit when the supplier has already reversed the VAT payable, the aim of subclause (4) is to ensure that the supplier does not have to notify the recipient that it has written off the debt. If there were a requirement for the supplier to notify the recipient, the VAT law could be seen as encouraging the recipient not to attempt to meet its debts. For the same reason, subclause (7) provides that the requirements to issue and hold VAT credit and debit notes, do not apply to adjustments required because of this clause. Nonetheless, both supplier and recipient are required to hold sufficient documentation to justify the basis of the amounts of the adjustments they have actually made.

Subclause (5) requires the supplier to pay VAT to the extent of any payments subsequently received from the recipient after a debt has been written off as bad.

Subclause (6) clarifies that the supplier cannot have both a VAT adjustment under subclause (2), (for amounts overdue more than twelve months) and subclause (4), (for debts written off as bad within twelve months) in relation to the same amount outstanding on a supply.

22. Reverse charge on imported services

This clause provides for what is commonly known as “reverse charging” in respect of a supply of services originating outside Grenada. Under a reverse charge rule, the liability to pay VAT lies with the recipient of the supply rather than the supplier, (thus the charge is reversed from what would otherwise be the case under clause 8(4)).

Subclause (1) is a purpose clause, which may be of assistance in interpreting the remainder of the clause (see clause 126). Reverse charging is required only for acquisitions made by taxable persons in Grenada. The main reason for reverse charging is to prevent any disadvantage to local Grenadian businesses because of the way in which the place of supply rules in clause 18, apply to supplies of services. In some cases, a non-resident supplier could provide services remotely to a local Grenadian taxable person more cheaply than a local supplier could supply those services, because the local supplier would have been required to pay VAT, whereas the non-resident supplier would not be required to do so. In many cases, it will not be convenient for a local business to use a non-resident service provider, but increasingly globalisation and the availability of high quality telecommunications technology has meant that it is possible to use non-resident service providers. In order to ensure a level playing field between local resident service providers and non-resident service providers, it is necessary to include reverse charge rules to ensure that taxable persons do not have any incentive to use non-resident suppliers, simply to avoid the burden of having VAT included in the price of the supplies.

The main situation where clause 22 will be of relevance will be where a taxable person such as: a financial institution, insurance company, residential property developer, or other supplier making exempt supplies, acquires foreign services for the purposes of making those supplies. The rule may also apply in situations where input tax credits

would be denied for reasons other than the relationship between the acquisitions and the making of exempt supply.

Under subclause (2), reverse charging will be required if the following conditions are satisfied—

1. There must be a supply of services. Supplies of goods are not subject to reverse charging because goods are tangible and in order to be consumed in Grenada, they must either be located here when supplied (in which case the supply will generally be taxable and reverse charging is not necessary), or they must be brought into Grenada, (in which case they will be taxed under the rules for taxing imports of goods). Reverse charging of the sort provided for in clause 22 is often referred to as a reverse charge on "imported services", even though services do not actually physically cross borders and so cannot be "imported" in the way that goods are imported.

2. The supplier must be a non-resident and the supply must not be a taxable supply, but must be one that would have been taxable at a rate other than zero, if made by a registered resident supplier.

One of the key requirements for a supply to be taxable is, that it is made in Grenada. Under clause 18, a supply of services by a resident is automatically considered to be made in Grenada, whereas a supply by a non-resident is considered to be made outside Grenada, unless the services are physically performed in Grenada by any person who is in Grenada at the time of supply (clause 18(1)(*b*)(ii)). In the latter case, if the supply is made to a registered person in Grenada, clause 18(1)(*b*)(ii) is over-ridden, and the supply is treated as taking place outside Grenada, unless the supplier and recipient agree to treat the supply as taxable. In addition, for a supply to be taxable, the supplier must be registered or required to have applied for registration at the time the supply is made, and the supply must be made in the course or furtherance of a taxable activity. These are presumed in clause 22(2)(*b*).

In relation to the "made in Grenada" requirement, the following points can be made—

- if the services are not physically performed in Grenada, a supply by a non-resident supplier will be considered to be made outside Grenada, and a recipient who is a taxable person may be required to reverse charge the supply under clause 22;
- if the services are physically performed in Grenada, under subclause 18(3), the supply will be treated as being made outside Grenada, unless the supplier and recipient have agreed otherwise in writing;
- if no such agreement has been made, the supply will be considered to be made outside Grenada and a recipient who is a taxable person may be required to reverse charge the supply under clause 22;
- if such an agreement has been made, the supply will be considered to be made in Grenada and a recipient who is a taxable person, will not be required to reverse charge the supply under clause 22.

3. The recipient of the supply must be a taxable person;

Reverse charging does not apply to acquisitions by end consumers or persons who are neither registered nor required to be registered. While this means that some local consumption of imported services will not be subject to VAT, it is administratively unfeasible to require reverse charging in such circumstances. Thus—

- if services supplied by a non-resident are not physically performed in Grenada, a recipient who is not a taxable person will not be required to reverse charge the supply under clause 22.

4. The supply must be one that would have been taxable at a rate other than zero, if it had been made in Grenada by a resident person who was registered for VAT.

Reverse charging does not apply to exempt supplies. Thus, for example, if a person imports financial services, which are exempt supplies under the Fourth Schedule, the recipient will not be required to reverse charge the supply under clause 22.

Reverse charging is also not necessary if an acquisition of the services from a local supplier would in any case have been zero-rated. For example, a telecommunications supply that is initiated outside Grenada (such as a global roaming call supplied by a non-resident telecommunications supplier to a local Grenada taxable person but provided to, and initiated by, an employee of the local company who is outside Grenada when the call is made), would be a zero-rated supply if it were supplied by a local supplier (see item 13 in paragraph (1) in the Second Schedule). There is therefore no need to require the local client to reverse charge the supply.

5. The registered person making the acquisition of services must be intending to use the supply to make exempt supplies, for a private or domestic use (or one that would have that character if the person were an individual), or for any other purpose for which input tax credits would be denied; (most acquisitions for which input tax credits are normally denied are specified in clause 33).

In other words, reverse charging is only necessary if for some reason the recipient of the supply would not have been entitled to a credit for some or all of the input tax, if the supply had been a taxable supply. A recipient will not be required to reverse charge the supply under clause 22, if the recipient would have been entitled to full input tax credits if the services had been acquired from a local supplier.

If all of the above conditions are satisfied, the supply to the registered person is a taxable supply: subclause (2). The VAT chargeable on the supply is the liability of the recipient of the supply, i.e. VAT is reverse charged to the recipient: subclause (3). The registered person receiving the supply must therefore account for the VAT payable on the supply in the tax period in which the supply occurred, (clauses 8(4)(*a*) and 32).

The value of the supply is determined under subclause (4)(*a*). If the non-resident supplier and the local recipient are related parties, the value of the supply is the VAT-exclusive market value of the supply. If the supplier and recipient are not related, the value of the supply is the actual consideration. Because the actual supply is not a taxable supply, the consideration does not need to be reduced by the tax fraction. The VAT reverse charged to a recipient is also input tax of the recipient: subclause (4)(*b*). This enables the recipient to claim a credit for that part, if any, of the input tax that will be used to make taxable supplies. The following example illustrates how reverse charging works.

Example 22.1:

VATable is a Barbados accounting firm specialising in providing advice on value added taxes in the Caribbean region. VATable provides advice to a local Grenada property developer about its liability for VAT and its entitlement to input tax credits. The advice is provided remotely from Barbados and relates generally to the activities of the local property developer, which include making both taxable supplies of commercial property, and exempt supplies of residential property. The fee is EC$200,000. The local property developer would not have been entitled to claim full input tax credits if these services had been acquired from a local Grenadian company, and the proportion of input tax credits that would have been allowable under clause 34(3)(*c*) is calculated to be 65%, which means that 35% of input tax credits would have been denied. Thus, the property developer is required to reverse charge the VAT for the acquisition. Under subclause 21(4)(*a*), the value of that supply is $200,000. The VAT payable is therefore $200,000 x 15% = $30,000. The property developer is then entitled to input tax credits of $30,000 x 65% = $19,500. Since the input tax credits and the reverse charged output tax are reported in the same tax period, the net effect on the VAT payable by the property developer = $30,000 – $19,500 = $10,500.

If the supply had been made by a local firm, the supply would have been taxable and the local firm would have had to include VAT in its price, making the cost of the supply $230,000 rather than $200,000. The input tax included in the price would have been $230,000 x 0.15/1.15 = $30,000, and the input tax credits allowed would have been $30,000 x 65% = $19,500, with $30,000 x 35% = $10,500 of the credits not deductible under clause 33. Thus, the effect of clause 21 is, that the local property developer is in the same position he would have been if he had acquired the services locally.

Subclauses (5) and (6) ensure that the post-supply adjustment rules apply to a reverse charged supply if a VAT adjustment event occurs. As the reverse charge is only relevant to the recipient (who is treated as supplier), the adjustments only affect the recipient. Additional VAT may be required to be reverse charged if the VAT adjustment event has the effect that the recipient did not remit sufficient VAT initially. If the amount of VAT initially remitted was too high, the recipient is allowed to claim an input tax credit to counteract the excess amount of reverse-charged VAT.

Where a person has operations both inside and outside Grenada, subclause (7) treats the person as if he were two separate persons for the purposes of applying the reverse charging provisions in clause 22. Paragraph (*a*) deems a supply to have been made by the foreign branch to the local branch, while paragraphs (*b*) and (*c*) deem a time and value for that supply. This is required, because in reality the person is a single entity and so would not normally be seen as making supplies or providing consideration to himself or herself. The reverse charge provisions then apply to these deemed supplies if relevant. This ensures that suppliers making exempt supplies in Grenada cannot gain any advantage by outsourcing services to offshore branches in countries where no VAT applies.

PART V

Special Rules Relating to Supplies

23. Rights, options, and vouchers

Clause 23 deals with the treatment of rights, options, and vouchers. A voucher is defined in clause 2 as "a voucher, stamp, token, coupon, or similar article, including an article issued electronically, that can be redeemed by the holder for supplies of goods or services, and includes a phone card but does not include a postage stamp".

What rights, options, and vouchers have in common is that they effectively split a single consumption transaction into two separate supplies. First, there is a supply of the right, option, or voucher itself, which may or may not be made for consideration. Subsequently, there is a separate supply made at the time when the right or option is exercised, or when the voucher is redeemed, (exchanged by the holder for a supply of goods or services). The total value of consumption is effectively the sum of the amounts paid in each of the two transactions. If the recipient acquires the right, option, or voucher for consideration, but never exercises or uses the right, option, or voucher, the person has nonetheless consumed something – the holding open of the availability or possibility of the thing to which the right, option, or voucher entitled the person. The value of the consumption of that right, option, or voucher is the amount of consideration paid for its acquisition.

However, if the right, option, or voucher is exercised or used, the definition of consideration in clause 3 is so broad that the amount paid for the right, option, or voucher is also consideration for the supply made on exercise of the right, option, or voucher. That is because the amount paid for the right, option, or voucher is an amount paid "in respect of" and/or "for the inducement of" the later supply of goods or services. However, there would effectively be over-taxation to the extent of the amount paid for the right, option, or voucher if the single amount paid for it were counted as consideration for the two separate supplies.

Subclause (1) limits the consideration for the supply made on exercise of a right or option to any additional amount paid for the thing supplied at that time or in connection with the exercise of the right or option.

Example 23.1:

Rezco invests money in a local Grenada company (Windfree) undertaking promising research into ways of building hurricane-proof housing. The companies agree that Rezco will be granted an option to purchase an exclusive licence (at market value), to use the technology outside the Caribbean region if the research results are successful and marketable. The parties agreed at the time of the investment and on the basis of the prevailing circumstances that $10,000 of the money invested should appropriately be allocated as consideration for the option.

The issue of the shares is not a taxable supply, (see the Fourth Schedule) but the grant of the option is a taxable supply, (see clause 6 and the definition of taxable supply in clause 2). Windfree is liable to include $1,304.35 as output tax in the tax period in which the option was granted. If, later, Rezco exercises its right to acquire the exclusive licence, the value of the supply of the licence will be limited to the amount paid at that time, it will not include the amount paid for the option.

Example 23.2:

Zachary grants Everton an option to purchase commercial premises owned by Zachary. The option price is $10,000 and the exercise price is $200,000. The grant of the option is a supply of services by Zachary under clause 6(2) of the Act. The value of the supply is the $10,000 option price, (see clauses 3 and 18). The transfer of the premises is a separate supply of goods: see clause 6(1). The value of the supply is the exercise price ($200,000). The option price is not included in the value of the supply of the premises.

Subclause (2) ensures that subclause (1) applies to face value vouchers except where the Regulations provide otherwise, or the supply on redemption is a taxable supply, but the supply of the voucher was not a taxable supply.

A “face value voucher” is one that entitles the holder to receive supplies up to a monetary value stated on the face of the voucher or in some way electronically embodied in or linked with the voucher itself, (see the definitions of “face value” and “face value voucher” in clause 2). Telephone cards, gift vouchers, gift cards, and gift certificates are examples of vouchers commonly in use. Because face value vouchers can often be redeemed for a range of different types of supply, some of which would be taxable at the standard rate, and some of which might be exempt or zero-rated, many countries reverse the normal rule for rights and options, (as embodied in subclause (1)), and instead provide that the initial supply of the voucher is not taxable, but the later supply made on redemption of the voucher is taxable. This creates problems with valuation of the supplies when vouchers are sold through intermediaries. Paragraph 22(2)(*a*) anticipates that Regulations may be introduced to cover such situations, but in the meantime provides for subclause (1) to apply.

Example 23.3:

Superstore issues gift cards with a face value of $20, $50, and $100. When a gift card is sold, the supply is a taxable supply and the amount of VAT that must be included in Superstore’s return for the tax period in which the card is sold, is respectively $2.61, $6.52, and $13.04. Later, when customers (or the persons to whom the customers have given the gift cards as presents) return to the store to redeem the vouchers, subclause (2)(*a*) and subclause (1) have the effect, that the value of the supplies made in exchange for the vouchers is limited to any additional amount paid at that time. For example, Aubrey gives a $100 gift card to Errol for Christmas At that time, Superstore remits $13.04 in respect of the supply of the gift card. In January, Errol makes a trip to Superstore and purchases

clothing with a ticket price of $120, which includes $15.65 VAT. Errol pays using the gift card and an additional $20. In its January VAT return, Superstore must include $2.61 in its output tax in respect of the supply of the clothing. Superstore is not required to remit the whole of the $15.65 VAT included in the ticket price of the clothing, because clause 22 has the effect that the consideration for the clothing is limited to the additional $20 paid by Errol in January. If this were not the case, Superstore would overpay VAT, because it would pay $13.04 for the supply of the gift card and then the same amount again as part of the ticket price of the clothing, even though at that time it effectively only received $20.

Paragraph 22(2)(*b*) provides that subclause 22(1) does not apply to a supply on redemption of a face value voucher if the initial supply of the voucher was not taxable.

Example 23.4:

Callcards.com is a company selling telephone cards over the Internet. The company is based in Bermuda. Anthony purchases a card over the Internet and is issued with a PIN number and unique ID for the card. The supply of the card is not a taxable supply, because Callcards.com is not a resident: see clause 17(2). However, the supplies of the calls Anthony makes in Grenada using the card will be taxable supplies, provided that Callcards.com exceeds the threshold for registration for VAT: see clauses 9 and 17(7). Because the supply of the card was not a taxable supply, the value of the supplies of the calls does not exclude the amount paid to purchase the card. That amount is consideration both for the supply of the card and for the supply of the calls, because it is an amount paid in respect of and for the inducement of the supply (see clause 3). Thus, as each call is made and the remaining face value of the card is reduced by the appropriate amount, Callcards.com is liable for VAT on the tax fraction of that amount.

Thus, if the card Anthony purchased had a face value of $30 and he uses the card in Grenada to make a call to London, which results in $13 being debited from the card (or the associated account), Callcards.com is liable to include $1.70 in its VAT return for the tax period in which the call is made. If the card is one that can be used in other countries and Anthony uses the card to make a call back home to Grenada from St Vincent, the supply of that call will not be a taxable supply in Grenada.

Example 23.5:

Superstore issued gift cards continuously in the period leading up to the implementation of VAT. Some of those cards were redeemed after the date of implementation. Suppose, in example 22.2, that Aubrey had purchased the card he gave to Errol before VAT came into force, but Errol redeemed the card after that time because the initial supply of the gift card was not taxable, when Errol redeems the card to buy clothing, the value of the clothing would include both the $100 paid by Aubrey for the card and the $20 paid by Errol at the time of redemption. Superstore would thus be liable to include in its output tax the full $15.65 of VAT for the supply of $120 worth of clothing, In this respect, paragraph 22(2)(*b*) operates as a transition rule. This rule for vouchers is appropriate because they are effectively used in lieu of money, even though they do not fall within the definition of money.

24. Gambling supplies

Clause 24 provides special rules for calculating VAT for gambling supplies. Gambling is a form of risk intermediation, where risk (or opportunity) is spread among a number of different persons because it is difficult to allocate an exact value to the supply made to each individual gambler, some VAT regimes treat gambling as an exempt supply along with other financial and risk intermediation services such as: insurance and financial services (see the Fourth Schedule). Other regimes, including the VAT regime for Grenada, take the view that all gambling is end consumption and therefore there is no

need for a value to be attributed to each separate gambling supply because no input tax credits will be allowable to the gamblers (see Part VIII) and no VAT invoice will need to be issued: subclause (7). This makes it possible to determine the value of gambling supplies, on a global basis, which is the approach taken by clause 24.

Clause 2 defines the concepts of a "gambling supply" and a "gambling event". A gambling supply is a supply of a ticket in a lottery, raffle, or similar undertaking, or the acceptance of a bet relating to the outcome of a gambling event. A gambling event is the conduct of a lottery, raffle, or similar undertaking or a race, game, sporting event, or any other event which has or is intended to have an outcome. Gambling thus includes sports betting, betting on horse races, and casino gambling, including poker machines and other casino games. As well, it includes betting on who will be the next King of England and other such events.

Subclause (2) varies the normal rule for imposing VAT on taxable supplies. Rather than each taxable supply being subject to VAT, the VAT for gambling supplies is worked out on a global basis for a tax period, rather than individually for each supply. In other words, it is worked out for all gambling supplies that have been made during the period.

Subclause (3) requires a person who makes gambling supplies to include in the person's output tax an amount calculated according to the formula:

(total amounts wagered – total monetary prizes) x the tax fraction.

"Total amounts wagered" is defined in subclause (1) as the sum of certain specified amounts. The first, in paragraph (*a*), is the consideration for all the gambling supplies made by the taxable person in the tax period, which is essentially the amount gambled – the bets placed by gamblers or the purchase price of tickets sold in lotteries etc. The time at which a gambling supply is made is worked out under the normal time of supply rules in clause 17. The second amount, in paragraph (*b*), deals with amounts recovered for bad debts, if the amount written off for those bad debts was included in the taxable person's calculation of "total monetary prizes".

"Total monetary prizes" is defined in subclause (1) and is the sum of certain amounts whether or not the gambling event, supply, or loss took place during the current tax period.

- Paragraph (*a*) includes monetary prizes paid out during the tax period because of the outcome of gambling events, for example, lottery winnings paid.
- Paragraph (*b*) includes certain payments that may be made by the gambling supplier to a customer, for whom the supplier has agreed to repay a proportion of their losses. Such arrangements may be entered into, for example, between a casino operator and a high roller. Subclause (6) clarifies that a payment of this kind to a high roller, (or any other person with whom such an agreement has been made), should not be treated as consideration for a supply or acquisition, since these payments are already being dealt with under clause 24.
- Paragraph (*c*) includes a negative amount carried forward from the previous tax period. This may arise because subclause (4) provides, that if the result of the calculation in subclause (3) is a negative amount, nothing is included in a person's output tax, nor is there any provision allowing a deduction of that negative amount, other than by inclusion in the calculation for the following month, as specified by paragraph (*c*) of the subclause (1)(*c*) definition.
- Paragraph (*d*) includes any amounts written off as bad debts in relation to gambling supplies, while subclause (5) makes it clear that the rules for bad debts in clause 21 do not apply in relation to a gambling supply. Thus, a gambling supplier cannot include an amount in its input tax in respect of bad

debts that relate to gambling supplies. The only way in which allowance is made for such bad debts, is by inclusion in the definition of total monetary prizes, which will reduce the amount of VAT payable on a global basis for a tax period. If the bad debts result in a negative amount under the subclause (3) calculation, that amount will have to be carried forward into the following tax period's "total monetary prizes".

The effect of the formula for calculating output tax on gambling supplies is to ensure that the supplier is liable for VAT only on the net amount it actually receives from gambling supplies, rather than the gross amount of bets taken and/or tickets sold. This is effectively the "value added" by the supplier on its gambling supplies. At the same time, the formula ensures that the VAT revenue is not reduced because of bad debts incurred, and loss payments made, by the gambling supplier. Such losses may only be dealt with by reducing the VAT liability for gambling supplies in future periods through their inclusion in "total monetary prizes".

25. Lay-away sales

Clause 25 alters the normal time of supply rule for lay-away sales. A lay-away sale, also referred to as a lay-by sale, is defined by reference to the "lay-away agreement" under which a sale of goods takes place. Subclause (1) defines such an agreement as one where the person pays by instalments, does not take delivery of the goods at the time the deposit is paid, and does not become owner of the goods until ownership is transferred by delivery of the goods. Under the normal time of supply rules in clause 17, the payment of the deposit would trigger a liability for VAT for the full amount of consideration payable for the supply of the goods, even though there might be some uncertainty about whether the transaction will ultimately be completed. Subclause (2) changes the time of supply rule, deferring the time of supply until the time when the goods are delivered to the purchaser. This rule deals with the uncertainty about whether the supply will actually be made by waiting until delivery, when it becomes clear the supply has in fact been made.

Subclause (3) deals with what happens when a lay-away agreement is cancelled. If the taxable person (who would have been the supplier had the agreement not been cancelled) retains part of the consideration already paid by the intended recipient, or recovers an amount from the recipient under the agreement, the cancellation of the agreement is treated as a supply made by the taxable person to the intended recipient. The value of the supply is the amount retained or recovered and the time of supply is the time of cancellation or the time of recovery (whichever is appropriate). This rule ensures that the amount expended on consumption, which in the case of a cancelled lay-away agreement, is essentially the consumption of the opportunity to purchase the goods and the holding of the goods for the intended recipient, is appropriately taxed. Similarly, the value added by the supplier, representing the opportunity cost of holding the goods for the recipient, is taxed.

Example 25.1:

Miss Jervis enters into a lay-away agreement with Retailer to purchase a television set for $2,875, which includes $375 VAT. Retailer is registered for VAT. Miss Jervis pays a deposit of $575 on signing the agreement and is required to pay the balance within six months after the agreement is signed. Miss Jervis makes a further payment of $125, but fails to make any further payments and Retailer exercises its right to cancel the agreement. Under the terms of the agreement, Retailer retains 10% of the agreed purchase price, which is $287.50, and repays the remaining amount to Miss Jervis.

Under subclause (2), the time of supply for the television would have been the time when ownership transferred on delivery. As the agreement was cancelled, this did not occur, and there was therefore no supply and no time of supply. However, under subclause (3), Retailer is treated as having made a supply of services to Miss Jervis consisting of the cancellation of the lay-away agreement. As Retailer is a resident of

Grenada, the place of supply is in Grenada, (clause 17). The supply therefore meets all the requirements to be a taxable supply (see definition in clause 2). Subclause (3) provides that the time of cancellation of the agreement is the time of supply. The amount paid by Miss Jervis and retained by Retailer is treated as VAT-inclusive, because subclause (3) provides that the value of the supply is $287.50, minus the tax fraction of that amount, i.e. $287.50 – 37.50 = $250. The VAT payable on the supply is thus $250 x 15% = $37.50 (clause 8). Thus, Retailer must include $37.50 in its output tax for the tax period in which the agreement is cancelled.

26. Vending machines

Clause 26 deals with what happens when a supply has taken place through a vending machine, but the supplier does not yet know that it has occurred. Under the normal time of supply rules in clause 17, the time of a supply made through a vending machine, meter, or other device, would be the time at which a customer put money into the machine. Clause 26 varies this rule by making the time of supply the time when the payment (which may be a coin, note, or token), is taken from the machine.

When payment is made by way of a token, unless clause 23(2)(*b*) applies, the value of a supply made through a vending machine will be nil to the extent that the consideration was provided by way of a token, because the supply of the token will have been a taxable supply and clause 23 will have the effect of excluding the amount paid for the token, from the consideration for the supply made when it is used.

27. Supply as part of the transfer of a going concern

Clause 27 provides for concessional treatment of supplies made as part of the transfer of a taxable activity as a going concern. Subclause (1) clarifies that this includes a situation where only part of a taxable activity is being transferred, if that part is capable of separate operation. Under subclause (2), where a supply is made as part of the transfer of a taxable activity as a "going concern" from one registered person to another registered person, the supply is zero-rated if certain conditions are met. Firstly, the supply must actually be made as part of the transfer of a taxable activity as a going concern, as that concept is defined in subclause (1). This requires both that the supplier must supply the recipient with all of the goods and services necessary for the continued operation of the taxable activity, and that the supplier must continue to carry on the taxable activity until the day of the transfer. This ensures that the purchaser is acquiring a continuing taxable activity, not simply some or all of the assets used in that taxable activity.

Subclause (2) sets additional requirements before the supply will be zero-rated—

- The supplier and the recipient must both be registered.
- The supply must be one that would otherwise have been taxable at a rate other than zero. Zero-rating does not apply to goods or services supplied as part of the transfer of a taxable activity as a going concern, if those supplies would have been otherwise zero-rated, exempt, or not taxable.
- The supplier and the recipient must have agreed in writing that the taxable activity is being supplied as a going concern, and included in their agreement, the details of the supplies to be treated as zero-rated, including the quantities and values of the things to be supplied.
- The supplier and recipient must have provided a copy of the agreement to the Comptroller no later than twenty days after the end of the tax period in which the taxable activity is transferred.

Although it is common to speak of a "sale of a business as a going concern", from a VAT perspective, such a transaction is not characterised as a single supply of something called a "going concern". The transaction will result in a number of separate but related supplies of the particular goods and services that are transferred as part of the one

contractual relationship. This is why those supplies that would otherwise have been exempt or out of scope retain that treatment, even when transferred as part of a going concern: subclause (2)(*a*). The reason for excluding supplies that would in any case be zero-rated is to ensure that that zero-rating is not subject to the restrictions in clause 27.

The purpose of the special treatment for supplies made in transferring a taxable activity as a going concern is twofold. Firstly, it aims to facilitate the sale of active businesses and other taxable activities, by avoiding the cash flow problems that can arise if the supply is treated as a taxable supply. Zero-rating means that the purchaser is not required to find an additional fifteen funding to cover the period between the time of supply and the time at which, if the supplies were taxable, the purchaser could have effectively reclaimed the VAT charged either by offsetting it against the values of supplies made through the taxable activity, or by an eventual refund (see clause 49).

The second reason for zero-rating supplies made on the transfer of a going concern is an anti-evasion reason. If registered persons sell their taxable activity and then de-register, it may be difficult for the Comptroller to enforce payment of the VAT in relation to the sale of the going concern. Nonetheless, if the supplies were taxable, the recipient would be entitled to input tax credits, even in circumstances where the supplier had not actually remitted the VAT. This could result in significant losses to the revenue due to evasion by persons ceasing their businesses.

Subclause (3) requires a recipient of a supply that has been zero-rated under subclause (2), to account for an amount of output tax to the extent that the purchaser uses or intends to use the supply for private or domestic purposes or to make exempt supplies. This is subject to a *de minimis* exception that such use must constitute more than ten per cent of the total use of the thing acquired. Subclause (3) ensures that the zero-rating of going concerns cannot be used as a way to avoid VAT on end consumption (private or domestic use) or quasi-consumption, (use to make exempt supplies).

Example 27.1:

Mr Terry is the owner of Terry Pty Ltd ("Terry"), a company which owns land on which are located a small hotel with 6 rooms, a restaurant, and a private residence. Terry operates the hotel business itself, leases out the restaurant to another taxable person, and Mr Terry lives in the private residence. Terry agrees with Loren Pty Ltd ("Loren") to transfer the land and all the assets of the business. The parties agree in writing that the transfer will be one of going concern and that Terry will continue to carry on the hotel business and continue to lease out the restaurant until the day of the supply. All the hotel assets, including furnishings, bedding, office equipment, telephones, televisions, advertising materials, etc., will be transferred, along with the land. Terry and Loren are registered for VAT. As required by their agreement, Terry has quantified and valued the items to be zero-rated under clause 27 and notified the Comptroller in writing.

Each of the various items supplied by Terry to Loren will be zero-rated under clause 27, unless the supply would not otherwise have been a taxable supply. The transfer of the private residence is an exempt supply of residential premises (see the Fourth Schedule) and to the extent that the real property supplied relates to the residence, that supply, (or part of the supply), will be exempt and will not be zero-rated. It will therefore be important for Terry and Loren to determine the extent to which the price paid is attributable to the private residence, because while input tax credits will be allowable to the extent that the supply is a zero-rated going concern, they will not be allowable to the extent that the supply is an exempt supply of residential premises. In any case, the supply of the residence is also not made in the course of the taxable activity carried on by Terry (which means it is not a taxable supply), since its nature as a residence is essentially private. If the remaining items would otherwise have been taxable and not zero-rated, those supplies will be zero-rated under clause 27.

Mrs Loren, the owner of Loren, intends to live in the residence and to use some of the recently purchased hotel bedding, towels, furniture, and other equipment for private

purposes. To the extent that Mrs Loren intends to or actually does use goods or services treated as zero-rated under clause 27 for such purposes, Loren must include an amount of output tax in its VAT return for the tax period in which those goods or services were acquired from Terry. This applies individually to each of the goods and services supplied under the arrangement for the transfer of the taxable activity as a going concern. The transaction involves a number of separate supplies. Clause 26 does not treat the transaction as involving a single supply of "a going concern", but instead operates to zero-rate the supplies made under an arrangement that has the effect of transferring a going concern.

28. Travel agents and tour operators acting as principal

Clause 28, in combination with clause 18 and the Second Schedule, has the effect of creating a travel agents' or tour operators' margin scheme, similar to the margin scheme used by European Union Member States. The term "travel agent" is defined broadly in clause 2 to include "an agent, tour operator, hotel operator, or person acting in a similar capacity, who makes supplies of rights to receive accommodation, meals, tours, entertainment, or similar goods or services commonly provided to tourists or international visitors, (whether alone or as part of a holiday or tour package)." It is a feature of the tourism industry that such rights are transferred separately from the underlying supplies of the goods and services that will be consumed when the rights are exercised, and that the rights pass through a number of hands before being sold to the eventual consumer/tourist.

Tourism generally involves the final consumption of hotel accommodation and other goods and services by tourists. However, supplies to tourists are often prepaid, with rights to receive goods and services being sold and on-sold through one or more travel agents, so that local suppliers in the country the tourist intends to visit, may not contract directly with the tourists to whom they provide goods or services.

One example of a supply chain leading from the initial sale of the right to consume goods and services in Grenada, to the actual consumption of those services is illustrated in the following diagram:

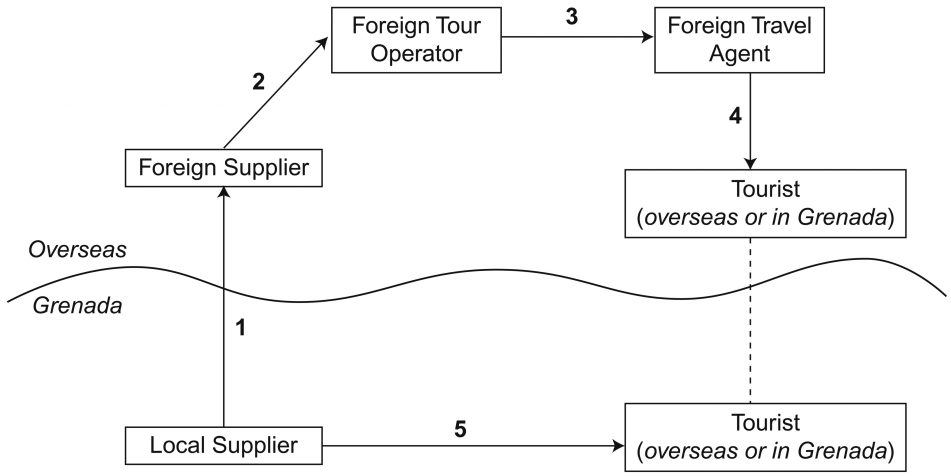
Supplies 1 to 4 involve a series of separate supplies and on-supplies of the right to receive goods and services from the local supplier. The number of such supplies may vary, whether within Grenada or overseas, and may be made to persons related or unrelated to the local supplier. The critical factors from a VAT perspective are that the rights to receive supplies of goods or services in Grenada are supplied separately from the actual goods and services to be consumed, and that at least one supplier is a non-resident.

When the goods or services will be consumed in Grenada, ideally VAT would be charged on the full amount paid by the tourists, either by—

(i) requiring foreign travel agents to register for VAT in Grenada and remit VAT on the full value of their charges to the tourists, or

(ii) requiring Grenadian suppliers who will ultimately supply such goods or services to calculate VAT on their supplies to tourists by reference to the full amount actually paid by the tourists to the foreign travel agent.

Diagram 24.1



However, in terms of option (i), it would be difficult for the Comptroller to enforce registration of non-residents who have no presence here and are not carrying on a taxable activity here, and it is unlikely that most would voluntarily register. On the other hand, requiring local suppliers to remit VAT using the amount charged by the final non-resident to the tourist as the value of the local supply is, also impractical because—

(*a*) the local supplier will generally not have access to the details of the price paid by the tourist (except where the travel agent and the local supplier are related persons); and

(*b*) such an approach would effectively require the local supplier to remit tax on the value added by all the intermediate suppliers through whom the rights have been supplied, making the local supplier's tax burden (as a percentage of the value added by the supplier), higher than the prevailing VAT rate, a result that would be likely to have an adverse impact on local suppliers' profit margins.

Furthermore, the final package sold to the tourist may encompass travel to a number of different countries, making the application of the place of supply rules in the value added tax regimes, if any, of those countries very complex for the travel agent, and requiring the agent to register in each of those countries.

The solution to these issues that has been adopted for the Grenadian VAT is to combine taxing on a destination basis and an origin basis: the underlying goods and services are taxed at destination (based on the price charged by the last local supplier in the supply chain to have made a supply of the rights to a non-resident) but the travel agents' margin is taxed at origin, (the place where the travel agent has its place of business). Taxing in this way effectively treats the supplies as if they have two aspects: the underlying goods or services and the services of acting as travel agent. When viewed in this way, it makes sense to tax a travel agent's margin at the place of origin, because that is where the customer is purchasing the holiday package and effectively consuming the travel agent's services, the price of which is embedded in the price the tourist is paying for the overall holiday package.

The rules in clause 28 only apply where the travel agent is acting as principal (i.e. where the travel agent is buying and on-selling the right or option). If the travel agent were merely acting as agent, it would be the principal who was making the supply, not the travel agent. The travel agent would merely be making a supply to the principal of "arranging for" the supply to be made.

Foreign travel agents

Clauses 28(1) and (2), in combination with item 9 in paragraph (1) in the Second Schedule, and paragraphs (2) and (3) in that Schedule, deal with the treatment of foreign travel agents. Under item 9, a supply of a right or option to a non-resident who is outside

Grenada at the time the services are supplied is zero-rated. This would normally apply to a supply such as supply number 1 in diagram 28.1 above. However, both paragraphs (2) and (3) ensure that the supply is not zero-rated because it is a supply of a right to receive goods or services in Grenada, and also because the supply is made directly or indirectly to a non-resident, but will be provided to another person in Grenada (the tourist). In general, even if such a supply is ultimately provided to a person who is a taxable person, it would most often not be reasonably foreseeable that that would be the case, particularly when the local supplier supplies non-specific rights that could be supplied to, and eventually exercised by, any person to whom the rights are ultimately sold. If the rights are to receive supplies that would otherwise be zero-rated, then to that extent the supply of rights (supply 1) could be zero-rated but it is considered that this would rarely arise, given the limited range of supplies (other than exports) that are zero-rated.

Clause 28(1) ensures that supplies 2, 3, and 4 are not considered to be made in Grenada by over-riding clause 18(1)(*b*), which would otherwise have had the effect that the supplies would be considered to be made in Grenada, because the goods or services will be provided to the tourist in Grenada. Thus, the effect of clause 28(1) in combination with the Second Schedule, is that the amount charged by the local supplier is subject to VAT in Grenada but the value added (the margin) by the foreign suppliers is not subject to VAT.

Clause 28(2) deals with the particular situation that may arise if a non-resident travel agent has supplied a face value voucher to a tourist, entitling the tourist to acquire goods or services in Grenada up to an amount represented by the face value of the voucher, (see discussion of clause 23 for more information on vouchers). The supply of the rights (whether or not embodied in a voucher) by the local supplier will have been taxed and not zero-rated, (as discussed above), and the supply of the voucher will have been out of scope, (and so not a taxable supply) because of subclause 28(1). However, under clause 23(2)(*b*) the supply made on redemption of a voucher whose supply was not a taxable supply, includes the amount paid to acquire the voucher (that amount is consideration for the supplies on redemption, because it is an amount paid in respect of and for the inducement of those supplies). To apply this rule in a situation where the initial supply of the rights has already been taxed, would result in double taxation of the amount charged by the local supplier and would defeat the purpose of the special rules for travel agents, by also taxing the value added by the non-resident travel agent. Clause 28(2) thus overrides the rule in clause 23(2)(*b*), and has the effect that the consideration for the supplies made on redemption of the voucher is limited to the additional consideration, if any, provided those supplies, or in connection with the redemption of the voucher.

Local travel agents – margin scheme

Clauses 28(3) and (4) deal with the opposite situation to subclauses (1) and (2). The aim of the latter is to ensure that the amount charged by local suppliers is taxed in Grenada, but the foreign travel agent's margin is taxed (if at all) under the rules in force in the place where the travel agent has its place of business. In contrast, the aim of Clauses 28(3) and (4) is to ensure that the value added by local travel agents (their margin) is taxed at origin, i.e. in Grenada where the travel agent his its place of business.

First, subclause (3) provides that a supply of rights to accommodation (or other relevant tourism supplies) which will be received outside Grenada, (for example, a holiday package to be used in the United States, Canada, and Mexico) is not zero-rated. Then, subclause (4) provides that the value of such supplies is worked out on a global basis for each tax period, taking the value of those supplies as the difference between the acquisition and sale costs of the supplies.

Margin scheme only applies to supplies as principal

The margin scheme only applies where the chain of supplies involves supplies, acquisitions, and on-supplies of rights, with each supplier acting as principal. It does not

apply when the travel agent acts as agent. In such cases, the agency services provided by the travel agent will be taxed under the normal rules, and the supplies by the principal will similarly be taxed under the normal rules. In many cases, this will have the same effect as the margin scheme.

The scheme also does not apply to other supplies made by the travel agent. Thus, where it charges a specific fee (a commission) to the customer, that commission will be consideration for the travel agent's supply of services to the customer and will be taxed under the normal rules. Where a local travel agent supplies to a person in Grenada a right to receive relevant goods and services in Grenada, the supply of those rights will also be taxed under the normal rules.

29. Value of employee fringe benefits

Clause 29 provides special rules for valuing fringe benefits provided to employees, so as to make it simpler for employers to work out the value of the fringe benefit for VAT purposes. A fringe benefit is something other than money that is supplied to an employee as part of the employee's remuneration package.

The value of a fringe benefit will depend on whether the benefit is—

- accommodation for a period not exceeding 45 days in any calendar year: subclause (1)(*a*);
- meals: subclause (1)(*b*); or
- any other form of fringe benefit: subclauses (2) and (3).

Where accommodation and meals fringe benefits (as limited) are supplied to an employee, the employee's cash contribution ("consideration in money"), if any, is treated as the price of the supply, and thus the value of the supply for VAT purposes is limited to that amount minus the tax fraction thereof. This approach is a concession that provides encouragement for employers to take care of the basic welfare of their employees, and also recognises that the provision of short-term accommodation and meals may be an essential aspect of certain types of business, particularly in the tourism industry.

Other fringe benefits are not subject to the above limitation in value. If no further rule were applied, this would mean that the consideration for such fringe benefits would include all forms of consideration provided by the employee, whether they be cash contributions or simply the employee's services to the employer: see the definition of "consideration" in section 4, which includes "any payment, act, or forbearance in respect of, in response to, or for the inducement of the supply." Under the normal VAT rules, when part or all of the consideration for a supply of a fringe benefit is non-monetary, (the employee's services), the value of the supply of the fringe benefit would be "the VAT-inclusive fair market value of the consideration".

This would require employers to value supplies of fringe benefits by reference to part of the supply of the services provided by the employee, (the part that it provided in return for the fringe benefit, rather than the part supplied for salaries or wages paid in money).

Subclauses (2) and (3) remove any uncertainties that might arise in valuing fringe benefits by reference to the value of employee services. Under subclauses (2) and (3), if an employer simply imports or acquires goods and services and then on-supplies them to the employee in the same form and manner as they were acquired or imported, the value of the fringe benefit is worked out by reference to the cost to the employer of acquiring or importing the benefit: subclauses (2)(*a*) and (2)(*b*). In any other case, subclause (2)(*c*) requires the value to be worked out using the VAT-exclusive market value of the fringe benefit. Subclause (3) provides that if the employee pays an amount in money for a supply by the employer, the value of the supply is the greater of the amount worked out under subclause (2) or the amount of money paid, minus the tax fraction of that amount. These provisions are similar in effect to section 18(2)(*b*) of the Barbados Value Added Tax Act (Chapter 87).

Example 29.1:

Bespoke Limited is a clothing manufacturer. It imports plain white T-shirts, dyes them, and imprints patterns relating to Belize onto them for sale to tourists. The import value of the T-shirts for VAT purposes is $2 per unit. The wholesale sale price of printed T-shirts is $23 and the retail price is $34.50. Bespoke also supplies lunches to its employees for a nominal contribution of $1, and provides a bus service to bring its employees to and from work, which it sub-contracts to a local bus company. Carla is a new employee, and on her first day, Bespoke gives her two plain white T-shirts (for no payment in money by Carla). Later that month, Carla buys ten of the printed T-shirts at a staff discount of $18, because she has decided to sell them at a market stall on the weekends.

When completing its VAT returns, Bespoke must account for VAT on the various supplies made to Carla as follows—

- 60 cents for the two plain white T-shirts. (Their value is the import value of $2 each, i.e. $4: section 29(2)(*a*));
- $30 for the 10 t-shirts purchased by Carla at a staff discount. (Their value is the VAT-exclusive market value, i.e. $230 – $30 = $200, the market value in this case being the wholesale market since Bespoke is a wholesaler: section 29(2)(*c*) and section 4)
- 13 cents for each lunch Carla had. (The value of the lunch is $1 minus the tax fraction of $1, i.e. 87 cents: section 29(1)(*b*));
- For the bus service, the VAT payable for all employees using the service during the month will be the VAT-exclusive price charged to Bespoke by the subcontractor – section 28(2)(*b*)(i). (It has been presumed that Bespoke would have been entitled to deduct all of the input tax incurred on the supply by the subcontractor).

Subclause (4) ensures that an employer who uses an acquisition or import to supply a taxable fringe benefit to an employee, will not be denied input tax credits for the acquisition or import.

PART VI

Basic Rules Relating to Imports

30. Time of import

This clause provides rules for determining the time of an import of goods. A taxable person needs to know when an import has occurred so that it can—

- identify the time at which it must pay the VAT due on a taxable import, which, under clause 8(4)(*b*), is due at the time of the import; and
- identify in which tax period it may claim any input tax credits to which it is entitled for taxable imports, which, under clause 34, are accounted for in the tax period in which the import occurs.

The basic rule is, that an import of goods occurs at the time the goods are entered for use in Grenada under the customs laws. If the goods are not entered for such use, then the time of the import is the date on which the goods are brought into Grenada, i.e. the date on which the goods are physically brought across the border into Grenada with the intention of landing them for consumption in Grenada. Goods crossing through Grenada waters, or held in a ship docked in Grenada which are not intended to be landed there for consumption should not be considered to have been imported, even if they are technically "in" Grenada. They will have no "time of import" under clause 30, because they are

neither entered for home use, nor imported for use in Grenada, so neither paragraph (*a*) nor paragraph (*b*) applies.

31. Value of import

Clause 31 provides rules for determining the value of an import of goods, which is the basis for calculating the VAT payable on a taxable import: see clause 8(2).

The value of an import of goods is the sum of the following amounts—

(*a*) the customs value of the goods ascertained under the customs laws, whether or not any customs duty is payable on the import;

(*b*) if not already included in (*a*), the cost of insurance and freight to bring the goods to Grenada plus the value of any services incidental to the import which are treated under clause 6(6) as part of the import; and

(*c*) the amount, if any, of customs duty, customs service tax, excise tax, or other tax or fiscal charge (other than VAT), payable on the goods as a result of the import.

Customs tax, customs service tax, freight, insurance, etc., are included in the value of a taxable import for VAT purposes because VAT is a tax on consumption, which is valued by reference to the amount that a person must pay in order to consume the goods in Grenada. When a consumer purchases goods locally, the full cost to the consumer of purchasing the goods is subject to VAT. Similarly, when a consumer imports goods, the full cost to the consumer of having the goods available in Grenada for consumption must be taxed, in order to ensure neutrality between the consumption of local and imported goods.

PART VII

Calculation and Payment of Vat Net Amount

32. Net amount of VAT to be remitted in a tax period

Clause 32 sets out the method for calculating the net amount of VAT a taxable person must remit to the Comptroller for a tax period. Under clause 8(4)(*a*), the taxable person making a taxable supply is required to account for the VAT payable in respect of the supply. This is done on a periodic basis by reference to each tax period, (which is defined in clause 2 as a calendar month). This clause is not relevant to the collection of VAT payable on taxable imports, because the VAT on imports is paid at the time of the import, (see clause 8(4)(*b*)) whether or not the importer is a taxable person.

Under subclause (1), the amount of VAT that a taxable person must remit to the Comptroller for a tax period is the sum of all the output tax payable by the person in the tax period, (component A of the formula) less the sum of all the input tax credits allowed to the person for the period (component B of the formula).

"Output tax" is defined in clause 2 by reference to a taxable person. It is "the VAT chargeable in respect of a taxable supply made or treated as having been made by the person", and includes any amount that is treated as output tax for that period under the Act or Regulations. The reference in the definition of output tax to amounts treated as output tax, ensures that Component A of the formula includes any amounts treated as output tax under the post-supply adjustment and bad debt rules in clauses 20 and 21, and other similar amounts that a taxable person may be required to treat as output tax.

Input tax is the VAT payable in respect of taxable supplies to, and taxable imports by the taxable person (see the definition of "input tax" in clause 2). However, not all input tax incurred by a taxable person is allowed as a credit. An input tax credit is generally allowed only in the circumstances specified in Part VIII. Input tax is normally allowed as

a credit in the tax period in which the taxable supply to, or taxable import by, the taxable person occurs. This is subject to the rule in clause 34(7), which prevents the claiming of an input tax credit, until the taxable person holds a VAT invoice or other relevant document in respect of a taxable supply, or a bill of entry or other prescribed document in respect of a taxable import. The reference in Component B to clauses 20, 21, 34, 35, 36, 49, 50 and 52 ensures that the calculation takes account of any amounts treated as input tax under the post-supply adjustment and bad debt rules (clauses 20 and 21), the normal rules for input tax credits (clause 34), the rules for resident agents of non-resident principals (clause 34), any Regulations made in relation to input tax credits (clause 34), any carry forward negative amounts from earlier tax periods (clause 49), and any other refunds allowed as input tax credits (clauses 50 and 52).

The formula in clause 32(1) has the effect that the VAT payable by a taxable person for a tax period is a net amount (output tax less input tax). The net amount that a taxable person must remit for a tax period represents the VAT on the value added by the person in that period. The net amount must be paid by the taxable person to the Comptroller by the due date for lodgement of the person's VAT return for that period: subclause (2) and clauses 44(1) and 46(1). If B > A in the calculation in subclause (1), i.e., if the taxable person's total input tax credits for a tax period, exceed the VAT payable on taxable supplies made or treated as made in the period, the excess is carried forward or refunded: subclause (3) and clause 49.

The time of supply rules in clause 17 determine when a taxable supply or acquisition is made and therefore in which tax period the output tax on supplies, or the input tax on acquisitions, must be accounted for in the clause 32 calculations. In the ordinary case, the time of a supply or acquisition is the earlier of the date of invoice or the date of payment (see clause 17). The time of an import is determined under clause 30, which determines the tax period in which the importer may include any input tax credit to which it is entitled for the import.

Example 32.1:

The total consideration for taxable supplies made by a taxable person in a particular tax period is $115,000 and all of those supplies are fully taxable at the standard rate. If there are no other amounts treated as output tax for that tax period, the person's output tax for the period is $15,000. This is the amount of output tax that the person is considered to have collected from its customers in relation to those supplies.

During the same period, the total value of acquisitions by the taxable person was $57,500 for supplies that were fully taxable at the standard rate, in respect of which the person has therefore paid $7,500 input tax. The taxable person also imported goods during the tax period whose value for VAT purposes was $10,000, and on which the person paid $1,500 VAT. Under the rules in Part VIII, the person has determined that it is entitled to input tax credits for all of its input tax for that period.

Thus, the amount of VAT that the person must pay to the Comptroller for the tax period is the amount of output tax less the input tax, i.e. $15,000 – ($7,500 + $1,500) = $6,000. This is equal to 15% of the value added by the taxable person during the tax period, as determined by calculating the sum of the value of the supplies made by the person ($115,000 x 1/1.15 = $100,000), minus the value of the acquisitions and imports made by the person (($57,500 x 1/1.15) + $10,000 = $50,000 + $10,000 = $60,000). Thus, the value added is $100,000 – $60,000 = $40,000, 15% of which is $6,000.

PART VIII

Input Tax Credits

33. Goods or services for which no input tax credits are allowable

Clause 33 sets out rules denying input tax credits in particular circumstances. In general, under a value added tax input, tax credits should only be allowed for acquisitions or imports ("inputs") that will in some way feed into the cost of on-supplies that will be taxable, whether because the inputs are a direct cost component of the on-supplies, or because the inputs are part of the general costs of the person carrying on a taxable activity through which the on-supplies are made. Input tax incurred by an end consumer is not creditable because VAT is a tax on consumption, and the burden of the tax is intended to fall on the end consumer. The input tax credit mechanism is a way of ensuring that taxable persons only pay VAT on their value added, while at the same time ensuring that VAT falls on end consumers.

The general denial of input tax credits for private consumption can be found in subclauses (2)(*a*) and (*e*), which provide that no input tax credit arises for a person in relation to an acquisition or import, if the acquisition or import is not made in the course or furtherance of the person's taxable activity nor to the extent that the acquisition or import is of a private or domestic nature. The remaining paragraphs of subclause (2) provide more specific input tax credit denials—

- subclause (2)(*b*) denies input tax credits for the acquisition or import of a passenger vehicle, as defined in subclause (1), or for spare parts or repair and maintenance services for such vehicle, except where the person acquired or imported the vehicle for the purpose of a taxable activity the person carries on as a dealer in such vehicles, or that involves hiring out such vehicles. Where the proviso operates, the person will still need to meet the positive requirements in clause 34, and not fall under any of the remaining restrictions in clause 33, before it will be entitled to any input tax credits for the acquisition or import of the vehicle;
- subclause (2)(*c*) denies input tax credits to the extent that an acquisition or import is used to provide entertainment, as defined in subclause (1). The credit-denial rule does not apply if the taxable person's taxable activity involves providing entertainment, (such as: a restaurant, café, casino, sports club, theatre, etc.) and the entertainment was provided as part of that taxable activity. Once again, if the proviso operates, the person will still need to meet the positive requirements in clause 34, before it will be entitled to any input tax credits for the acquisition or import; and
- subclause (2)(*d*) denies input tax credits for the acquisition of a membership or right of entry fee for any person in a club, association, or society of a sporting, social, or recreational nature.

In each case, the reason for the credit-denial rules in paragraphs (*b*) to (*d*) is that these types of goods or services are of a kind where, even though they may be partly or wholly acquired for the purposes of a taxable activity, either their use involves an aspect that is quintessentially private consumption, albeit by individuals who may or may not be the taxable person making the acquisition (for example, entertainment and club membership), or they are likely to be used both for the purposes of the taxable activity and for private or domestic purposes (for example, a vehicle). Because it is difficult to police the border between business and private acquisitions for these types of supplies, input tax credits are only allowed in the situations specified in the provisos, where it is considered clear that the acquisition is not for the purposes of private consumption.

34. Input tax credits for acquisitions and imports

Clause 34 provides for the claiming of input tax credits by taxable persons for the purposes of computing the amount of VAT payable by the person for a tax period under clause 32. "Input tax" is defined in clause 2 to mean, in relation to an acquisition, the VAT imposed on a taxable supply to the person of the goods or services acquired, or in relation to a taxable import, the VAT imposed on the import. Thus, subject to any

restrictions on claiming input tax credits, they may arise in respect of the VAT incurred on both taxable acquisitions and taxable imports by a taxable person.

Under subclause (1), if all the supplies made by a taxable person during a tax period are taxable supplies (whether at the standard rate, a reduced rate, or a zero-rate) the person is allowed input tax credits for all of the input tax chargeable on acquisitions or imports made by the taxable person during the tax period. This is subject to the restrictions under clause 32, which prevent input tax credits being claimed in some circumstances and under subclause (2).

Under subclause (2), if a taxable person ordinarily makes both taxable and non-taxable supplies, but in a particular tax period makes only taxable supplies, subclause (1) does not apply. This means that subclause (1) is effectively limited to taxable persons who make only taxable supplies.

Subclause (3) provides for the allocation and apportionment of input tax credits. This subclause applies to—

- taxable persons who ordinarily make both taxable and non-taxable supplies, but in a particular tax period have made only taxable or only non-taxable supplies; and
- taxable persons who have made both taxable and non-taxable supplies during the current tax period.

The non-taxable supplies may be exempt supplies, or supplies that are out of scope because they do not meet all of the requirements to be taxable supplies.

Where subclause (3) applies, the taxable person must first allocate particular acquisitions or imports to taxable or other supplies, if those acquisitions or imports relate wholly to making one or other type of supply. If an acquisition or import relates wholly to making taxable supplies, the person is entitled to an input tax credit for the full amount of input tax chargeable in respect of that acquisition or import – subclause (3)(*a*). If the acquisition or import relates wholly to making supplies that are not taxable, the person is not entitled to an input tax credit for the acquisition or import – subclause (3)(*b*). For acquisitions or imports that relate, whether directly or indirectly, to making both taxable and other supplies, the person is entitled to input tax credits in accordance with the outputs based formula set out in subclause (3)(*c*). Under that formula, the taxable person adds up all of the input tax chargeable on acquisitions or imports made during the period, other than those already accounted for by direct allocation to taxable and other supplies under subclause (3)(*a*) and (*b*) – this is Component A. This is then multiplied by B/C, where B is the value of all taxable supplies made by the person during the tax period, and C is the value of all supplies made by the person during the tax period, other than those made through a taxable activity the person carries on outside Grenada. To include supplies made through overseas branches would unfairly reduce the amount of input tax for which the taxable person is entitled to input tax credits. By excluding the value of supplies made through overseas branches from Component C, the formula effectively allows input tax credits to the person in relation to such supplies, thereby effectively treating them in a similar way to zero-rated exports, even though this would not technically be the result if, for example, the person only made supplies through its foreign branch in a particular tax period, and was therefore denied input tax credits because of subclause (2). Component C must include the value of taxable supplies, exempt supplies, and other non-taxable supplies.

Subclause (4) modifies the operation of the apportionment calculation in subclause (3)(*c*)—

- If the fraction B/C is more than 0.90 (or less than 0.10), the taxable person is entitled to input tax credits for all (or none) of the input tax included in Component A for the purposes of subclause (3)(*c*) – see subclauses (4)(*a*) and (*b*).

- If the taxable person is a bank or other financial institution that makes both taxable and exempt supplies, subclause (3)(*c*) does not apply, which means that the person is entitled to input tax credits only for acquisitions or imports that relate wholly to making taxable supplies, and are allowed under subclause (3)(*a*). While one reason for this restriction is the complexity of administering input tax credit apportionment for banks, and financial institutions, the main reason is that an outputs based formula is not generally considered to be appropriate for this type of business. This is partly because the value of a financial supply is not always easy to determine, particularly where the profits of the bank are made in the spread between, for example, interest rates charged on loans and paid on deposits. In addition, the way in which inputs relate to outputs in the case of banks is not always reflected in the balance between the cost of the inputs and the value of the outputs. However, it is not anticipated that banks and financial institutions will be permanently denied input tax credits for dual purpose acquisitions and imports. Instead, it is considered likely that banks would, as a group, negotiate with the Minister to develop Regulations under clause 36(2), using a formula that will more accurately reflect the way in which the inputs of particular kinds of financial institutions relate to their taxable and other outputs. In such negotiations, it is expected that the institutions would make reference to the various input based formulae used in other value added tax regimes, for example the United Kingdom, or to the flat rate entitlement provisions used in countries such as Singapore.
- Subclause (4)(*d*) gives precedence to specific formulae that may be set out in the Regulations if the person makes both taxable and exempt supplies (as opposed to taxable and other supplies). This provision is specifically intended to deal with any future Regulations that may be enacted for financial institutions.

Subclauses (5) and (6) deal with the input tax credits that arise because of VAT adjustment events. The effect of subclause (5) is, that any adjustment to the input tax claimable on an acquisition because of such an event, is treated in the same way as the original input tax. This prevents manipulation of input tax credit entitlements by taxpayers, creating situations in which VAT adjustment events will give rise to increases in
input tax credits in tax periods where more input tax credit would have been allowed than was allowed in the original period in which the acquisition or import was made. The effect of subclause (6), is to allow a supplier a full input tax credit for the amount of an input tax credit that arises because of a VAT adjustment event in relation to a supply. The full credit is allowed because the taxable person has paid too much VAT, and clause 20(4) is treating the amount of the overpayment as input tax in the period in which the VAT adjustment event occurred. The intention to undo the overpayment would be defeated if the person were not allowed a full input tax credit for the deemed input tax.

Subclause (7) denies a person an input tax credit under any of the prior rules unless the person holds the relevant documentation specified in subclause (8) – a VAT invoice, customs documentation, VAT debit note, or VAT credit note, as applicable. If the person does not have the documentation by the time it comes to lodge its VAT return, it should nonetheless work out the amount of the input tax credit to which it would be entitled (because subclause (9) effectively requires it to be worked out in the tax period in which the acquisition or import occurs), but cannot actually deduct the credit in the clause 31 formula until the first tax period in which the documentation is held. There is a 6 month restriction on this deferral, which means that registered persons will have a strong incentive to ensure that they are provided with the necessary documentation by suppliers, otherwise they will lose their entitlement to the credits. The requirements to issue VAT invoices for taxable supplies to registered persons and to hold VAT invoices to support claims for input tax credits are essential aspects of the VAT regime, designed to ensure the maintenance of an audit trail documenting VAT collections. Making recipients

responsible for ensuring they are issued with VAT invoices contributes to the "self-policing" aspect of VAT, which is one of the often cited advantages of a value added type tax.

Subclause (10) clarifies that a person should work out whether an acquisition or import relates to making a particular kind of supply, on the basis of the person's intention at the time of making the acquisition or import, but allows the person to take account of actual use or a change in intention that occurs before the date on which the VAT return for the period is due. This allows taxable persons some flexibility in considering the actual use of acquisitions or imports. In general, the question of whether a particular acquisition or import relates wholly or partly to making a particular kind of supply will be a question of fact, to be determined according to all the circumstances of the taxable person, its taxable activity, and the particular acquisition or import. The person should be able to substantiate the basis of its allocations and apportionments, in the event that the Comptroller conducts an audit of the person's VAT returns.

Subclauses (11) to (13) allow a person to claim input tax credits in certain circumstances for acquisitions made prior to becoming registered. If the person made an acquisition or importation in the three months before it became registered, and provides the evidence listed in subclause (11), the Comptroller will generally be expected to allow the input tax credit. The registered person must apply for this special input tax credit within the first six months of registration and the Comptroller must notify his or her decision within two months of receiving the application. The person is not entitled to an input tax credit for the acquisition or import unless—

- the goods are on hand at the date of registration (i.e. the goods must still be in the ownership and possession of the newly registered person), which must be proved to the satisfaction of the Comptroller;
- the amount of VAT chargeable on the acquisitions or imports, and the fact that it was indeed paid, is substantiated to the satisfaction of the Comptroller;
- the Comptroller is satisfied that the VAT referred to was in fact accounted for by the supplier, or paid to the Comptroller of Customs at the time of import by the registrant (it is not anticipated that the registrant would have access to information about the supplier's remittances, and it is therefore anticipated that Comptroller would be satisfied that the VAT was remitted by the supplier, unless the Comptroller has reason to believe otherwise);
- if the thing acquired or imported has been used in the person's taxable activity prior to the date of effect of the registration, the person can substantiate the extent of such use; and
- the person would have been entitled to an input tax credit if the acquisition or importation had been made when the person was registered.

Subclause (12) provides that the person need not hold a VAT invoice in relation to an acquisition for which an input tax credit is allowed under subclause (11). This is because the person would not have been issued with an VAT invoice, because the supplier would have been prohibited by clause 38(1) from issuing such an invoice to an unregistered recipient.

In addition, the amount of the input tax credit allowed under subclause (11) must be reduced to take account of any use of the goods and services prior to registration. It must also be reduced to take account of the extent, if any, to which the person would have been denied an input tax credit, if the acquisition had been made when the person was registered, for example, if the acquisition or import will be used to make supplies exempt supplies.

The primary purpose of the credit allowed under subclause (11) is to prevent cascading of VAT. The cost of goods and services held by a newly registered person at the date of registration will include any VAT incurred in relation to the acquisition or

import of those things, because the person will not have been entitled to an input tax credit. Charging VAT on subsequent supplies of those goods and services, or made using the goods and services, would result in over-taxation. The special credit ensures that VAT charged on a taxable supply to, or an import by, an unregistered person who soon after becomes a registered person does not become a cost component of the taxable supplies made by the person after it becomes registered. The person is not entitled to an input tax credit to the extent that the person used or consumed the acquisition or importation in its business prior to registration because to the extent of that use no cascading of tax occurs.

35. Acquisitions or imports by resident agent

This clause transfers the entitlement to input tax credits from a non-resident principal to the resident agent, for an acquisition or import made through the agent. However, this does not apply if the non-resident principal is treated to any extent as a resident and is registered for VAT under the Act. This is done because clauses 8(5) and (6) transfer the liability for VAT on taxable supplies made by a non-resident through a resident agent to the agent, except where the non-resident principal is treated to any extent as a resident and is registered for VAT under the Act. A non-resident might not be registered if all the taxable supplies or imports it makes are made through one or more resident agents who are registered: see clause 9(6) and (7). In that case, the resident agents will account for the output and input tax in relation to supplies, acquisitions, and imports it makes as agent for the non-resident.

The aim of these rules is to minimise the involvement of non-residents in the VAT regime, and to simplify the administration of the tax when non-resident suppliers make taxable supplies other than through a taxable activity they carry on in Grenada.

However, under paragraph (*d*) of the definition of resident in clause 2 a non-resident person will be treated as a resident if he is carrying on a taxable activity in Grenada. Where a non-resident person makes taxable supplies both through a taxable activity in Grenada and, via a resident agent, from his overseas branch or head office, if the non-resident is registered for VAT in Grenada, the rules transferring liability for VAT and entitlements to input tax credits from the principal to the resident agent do not operate. This is because the presence of the person in Grenada and his status as a registered person make it unnecessary to do so.

36. Regulations relating to input tax credit entitlements

Clause 36 sets out particular situations in which Regulations might add to or modify the input tax credit entitlement rules. Subclause (1) deals with the possibility of requiring adjustments to increase the input tax credit entitlement, (by including a further amount as input tax in a later period) or decreasing the input tax credit entitlement (by including an amount in output tax to effectively undo part of the previously claimed input tax credit). Input tax credit entitlements under clause 34 are based on the taxable person's initial intention regarding the use of an acquisition or importation (see clause 34(10)), and subclause 36(1) is aimed at situations where there is a change in the way an acquisition or importation is used compared with the way the taxable person intended to use it. Because the subclause anticipates that such "change of use" Regulations will apply only to acquisitions or importations (or related groups of acquisitions or importations) whose value exceeds $10,000, or that are capital assets (as defined broadly in clause 2), by implication the Regulations cannot require such adjustments for non-capital assets or acquisitions or importations of lower value.

Subclause (2) is a more broad provision allowing Regulations aimed at ensuring that the input tax credits claimed by a taxable person reflect the extent to which particular acquisitions or importations are used to make taxable supplies. Such Regulations might, for example, provide for a variation on the formula in clause 34(3)(*c*) for a particular kind of person, in which case clause 34(4)(*d*) will require the person to use the method in the Regulations in preference to that in the Act.

Subclause (3) clarifies that, apart from the implied limitation on change of use Regulations inherent in subclause (1(*a*) and (*b*)), the clause does not otherwise limit the Minister's power to make Regulations. Thus, other aspects of input tax credit entitlement not specifically referred to in subclauses (1) and (2), may be dealt with in Regulations.

PART IX

VAT Documentation

37. VAT Invoices

This clause provides for the issuing of a VAT invoice by a registered person for a taxable supply made by the person to another registered person (i.e. where both the supplier and the recipient are registered).

VAT invoices play a crucial role in the administration and enforcement of the VAT. Every registered person acquiring goods or services through a taxable supply should seek a VAT invoice for the supply, because holding a VAT invoice is a precondition for claiming an input tax credit in respect of the supply: see clause 34(7) and (8). The VAT invoice serves as evidence that the supply by the registered person was taxable, although it is not conclusive evidence. The issue of a VAT invoice does not verify that the person actually accounted for the VAT correctly under clause 32. Nonetheless, if the supply was indeed taxable and a VAT invoice is held, the recipient is entitled to an input tax credit, even if the supplier has not accounted for the VAT. Conversely, the fact that a VAT invoice was issued, does not in fact mean that the supply was taxable. If it were not, there will be no input tax to be credited, irrespective of whether the supplier mistakenly believed the supply to be taxable and accounted for VAT under clause 32, as if the supply were taxable (see paragraph (*a*) in the definition of "input tax" in clause 2, which refers to VAT imposed on a supply). If a registered recipient is in any doubt about whether an acquisition is taxable, he or she should discuss the matter with the supplier and/or the Comptroller. The primary function of a VAT invoice is to create a documentary trail, but that trail does not substitute for the law, and issuing (or not issuing) a VAT invoice cannot change the status of a supply to make it taxable (or not taxable). Likewise, if a supply is fictitious and a VAT invoice is fraudulently issued, the purported recipient of the supply does not obtain the right to an input credit.

Subclause (1) obliges a registered person making a taxable supply to another registered person to provide that other person with the original VAT invoice for the supply. A VAT invoice can be issued only if the taxable supply is made to another registered person. It must be issued at the time of the supply (as determined under clause 17). Subclause (2) states that the contents of a VAT invoice must comply with the Regulations.

A registered person who provides, or fails to provide, a VAT invoice as required under Part IX, or issues a false VAT invoice, is liable for an administrative penalty and is guilty of an offence (see clause 81). However, no penalty or offence will apply if information relating to the recipient was incorrect, but the supplier exercised all due care and believed, on reasonable grounds, that the information was correct. Similarly, no penalty or offence will apply for wrongly issuing or failing to issue a VAT invoice if the supplier exercised all due care and believed on reasonable grounds that the recipient was, or was not, a registered person.

38. Sales receipts

Where a registered supplier makes a taxable supply to a person who is not registered for VAT, the supplier is prohibited from issuing a VAT invoice, but is required to issue a sales receipt containing the information prescribed in the Regulations. The aim of prohibiting the issue of VAT invoices to unregistered persons is to prevent the development of an illicit

trade in VAT invoices where registered persons attempt to acquire such invoices from unregistered persons and wrongly claim input tax credits. The aim of requiring sales receipts to be issued to non-registrants is both to strengthen the paper trail generated by VAT, and to encourage end consumers and small, unregistered businesses to take note of when suppliers stated that VAT is being charged on their purchases, so that they can also participate in the self-policing aspect of the tax. When combined with the requirement for the supplier to display a copy of its VAT registration certificate (see clause 14(10)) at each of its places of business, and the maintenance of a register of registered persons, (see clause 16) this gives the consuming public some power to check on the activities of persons purporting that VAT is being charged on their supplies, and using this as a justification for price increases. If a consumer receives a sales receipt noting that VAT has been charged on the supply, but cannot see the VAT registration certificate and cannot find the supplier listed on the register, the person can challenge the supplier directly or bring the matter to the attention of the Comptroller.

A registered person who issues, or fails to issue, a sales receipt as required, or who issues a false sales receipt, is liable for an administrative penalty and is guilty of an offence under clause 78. As for VAT invoices, no penalty or offence will apply if information relating to the recipient was incorrect but the supplier exercised all due care and believed, on reasonable grounds, that the information was correct. Similarly, no penalty or offence will apply for wrongly issuing or failing to issue a sales receipt, if the supplier exercised all due care and believed on reasonable grounds that the recipient was, or was not, a registered person.

39. VAT credit and debit notes

This clause provides for the issuing of VAT credit and debit notes in respect of post-supply adjustments made under clause 20.

Subclause (1) applies if a VAT invoice was issued for a taxable supply and, as a result of a VAT adjustment event, the amount of VAT shown on the invoice as charged for the supply exceeds the VAT properly chargeable for the supply. In this case, the supplier is obliged to provide the recipient of the supply with a VAT credit note containing the particulars specified in the Regulations: see subclause (3).

Subclause (2) applies where a VAT invoice has been issued for a taxable supply and, as a result of a VAT adjustment event, the amount of the VAT properly chargeable for the supply exceeds the amount of VAT shown on the invoice as charged for the supply. In this case, the supplier is obliged to provide the recipient of the supply with a VAT debit note containing the particulars specified in the Regulations: see subclause (3).

A registered person who provides, or fails to provide, a VAT credit or debit note as required, or who provides a false VAT credit or debit note, is liable for an administrative penalty and is guilty of an offence under clause 78. As for VAT invoices and sales receipts, no penalty or offence will apply if information relating to the recipient was incorrect, but the supplier exercised all due care and believed, on reasonable grounds, that the information was correct. Similarly, no penalty or offence will apply for wrongly issuing or failing to issue a VAT credit or debit note, if the supplier exercised all due care and believed on reasonable grounds that the recipient was, or was not, a registered person.

40. Documentation issued by or to agents

This clause deals with the practicalities of issuing and receiving documentation when supplies are made through agents. If both agent and principal are registered, any documentation required to be issued by or to the principal can be issued by or to the agent. This provision does not alter the person who is required to account for the VAT: except where liability for VAT and entitlement to input tax credits are transferred from a non-resident principal to a resident agent (see clause 8(5) and (6) and clause 35), the liability to account for VAT remains with the supplier – the principal: see clause 8(4)(*a*).

Subclause (5) confirms what would in any case apply under the normal rules of agency, which is, that any documentation issued by or to the agent is treated as being issued by or to the principal. Obviously, this provision only applies when the documents are issued by or to the agent in its capacity as agent. Where it acts other than as agent, a person is not an agent but is acting in its own capacity.

Subclause (2) allows an unregistered agent to issue or receive documentation but only in the name of, and using the details of, the registered principal.

Subclause (3) deals with the situation where liability for VAT and entitlements to input tax credits have been transferred from a non-resident principal to a resident agent. In such cases, only the agent is entitled to issue and receive VAT documentation and must do so in his own name and using his own details.

Subclause (4) ensures that documentation is only issued once, either by the agent or the principal, whichever is applicable. Particularly in cases covered by subclause (1), where both agent and principal are entitled to issue and receive documentation relating to supplies made by or to the agent on behalf of the principal, the parties must ensure that only one of them issues or receives the relevant documentation.

41, 42 and 43. Requests for VAT documentation, Prohibitions, and Retention of records

Clause 41 strengthens the self-policing aspects of VAT by clarifying that a registered person who has not received a VAT invoice or credit or debit note that a supplier was required to issue, may request one in writing. A registered supplier has twenty-four days to comply with such a request. However, the recipient must make the request within two months of the time of supply or the time of the VAT adjustment event, whichever is applicable.

Clause 42 allows Regulations to require prior approval from the Comptroller before VAT invoices, credit notes, or debit notes are issued. Subclauses (2) and (3) prohibit the issue of more than one original VAT invoice, credit note, or debit note, but allow a copy clearly marked as such to be issued to a registered recipient who claims to have lost the original. Subclause (4) confirms the provisions in clause 80 by stating that it is an offence to issue a VAT invoice, credit note, or debit note otherwise than as specified in Part IX.

Clause 43 requires a taxable person to maintain the following documents for the purposes of Part XIX of the Act. Clause 110 specifies that such documents must be kept for seven years after the end of the tax period to which they relate. The documents to be retained include—

(*a*) copies of all VAT invoices, VAT credit notes, and VAT debit notes issued by the person, which must be maintained in chronological order to ensure that they are easily accessible in the event of an audit;

(*b*) all VAT invoices, VAT credit notes, and VAT debit notes received by the person, whether originals or copies;

(*c*) all customs documentation relating to imports and exports of goods by the person; and

(*d*) in relation to all imported services on which the recipient is required to reverse charge VAT to itself under clause 22, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for particular purposes.

A taxable person who fails to maintain records as prescribed in subclauses (5) and (6) is liable to an administrative penalty under clause 81.

PART X

VAT Returns and Payments

Division 1: VAT Payable on returns

44 and 45. VAT returns and amended returns

Clauses 44 and 45 provide for the lodging of VAT returns and amended returns by taxable persons.

Clause 44(1) obliges a taxable person to lodge a VAT return for each tax period. The return must be lodged no later than one calendar month after the end of the tax period. Thus, a VAT return for the tax period commencing on 1 February must be lodged by March 31.

Subclause (2) provides that a VAT return must be lodged with the Comptroller in the prescribed form and containing the information specified in that form.

Subclause (3) allows the Comptroller to grant permission for late lodgement of a VAT return but subclause (4) clarifies that this does not alter the due date for payment. Thus, if a return is lodged late and the person also does not pay on the relevant date (because it has yet to determine its liability for the period), interest will nonetheless begin to accrue under clause 68 for the late payment.

Subclause (5) clarifies that the Comptroller may require fuller or additional returns from a person required to file a return, irrespective of whether or not the person has filed a return for the relevant period.

Clause 45 allows amended returns to be lodged by a taxable person and requires the Comptroller to amend the original return or accept lodgement of the amended return. This will be relevant if the taxpayer has made a mistake, but will not be necessary for VAT adjustment events, which are accounted for in the tax period in which they occur (see clause 20) nor for bad debts, which are accounted for in the periods specified in clause 21. An amended return must be requested in writing, specifying the grounds on which it is made, and must be made within three years after the end of the tax period to which the return relates.

A person who fails to file a return by the due date is liable for a penalty and may be prosecuted for an offence under clause 79.

46. Due date for payment of VAT for a tax period

This clause provides for the payment of VAT due in relation to a tax period.

Subclause (1) provides that the VAT payable by a taxable person under clause 32 is due and payable on the due date for lodging the VAT return for the period. Thus, the VAT payable for a particular tax period must be paid no later than the 20th day of the following month: see clause 44(1).

Subclause (2) makes it clear that the liability to pay an amount of VAT arises by operation of the Act and is not dependent on the Comptroller making an assessment. Note that under clause 81, a person who fails to pay all or part of the VAT due for a tax period is liable to an administrative penalty and may be prosecuted for an offence. This is in addition to the late lodgement penalty in relation to failure to file a return for the period (also clause 79), interest due under clause 68, and the late payment penalty in clause 80.

Under subclause (3), the Comptroller may grant an extension of time to pay or make other arrangements (such as allowing payment by instalments). The person must apply in writing for the extension, and the Comptroller must notify the person of his decision in writing, within 14 days of receiving the application: subclause (4). If the Comptroller

grants such an extension, it is anticipated that he would also generally exercise his power to waive the taxpayer's liability for a late payment penalty, but it is not mandatory that he do so, and much will depend on the circumstances of the taxable person and the reason for requesting the extension. As stated in subclause (6), irrespective of whether the Comptroller waives the late payment penalty, interest will nonetheless accrue under clause 68 to the extent of the late payment. If the Comptroller grants permission to pay by instalments, failure to pay a single instalment will result in the whole of the outstanding amount becoming immediately payable – subclause (7). Finally, subclause (8) allows the Comptroller to bring forward the time for payment of VAT by notice in writing issued to a taxable person who he believes, on reasonable grounds, may leave Grenada for an extended period before the due date for payment of an amount of VAT.

Division 2: VAT Payable on imports

47 and 48. Due date for payment of VAT on imports and VAT Payable on imports

Subclause 47(1) provides that the VAT payable by an importer in respect of a taxable import is due and payable at the time of the import, which is determined under clause 30. As with the VAT due on returns, the liability arises under the Act and does not depend on the making of an assessment – subclause 47(2).

Clause 48 requires the Comptroller of Customs to collect the VAT payable on taxable imports at the time of import, and to collect the information specified in subclause (1)(*a*) from the importer, who may or may not be a registered person. Subclauses (2) and (3) require importers to furnish an import declaration in the form and manner, and containing the information specified, by the Comptroller of Customs, and to pay the VAT due on the import to the Comptroller at the time of the import. To facilitate this responsibility, subclauses (4) and (5) empower the Comptroller to exercise the powers and apply the provisions of the customs laws, as if the VAT due on a taxable import were customs duty due on the imported goods.

PART XI

Refunds

49 and 50. Refunds

Part XI provides for the payment or crediting of refunds in certain circumstances, including where a person's input tax entitlements exceed his output tax liabilities for a tax period (clause 49), VAT erroneously overpaid (clause 50), refunds payable to diplomats and others entitled to exemptions from tax under international obligations (clause 51). Clause 52 deals with the way in which refundable amounts are to be applied.

49. Refund of negative net amount of VAT for a tax period

Clause 49 applies if there is a negative net amount under clause 31 for a tax period (i.e. the total input tax credits allowed to a taxable person for a tax period exceed the total output tax payable by the person in that period, so that the result of the calculation in clause 32 is a negative amount). In the ordinary case, an excess of input tax credits would not be a regular feature of a taxable person's business. Generally, a taxable person's output tax for a tax period should exceed its input tax. However, a taxable person may have an excess of input tax credits in a particular tax period due to, among other things, the acquisition of substantial capital assets, a large import of trading stock, or some other unusual expense. In such cases, the excess must be carried forward and is allowed as an input tax credit in the following tax period. If the amount of the excess is not fully credited in the following period, then the uncredited amount must again be carried forward to the next following tax period. Such carrying forward continues until either the

whole of the excess is used up, so that no amount remains, or some or all of the amount remains after carrying forward into three consecutive months after the tax period in which the excess arose. Thereafter, the person is entitled to apply for a refund if the remaining amount exceeds two hundred and fifty dollars. If the amount is two hundred and fifty dollars or less, the person must continue to carry it forward until it is fully used up as credits against the output tax liability in subsequent tax periods.

If the amount does exceed two hundred and fifty dollars, the registered person may apply for a refund of the part of the excess that remains outstanding. The application must be lodged on or after the date on which the taxable person lodges its VAT return for that sixth tax period: subclause (4)(*a*), and in the form and manner prescribed: clause 49(1)(*b*)(ii). The Comptroller must then refund the amount to the taxable person within two calendar months after the date of the application (subclause (1)(*b*)(ii)), but may first apply the amount refundable in accordance with clause 52.

Subclause (2) provides for the order in which excess input tax credits are taken into account if there is an excess for more than one tax period. Excess input tax credits are taken into account on a "first-in-first out" basis (i.e. the earliest excess credit is applied first). This means that a taxable person must keep a separate account of the excess for each tax period.

In some cases, excess input tax credits will be a regular feature of a taxable person's activities, for example if the person is primarily making zero-rated supplies (such as an exporter). Subclause (3) sets out circumstances in which the carry forward rules in subclause (1) do not apply and establishes a right to be paid a refund by the Comptroller within two calendar months after the lodgement of the VAT return for the tax period in which an excess arises. Subclause (3)(*a*) deals with exporters for whom either fifty per cent or more of their outputs (turnover) comes from supplies that are zero-rated exports, or fifty per cent or more of their inputs (acquisitions and imports) relate to making supplies that are zero-rated exports.

Subclause (3)(*b*) provides more generally that a right to earlier refunds should also be granted if the Comptroller is satisfied that some other feature of the person's business regularly results in excess input tax credits. This might arise if, for example, a significant part of the person's business involves making supplies that are zero-rated under the Third Schedule, such as basic food items. Taxable persons in such a situation should approach the Comptroller with sufficient evidence to establish their claim to such refunds and it is anticipated that the Comptroller would be sufficiently satisfied to grant the right of refund if it is clear that the person will be regularly or always unable to use up its excess credits in the following three tax periods because of excess credits in some or all of those periods or because any positive net amounts payable in such tax periods will be insufficient to use up the excesses generated.

Where subclause (3)(*a*) or (*b*) apply, the taxable person may lodge an application for a refund of an excess for a tax period. Such application must be in the form and manner prescribed (subclause 3, and must be lodged on or after the date on which the VAT return is lodged for the tax period in which the negative net amount arose, and the Comptroller must pay the amount refundable within two months of the date of the application. Once again, the Comptroller may first apply the refund in accordance with clause 52.

50. Refunds of VAT erroneously over-paid

Clause 50 applies if a taxable person has erroneously overpaid VAT for a tax period (for example, due to calculation error or because supplies were incorrectly treated as taxable). Subclause (1) provides that the taxable person may apply to the Comptroller for an input tax credit for the amount of overpaid VAT. The application must be made within three years from the end of the tax period to which the overpayment relates.

The Comptroller must make a decision on an application under subclause (1) within two months of the date of the application, unless before that time the Comptroller commences an audit of the taxable person in respect of that tax period – subclause (2).

Where the Comptroller does not commence an audit, the decision must be made and notified to the person within the two months, and the taxable person is entitled to an input tax credit for the amount the Comptroller has determined is refundable – subclause (4)(*a*).

If the Comptroller does commence an audit before the expiry of the two month period, the person must be notified of the audit within that period, a decision on the audit must be made within one year of the date on which the application was lodged, and notice of the decision in relation to the audit and the refund application must be given to the taxpayer within one month of the date on which the Comptroller makes the decision – subclause (3). Where the Comptroller determines that an amount is refundable after such an audit, if the amount does not exceed two hundred and fifty dollars, the person is allowed an input tax credit for the amount. If it does exceed two hundred and fifty dollars, the Comptroller must (subject to clause 52) pay the refund to the person within two months of the date on which the person was notified of the decision.

Subclause (5) puts limitations on a person's entitlement to a refund for VAT erroneously overpaid, if the reason for the over-payment is that a supply was treated as taxable when it was not in fact taxable, or was treated as taxable at a higher VAT rate than that which actually applied. Because VAT is a consumption tax, and the burden of the tax is expected to be passed on to customers in the prices charged to them, a supplier who did pass on VAT in this way could be unfairly advantaged if such a refund were given. In such cases, the Comptroller has a number of options—

(i) an assessment can be made as if the tax was in fact correctly paid (see clause 53(3));

(ii) the Comptroller can simply not pay the refund (without making an assessment) – clause 50(5); or

(iii) the Comptroller can agree to pay the refund only if the conditions set out in clause 50(5) are met.

The first option is most likely if the taxpayer has been dishonest, or has made a mistake but not brought it to the Comptroller's attention. The third option is designed to reflect the consumption tax nature of the tax. If the recipient is a taxable person and the supplier can identify that person and refund the erroneously over-paid VAT to the person, the Comptroller may agree to pay the refund. This is necessary, because if the VAT were in fact erroneously over-paid, the recipient may have claimed an input tax credit to which it was not in fact entitled. A situation where the supplier might be able to argue that the recipient was not disadvantaged, might be where the supplier and recipient had disagreed about the VAT status of the supply, and the recipient had refused to allow the supplier to increase the price to cover its VAT liability. Such a situation would in fact have been disadvantaging the supplier, so that the payment of the refund to the supplier would put the supplier in the position it should have been at the outset, and would not disadvantage the recipient.

If the recipient is not a taxable person, or the supplier cannot easily identify the recipient (for example, if there were a large number of transactions on which VAT was erroneously overpaid), the Comptroller may agree to some alternate arrangement under which the supplier effectively passes on the benefit of the refund to the class of persons likely to have included the recipient.

51. Refunds to diplomats, non-profit bodies, and other international bodies

Clause 51 allows the Comptroller to authorise refunds of VAT incurred by approved non-profit bodies, public international organisations, foreign governments, diplomatic missions, or any other persons to the extent that the organisation, government, or person is entitled to an exemption from VAT under an international assistance agreement. This ensures that clause 8(8) does not prevent Grenada from meeting its international obligations, and allows the Comptroller to take note of international agreements when responding to requests for refunds from such persons.

As the organisation, government, or person may not be (and likely will not be) registered for VAT, it is unlikely that the person will have been issued with a VAT invoice. Subclause (2) thus provides that an application for a refund under clause 51 must be made in the form and manner, and at the time, prescribed by the Comptroller, and must be accompanied by suitable evidence that the VAT was incurred as a cost by the person, (whether by being paid on import, or payable by the supplier of a taxable acquisition made by the person). The person must also provide evidence of its entitlement to the claim, which may include a copy of the relevant international agreement and evidence of the person's status and the capacity in which the acquisition or import was made. An international assistance agreement is defined in clause 2 as an agreement between the Government and a foreign government or public international organisation for the provision of financial, technical, humanitarian, or administrative assistance to the Government.

The Comptroller must make a decision on the application within two months and must pay the refund within two months of giving notice of the decision. Refunds must be made even if the amount refundable does not exceed five hundred dollars.

52. Application and payment of refunds

Under clause 52(1), the Comptroller is not required to pay a refund to a person under clause 49 or 50, unless and until the person has lodged all its VAT returns for the periods falling between the tax period to which the refund relates, and the day on which the application is made.

Under subclause (2), before paying a refund for which a person has applied under clause 49 or 50, the Comptroller may apply it against any interest or penalties payable under the Act, or against any other taxes, levies, or duties collected by the Comptroller, including amounts payable under the repealed taxes.

Where the amount remaining after applying the refund in accordance with subclause (1) is two hundred and fifty dollars or less, the taxable person is allowed an input tax credit for the remaining amount, and the credit is allowed in the tax period in which the Comptroller would otherwise have been required to pay the refund.

If the amount that remains refundable after applying the refund in this way exceeds two hundred and fifty dollars, the Comptroller must pay the refund within the time required by the relevant section. If the Comptroller does not pay the refund within that time, interest will accrue at the rate of two per cent per month for amounts not refunded within the required time – subclause (3). Note that interest will not be payable if the Comptroller is not required to pay the refund because of subclause (1). Only once the returns have been submitted, can the Comptroller apply the refund in accordance with subclause (2) and then deal with the amount remaining under subclauses (3) and (4).

Although subclauses (1) to (3) apply only to refunds arising under clauses 49 and 50, the obligation to pay interest under subclause (4) applies to all refunds payable under Part XI. Thus, interest will be payable on overdue refunds owed under section 51.

PART XII

Assessments

53. Assessments

This clause provides the Comptroller with the power to make VAT assessments. The clause is structured as follows—

Subclause Topic

Assessments of VAT payable

Assessment of VAT not payable where supplier incorrectly 'charged' VAT

Amended assessments

Default assessments

Time limits on assessments

Assessments of which there are no time limits

Notice to be given of assessments

Computation of interest and penalties on amounts assessed.

Subclause (1) sets out three classes of situation in which a VAT assessment may be made. The first case is where the Comptroller is not satisfied with a VAT return lodged by a taxable person – subclause (1)(*a*). Subclause (8)(*a*) places a time limit on the Comptroller's ability to raise a VAT assessment in this case: the Comptroller may raise the VAT assessment only within 6 years after the end of the tax period to which the assessment relates. However, if the default is due to fraud or wilful neglect, this time limit does not apply and the Comptroller may raise a VAT assessment under subclause (1)(*a*) at any time.

The second situation is where a taxable person fails to lodge a VAT return as required under the Act – subclause (1)(*b*). Subclause (9) provides that in this case the Comptroller may raise a VAT assessment at any time.

It is important to note that the Comptroller is not obliged to raise an assessment in order for the tax to be payable. The liability for VAT arises automatically under clause 46(2), regardless of whether or not a VAT return is lodged. The Comptroller can collect VAT payable by taking recovery action under Part XVI, whether or not an assessment has been made. However, the Comptroller may choose to raise an assessment in this case to limit the taxable person's ability to challenge the liability (see clause 56).

The terms "fraud" and "wilful neglect" are intended to have their general law meanings. This would cover, for example, a deliberate understatement in a VAT return of the VAT payable, or a deliberate overstatement in a return of input tax credits claimed, (including input tax credits claimed under clause 49 due to excess input tax credits, or under clause 50 due to an erroneous overpayment of VAT). It would also cover a person who recklessly fails to check the accuracy of the VAT payable or credits claimed in its VAT return. The fraud or wilful neglect may be committed by the person required to lodge the VAT return or by a person acting on behalf of that person, (such as an accountant or other tax adviser).

The third situation covered in subclause (1), is where the Comptroller has paid a refund of VAT to a taxable person in circumstances where the person was not entitled to the refund – subclause (1)(*c*). Part XI covers the payment of refunds. Subclause (8)(*b*) puts a time limit on the Comptroller's ability to raise a VAT assessment in this case. If the default is due to fraud or wilful neglect, the Comptroller may raise a VAT assessment under subclause (1)(*c*) at any time. In any other case, the Comptroller may raise the VAT assessment only within six years after the date on which the refund was paid, or if an input tax credit was allowed for the refund, within 6 years of the end of the tax period in which the credit was allowed.

Under subclause (2), the Comptroller may also make an assessment on a person who is not a taxable person, if that person makes a supply of goods and services and represents that VAT was chargeable on the supply. In such circumstances, the assessment may be made as if the person were a taxable person and the amount of VAT represented as chargeable was in fact chargeable on the supply.

Subclause (3) deals with the analogous situation for taxable persons. If a supply that is not taxable is represented to be taxable, or a taxable supply is represented to be

chargeable to VAT at a higher rate than in fact applies, the purchaser may have accepted a higher price than might otherwise have been willing to pay. In such situations, the Comptroller may assess the person as if the supply were in fact taxable as represented.

However, the Comptroller may not make an assessment under subclause (3) if the person actually paid VAT in accordance with the representation, and either the person has applied for a refund under clause 50, or if the Comptroller commenced an audit in which the representation came to light, if the Comptroller is nonetheless satisfied that it is appropriate to deal with the error under clause 50.

An example of the latter situation might be if a local supplier takes the view a supply of services to a non-resident is not zero-rated under the Second Schedule, but the non-resident recipient does not agree and refuses to allow the price of the supply to be increased in order to include an amount for VAT. In such circumstances, if it is established that the supplier's view was incorrect and the supply was in fact zero-rated, the recipient would not have been disadvantaged (since the price was not increased to take account of VAT), and the supplier would not have been advantaged, (since it was in the meantime bearing the VAT out of its profit margin on the supply). It would therefore be acceptable for the Comptroller to refund the amount, and there would be no need to assess the supplier for that amount, nor to treat it as VAT payable under the Act because of subclause (4).

Subclause (4) ensures that the VAT assessed under subclause (2) or (3) is treated as VAT chargeable under the Act. This means that the recipient will be able to claim any input tax credits to which it was entitled on the basis that the VAT was in fact chargeable.

An assessment under either subclause (2) or subclause (3) may be made at any time – subclause (9).

Subclause (5) empowers the Comptroller to amend a VAT assessment by making such alterations or additions to the assessment as he considers necessary. An amended assessment may be made within three years after service of notice of the original assessment, and will be treated in all respects as an assessment: subclause (6).

Subclause (7) permits the Comptroller to estimate the VAT payable by a person for the purposes of making an assessment. In making an estimate, it is not permissible for the Comptroller to simply "pluck a figure out the air". The estimate must be based on the information available to the Comptroller concerning the person's VAT affairs at the time of making the assessment. However, the less information that is available, the more likely it is that the Comptroller will need to make an assessment based on information similar to that on which the Comptroller would make a default assessment for income tax under section 82(3) of the Income Tax Act, 1994.

As noted, subclause (8) establishes a general time limit on the making of assessments or amended assessments. An assessment under subclause (1)(*a*) must be made within six years from the end of the tax period to which the assessment relates, or for an assessment under subclause (1)(*c*) in relation to an erroneously paid refund, within six years from the date the refund was paid. This effectively restricts the three year time limit on amended assessments. For example, if an original assessment is not issued until five years after the relevant date, the amended assessment will have to be made within one year rather than three years. However, these time limits do not apply if the taxable person committed fraud or wilful neglect. In addition, the time limits do not prevent the Comptroller making an assessment to give effect to a decision of the Appeal Commissioners or a Judge. Finally, the six year time limits do not apply to assessments under subclauses (1)(*b*), (2) or (3).

The Comptroller is empowered to collect an amount of VAT assessed by taking recovery action under Part XVI. Nonetheless, the liability for VAT arises automatically under clause 46(2). Neither the lodgement of a VAT return, nor the making of an assessment, is a prerequisite to liability. Moreover, under clause 56, an assessment is conclusive evidence that the tax was payable, so that unless the taxable person successfully challenges the assessment under Part XVII, late payment penalties or other

relevant penalties may apply, and interest will be due under clause 68. Subclause (12) makes it clear that interest under clause 68 will be applied from the date on which the amount should have been paid, (i.e. the original due date for payment of the net amount of VAT for a tax period, the date on which a refund was erroneously paid, or the date on which the VAT would have been due if the supply had been a taxable supply). Thus, the date set for payment under subclause (6)(*b*) does not protect the person from paying interest effectively from the date on which the amount should originally have been paid (or should not have been refunded). Similarly, subclause (12) also allows for the imposition of any of the relevant penalties payable under the Act on the basis that the amount was due from such date.

54. Assessment of recipient

This clause provides for the recovery of unpaid VAT from the recipient of a supply, if the recipient has dishonestly misrepresented facts that have led the supplier to believe that the supply is an exempt or zero-rated supply.

Subclause (1) empowers the Comptroller to assess the recipient of a supply for the VAT, (plus interest and penalty) owing in respect of the supply, if the supply has been treated as an exempt or zero-rated supply as a consequence of any fraudulent action or misrepresentation by the recipient of the supply. The assessment is treated as an assessment of VAT payable by the recipient for all purposes of the Act, irrespective of whether the recipient is a taxable person.

Subclause (2) requires the Comptroller to serve a notice of an assessment raised under subclause (1), on the recipient of the supply. The notice of assessment must specify the matters set out in paragraphs (*a*) to (*d*). Subclause (3) allows the Comptroller to recover all or part of the VAT, interest, or penalty from the supplier, while subclause (4) empowers the supplier to recover any such amount from the recipient. The Comptroller cannot, however, recover VAT on the same taxable supply twice, and therefore, any part of the tax, interest, or penalty recovered from one person is credited against the liability of the other person.

55. Negation of tax benefit from a scheme

This clause provides a general anti-avoidance rule for the VAT regime. Under subclause (2), if the Comptroller is satisfied that a person, (who need not necessarily be the taxable person), entered into a scheme for the sole or dominant purpose of enabling that person (or some other person) to a tax benefit in a connection with the scheme, and the tax benefit was in fact obtained, and in a manner that constitutes an abuse or misuse of the provisions of the Act, the Comptroller may determine the liability of the person who obtained the benefit, as if the scheme had not been entered into or carried out.

The concept of a tax benefit is defined in subclause (1) and includes a range of possible types of tax benefits including reducing or delaying VAT liability, increasing or bringing forward input tax credit entitlements, creating a refund entitlement, causing supplies or imports not to be taxable, or enabling input tax credit entitlements for acquisitions or imports that are essentially intended for use otherwise than in making taxable supplies. The concept of a tax benefit is intended to encompass any form of benefit that may arise as a result of VAT avoidance schemes. The concept of a "scheme" is also defined broadly and is not limited to express legally enforceable agreements.

In determining the person's tax liability as if the scheme had not been entered into or carried out, subclause (3) enables the Comptroller to "rewrite history" by treating particular events as if they did or did not happen and at particular times or involving particular third party actions.

The Comptroller must notify the person whose liability has been determined under subclause (2) by serving notice of the determination on the person, or by issuing an assessment to the person in relation to one or more tax periods. A determination under

this clause is a reviewable decision, as is any assessment issued: see clause 105(1)(*h*) and (*i*).

56. General provisions relating to assessments

The original or a certified copy of an assessment is conclusive evidence that the assessment has been duly made and that the particulars are correct. Thus, the Comptroller may issue recovery proceedings after issuing an assessment and the validity of the assessment and the liability cannot be challenged if the assessment is produced. This means that a person to whom an assessment is issued can challenge the assessment only under the objection and appeal provisions of Part XVII of the Act.

Subclause (2) strengthens subclause (1) by preventing the quashing, voiding, or affecting of an assessment made, issued, or executed under the Act merely because the assessment is not strictly in the correct form, or some minor mistake, defect, or omission is evident, so long as the assessment is in substance and effect in conformity with the Act, and designates the person to whom it is issued according to common understanding.

PART XIII

Administration

57. Powers and duties of the Comptroller and the Comptroller of Customs

The clause sets out some of the general powers and duties of the Comptroller and the Comptroller of Customs in relation to the VAT regime. Under subclause (1), the Comptroller of Inland Revenue is given the general responsibility for administering the Act, while under subclause (2), he or she is given the power to carry out any duties or functions required of him or her under the Act. Subclause (3) allows the Comptroller to issue documents in the nature of VAT rulings, which may be for internal use by taxation officers or for publication. Such documents will outline how the Act will be administered, or may relate to the Comptroller's interpretation of the law. These documents will not be binding for the purposes of the Act.

Under subclause (5), the Comptroller of Customs is given the responsibility for administering and enforcing the VAT imposed on imports.

58. Co-operation and information exchange

Because the administration of the VAT Act, Chapter 333A, will be shared between the Comptroller and the Comptroller of Customs, it is essential to ensure the smooth functioning of communication between the Comptrollers, and the Departments or Divisions of government through which they carry out their functions. Subclauses (1) and (2) require the Comptrollers to provide each other with the information necessary for carrying out their responsibilities under the Act. These obligations override any previously enacted laws that might otherwise have restricted them from sharing information with each other, including obligations of secrecy under pre-existing laws.

Subclause (3) requires them to enter into a Memorandum of Understanding to govern the way in which they will co-operate for the purposes of administering the Act. It lists some of the matters that must be covered in the Memorandum but does not preclude the inclusion of other relevant matters.

Subclause (4) confirms that it is not a breach of any secrecy or confidentiality requirements in other laws, if the Comptroller and Comptroller of Customs exchange information for the purposes of the VAT Act, Chapter 333A.

Subclause (5) confirms that the Memorandum of Understanding need not be restricted to matters relating to VAT. If the Comptrollers deem it appropriate to cover other areas of co-operation, they may do so in the same Memorandum, of Understanding.

59. Secrecy

Subclause (1) requires the Comptroller, the Comptroller of Customs, and any taxation officers carrying out the provision of the Act not to disclose any information, or provide access to information, except in the exercise of powers or the performance of duties under the Act or by order of a court. Subclause (2) allows the disclosure of information for revenue or statistical purposes, or for the purposes of revenue laws, to authorised persons, or to the competent authority of a country with which Grenada has entered into a double tax agreement. Any person receiving such documents may use them only to the extent necessary for the purpose for which they were disclosed. The Comptrollers may nonetheless use documents or information obtained in administering VAT, for the purpose of any other revenue law administered by either of them of by any other agency or Department falling under the portfolio of the Minister of Finance: subclause (4). In addition, information pertaining to a person may be disclosed if the person has given written consent to the disclosure (subclause (5)) and may also make disclosure to the person's authorised representative on authentication of that capacity (subclause (6)). Sections 57 and 58, which require the Comptroller and the Comptroller of Customs to co-operate in the administration of the Act, take precedence over any secrecy obligations imposed under section 59.

60. Power to require security

This clause gives the Comptroller a broad power to require any person to give security for the VAT that is or may become due by the person.

61. Power to seize goods

This clause provides the Comptroller with the power to enter any place and seize goods in respect of which VAT has not or will not be paid. To do so the Comptroller must first get a warrant signed by a Magistrate or Justice of the Peace.

Subclause (1) empowers the Comptroller to enter any place and seize any goods if the Comptroller has reasonable grounds to believe that the VAT that is, or will become, payable in respect of a supply or import of the goods has not been, or will not be paid.

Subclause (2) obliges the Comptroller to store any goods that have been seized in a place approved by the Comptroller for the purpose of such storage.

Subclause (3) obliges the Comptroller to notify the owner, or the person who had custody or control of the goods at the time of seizure, of the seizure of the goods. Such notice must be in writing and served on the relevant person as soon as practicable after the seizure of the goods. The notice must specify the matters set out in paragraph (4)(*a*) to (*c*).

Subclauses (5) and (6) specify how the Comptroller must deal with seized goods. Under subclause (5), the Comptroller may deliver the goods to the person on whom a subclause (3) notice in respect of the goods has been served. This power may be exercised if that person has paid the VAT owing or that will become owing in respect of the supply or import of the goods, or the person makes an arrangement satisfactory to the Comptroller for such payment.

If subclause (5) does not apply, the Comptroller must detain the goods for the period specified in subclause (6), and may then dispose of the goods as provided for. The period of detention in subclause (6) is intended to allow the owner or the person having custody or control immediately before the goods were seized, a reasonable time to claim the goods.

Once the detention period has expired, the Comptroller is permitted to dispose of the goods by sale at public auction, or in such other manner as the Comptroller may determine. The proceeds of sale must be applied under subclause (7) first to the cost of seizing, keeping, and selling the goods, then towards payment of any outstanding VAT liability of the person liable for VAT in respect of the supply or import of the seized goods, then to any other tax liabilities of that person, with the balance of the proceeds, if any, paid to the owner of the goods.

Subclause (8) makes it clear that the Comptroller is permitted to use the debt recovery procedure in Part XVI to collect any excess VAT still owing after the disposal of the seized goods.

62. Delegation

This clause provides the Comptroller with the power to delegate a duty, power or function conferred on him or her under this Act. Therefore, references in this Act to "Comptroller" include a reference to persons to whom the Comptroller has made a relevant delegation.

PART XIV

Miscellaneous

63. Branches and divisions

This clause provides that a taxable activity conducted in branches or divisions is to be treated as a single taxable activity, and there is no separate registration of branches and divisions. The only exception relates to the reverse charge provisions in clause 22.

64. Actions of partners, trustees, and members of unincorporated persons

This clause clarifies how the actions of certain persons should be treated in light of the fact that the Act treats particular types of association as a "person" even though such associations are not legal persons and therefore do not have an existence independent from that of their members. This is relevant in the case of unincorporated bodies of persons, partnerships, and trusts.

Subclause (1) provides that the actions or activities of a person acting in the capacity of an officer of an unincorporated body of persons, is treated as being done by the body of persons and not by the officer. Subclause (2) clarifies what this means by reference to particular actions or activities that may be done by such persons.

65. Currency

This clause provides currency translation rules.

Subclause (1) provides the general rule that all amounts taken into account under the Act are to be expressed in Eastern Caribbean Currency. Subclause (2) provides a currency translation rule applicable if an amount is expressed in a currency other than Eastern Caribbean Currency. In the case of an import, the amount is to be translated to Eastern Caribbean Currency at the exchange rate applicable under the customs laws, for the purposes of computing the customs duty payable in respect of the import.

In any other case, foreign currency is to be translated to Eastern Caribbean Currency at the Eastern Caribbean Central Bank mid-exchange rate, applying between the foreign currency and Eastern Caribbean Currency on the date the amount is taken into account under the Act. In the case of a taxable supply, for example, this would be the time of the supply as determined under clause 16, which is when the VAT invoice must be issued.

66. VAT-inclusive pricing

The clause clarifies that all pricing is deemed to be VAT-inclusive for the purpose of the Act.

Subclause (1) clarifies the effect of clause 19, which defines the value of a supply by taking out the VAT portion from the consideration, (which is effectively the "price" of the supply). Consideration/price is thus considered to be VAT-inclusive. This is the case whether or not the supplier took VAT into account when setting the price. It is the responsibility of suppliers to identify the tax status of their supplies, and to set the price according. Consumers and other recipients of supplies are entitled to rely on the price charged, and cannot be required to pay more if the price of the supply was incorrectly calculated, on the basis that the supply was not taxable. This is, of course, subject to any contrary agreement between the parties that may be binding upon them by mutual agreement.

Subclause (2) clarifies that advertised and quoted prices must be VAT-inclusive. Subclause (3) relaxes this for price tickets on goods (such as items on the shelf at a supermarket) which need not separately state the amount of VAT payable, if a notice stating that prices are inclusive of VAT is prominently displayed at or near the entrance to the premises where the goods are being offered for sale, and at the place where payments are effected. Subclause (4) allows the VAT-exclusive price to be stated in an advertisement or quoted only if the VAT-inclusive price is stated with equal or greater prominence.

Subclause (5) allows the Comptroller to approve another method of displaying prices for taxable supplies for a particular taxable person or for a class of persons. In the case of supplies between taxable persons, such a method may include allowing VAT-exclusive pricing, though it would be anticipated that the Comptroller would approve such a method only if the fact that VAT would be added was made clear between the parties.

67. Regulations

This clause provides the Minister with a general power to make Regulations for the purposes of the Act, and otherwise for the efficient administration of the Act. Subclause (2) lists fairly extensively, some of the situations in which the Minister may wish to make Regulations, but this list is not intended to limit the generality of the general power in subclause (1). Provisions throughout the Act specifying situations where the Minister may wish to make Regulations are also not intended to limit the general power in subclause (1).

In general, Regulations must be affirmed by Parliament (see subclause (2)) but in the case of forms, filing, and other documentation requirements, the Minister may choose either to make Regulations (which must be affirmed by Parliament) or to specify the forms by way of notice in the *Gazette*.

PART XVI

Collection and Recovery

Clause 102 deals with the recovery of VAT. Subclause (1) allows the Comptroller to collect VAT, interest, and penalties under the VAT Act, Chapter 333A, by using the collection and recovery provisions of the Inland Revenue Administration Act. If the Comptroller is unable to recover an amount under the Act, subclause (2) empowers the Minister, on approval by Cabinet, to order the extinguishment of the amount owed as a debt to the Crown. Without this provision, such debts would have had to remain indefinitely on the Government's books, even when there was no possibility of collecting them. Subclause (3) allows the Comptroller to subsequently recover the extinguished amount, if the person who owed the debt has assets that may be attached for that purpose. The recovery of VAT collected on taxable imports by the Comptroller of Customs is not

covered by clause 102 because the provisions of the customs laws apply for that purpose (see clause 48).

Clause 103 deals with the allocation of payments, which must first be used to reduce interest due and payable, then to reduce any penalty due and payable, then to reduce the amount of any VAT due and payable.

Clause 104 deals with recovery from persons leaving Grenada to ensure that any VAT liability is paid.

PART XVII

Objections and Appeals

Clause 105 lists the decisions that are reviewable decisions for the purpose of the Act. Subclause (1) lists the following as reviewable decisions—

- a decision under Part III to register or not register a person under this Act, including a decision in relation to the date of commencement of registration, and a declaration that reasonable grounds exist for believing that a person is required to be registered;
- a decision under clause 15 to cancel or not to cancel a person's registration under this Act, including a decision in relation to the date of cessation of registration;
- a decision under clause 44(3) not to allow a person permission for late lodgement of a return;
- a decision under clause 44(5) to require a person to lodge fuller or additional returns;
- a decision under clause 46(3) on a request for an extension of time to pay, including a decision not to grant the request, to require payment sooner than requested, or to require a taxpayer to comply with other payment arrangements;
- a decision under clause 46(5) not to waive a late lodgement penalty;
- a decision under Part XI not to pay a refund or allow an input tax credit;
- the issue of an assessment under Part XII;
- a decision under the general anti-avoidance provision in clause 55 to make a determination in relation to a taxpayer's liability for an amount;
- a decision under clause 60 to require a person to give security;
- a decision under section 68(5) not to remit all or part of the interest payable under section 68;
- a decision under Part XV to impose an administrative penalty, including a decision as to the amount of the penalty;
- a decision under section 69(5) not to remit a penalty, or a decision to remit the penalty only in part;
- a decision under clause 115 to appoint a person as a representative of a taxable person; and
- a decision under clause 34(11), (12) or (13) to allow or not allow an input tax credit for a registered person, (including a decision relating to the amount of the input tax credit).

In addition, under clause 105(2), if another provision of the Act lists a decision as a reviewable decision, it will be reviewable even though it might not be listed in

subclause (1). This is intended as a catchall provision, in case in making subsequent amendments to the Act, a reviewable decision is created without being added to subclause (1).

Clause 106 allows persons to object to the Comptroller against a reviewable decision of the Comptroller, in which case the objection proceeds in the same way as an objection under the Income Tax Act, Chapter 149. Under clause 107, if the person is still dissatisfied with the decision, the person may appeal the reviewable decision to the Appeal Commissioners established under section 88 of the Income Tax Act 1994, Chapter 149. The Appeal Commissioners will hear appeals in accordance with the law and are able to exercise the same powers they exercise under the Income Tax Act, Chapter 149. In making their decision, they effectively stand in the shoes of the Comptroller. Under clause 108, a person may appeal a decision of the Appeal Commissioners on a matter of law, or a mixed question of fact and law, to the High Court, and may appeal a decision of the High Court to the Court of Appeal.

PART XVIII

Record Keeping and Information Collection

Clause 110 requires a person to keep appropriate records including accounts, documents, and other records, including those specified in clause 43, for seven years after the end of the tax period to which they relate. The records required to be kept under clause 42 include—

(*a*) copies of all VAT invoices, VAT credit notes, and VAT debit notes issued by the person, which must be maintained in chronological order to ensure that they are easily accessible in the event of an audit;

(*b*) all VAT invoices, VAT credit notes, and VAT debit notes received by the person, whether originals or copies;

(*c*) all customs documentation relating to imports and exports of goods by the person; and

(*d*) in relation to all imported services on which the recipient is required to reverse charge VAT to itself under clause 22, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for particular purposes.

Clause 111 empowers the Comptroller to require a person to furnish specified information or to attend and be examined on oath, while clause 112 gives the Comptroller power to enter and search a person's property if he has reasonable grounds to suspect a breach of the Act. In the case of such a search, the owner or lawful occupier of the property must provide all reasonable assistance and facilities to the Comptroller or his authorised officer carrying out the search. Under clause 113, any records kept in a foreign language must be translated at the person's expense if the Comptroller so requests.

Each of these powers is designed to enable the Comptroller to effectively administer the Act and to be able to audit persons for the purpose of verifying their VAT returns or issuing an assessment under the Act.

PART XIX

Taxpayer Identification Number

Clause 114, requires the Comptroller to issue every registered person with a unique taxpayer identification number or TIN for VAT purposes, which may or may not be the same as the number used for other taxation purposes.

PART XX

Representatives

Clause 115 allows the Comptroller to declare an individual to be a representative of a person for the purposes of the Act. This complements the final words of the definition of a representative in clause 2. A person declared to be a representative is in addition to those persons who are defined to be representatives under the remainder of that definition. The clause 2 definition states—

"representative" means, in the case of—

(*a*) an individual under a legal disability – a guardian or manager who receives or is entitled to receive income on behalf of, or for the benefit of, the individual;

(*b*) a company, other than a company in liquidation – the chief executive officer of the company;

(*c*) an unincorporated association or body – a member of the committee of management of the association or body;

(*d*) a government entity – an individual responsible for accounting for the receipt or payment of monies or funds on behalf of the entity;

(*e*) a local authority, council, or similar body – an individual responsible for accounting for the receipt or payment of monies or funds on behalf of the authority, council, or body;

(*f*) a partnership – a partner in the partnership;

(*g*) a trust, including an estate of a deceased person – a trustee of the trust or an executor or administrator of the estate;

(*h*) a foreign government or a political subdivision of a foreign government – an individual responsible for accounting for the receipt or payment of monies or funds in Grenada, on behalf of that government or political subdivision of government;

(*i*) any other body of persons not mentioned above – a person who is responsible for accounting for the receipt or payment of monies or funds on behalf of the body;

(*j*) a non-resident person – a person controlling the person's affairs in Grenada, including a manager of a business of such person in Grenada;

(*k*) any person – a receiver or agent of the person; and

(*l*) any person – a person that the Comptroller has, by notice in writing, declared to be a representative of the person for the purposes of this Act.

Clause 116 sets out the various liabilities and obligations of representatives, while clause 117 sets out the responsibilities of receivers.

A representative of a person is responsible for carrying out the person's duties and obligations under the Act, including payment of any amounts due under the Act: subclause 116(1). Such amount is recoverable from the representative only to the extent that assets of the person are in the possession or control of the representative. Every representative is personally liable for amounts due if, while the amount is owing, the representative alienates, charges, or disposes of money received or accrued in respect of which the amount is payable, or if the amount could legally have been paid out of money or funds in the representative's capacity.

Under clause 117, a receiver must notify the Comptroller within twenty-one days of being appointed to the relevant position or taking possession of the relevant asset of a person liable for VAT. The Comptroller should then notify the receiver of the VAT liability that is or will become payable by the person whose assets are in the hands of the

receiver, and the receiver must set aside that amount out of the proceeds of the sale of the person's assets, or such lesser amount as is agreed with the Comptroller. The receiver may pay the debt in preference to other debts owed by the person. A receiver is personally liable for the amount owing if the receiver fails to comply with these requirements.

Clause 118 deals with the liabilities of company directors.

Clause 119 with the liabilities of officers of unincorporated bodies.

Clause 120 ensures the continuity of partnerships and unincorporated associations on changes in membership.

Clause 121 deals with the effect of insolvency or sales of property of a taxable person by a mortgagee in possession.

Clause 122 ensures that a person acting as a trustee of more than one trust is a separate person in relation to each of those capacities.

PART XXI

Forms and Notices

Clause 123 allows the Comptroller to prescribe forms, notices, and other documents by publishing them in the *Gazette*. The forms must also be made available at the Inland Revenue Department, and may also be made available electronically on an official Government website or at Post Offices in hard copy.

Clause 124 specifies the method required for serving notices under the Act, while clause 125 confirms the validity of documents issued, despite want of form or minor mistakes, defects, or omissions.

PART XXII

Clause 126 clarifies what forms part of the Act and requires the Act to be interpreted in accordance with its purpose wherever possible. The clause also enables reference to be made to certain extrinsic materials such as this Explanatory Memorandum, which may make the purpose of the Act more evident.

THE SCHEDULES

The schedules list those supplies or imports that are treated as zero-rated or exempt for VAT purposes. A zero-rated supply is one that is taxable but at the rate of zero per cent. Input tax credits are available for acquisitions or imports that relate to making such supplies (see clause 34), which means that the supplies are in reality, VAT-free. In contrast, exempt supplies are not taxable supplies. This means that no tax is charged on the supplies, and no input tax credits are available for acquisitions or imports that relate to making such supplies (see clause 34). This means that such supplies are in effect partially taxed or "input-taxed" because the tax borne on inputs to these supplies will be passed on as part of the price of the exempt supply.

First and Second Schedules give effect to the destination principle, by ensuring that exports and other supplies that will not be consumed in Grenada are zero-rated. The Third Schedule deals with other supplies that are zero-rated for social policy reasons or, in the case of fuel, because they are intended to be taxed under the excise laws rather than the VAT law.

Fourth Schedule deals with exempt supplies for a range of reasons, including the difficulty of taxing particular types of supply under a value added type transaction tax, similar social policy objectives to those underlying the zero-ratings in the Third Schedule,

and in some cases, certain aspects of the destination principle for supplies consumed outside Grenada.

Fifth Schedule deals with exempt imports, some of which mirror the exempt supplies, while others relate to imports that are not intended for consumption in Grenada.

FIRST AND SECOND SCHEDULES

Exports

In common with all value added tax regimes, the VAT regime uses proxies or markers for determining where a supply will be consumed, or is likely to be consumed, rather than requiring a supplier to determine where, in fact, the supply is consumed. There are sound reasons for this approach—

- It relieves the supplier of the burden of having to identify the recipient's intention in relation to the use of the thing supplied.
- It prevents the supplier from being disadvantaged if the recipient does not actually consume the supply where it said that it would. In such situations, if the tax treatment depended on the actual place of consumption, the supplier might have to pay the VAT liability out of its profits, if it is unable to claim an amount from the recipient to cover that liability, which has arisen because of the recipient's choice of place of consumption.
- The tax status of a supply needs to be determined at the time of supply, because VAT is accounted for at that point in time, which will generally be before any consumption has taken place. It would be impractical to require the supplier to monitor the recipient's use of the supply, and make adjustments to its VAT liability based on the actual place where the recipient consumes the supply.
- In the case of goods or services with a long effective life, which can be used over a period of time, it allows the VAT treatment to be settled on the basis of presumptions about where the thing supplied will be used, without having to monitor the place of use indefinitely.

For these, and other reasons, the VAT law uses proxies to predict where a person is most likely to consume something. In general the VAT law is not concerned, if it turns out that the consumption does not actually take place at the predicted location. The use of these proxies can be seen in both the place of supply rules and the zero-rating rules in the First and Second Schedules.

The first proxies appear in the place of supply rules in clause 18. The initial proxy is the residence of the supplier. If the supplier is resident in Grenada, the initial presumption is that the recipient will consume the supply in Grenada. Thus, clause 18(1) provides that the place of supply is Grenada. In contrast, if the supplier is a non-resident, it is initially presumed that the supply will be consumed outside Grenada and clause 18(2) provides that the place of supply is not in Grenada. Underlying the use of the place of residence of the supplier as the primary proxy for place of consumption, is the presumption that consumers mostly purchase goods and services from local suppliers. Even in the modern global economy, this holds true for many types of supply. However, because it is not always true, clause 18 uses an alternative proxy, which is given precedence over the residency of the supplier. The second proxy is the location of the supply, i.e. the place where goods are delivered or made available to the recipient of the supply, or the place where services are performed. Clause 18(1)(*b*) embodies this proxy for non-resident suppliers, while items 6 and 7 of the First Schedule and item 8 of the Second Schedule embody this proxy for a resident supplier.

While in the case of a registered recipient, clause 18(3) then overrides the second set of proxies, unless the supplier and recipient agree to treat the supply as taking place in Grenada, this over-riding is more a matter of practicality than an indication of where the supply should be deemed to be consumed. If the recipient is registered, there is no particular point in taxing the supply if the recipient could simply claim back the VAT through input tax credits. If the recipient would not be entitled to input tax credits, it is easier to impose VAT through the reverse charge mechanism in clause 22.

In the case of telecommunications supplies, the proxy used for place of consumption is the place where a supply is "initiated" (see clauses 18(7) and (8) and item 12 in the Second Schedule).

The zero-rating rules take the use of proxies further to zero-rate supplies that are treated as having been made in Grenada, yet which will not be consumed in Grenada. In the case of exported goods, if the place where the goods are delivered in the process of the supply is outside Grenada, then the place where the goods will be consumed is presumed to be outside Grenada. In the case of services, a more complex set of proxies is used, as discussed in the commentary on the Second Schedule.

First Schedule

Zero-rated Supplies

Exports of goods and other supplies of goods for consumption outside Grenada

Under the destination principle, only those supplies that are consumed in Grenada should be subject to VAT. This means not only that no VAT should be charged on transactions where the thing supplied will be consumed outside Grenada, but also that any VAT charged on supplies made earlier in the chain of production and distribution should be refunded. Thus, such transactions should be zero-rated rather than exempt to ensure that there is effectively no VAT burden on foreign consumption.

The First Schedule deals with zero-rating of exports, and also covers certain supplies made by resident suppliers where it is not strictly correct to say that the supplies are exported, because they are in fact made wholly outside Grenada, but would be treated as being made in Grenada because the supplier is a resident: see clause 18(1)(*a*).

Items 1 and 2 deal with supplies of goods that are exported. Such supplies will be zero-rated if *the supplier* has entered, or will enter, the goods for export under the customs laws and the goods have been or will be exported, or if the Comptroller is satisfied that the goods have been or will be exported from Grenada by the supplier. Under the time of supply rules in clause 17, a supplier may be required to determine the tax status of a supply (i.e. whether the supply is zero-rated, exempt, or fully taxable) for the purposes of clause 34 before the goods have actually been exported. The wording of items 1 and 2 is such, that the supply will nonetheless be zero-rated, if the intention is that the goods to be exported will be supplied. However, if the goods are not in fact exported by the supplier, and if no other provision makes the supply zero-rated, there will be a VAT adjustment event, and clause 19 will apply to require the supplier to pay an amount of VAT in relation to the supply. The original price will be considered to be VAT-inclusive, and if the supplier's agreement with the recipient does not allow it to increase its price to include an additional amount to cover this VAT liability (which additional amount would itself give rise to a VAT adjustment event), the supplier may be out of pocket to the extent of 15/115ths of the price of the supply.

Item 3 allows a supply to be treated as a zero-rated export even if the supplier delivers the goods in Grenada, if the recipient of the supply is a non-resident person who is not a taxable person (i.e. is neither registered nor required to apply for registration), and the recipient exports the goods without altering or using them in any way between the time

they are delivered or made available to the recipient and the time they are exported, except to the extent, if any, necessary to prepare them for export. The supply is not zero-rated unless, within three months of the date of the supply, the supplier holds sufficient documentary evidence to establish that the recipient or agent entered the goods for export under the customs laws. As with supplies that are zero-rated under items 1 or 2, a supply that is zero-rated, under item 3 could subsequently cease to be zero-rated, if the recipient does not export the goods or does not provide the supplier with the necessary documentation within the requisite time frame. Item 3 is intended to deal with transactions where the terms of contract require title to pass prior to the point where the goods are exported, but where the intention remains that the goods will not be exported. It does not apply where the recipient is a resident person, nor where the non-resident is a taxable person. In the latter case, the recipient can claim input tax credits if it is entitled to do so; in the former case, the risk of VAT evasion from extending the provision to local persons is considered too great.

Item 4 allows goods sold duty-free to a tourist by a licensed duty-free vendor to be zero-rated if the supplier holds documentary evidence, collected at the time of the supply, showing that the goods are to be removed from Grenada without being effectively used or enjoyed in Grenada. Such evidence might include travel documents showing that the person was to depart from the country on an international voyage, and a photocopy of the person's passport showing an entry certificate for Grenada that clearly indicates the person is in Grenada as a tourist with no capacity to work here. It is anticipated that the requirements for satisfying item 4 will closely correlate with the requirements for duty-free treatment under customs law. A supply to a locally resident person cannot be zero-rated under item 4 because such a person would not fall within the ordinary meaning of the word "tourist".

Item 5 deals with goods that are supplied or consumed in the process of providing repair services that are zero-rated under items 3, 4, 5, or 13 in paragraph (1) of the Second Schedule. Those items deal with goods that are temporarily in Grenada for one reason or another, including goods specifically sent here for the purpose of being serviced and then re-exported. In such cases, the location of the goods supplied (as dealt with under this item), and of the services (as dealt with under the Second Schedule) at the time of the supply, is not an appropriate proxy for the place of consumption, because the goods and services will be consumed at the place where the goods being serviced will be consumed, which is outside Grenada.

Items 6 and 7 deal with supplies that will clearly be consumed outside Grenada, because the goods are at all times located outside Grenada and will not be imported into Grenada by the supplier (item 6), or because the supply is of real property relating to land located outside Grenada (item 7). If such supplies were made by a non-resident person, they would not be taxable supplies in any case, (see clause 18(2)) but where such supplies are made by a resident person, they would be treated as supplies made in Grenada (see clause 18(1)(*a*)). Items 6 and 7 thus zero-rate the supplies to ensure that they are taxed consistently with supplies made outside Grenada by non-resident suppliers. A resident supplier making such supplies and incurring related costs in Grenada, will be able to claim input tax credits for VAT incurred on acquisitions and imports that relate to making those supplies.

Paragraph (2) ensures that a supply cannot be zero-rated under an item in paragraph (1), if the supplier re-imports the goods into Grenada. If the supplier always intends to do so, the supply will not be zero-rated in the first place. If the supplier later imports the goods without having initially intended to do so, a VAT adjustment event will occur and clause 20 will apply.

Paragraph (3) ensures that where a resident makes a progressive or periodic supply by leasing goods and each part of the supply is treated as a separate supply, each separate supply can be zero-rated if the goods are outside Grenada throughout the relevant period.

Second Schedule

Zero-rated Supplies

Exported services and other supplies of services for consumption outside Grenada

Second Schedule deals with services that are considered to be "exported," in the sense that they will be consumed outside Grenada, even though clearly services cannot be "exported" *per se*, since they are intangible and generally do not physically cross borders.

The first group of zero-rated services (items 1 to 7) are those that are connected with "exported" goods, including goods that are always outside Grenada.

Item 1 zero-rates a supply of services directly in connection with land, or improvements to land, located outside Grenada. In this case, the proxy of the location of the land is used because land is presumed to be consumed where it is located, and any services closely connected with the land will most likely also be consumed at the place where the land is located. The connection required between the services and the land must be "direct" before the supply can be zero-rated. Examples of directly connected services might include engineering or architectural services directly related to an identified piece of land, surveying services, maintenance services, security services, gardening, and other services so closely connected with the land itself that it can be said that the services will be consumed where the land is located. In contrast, an architectural design not made for a specific piece of land, (for example, a general design for a particular type of house that could be erected anywhere with suitable terrain), will not be considered to be directly in connection with land.

Item 2 is a similar provision for services directly in connection with goods located outside Grenada at the time the services are performed. (Note that item 1 does not include this restriction regarding the time of supply because land does not move from one country to another). Item 2 uses the location of goods as a proxy for determining where services closely connected with the goods will be consumed, and as with item 1, the connection must be sufficiently direct to warrant zero-rating. Services physically performed on goods will be covered, as will insurance for goods while they are located outside Grenada, testing services, and security services. Transport is not covered by item 2, since there is a more specific provision dealing with transport.

Items 3 and 4 deal with services directly connected with goods or containers temporarily located in Grenada. Because the consumption of these goods will not take place in Grenada, the place of consumption of services directly connected with such goods is determined by using the location of the goods as a proxy for place of consumption. The level of connection required is the same as for items 1 and 2. Similarly, item 5 deals with certain repairs and maintenance ("RandM") services for goods temporarily located in Grenada. Note also that any goods affixed to the goods being repaired, or consumed in the process of repair, will be zero-rated under item 5 of the First Schedule.

Item 6 deals with services directly in connection with exports of goods that are zero-rated under the specified items in the First Schedule, or supplies by residents that are zero-rated, because in reality they take place outside Grenada. Item 6 effectively uses as a proxy for the place of consumption of these services, the same proxy that is used for the supplies to which the services are directly connected. This means that there should be a real and close connection between the services zero-rated under item 6 and those to which they relate. For example, the services of "arranging for" for such supplies or insuring the supplies or the things supplied.

Item 7 is in similar terms but is limited to services supplied to non-residents. This is because there is a presumption that the supplies to which the services are related will be consumed outside Grenada, but this presumption may not hold true if the recipient is a resident.

The second group of services that are zero-rated under the Second Schedule are those that are themselves considered to be consumed outside Grenada.

Item 8 deals with services that are physically performed outside Grenada and are of a kind that are effectively used or enjoyed at the time and place where they are performed. Examples include entertainment services such as: music or dramatic performances, hairdressing services, or other services physically performed on the person receiving the services, the provision of catering services (which will also include supplies of goods), and the performance of ceremonies such as funerals or weddings.

Item 9 deals with services provided to a non-resident who is outside Grenada at the time the services are performed (subitem 9(*d*)), or provided to any person who is outside Grenada if the services are effectively used or enjoyed outside Grenada (item 9(*e*)). This item uses both the residence of the recipient and the person's location at the time of supply as proxies for determining that the place of consumption is outside Grenada. If the person to whom the services are provided is a resident, it also requires that actual place of consumption, (the place of effective use or enjoyment), be considered. However, these proxies are over-ridden if the services are directly in connection with land in Grenada, or goods that are in Grenada at the time of supply, or a restraint of trade or similar supply if that supply will be effectively used or enjoyed in Grenada. An example of the latter type of supply would be a promise not to compete in business in Grenada. In these cases, the supply will not be zero-rated.

A service may be supplied to one person (the person contracting for the supply to be made), but provided to another person, (the person who will use the services). This may arise where there is a third party consideration, e.g. where parents pay for a supply to be made to a child, (or a head company provides for a supply to be made to its subsidiary). It may also arise in subcontracting situations, for example, where A has contracted B to do provide services to B, but A subcontracts C to actually perform the services. In this case, C may provide the services directly to B, even though it is supplying the services to A. Item 9 focuses on the person to whom the supply will be supplied, but paragraph (3) requires a consideration also of the person to whom the services are provided (see below).

Item 10 zero-rates services consisting of intellectual property rights to be used outside Grenada, restraints of trade and similar obligations or rights for use outside Grenada, and services incidental to those referred to in item 8, (those consumed at the time and place they are performed). In the first two cases, the place where the right or obligation can be used is used as the proxy for place of consumption.

Items 11 and 12 are specific to telecommunications services. Item 11 zero-rates supplies by a resident telecommunications supplier to a non-resident telecommunications supplier, but only to the extent that they are for the use or consumption of a person outside Grenada at the time the services are performed. This is aimed at telecommunication interconnect supplies, including terminating and transmitting a call for a non-resident telecommunication supplier. Item 12 deals with telecommunications services provided to other persons. Under clause 18, a telecommunications supply by a resident supplier, and in some cases by a non-resident supplier who performs the services in Grenada, would be seen as made in Grenada. Item 12 ensures that this will not be the case if the service is initiated outside Grenada. Subclause 18(8) sets out the rules for determining where a telecommunications service is initiated.

Item 13 is a specific provision aimed at situations where warranty payments from non-resident manufacturers to local repairers may create double taxation issues. The price charged for goods imported (and therefore the value on which VAT is calculated when they are imported), usually includes an amount the manufacturer expects will be sufficient to cover all repairs under warranties. When a local person repairs goods under warranty, the local person supplies parts and labour to the non-resident manufacturer, but delivers them to the local car-owner. The repairs are provided (by the non-resident manufacturer through the agency of the local repairer) to the customer for no consideration. The reimbursement from the manufacturer to the repairer should be zero-

rated because the price of warranty repairs has already been factored into the price of the goods. Taxing the payments to the repairer for doing the repairs would result in double tax. As well as item 13, which zero-rates the repair services, the goods or consumables used in the repairs will be zero-rated under item 5 in the First Schedule.

Item 14 zero-rates international transport. "International transport" is defined in clause 2. This is in keeping with international practice, which favours the zero-rating of international transport because the transport is consumed largely outside the local jurisdiction. Some Caribbean countries exempt international transport in preference to zero-rating. Where the international transport of goods is zero-rated, it will usually be included in the value of an import of the goods for VAT purposes. Where the goods are transported to Grenada, this means that the international transport will effectively be subject to VAT. Where the goods are transported from Grenada to another country, any VAT applied will be applied in the country of destination, not in the country of origin (Grenada). Where passengers are transported, the zero-rating of international transport means that such services are not subject to VAT.

Paragraphs (*2*) *and* (*3*) limit the zero-rating in items 9, 11, or 12. Under paragraph (2), if the supply is of a right or option to receive goods or services in Grenada, and those goods or services would not be zero-rated if supplied in Grenada, then the supply cannot be zero-rated under the listed items. It may be possible for the supply to be zero-rated under another item because the items overlap and are not mutually exclusive. Under paragraph (3), a supply of services will not be zero-rated if the services are supplied under an agreement entered into, (whether directly or indirectly), with a non-resident, if the performance of the services is (or it is reasonably foreseeable at the time of supply, that they will be) received in Grenada by another person. It must also be reasonably foreseeable that that person will not be a taxable person when it receives the performance of the services. In other words, this limitation is only relevant to supplies that will constitute consumption or quasi-consumption when provided to the other entity in Grenada. If the person receiving the services in Grenada is a taxable person, and if the services are provided as part of a tri-partite arrangement, it may be required to reverse charge the services under clause 22. For example, if Resident A supplies services to non-resident B who supplies the services to Resident C, where A provides the services directly to C, the supply by A may be zero-rated, the supply by B will not be a taxable supply because under clause 18(3) it will be considered not to be made in Grenada (unless the supplier and recipient have agreed otherwise in writing), in which case clause 22 may operate to require the recipient to reverse charge the supply.

Finally, it should be noted that paragraphs (2) and (3) also overlap, both being applicable where the services supplied consist of the right or option to acquire goods or other services. In the case of paragraph (3), the final words of the paragraph clarify that in such cases the performance of the services to be considered is the supply of goods or services that will be made on exercise of the right or option.

Third Schedule

Zero-rated Supplies Other

Whereas Second and Third Schedules deal with zero-rating to give effect to the destination principle, the Third Schedule deals with things that are zero-rated for social policy reasons. Most such supplies are dealt with under the Fourth and Fifth Schedules (exempt supplies) but a few key items that would unfairly impact on the poor are zero-rated instead. These consist of certain basic necessities, including prescribed foods for human consumption (item 1) and medicines (item 2). The details of which supplies are zero-rated under this category will be prescribed in the Regulations.

Item 3 zero-rates a supply of water up to a set limit, while item 4 zero-rates electricity up to a set limit. In both cases, the water or electricity must be supplied to residential

premises for private or domestic use. However, for water, there is an additional, unlimited zero-rating, if the water is used in agriculture or commercial fishing.

Item 5 zero-rates domestic postal services. International postal services are zero-rated under item 14 in paragraph (1) of the Second Schedule. To save the complication of having the post office needing to issue different stamps for domestic and international mail, and having to account for tax on only some of its supplies, domestic postal services are also zero-rated.

Item 6 zero-rates petrol, diesel, and other petroleum oils that are taxed under the Petrol Tax Act, 2005, Chapter 238A.

Fourth Schedule

Exempt Supplies

Fourth Schedule list supplies that are to be treated as exempt supplies. There are a range of reasons for such exemptions, including; meeting social policy objectives, partially complying with the destination principle, or dealing with supplies that are difficult to tax under a value added type tax.

Item 1 exempts the listed financial services, but not where the services are provided for an explicit fee. The main reasons for exempting financial services under a value added type tax such as the Value Added Tax, are discussed briefly below.

Financial services are considered difficult to tax in a transaction type value added tax, because the focus on supplier, recipient, and the use of the credit-invoice method presumes that the value added by the supplier can be identified by focussing on the subject transaction. With financial services, this is not the case, because the profit earned on many financial services is earned through implicit rather than explicit fees. Such financial services are intermediation services, in which the supplier is bringing together persons with reciprocal needs (for example, persons with money to lend and persons wishing to borrow money). This can be illustrated as follows—

Diagram 4.1 Financial Intermediation

From a VAT perspective, this creates two problems—

- a measurement problem, because with implicit fees it is difficult to identify the value added on a transaction by transaction basis, and because separating interest from inflation and from underlying flow of financial capital is difficult; and
- an allocation problem, because allocating the value added to particular recipients of supplies so as to be able to issue an accurate VAT invoice is difficult.

Where an explicit fee is charged, these problems need not be of concern, which is why item 1 only exempts financial services to the extent that the fee is not an explicit fee.

The main types of intermediation that are covered by the exemption for financial services in item 1 are—

- deposit-taking intermediation between suppliers and users of financial capital;
- risk intermediation between high risk takers and low risk takers, such as hedging but not including gambling, which is taxed rather than exempt under the VAT law;
- insurance intermediation, involving the pooling risks of risks to spread exposure to the risk; and

- brokerage services – the connecting of buyers and sellers of commodities, currencies, and debt or equity securities.

Item 2 exempts a supply of goods that were used solely in connection with making exempt supplies, and also a supply of a passenger vehicle for which the supplier was denied input tax credits under section 33. No input tax credits would have been allowed for the acquisition or importation of such goods, which means that taxing their on-supply would result in over-taxation. Exemption removes this over-taxation effect.

Item 3 exempts supplies of vacant land and of land to the extent that it is to be used for agricultural purposes. The words "to the extent that" require apportionment. Thus, if land on a single freehold title is sold or leased and part of the land is agricultural, but another part has a commercial building or hotel located on it, only that part of the land to be used for agricultural purposes will be exempt. If the land is both agricultural and residential, since both are exempt (see items 4 and 5), the whole supply may be exempt.

Items 4 and 5 deal with residential property sales, leases, licences, etc. Residential property and accommodation are generally exempted under value added type taxes in order to provide equality of treatment between home owners and renters. In addition, because so much residential property tends to be in the hands of persons who are not carrying on an enterprise, it is considered inequitable to tax some residential property and not others. Residential premises is defined in clause 2 as follows: "land or a building that is occupied or capable of being occupied as a residence, but a supply of hotel or holiday accommodation is not a supply of residential premises." Thus, commercial property, including holiday or hotel accommodation (which is also defined in clause 2), is taxable.

Items 6 and 7 exempt supplies of accommodation in hotel or holiday accommodation and related types of accommodation, if the person occupying the accommodation does so for more than forty-five days. This treatment reflects that some persons live in hotel or holiday accommodation on the same terms as those renting long-term accommodation. However, the first forty-five days of occupation are taxable at the reduced rate (ten per cent applicable to hotel and holiday accommodation. After the first forty-five days, the supply becomes exempt unless, under paragraph (2), the supplier elects to continue treating it as taxable at the ten per cent rate under clause 8(3)(*b*). Continuing to tax is an alternative to exemption, which allows a supplier to avoid having to apportion its input tax credits between taxable and other supplies (including exempt supplies) under clause 33. Many hotels will find it easier simply to continue to tax after forty-five days than to treat the supply as exempt, (which itself has the effect of partially taxing the supply). This also has the advantage that taxable persons who acquire long-term accommodation in hotel or holiday accommodation for the purposes of their taxable activity, may be able to claim input tax credits for the accommodation, if it has been treated as taxable at the lower rate rather than exempt. On the other hand, if most of the clientele of a particular hotel are long-term occupants, the hotelier may prefer to choose exemption.

Item 8 deals with supplies between a condominium body corporate and the owner of a condominium. The fees charged for upkeep of the property are treated as exempt so as to provide parity of treatment between the owners of freehold property and those of condominiums. The provision extends to other similar forms of holding units or apartments, such as through shares in a company or units in a unit trust, where the shares or units entitle the holder to occupation of a particular apartment.

Item 9 exempts education services, while item 10 exempts medical and other related services. Item 11 exempts nursing home and similar services, and item 12 exempts veterinary services. Item 13 exempts a supply of goods or services by an approved non-profit body, if the supply is made for a prescribed purpose. Item 14 exempts gambling provided by a non-profit organisation approved by the Minister, while item 15 exempts certain lottery tickets. In each case, these items provide exemption for social policy reasons.

Item 16 exempts domestic transport by taxi, bus, or ferry within Grenada, but not chartered journeys or tours of a kind normally provided to tourists and other visitors.

Item 18 exempts unprocessed agricultural or fishing products if the supplier is the producer of the goods, while item 19 exempts a supply of agricultural or fishing inputs if they would be exempt on import. Together, these provisions reflect an intention to take agriculture outside the VAT regime by exempting many of the inputs and outputs, but not once processing has taken place.

Item 20 exempts prescribed inputs to agriculture and fishing.

Item 21 exempts the supply to a non-resident who is not a taxable person of services provided to ships or aircraft engaged in international transport. This reflects the fact that international transport is zero-rated.

Paragraph 3 ensures that where a supply would be both zero-rated and exempt, zero-rating will normally prevail. The only exemption is in the case of inputs to international transport, for which exemption prevails over zero-rating. This limitation is included for administrative efficiency.

Fifth Schedule

Exempt Imports

Fifth Schedule lists the exempt imports.

Item 1 ensures that imports of goods are exempt if a supply of those goods would be exempt. This is in keeping with the non-discrimination in VAT between consumption from local or foreign sources.

Item 2 ensures that gifts given to schools, hospitals, or approved non-profit bodies are not taxed when imported. This does not apply if the imports are not given as gifts, nor it they are given for the purpose or re-sale. Similarly, a gift to the State will be exempt from VAT when imported, if the Minister of Finance notifies the Comptroller of Customs that the gift should not be subject to VAT.

Item 3 exempts certain imports that would also be subject to customs duty exemptions. This aligns the treatment for customs and VAT.

Under item 4, goods that are exported and then re-imported without being changed, or changing ownership, are exempt from VAT when re-imported, so long at they were not zero-rated when exported, and provided also that they were not exported before VAT commenced.

Item 5 exempts goods imported only for transhipment to another country.

Item 6 exempts certain gifts to Grenada.

Item 7 exempts certain donated clothing (in addition to that exempt under item 3(*g*). Similarly, item 14 exempts an import of goods from VAT if the Comptroller is satisfied that VAT was previously paid on the goods.

Value Added Tax Regulations

SRO 41 of 2009

ARRANGEMENT OF REGULATIONS

PART I

CHAPTER 333A
VALUE ADDED TAX REGULATIONS

The Minister in Accordance with the powers Conferred on him by Section 67 of the value Added Tax Act, No. 23 of 2009, makes the following Regulations.

[SRO 41 of 2009.]

[11*th January*, 2010.]

PART I

Preliminary

1. Citation and commencement

(1) These Regulations may be cited as the Value Added Tax Regulations, 2009

(2) These Regulations come into force on such day as the Minister may appoint, and different dates may be appointed for different provisions of the Regulations or for different purposes of the same provision.

2. Definitions

In these Regulations, unless the context otherwise requires—

"Act" means the Value Added Tax Act, Chapter 333A;

"intermediary" in relation to a face value voucher, means a person, whether or not acting as agent, who acquires the voucher in carrying on a taxable activity, and who will not use the voucher to acquire goods or services, but will supply it to a third person, including a director, employee, or member of the person;

"redeem" and "redemption", when used in relation to a voucher, means the use of the voucher to pay for a supply of goods or services;

"standard-rate" and its derivatives, means, in relation to a taxable supply, the rate specified in section 8(3)(*d*) of the Act; and

"VAT commencement date" means the date on which the Act commences, as specified in section 1(2) of the Act.

PART II

Imposition of Value Added Tax

3. Mobile Telecommunications Services

For the purposes of section 8(3)(*d*) of the Act, Value Added Tax is levied on mobile telecommunication services at the rate of 20% on the supply of a voucher as defined in the VAT Act.

4. Dive Activity

(1) The 10 per cent tax rate under section 8(3)(*c*) of the Act, applicable to a taxable supply of dive activity is limited to the charge for that service.

(2) Subject to subsection (1), if the dive activity is included as part of a tour or dive package, the 10 per cent rate applies only to the charge applicable to the dive activity, but in no case more than the charge imposed by the service provider if it is provided separate from a tour or dive package.

(3) To the extent provided in section 8(3)(*c*), the dive activity portion of a dive package constitutes the following—

(*a*) supply of dive equipment to an individual by a dive establishment which is offering the diving instruction during the dive activity;

(*b*) accompaniment by a diving instructor with the individual during the dive activity.

(4) For the avoidance of doubt, dive activity portion of a dive package does not include the following—

(*a*) supply of dive equipment to an individual not using the facilities of the particular dive establishment;

(*b*) tuition fee for dive activity unless it meets the requirements provided for in item 9 of the Fourth Schedule of the Act;

(*c*) supply of meals and refreshment; and

(*d*) supply of goods by dive shops.

PART III

Supplies

5. Single and Multiple Supplies

(1) Where two or more things, whether goods, services, or both are combined to form the subject matter of a single supply, and the VAT treatment of each would be different if they were not combined, whether the supply should be treated as a single supply or as two or more separate supplies, is determined as follows—

(*a*) if—

(i) one part of the supply the subsidiary part is ancillary or incidental to another part of the supply the dominant part, and

(ii) looked at objectively, the subsidiary part does not constitute an object in itself for the recipient, but is merely a means of better enjoying the dominant part, or is something necessarily supplied as an integral part of the dominant part;

then the subsidiary part is treated as part of the dominant part, and has the same VAT treatment as the dominant part.

(*b*) paragraph (*a*) may, if appropriate, be applied in iterative steps in respect of each thing supplied, so as to determine the true character of the supply and the extent, if any, to which it should be treated as two or more separate supplies.

(2) If a single supply consists of more than one part, but the parts could not be separately supplied, subregulation (1) applies as if the parts were capable of being separately supplied.

(3) For the purpose of working out the value of each supply, the consideration for a single supply that is treated as two or more separate supplies because of subregulation (1) or (2), should be apportioned between each separate supply in such a way, as to provide a true reflection of the value to the recipient of each such supply.

(4) The way in which the supplier and recipient agreed to apportion the consideration may be considered in determining the value of a supply in accordance with subregulation (3), but shall not be taken to be conclusive.

6. Compulsory acquisitions of land

(1) This regulation applies if—

(*a*) land is compulsorily acquired from a taxable person, in accordance with the Land Acquisitions Act, Cap 159 of the 1990 Laws of Grenada;

(*b*) compensation is paid to that person in relation to the acquisition; and

(*c*) a sale of that land by the person would have been a taxable supply, if it had been made on the day on which the land was compulsorily acquired.

(2) Where this regulation applies—

(*a*) the taxable person is deemed to make a taxable supply of the land;

(*b*) the compensation paid is deemed to be the consideration for that land;

(*c*) the time of supply is deemed to be the day on which the compensation is paid; and

(*d*) if more than one compensation payment is made, VAT is accounted for to the extent of each payment, as if each payment related to a separate supply.

(3) For the purpose of subregulation (1)(*c*), land is treated as having been compulsorily acquired on the day on which—

(*a*) if the compulsory acquisition results in the title to the land being vested in a person other than the taxable person, the day on which the title vests; or

(*b*) if the compulsory acquisition involves possession of the land being given to a person, other than the taxable person, the day on which that possession is given.

PART IV

VAT Documentation Requirements

7. VAT invoices, VAT credit notes, VAT debit notes, and sales receipts

For the purposes of Part IX of the Act, if a person is required to issue a particular document being a VAT invoice, VAT credit note, VAT debit note, or sales receipt, the document shall contain the information specified in the First Schedule for that type of document.

PART V

VAT-Inclusive Pricing

8. Pricing methods for supplies

(1) This regulation applies for the purpose of section 66 of the Act.

(2) For the purposes of this regulation, the treatment of taxable supplies is illustrated, using the example of a supply for a price of $115, which is taxed at the standard rate, such that the value of the supply as calculated under section 19(2) of the Act is $100 and the VAT payable in accordance with section 8(2) and 8(3)(*e*) of the Act, is $15.

(3) Where a registered person offers goods for retail sale—

(*a*) the person shall comply with the pricing methods set out in this regulation; and

(*b*) if some of the goods are taxable at the standard rate, while others are zero-rated, not taxable, or only partly taxable, the person shall clearly indicate to customers how much tax is included in the price of the goods.

(4) For the purposes of subregulation (3)—

(*a*) if it is feasible, where goods are taxed at the standard rate, the person shall indicate on price tags, tickets, or other price marks, that the price is VAT-inclusive, for example by disclosing the price of an item as: "$115 (including $15 VAT)" or "$115 (including VAT)";

(*b*) the following pricing methods are not acceptable for price tags, tickets, price marks, or other pricing information, nor for the purposes of advertising prices—

(i) a statement of the VAT-exclusive price alone, e.g. "$100",

(ii) a statement of the VAT-exclusive price and a statement that the price is VAT-exclusive, e.g. "$100 (excluding VAT)", or

(iii) a statement of the VAT-exclusive price and a statement that VAT will be added, even if the amount of VAT or the rate of VAT is specified, e.g. "$100 + VAT", "$100 + $15 VAT", or "$100 + 15% VAT".

(5) Despite anything else in this regulation, if a supply includes a number of items bundled together for a single price, some of which are taxable at the standard rate, and some of which are not, any price tag, ticket, or other price mark, or any advertisement, letter, quote or other document notifying the price for which the supply is offered, shall state the amount of VAT included in the price.

(6) A registered person who, during the first month after the VAT commencement date, does not comply with subregulation (3) or (5) and item 9 of the Sixth Schedule shall not be liable for a fixed penalty, or prosecuted for an offence under section 83 and item 9 of Schedule VI of the Act, in relation to the non-compliance, during that first month.

PART VI

Objections and Appeals

9. Reviewable decisions

A decision of the Comptroller to do or not do something under these Regulations, is a reviewable decision for the purposes of section 105 of the Act.

PART VII

Input Tax and Refunds

10. Restrictions on refunds where no taxable supplies made

Where a registered person has made no taxable supplies in a tax period, nor in any previous tax period, any refund payable to the person under Part XI of the Act is subject to such conditions as the Comptroller thinks fit to impose, including conditions as to the repayment in specified circumstances.

Grenada Investment Promotion Act

11. Refunds for projects approved under the Grenada Investment Promotion Act

(1) Where a taxable person—

(*a*) carries on a taxable activity involving a project approved under the Grenada Investment Promotion Act; and

(*b*) has negative net amounts under section 32 of the Act, in respect of the project for tax periods occurring during the development phase of the project,

the Comptroller shall deal with applications for refunds for those tax periods under section 49(3) of the Act, on the basis that paragraph (*b*) of that section applies.

(2) For the purpose of this regulation, the development phase of a project ceases when the Comptroller reasonably concludes that, because the ordinary operations of the project have been substantially commenced, it is unlikely the taxable person will continue, on a monthly basis, to generate negative net amounts.

(3) The Comptroller need not pay all, or part of a refund, in accordance with this regulation if the Comptroller is satisfied that the refund, or that part of the refund, relates to an acquisition or import that was made for a purpose other than the development of the project, including a purpose relating to another taxable activity carried on by the taxable person.

12. VAT invoices and input tax credits

(1) For purposes of section 34 of the Act, if any of the information required to be stated on a VAT invoice is missing, the VAT invoice is invalid, and the recipient of the supply is not entitled to an input tax credit, in relation to the supply unless and until the supplier issues a correct VAT invoice.

(2) Despite subregulation (1), if the recipient of a supply is entitled to an input tax credit under section 34 of the Act for the acquisition of the thing supplied, but the amount of VAT stated on the VAT invoice issued by the supplier in accordance with section 37 of the Act, is less than the VAT actually imposed on the supply—

(*a*) the VAT invoice shall not be treated as invalid merely because it understates the amount of VAT; and

(*b*) for the purposes of calculating the amount of any input tax credit the recipient is entitled to under section 34 of the Act, the input tax, in relation to the acquisition, is treated as being equal to the amount stated on the VAT invoice, unless and until the supplier issues a correct VAT invoice.

(3) Despite section 34(7) of the Act, where—

(*a*) a supplier purports to issue a VAT invoice, but the document issued is not a valid VAT invoice, or the amount of VAT stated on the invoice is less than the VAT actually imposed on the supply;

(*b*) within 6 months of the time of supply, the recipient requests the supplier to issue a correct VAT invoice; and

(*c*) the supplier provides a correct VAT invoice, whether before or after the expiration of the 6 month period,

the recipient may include the appropriate input tax credit, or an additional amount of input tax credit, in the tax period in which the acquisition was made.

(4) For the avoidance of doubt, if a VAT invoice issued by a supplier overstates the VAT imposed on the supply, the input tax in relation to the acquisition of the supply is determined by reference to the Act, including the definition of "input tax" in section 2 of the Act, and shall not be the amount stated on the invoice.

(5) For purposes of section 34 of the Act, if any of the information required to be stated on a VAT credit or debit note is missing, or if the amount of the VAT adjustment is understated, this regulation shall apply as if—

(*a*) the references to a VAT invoice were references to a VAT debit or credit note; and

(*b*) the references to an input tax credit entitlement of the recipient of a supply, were references to an input tax credit entitlement of the supplier or recipient, (as applicable) because of a VAT adjustment event.

(6) Section 42(2) of the Act does not prevent a taxable person from issuing a corrected VAT invoice, if the person has previously issued a document purporting to be a VAT invoice, but which is not a valid VAT invoice, or would not have been a valid VAT invoice if subregulation (2) had not applied.

13. Restrictions on input tax credits relating to entertainment

(1) For the purposes of section 33(2)(*c*) of the Act—

(*a*) the provision of entertainment by a registered person to a related person or an employee, means provision to an individual who is a related person or an employee, or to an individual who is employed by a related person or related to an employee;

(*b*) the provision of entertainment by a registered person to an employee, or to an individual who is a related person, shall include the provision of entertainment to staff, acting as hosts or participants in the provision of business entertainment; and

(*c*) the provision of refreshments provided at events where the primary purpose is promotion of goods or services, is a supply of entertainment.

(2) The use, by a taxable person, of capital goods such as yachts or other boats, leisure facilities, or private aircraft, to provide entertainment, constitutes a supply of entertainment by the registered person.

(3) The use of leased or licensed goods such as yachts or other boats, leisure facilities, or private aircraft, or the use of a corporate or individual golf club membership or membership of other leisure facilities including a gymnasium, is treated as a supply of entertainment.

(4) A taxable person shall not be entitled to an input tax credit for an acquisition of accommodation, or for an acquisition used to supply accommodation, unless the person's taxable activity involves providing accommodation, and the accommodation was provided in the ordinary course of that taxable activity.

(5) A registered person shall keep records of acquisitions relating to acquisitions or imports for which input tax is disallowed because of this regulation and section 33 of the Act, and of all supplies made, using those acquisitions.

PART VIII

Records and Returns

14. Books and records to be kept

(1) For the purposes of section 110 of the Act, in addition to the books and records required to be kept by section 43 of the Act, or any other section of the Act, or of these Regulations, every registered person is required to keep all books and records necessary to explain and show the calculation of the person's output tax, input tax, and net amount of tax payable for each tax period, including, but not limited to, the following—

(*a*) VAT accounts;

(*b*) purchases and sales ledgers;

(*c*) invoices, (whether or not they are VAT invoices) for acquisitions made by the person;

(*d*) copies of invoices, (whether or not they are VAT invoices) issued for supplies made by the person;

(*e*) records of any VAT invoices for which the recipient of the supply requested a copy to be issued;

(*f*) income and expense accounts;

(*g*) till rolls and tapes, (if applicable);

(*h*) bank statements;

(*i*) documents or records relating to the supply of goods or services to officers, directors, and employees, whether or not the supplies were made for consideration; and

(*j*) any other documents or 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 taxable activity.

15. Advance payments and unpaid refunds

(1) Notwithstanding section 46 (1) of the Act, if an amount of VAT is payable by a taxable person for a tax period on a date specified in that section, the person need not pay part or all of the amount to the Comptroller if—

(*a*) the person has made an early payment of part or all of the amount due; or

(*b*) the Comptroller has notified the person—

(i) that the Comptroller is holding funds owed to the person, and

(ii) that the person may offset part or all of a future amount of VAT, due and payable under section 32 of the Act, against those funds.

(2) If an amount referred to in subregulation (1)(*a*) or (*b*) is sufficient to cover only part of the amount of tax payable by the person for the tax period, the VAT return must be accompanied by a payment of the difference.

16. Validity of Returns

If, other than as allowed by regulation 13, a person fails to pay all or part of the VAT due and payable under section 32 of the Act, by the date specified in section 46 of the Act, the return shall not be considered to be incomplete, merely because of the failure to pay.

PART IX

Diplomatic Missions and International Organisations

17. Claims for refunds

(1) This Part empowers the Comptroller to refund VAT payable in relation to a taxable acquisition or a taxable import in accordance with section 51 (1) of the Act.

(2) In this Part—

"approved non-profit body" means any organisation approved in accordance with section 37(*m*) of the Income Tax Act, Chapter 149;

"diplomatic mission" means a diplomatic mission or consulate appearing in the Diplomatic Mission Master List prepared by the Ministry of Foreign Affairs;

"Head of approved non-profit body" means the head of an approved non-profit body in Grenada;

"Head of International Organisation" means a person acting in the capacity of head of the international organisation in Grenada;

"Head of Mission" means the head of a diplomatic mission in Grenada;

"Head of Agency" means a person acting in the capacity of head of an International Organisation in Grenada; and

"International Organisation" means an international or regional organisation.

(3) A diplomatic mission is entitled to a refund under section 51 of the Act.

(4) The Minister may, by Notice in the *Gazette*, publish a list specifying the International Organisations that are entitled to claim refunds under section 51 of the Act.

(5) (*a*) An approved non-profit body is entitled to a refund in accordance with section 51 of the Act on the following—

(i) furniture and equipment used in the conduct of their business;

(ii) unconditional gifts received for charitable purposes and does not include stationary, vehicles or any other thing used not only in the conduct of their business but for other purposes.

(*b*) An application for refund under subregulation 5(*a*) shall be made to the Comptroller within 3 months from the date on which the acquisition was made.

(6) An entitlement to refunds for a diplomatic mission, International Organisation or approved non-profit body shall not be allowed for goods and services acquired or imported for consumption in Grenada, by persons other than the Diplomatic mission, International Organisation or approved non-profit body or their eligible staff.

(7) The following diplomatic staff members and members of their households are not entitled to refunds—

(*a*) citizens or permanent residents of Grenada who were recruited locally to work for or represent a diplomatic mission; and

(*b*) nationals of the sending diplomatic state who are residents of Grenada and were recruited locally.

(8) Notwithstanding any other provision of this Part an International Organisation—

(*a*) shall not be entitled to make a claim for a refund under this Part, unless the organisation is included in a current list published by the Minister under subregulation (4); and

(*b*) that is so listed, shall only be entitled to refunds for VAT paid on imports or acquisitions specified by the Minister in the published list.

18. Registration, returns, and requests for refunds

(1) To receive a refund under section 51 of the Act or this regulation, a diplomatic mission, International Organisation or approved non-profit body shall—

(*a*) be registered for VAT under section 14 of the Act; and

(*b*) provide the Comptroller with a specimen of the signature of the Head of Mission, Head of International Organisation or Head of the approved non-

profit body, and a specimen of the signature of another official of the Mission, international organisation or approved non-approved body who is designated to sign VAT returns and applications for VAT refunds, in the absence of the Head of Mission, Head of International Organisation or Head of the approved non-profit body.

(2) The Comptroller may register a diplomatic mission, an international organisation or an approved non-profit body under section 14 of the Act, whether or not the mission, international organisation or approved non-profit body is a taxable person carrying on an enterprise and exceeding the registration limits.

(3) A diplomatic mission, international organisation or approved non-profit body that is registered under the Act, shall file VAT returns with the Comptroller in accordance with the Act, unless the Comptroller has, in writing, granted the Head of Mission, Head of International Organisation or Head of the approved non-profit body, permission to lodge VAT returns on a different basis, such as on a quarterly basis.

(4) The person responsible for lodging VAT returns on behalf of a registered diplomatic mission, international organisation or approved non-profit body—

(*a*) in the case of refunds claimed by a diplomatic mission, or any members of the diplomatic or consular service and family members forming part of their household, who are entitled to refunds under an international assistance agreement, the Head of Mission or a delegate of that person approved by the Comptroller;

(*b*) in the case of refunds claimed by an international organisation, the Head of international organisation or a delegate of that person approved by the Comptroller; or

(*c*) in the case of refunds claimed by an approved non-approved body the Head of the approved non-profit body, or a delegate of that person approved by the Comptroller.

(5) A VAT return lodged on behalf of a registered diplomatic mission, international organisation or approved non-profit body must be accompanied by—

(*a*) supporting documentation establishing the amount of VAT paid in relation to the acquisitions or imports by the person entitled to the refunds, being—

(i) for taxable acquisitions, an original valid VAT invoice or other evidence which, to the satisfaction of the Comptroller, evidences that the supply was a taxable supply and the amount of VAT included in the price of the supply, and also evidences that the person claiming to be entitled to the refund, made the acquisition and paid the consideration for the acquisition, or

(ii) for taxable imports, customs entry documentation or other evidence showing, both the amount of VAT paid to the Comptroller of Customs, and the identity of the person by whom it was paid; and

(*b*) a request for a refund under section 51 of the Act, in writing and in the form set out in the Second Schedule.

19. Procedure for making a claim

(1) The procedures to be followed by diplomatic missions, international organisations or approved non-profit bodies claiming refunds under this Part and section 51 of the Act are as follows—

(*a*) at the end of each tax period, all VAT invoices or other supporting documentation must be categorised according to claimant (e.g., diplomatic mission, individual eligible staff member, etc.);

(*b*) the VAT invoice or supporting documentation shall show the VAT registration number of the diplomatic missions, international organisation or approved non-profit body and/or the customer's diplomatic identification card number;

(*c*) the refund claim form set out in the Second Schedule, must be completed using the information on the VAT invoice or other supporting documentation;

(*d*) the claim form must be added up and totalled and attached to the VAT return, along with the supporting documentation, which must be attached, in the same order as it appears on the claim form;

(*e*) both the VAT return and the claim form must be signed by the Head of Mission, Head of international organisation or Head of the approved non-profit body or by an officer duly authorised for that purpose and approved by the Comptroller, and whose specimen signature has been lodged with the Comptroller.

(2) If the Comptroller is satisfied that the VAT return and request for refund are correct, the Comptroller shall, within two months of receiving the return and request for refund, issue a refund to the diplomatic mission, international organisation or approved non-profit body by way of cheque and, where relevant, the diplomatic mission, international organisation or approved non-profit body shall be responsible for distributing the refunds to the claimants.

(3) If the Comptroller is not satisfied that the VAT return and request for refund are correct, the Comptroller shall—

(*a*) notify the Head of Mission, Head of the international organisation or Head of the approved non-profit body in writing, specifying the reasons why; and

(*b*) issue a refund in accordance with subregulation (2) for that part, if any, of the return and request for refund, that the Comptroller is satisfied is correct.

PART X

Face Value Vouchers

20. Objects and interpretation of this Part

(1) This Part, which applies to the supply and redemption of face value vouchers and to related supplies by intermediaries, is made in accordance with the general power to make regulations in section 67 of the Act, and also to give effect to the more specific provisions in sections 6(2)(*e*), 6(8), 17(8), 19(9), 23(2)(*a*), 37(2), 38(2), and 39(3) of the Act.

(2) The purposes of this Part are—

(*a*) to ensure that the application of VAT is consistent with the principles underlying the Act, in particular—

(i) that VAT is a destination-based tax on consumption in Grenada, and

(ii) that the VAT revenue collected on goods and services consumed in Grenada, should reflect the consumption expenditure incurred by consumers for those goods and services; and

(*b*) to simplify the application of VAT to face value vouchers sold through intermediaries by—

(i) not collecting VAT on supplies of face value vouchers by intermediaries, and

(ii) collecting all the VAT from those persons who accept face value vouchers in payment for goods and services.

(3) Unless the context requires otherwise, this Part must be interpreted in accordance with its objects and purposes, as set out in this regulation.

(4) In these Regulations, unless the context otherwise requires—

(*a*) a reference to the face value of a voucher includes—

(i) a reference to part of the face value of the voucher, if the voucher is, or can be redeemed progressively, to acquire a series of separate supplies,

(ii) a reference to all or part of an amount re-charged to a face value voucher, that can be re-charged, and

(iii) a reference to all, or part of an amount credited to a prepaid telecommunications account; and

(*b*) a reference to the redemption of a voucher or phone card, includes a reference to the debiting of value or air-time, from a prepaid telecommunications account.

21. Supplies of face value vouchers and intermediary services

(1) Where a face value voucher is supplied for consideration—

(*a*) the supply is a supply of services;

(*b*) for the purposes of calculating the VAT chargeable on the supply, the value of the supply is limited to the amount by which the consideration for the voucher exceeds its face value, reduced by the tax fraction of that amount; and

(*c*) no input tax credit is allowed to the recipient of the supply.

(2) Where a face value voucher is sold through an intermediary who does not act as principal, any consideration received by the intermediary in relation to the sale, including consideration received for services supplied to the person who issued the voucher, or to another intermediary through whom the intermediary obtained the voucher, is ignored in working out the value of the supply of those services.

22. Redemption of face value vouchers

(1) Where a supplier accepts the redemption of a face value voucher as part or full payment for a supply of goods or services—

(*a*) section 23(1) of the Act does not apply, and

(*b*) the consideration for the supply of goods or services includes, in respect of the redemption of the voucher—

(i) if the supplier can substantiate that the consideration given for the last sale of the voucher before it was used was less than the face value of the voucher, the amount of that consideration; or

(ii) in any other case, the face value of the voucher.

(2) Where subregulation (1) applies to a supply of goods or services, the supply is treated as being made—

(*a*) for a supply of goods, when the goods are delivered or made available; or

(*b*) for a supply of services, as and when the services are performed.

(3) The redemption of a voucher is not a supply.

(4) Where a voucher is redeemed for another voucher, for example where the value of a prepaid mobile phone voucher is uploaded to a prepaid telecommunications account—

(*a*) the exchange of vouchers is not a supply; and

(*b*) the face value of the voucher redeemed becomes the face value of the voucher for which it is redeemed.

23. Face value vouchers supplied to non-residents

(1) Where a face value voucher is supplied to a non-resident and paragraph (2) or (3) of the Second Schedule of the Act prevents the supply from being zero-rated—

(*a*) the supply to the non-resident;

(*b*) any subsequent supply of the voucher; and

(*c*) any supply made on redemption of the voucher,

are taxed in accordance with section 23(1) of the Act, and this Part (other than this regulation) does not apply to such supplies.

(2) Subregulation (1) does not apply to the supply or redemption of a face value voucher that is a phone card or a prepaid telecommunications account.

24. Discounts on face value

(1) Where a face value voucher is issued with free "bonus value" or "bonus minutes" given for no additional consideration, for example where, on the issue of a phone card with a nominal face value of $30, the card or the account is credited with $33—

(*a*) no VAT is payable on the bonus amount, which should be treated as effecting a discount on the price of goods or services for which the voucher is redeemed; and

(*b*) the VAT (if any) chargeable on supplies of goods or services for which the voucher is redeemed should be calculated so as to ensure the total amount of VAT chargeable in relation to such goods and services would (if all supplies for which the voucher is redeemed were taxable) be equal to the tax fraction of the face value of the voucher.

(2) If "bonus value" or "bonus minutes" attached to a face value voucher are supplied for consideration that is less than their face value, for example where, on uploading the value from a $49 prepaid mobile phone PIN a prepaid mobile phone account is credited with "$89 worth" of value, the VAT (if any) applicable to each supply for which the voucher is redeemed, must be determined by reference to the consideration actually given for the voucher.

25. Vouchers accepted by third parties

(1) If a taxable person who accepts a face value voucher in exchange for a supply of goods or services is not the person who issued the voucher and did not previously make a supply of the voucher—

(*a*) regulation 20(1) does not apply to the supply made by that taxable person in exchange for the voucher; and

(*b*) if the taxable person receives an amount from any person (including the person using the voucher) for or in relation to the supply, or because the taxable person accepted the voucher—

(i) each such amount is treated as consideration for the supply made on acceptance of the voucher; and

(ii) if more than one such payment is made and the payments are made at different times, for the purpose only of working out the tax period in which the person should treat an amount as output tax, the time of supply is the earlier of the time when the amount was received or the entitlement to receive it was confirmed, determined separately for each such amount.

(2) Any commission or other consideration paid or payable by a taxable person to a third person making a payment referred to in paragraph (*b*) of subregulation (1) (other than the person using the voucher) should not be netted off against the amount referred to in that paragraph but should be treated as consideration for a separate supply.

26. VAT invoices and sales receipts

(1) A supplier, including an intermediary, who supplies a face value voucher must clearly state on any VAT invoice or sales receipt issued for the supply of the voucher that no VAT is payable on the supply and no input tax credit arises on the acquisition of the voucher.

(2) Subregulation (1) does not prevent a supplier including, on the VAT invoice or sales receipt, the tax fraction of the face value of the voucher, if that amount is clearly stated only to represent the potential VAT that will be chargeable if the voucher is used to acquire taxable supplies.

(3) A supplier who accepts a face value voucher in full or part payment for a taxable supply of goods or services—

(*a*) is not required to issue a VAT invoice or sales receipt to the recipient of the supply; but

(*b*) must, if the recipient is a taxable person and requests that a VAT invoice be issued, provide the recipient with a VAT invoice for the supply of goods or services within 14 days after receiving the request.

(4) A VAT invoice issued in accordance with subregulation (3)(*b*) may cover all or some of the supplies made on redemption of the face value voucher, and may cover supplies made in more than one tax period, provided that the time and value of each such supply is clearly shown on the VAT invoice.

(5) A taxable person to whom regulation 23(1) applies—

(*a*) must, if issuing a VAT invoice or sales receipt for the goods or services supplied on acceptance of the voucher, include the face value of the voucher in the price of the supply stated on the VAT invoice; and

(*b*) must not issue a VAT invoice or sales receipt to any other person who reimburses or pays the supplier an amount for accepting the voucher.

27. Input tax credits on redemption of face value vouchers

(1) Where a taxable person ("the recipient") uses a face value voucher to acquire goods or services from another taxable person—

(*a*) the recipient is not allowed input tax credits for the goods or services acquired unless the recipient holds a VAT invoice issued in accordance with a request made under regulation 24(3)(*b*); and

(*b*) the input tax credits for the goods or services acquired may only be claimed in accordance with the time of supply for each acquisition, as shown on the VAT invoice.

(2) Despite subregulation (1), if a taxable person ("the recipient") uses or intends to use a face value voucher solely to acquire goods or services all of which will be taxable at the standard rate—

(*a*) the recipient may use a VAT invoice or sales receipt issued on the acquisition of the voucher as evidence of the recipient's entitlement, if any, to input tax credits for the goods or services acquired;

(*b*) the input tax credits for the goods or services acquired may be claimed in the tax period in which the voucher is acquired.

(3) A taxable person who claims input tax credits in accordance with subregulation (2) must subsequently adjust its input tax credits if the voucher is in fact used to acquire goods or services that are not taxable at the standard rate.

28. Unredeemed or expired vouchers

(1) Where a taxable person issues a face value voucher for consideration and—

(*a*) the voucher expires before it is redeemed, or before it is fully redeemed;

(*b*) because of the expiry, the taxable person recognises as income in its accounts an amount received for the issue of the voucher; and

(*c*) in respect of the amount recognised as income, the person has not either made a corresponding supply of goods or services or paid a reimbursement to another person for accepting the voucher in exchange for such a supply,

the amount of the face value that has expired is treated as consideration received by the person for a taxable supply of services made in the tax period in which the amount is recognised.

(2) If the supplier can substantiate that the consideration given for the last sale of the voucher before it was used was less than the face value of the voucher, subregulation (1) applies as if that consideration were the face value of the voucher.

(3) To the extent that a taxable person has been treated as making a supply in circumstances to which subregulation (1) applies, if the person later accepts the voucher in exchange for a supply of goods or services—

(*a*) regulation 20(1) does not apply; and

(*b*) if the supply made on acceptance of the voucher is partly or wholly zero-rated or exempt, the taxpayer may, in the tax period in which the supply is made, treat as input tax an amount equal to the tax fraction of that part of the face value of the voucher that is used for the zero-rated or exempt supply.

(4) To the extent that a taxable person has been treated as making a supply in circumstances to which subregulation (1) applies, if the person later reimburses another person for accepting the voucher in exchange for a supply of goods—

(*a*) the person paying the reimbursement may treat as input tax an amount equal to the tax fraction of the amount reimbursed; and

(*b*) the amount treated as input tax is accounted for under section 32 of the Act in the tax period in which the reimbursement is made.

(5) Subregulation (1) applies to a taxable person who, on the basis of a prediction or expectation of the extent to which vouchers of a particular kind will not be redeemed or fully redeemed, treats an amount as income in relation to a voucher before the expiry of the voucher.

(6) This regulation applies to the expiry of unused value in a prepaid telecommunications account.

PART XI

Discount Vouchers

29. Discount vouchers

(1) In this regulation "discount voucher" means a voucher that entitles the holder to a discount on the price of goods or services, whether that entitlement to a discount is expressed as a face value amount on, or associated with, the voucher, a percentage of the price, a "two-for-one" or similar offer, or in any another other way.

(2) Where a discount voucher is used in relation to a supply of goods or services, the consideration for the supply does not include any monetary value stated on the discount voucher, nor the amount of the discount granted because of the acceptance of the voucher.

(3) A supply of a discount voucher for consideration is not a taxable supply if the voucher can only be used for a discount on supplies that will not be taxable supplies or will be taxable at the rate of zero.

PART XII

Input Tax Credits – Allocation and Adjustments

30. Allocation of input tax credits for banks and financial institutions

(1) This Regulation gives effect to section 34(4)(*d*) of the Act, and applies to a taxable person who is a bank or other financial institution making both exempt and taxable supplies.

(2) Input tax is deductible in a tax period on any acquisition that is directly allocated to making a taxable supply.

(3) There is no deductible input tax on dual purpose acquisitions used in making taxable and exempt supplies.

31. Adjustments to input tax credits

(1) Where a taxable person makes a taxable acquisition or a taxable importation of goods or services to which paragraph (*a*) of section 36(1) of the Act applies, the person shall make an adjustment to the input tax credits, if any, it initially claimed in relation to that acquisition or importation if—

(*a*) the person's actual use of the goods or services acquired or imported did not match its initial intended use of those goods or services; and

(*b*) the difference between actual and intended use was greater than 10% of the total actual use of those goods or services.

(2) For the purpose of determining whether paragraph (*a*) of section 36(1) of the Act applies, a group of acquisitions or importations are related if—

(*a*) they are acquired or imported at or about the same time;

(*b*) they are intended to be used together for a common purpose, such that they are functionally and or structurally interdependent; and

(*c*) in the case of an acquisition, they are acquired under a single contract or a related group of contracts that form part of a single arrangement for the supplies to be made.

(3) The adjustment required to be made under this regulation must be made in the person's VAT return for tax period "T", where T is the tax period in which day "D" occurs, where D is the earliest of the days on which the following events occur—

(*a*) 5 years after the time of the acquisition or import;

(*b*) the date, if any, on which the person sells the goods or services; or

(*c*) the date, if any, on which the goods or services cease to be capable of being used in the taxable person's taxable activities, whether because they cease to exist, end, expire, are destroyed, or become unusable for any other reason.

(4) For the purposes of this regulation, the "actual use" of goods or services acquired or imported by a taxable person—

(*a*) shall include—

(i) use or consumption of those goods or services by the taxable person,

(ii) allowing another person to use or consume those goods or services; or

(*b*) supplying those goods or services to another person; and is measured from the date of acquisition until day D.

(5) Where a taxable person has held goods or services acquired or imported without actually using them during a particular time, the person is treated as having actually used them during that time for the same purposes and in the same proportions in which it actually used them between the date of acquisition and day D.

(6) For the avoidance of doubt, the "intended use" of goods or services acquired or imported by a taxable person is the use by reference to which the person worked out the input tax credits, if any, to which it was entitled under sections 34(1) to 34(4) of the Act, being—

(*a*) 1, if a full input tax credit was allowed under section 34(3)(*a*) of the Act;

(*b*) 0, if no input tax credit was claimed because of section 34(3)(*b*) of the Act;

(*c*) B/C, if a proportion of the input tax was allowed as a credit under section 34(3)(*c*) of the Act; or

(*d*) a proportion of the input tax that was allowed as a credit under regulations made for the purposes of section 34(4) of the Act.

(7) The amount of an adjustment that is required to be made in tax period T under this regulation is worked out as follows—

A = VAT x C

where—

A is the amount of the adjustment;

VAT is the amount of VAT paid on the import or included in the price of the acquisition, as affected, for an acquisition, by any credits or debits that have arisen because of a VAT adjustment event relating to the acquisition;

C is the change in the extent to which the use of the goods or services related, whether directly or indirectly, to making taxable supplies, as determined under subregulation (8).

(8) For the purpose of subregulation (7), C is worked out as follows—

(*a*) if the person's actual use of the goods or services to make taxable supplies was less than its intended use, C = (PI – PA);

(*b*) if the taxable person's actual use of the goods or services to make taxable supplies was greater than its intended use, C = (PA – PI);

where—

PA is the proportion of the actual use of the goods or services that related, whether directly or indirectly, to making taxable supplies, measured from the date of the acquisition or import until day D; and

PI is the initial proportion, if any, of input tax allowed as a credit, as specified in subregulation (6).

(9) The amount A calculated under subregulation (7) is included in the taxable person's calculation under section 32 of the Act for tax period T as follows—

(*a*) if the person's actual use of the goods or services to make taxable supplies was less than its intended use, A is included as an amount of output tax; or

(*b*) if the taxable person's actual use of the goods or services to make taxable supplies was greater than its intended use, A is allowed as an input tax credit so long as the taxable person holds the documentation referred to in section 34(8) of the Act.

(10) A taxable person shall not be entitled to an additional amount of input tax credit under subregulation 9(*b*) to the extent that there is bad debt owed by the taxable person to the supplier in relation to the acquisition.

(11) Except as provided by regulation 28, this regulation shall not apply to a taxable person who is a bank or other financial institution making both exempt and taxable supplies.

PART XIII

Deemed Input Tax Credits for Second-Hand Goods Scheme

32. Application

(1) This part applies to a registered person who deals in second-hand goods.

(2) For the purpose of this Part:

"dealer" means a registered person who deals in second-hand goods;

"second-hand goods" means goods that have previously been used but does not include—

(*a*) precious metals or goods made of precious metals, being—

(i) gold (in an investment form) of at least 99.5% fineness,

(ii) silver (in an investment form) of at least 99.9% fineness,

(iii) platinum (in an investment form) of at least 99% fineness,

(iv) goods to the extent that they would fall within (*a*), (*b*), or (*c*) if they were of the required fineness;

(*b*) diamonds, rubies, emeralds, or sapphires that are not mounted, set, or strung;

(*c*) animals or plants;

(*d*) real property;

(*e*) goods valued for $10,000 and less.

(3) The exceptions listed in the definition of second-hand goods shall not be entitled to input credit.

33. Acquisition of second-hand goods by a dealer

(1) A dealer is allowed an input tax credit for an acquisition of second-hand goods if—

(*a*) the supply of the goods to the dealer was not a taxable supply; and

(*b*) the dealer sells the second-hand goods in a taxable supply on which tax is charged at the standard rate.

(2) Subregulation (1) does not apply if—

(*a*) the supply of the goods to the dealer would have been a zero-rated supply if it had been made by a registered person;

(*b*) the dealer imported the goods;

(*c*) the supply of the goods to the dealer was made otherwise than by way of sale (for example, if the goods were leased to the dealer); or

(*d*) the supply of the goods to the dealer was exempt under item 17 in paragraph (1) of the Fourth Schedule to the Act.

(3) The tax period in which an input tax credit is allowed under subregulation (1) is the tax period in which the dealer sells the goods.

(4) The amount of an input tax credit allowed under subregulation (1) is the tax fraction of 70% of the price for which the dealer acquired the second-hand goods.

34. Receipts and stock book or register

(1) A dealer who claims, or intends to claim, an input tax credit under regulation 31 for an acquisition of second-hand goods must—

(*a*) give to the person from whom the goods are acquired a Purchase Receipt acknowledging the purchase of the goods; and

(*b*) maintain a register or stock book for each item purchased.

(2) A purchase receipt issued under subregulation (1) must include—

(*a*) an identifying number for the purchase;

(*b*) a description of the goods, including the quantity of goods purchased;

(*c*) the date of the acquisition;

(*d*) the name and address of the person selling the goods to the dealer;

(*e*) the price paid for the purchase; and

(*f*) the number of the invoice, if any, given by the seller to the dealer;

(3) All of the information required to be listed on a purchase receipt must be entered by the dealer into the register or stock book as soon as practicable after the purchase is made and in addition—

(*a*) each item to be sold must be given a separate identification number; and

(*b*) where more than one item was purchased for a single price and the items will be sold separately, the price paid must be allocated across the items in accordance with their market value when purchased, ensuring that the full amount paid to the seller has been listed against the items purchased.

35. Details to be entered in the stock book on sale

Where second-hand goods are sold by a dealer, the following details must be entered in the Register or Stock Book that is required to be maintained under regulation 32 and cross-referenced to the entry for the purchase of the item sold—

(*a*) the date of sale;

(*b*) the identifying number or numbers given to the goods in compliance with regulations 32(2)(*a*) and 32(3)(*a*);

(*c*) the number of the VAT invoice or sales receipt, whichever is applicable, given for the sale; and

(*d*) the price of the sale.

36. No credit if records not kept

(1) No input tax credit is allowed under this Part to a dealer who has not complied with regulations 32 and 33.

(2) Despite subregulation (1), the Comptroller may allow a dealer an input tax credit under this Part if the Comptroller is satisfied that, despite not being in accordance with regulations 32 and 33, the person's records are sufficient to support an entitlement to a credit under this Part.

37. Anti-avoidance

(1) Where a dealer sells a second-hand car that was acquired as a trade-in on the purchase of a new car, the following two values must be identical—

(*a*) the price the dealer used to calculate the input tax credit allowed under regulation 31 for the acquisition of the trade-in car; and

(*b*) the amount the dealer treated as non-monetary consideration in working out the price of the new car for the purposes of determining the VAT payable on the supply of that car.

(3) For the purposes of working out the amounts referred to in paragraphs (*a*) and (*b*) of subregulation (2), the dealer must use either the true market value of the trade-in car or the trade-in value stated in the transaction documents.

PART XIV

Simplified Accounting Methods for VAT

38. Simplified accounting methods for VAT

(1) The Comptroller may issue official guidelines authorising persons who fall within a particular class of registered person to do some or all of the following in a particular way—

(*a*) calculate the net amount of VAT payable under section 32 of the Act;

(*b*) calculate any amount that is required in order to work out the net amount of VAT payable under section 32 of the Act, including the amount of output tax payable in a particular tax period, the input tax credits allowed in a particular tax period, or the total value of particular types of supplies or acquisitions made during a tax period; and

(*c*) if the Comptroller considers it appropriate, issue VAT invoices, sales receipts, or VAT credit or debit notes in a manner set out in the official guideline, rather than in the manner required under the normal rules set out in sections 37, 38, and 39 of the Act and in Part III of these regulations.

(2) A registered person who wishes to use a simplified accounting method set out in an official guideline issued by the Comptroller under subregulation (1)—

(*a*) shall apply to the Comptroller for permission to use the simplified accounting method;

(*b*) may only use the method if the person meets the criteria for using the method set out in that guideline, and

(*c*) may not use the method if the Comptroller determines, on reasonable grounds, that the person should not be allowed to use the method despite otherwise meeting the criteria for its use, or should only be allowed to use a different simplified accounting method.

(3) If the Comptroller is of the opinion that a person who has applied for permission to use a simplified accounting method meets the criteria for using more than one of the methods for which an official guideline has been issued, the Comptroller may, having determined on reasonable grounds which scheme is most appropriate for the person to use, grant the person permission to use a method other than that for which permission was applied.

(4) If a person applies for permission to use a simplified accounting method, the Comptroller shall notify the applicant of the decision in relation to the application within 21 days of the date on which the application was received.

(5) The use of a simplified accounting method is optional and a registered person who meets the criteria for using, or who has been granted permission to use, such a method may choose not to use the method and may instead calculate its net amount in accordance with the Act.

(6) A person who is given permission by the Comptroller to use a simplified accounting method and who uses the method shall—

(*a*) issue VAT invoices, credit notes, and debit notes in accordance with the rules, if any, set out in the official guideline relating to that method;

(*b*) comply with any requirements set out in the guideline, including but not limited to record keeping requirements;

(*c*) from the first day on which the person commences to use the method, continue to use the method for at least the minimum period specified by the Comptroller in the official guideline.

39. Who may use simplified accounting methods for VAT

(1) Simplified accounting methods for VAT established by official guidelines issued by the Comptroller cannot be used by a registered person unless—

(*a*) the supplies made by the person through its taxable activity include retail sales; and

(*b*) the person's annual turnover of supplies is less than $500,000.

(2) For the purpose of subregulation (1), a person's annual turnover of supplies is less than $500,000 if—

(*a*) the value of supplies made by the person during the twelve months ending on the last day of the month preceding the date on which the person applied to use the simplified accounting method is less than $500,000; and

(*b*) there are reasonable grounds to believe that the value of the person's supplies in the twelve months commencing on the first day of the month in which the person applied to use the simplified accounting method will be less than $500,000.

(3) If a person applying to use a simplified accounting method commenced carrying on a taxable activity less than 12 months before the first day of the month in which the application is made, the person's annual turnover of supplies is taken to be less than $500,000, for the purpose of subregulation (2)(*a*), only if the amount calculated according to the following formula is less than $500,000:

A x 365/B

where:

A is the actual value of supplies made by the person from the date of commencement of the taxable activity until the last day of the month preceding the date on which the person applied to use the simplified accounting method; and

B is the number of days from the date the person commenced carrying on the taxable activity until the last day of the month preceding the date on which the person applied to use the simplified accounting method.

(4) The Comptroller may refuse permission for a registered person to use a simplified accounting method if the Comptroller has reason to believe that—

(*a*) the person has the capacity to calculate its net amount of VAT payable in accordance with the normal rules applying under the Act; and

(*b*) the net amount of VAT payable under the simplified accounting method would be significantly less than the net amount payable if it were calculated in accordance with the normal rules applying under the Act.

(5) In working out the value of supplies made during a particular period, apply the provisions of section 9(3)(*a*)(ii), (iii), and (iv) and section 9(3)(*c*) of the Act but not section 9(3)(*a*)(i) or 9(3)(*b*) of the Act.

40. The simplified accounting methods for VAT

(1) The categories of simplified accounting methods that the Comptroller may establish through the issue of official guidelines are—

(*a*) Sales Percentage Methods for Retailers—

(i) Sales Percentage Methods may allow retailers to use a simplified method to calculate the output tax payable on their sales of trading stock.

(ii) Sales Percentage Methods may also, or in the alternative, allow retailers to use a simplified method to calculate the input tax credits deductible for their purchases of trading stock.

(iii) Only Retailers who sell at least 95% of their trading stock in the same form and condition in which it was purchased, without any processing or modification, may use a Sales Percentage Method.

(*b*) Purchases Percentage Methods for Retailers—

(i) Purchases Percentage Methods may allow retailers to calculate their percentage of sales of trading stock that are zero-rated by reference to the percentage of their purchases that are zero-rated.

(ii) Only Retailers who sell at least 95% of their trading stock in the same form and condition, in which it was purchased, without any processing or modification, may use a Purchases Percentage Method.

(iii) Retailers may only use a Purchases Percentage Method if they do not apply significantly different mark-ups to different types of supply.

(*c*) Business Norms Methods—

(i) Business Norms Methods may allow registered persons carrying on particular kinds of business to use fixed percentages to calculate, for a tax period, their input tax credits allowed, their output tax payable, both their input tax credits allowed and their output tax payable, or their net VAT payable (the sum of output tax minus input tax).

(ii) The fixed percentages set for particular Business Norms Methods must be set by the Comptroller and must be based on evidence that particular types of business tend to have particular percentages of their inputs or outputs taxable or zero-rated.

(iii) Business norms percentages must be expressed as percentages to be applied, as relevant, to the inputs or outputs of the person whose

liability is being determined, and shall include information on how the amount to which the percentage is to be applied should be calculated.

(*d*) Snapshot Methods—

(i) Snapshot methods may allow registered persons to calculate their VAT payable for a tax period by using a calculation established by reference to a representative snapshot or snapshots of the person's business in an earlier tax period or periods.

(ii) Snapshot methods shall require the registered person to take further snapshots at specified regular intervals, and shall require the person to take additional snapshots if the person has reason to believe that the snapshot in use no longer accurately represents the inputs or outputs of the person's business.

(2) Nothing in this regulation requires the Comptroller to issue an official guideline establishing a simplified accounting method, nor is the Comptroller required to issue official guidelines in relation to each of the categories specified in subregulation (1).

PART XV

Miscellaneous

41. Security to be given

For the purposes of section 60 of the Act but without limiting the powers given under that section, the Comptroller may require security to be given by a taxable person where—

(*a*) the taxable person is a promoter of public entertainment or a licensee or proprietor of a place of public entertainment;

(*b*) a person managing the activities of the taxable person—

(i) is connected with past failures to pay VAT or any other tax administered by the Comptroller,

(ii) has failed previously to comply with VAT obligations or other tax obligations on more than one occasion, or

(iii) has been prosecuted for a VAT offence or an offence relating to another tax administered by the Comptroller,

whether or not that failure or prosecution was in relation to a taxable activity carried on by the taxable person;

(*c*) the taxable person has only recently commenced carrying on its taxable activity, or has recently significantly expanded its taxable activities; or

(*d*) the taxable person intends to carry on its taxable activity only for a limited period of time.

42. Signature on notices

Where the Act requires a notice to be given by the Comptroller or an authorised person, the notice must be duly signed by the Comptroller or the authorised person, or by any other person whom the Comptroller has appointed for that purpose, and it is sufficient for the signature of the Comptroller or such other person to be duly printed or written thereon.

43. Zero-rated foods

The foods listed in the Third Schedule to these Regulations are specified as zero-rated foods for human consumption to which item 1 of paragraph (1) of the Third Schedule to the Act applies.

First Schedule

Requirements for Vat Invoices, Vat Credit and Debit Notes, and Sales Receipts

[Regulation 5.]

(1) Except as the Comptroller may otherwise allow, where section 37 of the Act requires a taxable person to issue a VAT invoice, the invoice shall include the following particulars —

(*a*) the words "VALUE ADDED TAX INVOICE" or "VAT INVOICE" in a prominent place;

(*b*) the name, address, and TIN of the supplier;

(*c*) the name, address, and TIN of the recipient;

(*d*) the serial number of the VAT invoice and the date on which the VAT invoice is issued;

(*e*) a description of the goods or services supplied, including the quantity, volume, or period, as applicable, and the date on which the supply was made;

(*f*) the consideration for the supply; and

(*g*) the amount of VAT charged.

(2) Except as the Comptroller may otherwise allow, where section 38 of the Act requires a taxable person to issue a sales receipt, or where section 37 allows a taxable person to issue a sales receipt in lieu of a VAT invoice, the sales receipt shall include the following particulars—

(*a*) the words "VALUE ADDED TAX RECEIPT", "VAT SALES RECEIPT", "VALUE ADDED TAX INVOICE", or "VAT INVOICE" in a prominent place;

(*b*) the name, address, and TIN of the supplier;

(*c*) the date on which the sales receipt is issued;

(*d*) a description of the goods or services supplied, including the quantity, volume, or period, as applicable, and, if necessary to identify the supply, the date on which the supply was made;

(*e*) the total consideration for the supply (including VAT); and

(*f*) the amount of VAT charged.

(3) Except as the Comptroller may otherwise allow, where section 39(1) of the Act requires a taxable person to issue a VAT credit note, the credit note shall contain the following particulars—

(*a*) the words "VALUE ADDED TAX CREDIT NOTE" or "VAT CREDIT NOTE" in a prominent place;

(*b*) the name, address, and TIN of the supplier;

(*c*) the name, address, and TIN of the recipient;

(*d*) the individualised serial number of the credit note and the date on which the credit note was issued;

(*e*) the reason for the issue of the credit note and sufficient information to identify the taxable supply to which it relates;

(*f*) the consideration for the supply shown on the original VAT invoice and, if it has changed, the correct amount of the consideration for the supply; and

(*g*) the effect of the VAT adjustment event on the VAT payable, shown by specifying—

(i) the amount of VAT previously payable in relation to the supply, as shown on the original VAT invoice or, if relevant, as shown on the most recent VAT debit or credit note issued in relation to the supply,

(ii) the correct amount of VAT payable in relation to the supply following the VAT adjustment event that gave rise to the requirement to issue the credit note, and

(iii) the difference between those two amounts, shown as a credit.

(3) Except as the Comptroller may otherwise allow, where section 39(2) of the Act requires a taxable person to issue a VAT debit note, the debit shall contain the following particulars—

(*a*) the words "VALUE ADDED TAX DEBIT NOTE" or "VAT DEBIT NOTE" in a prominent place;

(*b*) the name, address, and TIN of the supplier;

(*c*) the name, address, and TIN of the recipient;

(*d*) the individualised serial number of the debit note and the date on which the debit note was issued;

(*e*) the reason for the issue of the debit note and sufficient information to identify the taxable supply to which it relates;

(*f*) the consideration for the supply shown on the original VAT invoice and, if it has changed, the correct amount of the consideration for the supply; and

(*g*) the effect of the VAT adjustment event on the VAT payable, shown by specifying—

(i) the amount of VAT previously payable in relation to the supply, as shown on the original VAT invoice or, if relevant, as shown on the most recent VAT debit or credit note issued in relation to the supply;

(ii) the correct amount of VAT payable in relation to the supply following the VAT adjustment event that gave rise to the requirement to issue the debit note; and

(iii) the difference between those two amounts, shown as a debit.

Second Schedule

Claim for VAT Refund Under Section 50 of the Act

[Regulations 15, 16, and 17.]

GRENADA INLAND REVENUE DIVISION VALUE ADDED TAX APPLICATION FOR REFUND

(*For use by Diplomats, Diplomatic/Consular Missions, Approved Non-Profit Organisations, Public International Organisations and Government*)

Full name of applicant

.....

Taxpayer Number (If any)

		`				

Telephone Number(s)

....

Address

.....

.....

.....

Fax Number(s)

....

Email Address

.....

Period of Claim

From ..... To .....

DETAILS OF CLAIM

Total value of goods and or services (inclusive of VAT) .....

VAT charged .....

VAT claimed .....

Customs Declaration or Receipt Number (if VAT was overpaid) .....

CERTIFICATE

I certify that this application for refund exclusively represents goods purchased or services rendered for purposes that qualify for refund under the VAT Act, section 31 and that no application for refund of tax has been previously submitted.

Tick as appropriate: 1 – Diplomats; 2 – Diplomatic or Consular Missions; 3 – Approved Non-Profit Organisations/Public International Organisation/Foreign Government

1. I certify that the articles required and/or services performed which form part of this application for refund were *exclusively for my personal use.*
2. I certify that the taxable supplies required which form part of this application for refund were *exclusively for use in connection with the work* of the Diplomatic or Consular Mission.
3. I certify that the taxable supplies which form part of the application for refund were provided to (insert the name of Organisation/Government) .....

   as an unconditional gift not for resale and that no other application for refund of tax has been previously submitted.

Name Organisation Title

....

Signature

.....

Date

Day Month Year

FOR INLAND REVENUE USE ONLY

Received

Date Month Year

Approved by (please sign)

.....

Position

.....

Date Cheque Issued

Day Month Year

Amount approved

Cheque number

.....

Document number

Taxpayer Number

Notes

.....

.....

.....

NOTES REGARDING APPLICATION FOR REFUNDS

1. A prescribed schedule of purchases accompanied by original receipts must be attached to each application.
2. The amount (of the refund) applied for must be the amount of the tax shown on the receipt from the supplier or, in the case of taxpayers who overpaid VAT, of the difference the paid and the correct amount of VAT to be paid.

Third Schedule

Zero-rated Foods for Human Consumption

[Regulation 42.]

Zero-rated Goods

MILK

0401. Fresh Milk NOT concentrated or sweetened.

0402. Milk in powder form or granules.

0402. Sweetened condensed milk.

ex 0402. Evaporated milk.

RICE

1006. Brown, White and broken rice imported in bulk for repackaging.

FLOUR

1101. Wheat flour.

SUGAR

1701. Cane Sugar.

INFANT PREPARATION

1901. Preparation for infant use, put up for retail sale.

2106. Milk-base preparation for infant use, put up for retail sale.

PETROLEUM PRODUCTS

2710. Motor spirit (gasoline).

2710. Gasoil (diesel).

2710. Illuminating kerosene.

2711. LPG (Propane cooking gas).

POSTAGE STAMPS

4907. Postage Stamps imported and supplied by the Grenada Postal Corporation.

Fourth Schedule

Exempt Imports

Re: Item 8 of the Fifth Schedule of the VAT Act – Microcomputer, software and accessories

8414.51.91	Computer cooling fans imported solely for personal use with micro-computers
8443.19.10	Printers imported solely for use with personal micro-computers
8471.30.10	Micro-Computers imported solely for personal use
8471.60.10	Input or output units, whether or not containing storage units in the same housing imported solely for use with personal micro-computers
8473.30.10	Parts and accessories of the machines of heading 84.71 imported solely for personal use
8504.40.10	Power supplies imported solely for use with personal micro-computers
8517.62.10	Switching and routing apparatus imported solely for use with personal micro-computers
8517.69.10	Hubs imported solely for use with personal micro-computers
8518.23.00	Speakers imported solely for use with personal micro-computer
8518.30.10	Headphones imported solely for use with personal micro-computer
8523.21.20	Unrecorded imported solely for use with personal Micro-computers
8523.21.91	Recorded imported solely for use with personal Micro-computers
8523.29.71	Diskettes imported solely for use with personal Micro-computers
8523.51.11	USB Flash Drive imported solely for use with personal Micro-computers
8523.51.21	Flash memory cards imported solely for use with personal Micro-computers
8523.51.31	Other unrecorded imported solely for use with personal Micro-computers
8523.52.10	Smart cards imported solely for use with personal Micro-computers
8528.41.10	Of a kind solely or principally used in an automatic data processing system of heading 84.71, imported for personal use
8528.51.10	Of a kind solely or principally used in an automatic data processing system of heading 84.71, imported for personal use
8544.60.91	Cables and Wires imported solely for connecting personal micro-computer devices
8471.90.10	Scanners imported solely for personal use with micro-computers