CHAPTER 333B
VALUE ADDED TAX (TRANSITIONAL PROVISIONS) ACT

• Act • Subsidiary Legislation •

ACT

Act No. 17 of 2009

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CHAPTER 333B
VALUE ADDED TAX (TRANSITIONAL PROVISIONS) ACT

An Act to repeal a number of indirect taxes consequent on the introduction of the Value Added Tax, to set out rules for the transition from those taxes to the Value Added Tax, and to provide for related matters.

[Act No. 17 of 2009.]

[*To be proclaimed*.]

PART I

Preliminary

1. Short title and commencement

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

(2) This Act comes into force on the date it receives Royal Assent.

2. Interpretation

(1) Unless the context requires otherwise, all words and phrases used in the VAT Act have the same meaning when used in this Act.

(2) Without limiting subsection (1), in this Act, unless the context requires otherwise—

"GCT" means the General Consumption Tax imposed by section 5 of the General Consumption Tax Act, 1995 (Act No. 7 of 1995);

"motor vehicle tax" means the tax imposed under the Motor Vehicle Purchase Tax Act, 1994 (Act No. 22 of 1994);

"progressive or periodic supply" means—

(*a*) a supply of goods or services made progressively or periodically, whether or not payment for the supply is made progressively or periodically; or

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

"regulated supply" means a supply occurring in the period commencing three months before and ending one year after the VAT commencement day;

"repealed legislation" means the legislation referred to in the definition of repealed taxes and repealed by section 3(2);

"repealed taxes" means the following taxes—

(*a*) ticket tax;

(*b*) GCT; and

(*c*) motor vehicle tax;

"ticket tax" means the tax imposed by section 3 of the Ticket Tax Act, 1980 (Act No. 26 of 1980);

"VAT Act" means the Value Added Tax Act, 2009; and

"VAT announcement date" means the 2nd day of June, 2009.

PART II

Abolition of Repealed Taxes

3. Abolition of repealed taxes

(1) The purpose of this Part is to ensure that—

(*a*) none of the repealed taxes is payable in relation to an import, supply or acquisition that is made on or after the VAT commencement day; and

(*b*) import supply or acquisition made before the VAT commencement day, will be subject to the laws under which those taxes are imposed.

(2) The following Acts, which impose the repealed taxes, are repealed with effect from the VAT commencement day—

(*a*) General Consumption Tax Act, 1995 (Act No. 7 of 1995);

(*b*) Ticket Tax Act, 1980 (Act No. 26 of 1980); and

(*c*) Motor Vehicle Purchase Tax Act, 1994 (Act No. 22 of 1994).

(3) The repealed legislation, including the rules governing the levy, payment, assessment, reporting, and recovery of the repealed taxes, continues to apply to an import, supply, or acquisition taking place before the VAT commencement day.

(4) All appointments made under the repealed legislation and subsisting at the VAT commencement day, shall be treated as appointments made under the VAT Act; and an oath of secrecy taken under the repealed legislation, shall be treated as having been taken under the VAT Act.

(5) Until specified otherwise by the Comptroller of Inland Revenue or the Comptroller of Customs, all forms and documents used in relation to the repealed legislation may continue to be used for the purposes of the VAT Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation, are taken to refer to the corresponding provisions and expressions used in the VAT Act.

PART III

Timing and Commencement

4. Commencement of VAT

The purpose of this Part is to ensure that—

(*a*) VAT is only payable on a supply or importation to the extent that it is made on or after the VAT commencement day; and

(*b*) an entitlement to an input tax credit only arises on an acquisition or importation, to the extent that it is made on or after the VAT commencement day.

5. Time of supply, acquisition or import

(1) This section sets out how to determine the time at which a supply, acquisition or import is made for the purposes of the transition from the repealed taxes to VAT, and in particular, how to determine which supplies and imports will be subject to the tax imposed by section 8 of the VAT Act.

(2) For the purpose of this Act—

(*a*) a supply of goods occurs—

(i) when the goods are delivered or made available to the recipient of the supply, or

(ii) if the goods are delivered or made available before it is certain that a supply will occur, when it becomes certain that a supply has occurred; and

(*b*) a supply of services occurs as and when the services are performed.

(3) An acquisition is made at the same time as the corresponding supply.

(4) If a supply or acquisition is treated by this Act as being made after the VAT commencement day, and section 7(1) of this Act does not apply, section 17 of the VAT Act applies for the purpose of determining the tax period in which the supplier or recipient has an amount of output tax or input tax in relation to a supply or acquisition.

(5) Section 30 of the VAT Act, Chapter 333A applies for the purpose of determining when an import is made.

6. Supplies made before VAT commences

(1) Where this Act treats a supply, acquisition, or import as being made before the VAT commencement day, no VAT is payable in relation to the supply or import, and no amount of input tax arises in relation to the acquisition or import.

(2) The fact that the time of supply referred to in section 17(1) of the VAT Act, Chapter 333A occurs after the VAT commencement day, does not alter the effect of subsection (1).

7. Payment or invoice before VAT commences

(1) Where this Act treats a supply or acquisition as being made on or after the VAT commencement day, but before that date—

(*a*) all or part of the consideration is received for the supply (or provided for the acquisition); or

(*b*) an invoice is issued in relation to the supply or acquisition,

to the extent that there is an amount of output tax for the supplier, or input tax for the recipient, in relation to the supply or acquisition, the supply or acquisition is treated as being made on the VAT commencement day, for the purposes of determining the tax period in which the supplier or recipient has an amount of output tax or input tax in relation to the supply or acquisition.

(2) Despite subsection (1), if an invoice is issued in relation to a supply or acquisition, or all or part of the consideration is received for a supply, or provided for an acquisition, more than twelve months before the VAT commencement day, to the extent of that invoice or payment, no VAT is payable in relation to the supply and no amount of input tax arises in relation to the acquisition.

(3) Subsection (2) does not apply in relation to a progressive or periodic supply, or part of that supply, that is treated under section 8 as occurring after the VAT commencement day, unless all of the consideration for that supply, or for that part of the supply, was paid more than twelve months before the VAT commencement day.

8. Progressive or periodic supplies spanning the commencement of VAT

(1) A progressive or periodic supply, or part of the supply, is treated as being made at a particular time to the extent that the thing supplied—

(*a*) is delivered, made available, or performed at that time; or

(*b*) is available at that time for the effective use or enjoyment of the recipient of the supply, or of another person at the direction of the recipient of the supply.

(2) For the avoidance of doubt, a progressive or periodic supply that is a lease, licence, or other form of supply relating to the use of goods or intangible property, is treated as taking place throughout the period for which the lease, licence, or other right of use is granted.

(3) Where a progressive or periodic supply is made over a period that starts before and ends after the VAT commencement day, VAT is imposed only to the extent that the supply is made after the VAT commencement day.

(4) Notwithstanding anything else in this Act or the VAT Act, Chapter 333A, if construction, reconstruction, manufacture, or extension of a building or civil engineering works is performed under a written agreement executed before the VAT commencement day and the building or works, or the property on which it is located is made available to the recipient after that date, VAT is imposed only on the value of the work performed after the VAT commencement day.

(5) Subsection (4) does not apply unless—

(*a*) the value of the work completed before the VAT commencement day is determined in a manner approved by the Comptroller;

(*b*) that value is submitted to the Comptroller by the supplier no later than the end of the VAT period ending three months after that date; and

(*c*) the submission is accompanied by documentation or other information supporting the valuation to the satisfaction of the Comptroller.

(6) This section does not apply to the supply of a warranty given for goods or services supplied before the VAT commencement day, if the value of the warranty was included in the price of the goods or services.

9. Gambling supplies

(1) If a gambling supply is made before the VAT commencement day in relation to a gambling event that happens on or after that date, the gambling supply is taken to have been made on the VAT commencement day, and the consideration for the supply is included in "total amounts wagered", for the tax period that commences on that date.

(2) For the purposes of section 24 of the VAT Act, "total monetary prizes" does not include—

(*a*) monetary prizes relating to the outcome of gambling events that happened before the VAT commencement day; nor

(*b*) amounts that would be included because of paragraph (*b*) or (*d*) of the definition of "total monetary prizes", to the extent that they relate to gambling events that happened before the VAT commencement day.

PART IV

Impact of VAT on Prices

10. Agreements entered into before VAT announced

(1) This section—

(*a*) overrides, in limited circumstances, contracts entered into before the introduction of VAT was announced, where the contracts do not include a

provision under which the introduction of VAT can be taken into account for the purpose of determining the prices to be charged under the contract;

(*b*) achieves this aim by allowing prices to be increased by arbitrary amounts, which should not be taken to reflect the anticipated effect on prices of the introduction of VAT; and

(*c*) has effect only where there are no provisions dealing with VAT, or taxes including VAT, in the relevant contract.

(2) Where a contract was concluded between two or more parties before the VAT announcement date, and no provision of the contract deals with the effect of VAT, or of taxes including VAT, on prices to be charged under the contract, notwithstanding anything in the agreement, the supplier and recipient shall negotiate to determine the amount, if any, by which the supplier may increase the price of taxable supplies made under the contract after the commencement date, such amount being calculated to recover from the recipient an amount that takes account of—

(*a*) the VAT chargeable on those supplies;

(*b*) any tax savings resulting to the supplier because of the abolition of the repealed taxes; and

(*c*) the supplier's entitlement, if any, to input tax credits on imports and acquisitions used in making the supplies.

(3) Where the supplier and recipient cannot reach an agreement under subsection (2)—

(*a*) in the case of a supply of goods other than real property, the supplier may not increase the price of the supply; and

(*b*) in any other case, the supplier may increase the price of the supply by an amount calculated by reference to the factors listed in subsection (2)(*a*) to (*c*), provided that the amount by which the price is increased does not exceed—

(i) in the case of a taxable supply of services to a recipient who is a registered person, the agreed price multiplied by the rate of VAT applicable to the supply,

(ii) in the case of a taxable supply of services to a recipient who is not a registered person, the agreed price multiplied by three-quarters of the rate of VAT applicable to the supply, or

(iii) in the case of a taxable supply of real property, the agreed price multiplied by the rate of VAT applicable to the supply.

(4) This section does not apply in relation to a taxable supply of hotel or holiday accommodation, nor to a supply of long-term accommodation that is taxable at the rate specified in section 8(3)(*b*) of the VAT Act, because of a choice made by the supplier under Schedule 4(2) of that Act.

(5) Section 12 applies in respect of a price increase determined under this section.

11. Agreements entered into after VAT announced

Where a contract is concluded after the VAT announcement date and the contract does not include a provision relating to VAT, in accordance with the principle of VAT-inclusive pricing set out in section 66 of the VAT Act, the contract price is deemed to include VAT from the VAT commencement day, and the supplier under the contract is required to account for the tax chargeable on supplies made under the contract, whether or not the supplier took its VAT liability into account when setting the price for those supplies.

12. Prevention of price exploitation on introduction of VAT

(1) Subject to subsection (3), any person who makes a regulated supply for a price that is excessive having regard to—

(*a*) the introduction of the VAT Act or the abolition of the repealed taxes;

(*b*) the person's costs;

(*c*) whether the person is a taxable person;

(*d*) supply and demand conditions relevant to the supply; and

(*e*) any other relevant matter,

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) For the avoidance of doubt, the reference in subsection (1) to a first, second, or subsequent breach of this section, refers to each time at which a penalty or fine is imposed, and does not mean that the penalty or fine should be imposed for each and every supply made at the excessive price.

(3) The Comptroller shall publish in the *Gazette*, guidelines for determining whether prices for regulated supplies are in contravention of subsection (1).

PART V

Registration

13. Registration at the commencement of VAT

(1) A person is required to be registered on the last day of the last month ending at least two calendar months before the VAT commencement day if—

(*a*) considering the total value of supplies made or to be made by the person in the course or furtherance of the person's taxable activity, the person would have been required to be registered under section 9 of the VAT Act on that day, if the VAT Act had come into force twelve calendar months before that day;

(*b*) the person is a resident agent acting for a non-resident to whom paragraph (*a*) applies; or

(*c*) the person is a government entity, or a local authority, council, or similar body that—

(i) is carrying on a taxable activity on that day or will commence to carry on a taxable activity on or before the VAT commencement day, and

(ii) makes, or will make, when the taxable activity commences, supplies of goods or services that will be taxable supplies.

(2) A person, including a resident agent acting for a non-resident, to whom subsection (1) does not apply, is required to be registered one month before the VAT commencement day if, on any day in the two months preceding the VAT commencement day, the person's turnover in the twelve months commencing on that day exceeds, or will exceed, the registration threshold in section 9(2) of the VAT Act.

(3) A person who is required to be registered because of this section shall apply for registration—

(*a*) if the person is required to be registered under subsection (1), at least two calendar months before the VAT commencement day; or

(*b*) if the person is required to be registered under subsection (2), at least one calendar month before the VAT commencement day.

(4) Notwithstanding anything in the VAT Act, if a person is required to be registered because of this section, the date of effect of the registration is the later of the VAT commencement day, or the day on which the person commences carrying on an enterprise.

(5) If, prior to the date on which the VAT Act received Royal Assent—

(*a*) a person lodged an application for registration under the VAT Act;

(*b*) the Comptroller purported to register a person under that Act;

(*c*) the Comptroller purported to issue a person with a taxpayer identification number (TIN); or

(*d*) the Comptroller purported to issue a Value Added Tax Registration Certificate under the VAT Act,

the relevant action is treated for all purposes as if it had occurred after that date.

(6) If—

(*a*) the Comptroller is satisfied that a person, other than a non-resident to whom section 9(6) of the VAT Act applies, is required to apply for registration under subsection (1) or (2) of this section; and

(*b*) that person has not applied for registration as required,

the Comptroller shall register the person in accordance with section 13 of the VAT Act.

(7) The Comptroller shall give notice in writing to a person registered under this section, stating the date of effect of the registration and notifying the person of his or her TIN, and the notice must be given no later than—

(*a*) if the person applied for registration more than one month before the VAT commencement day, within twenty-one days of receiving the application;

(*b*) if the person applied for registration less than one month before the VAT commencement day, within fourteen days of receiving the application; or

(*c*) if the Comptroller registers the person who did not apply for registration, on or before the day on which the registration takes effect.

(8) If the Comptroller decides not to register a person who applies for registration under this section, 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 XVII of the VAT Act.

(9) A person who is required to be registered under this section but who is not registered on the VAT commencement day, is treated as a person in accordance with paragraph (*b*) of the definition of person from that date.

14. Restrictions on voluntary registration

(1) Despite section 14(7) of the VAT Act, if a person applies for registration and the person is not required to be registered, the Comptroller shall not register the person with a date of effect earlier than such day, if any, as the Minister may by Order appoint, as being the day from which voluntary registration will be allowed.

(2) Subsection (1) does not prevent the Comptroller, before the day referred to in that subsection, receiving or processing such applications for registration, so long as the date of effect of the registration is on or after that day.

(3) Subsection (1) does not prevent the Comptroller, before the day referred to in that subsection, registering person who—

(*a*) is carrying on a taxable activity involving a project approved under the Grenada Investment Promotion Act, Chapter 131B; or

(*b*) is in the commencement stages of a taxable activity, if the Comptroller is satisfied that—

(i) the person will exceed the threshold once the ordinary operations of the taxable activity have been substantially commenced,

(ii) it is in the public interest that the person be allowed to register,

(iii) registering the person will not have an adverse impact on the Comptroller's ability to administer the VAT Act, and

(iv) the conditions in section 13(2) of the VAT Act are met.

PART VI

Administration and Regulations

15. This Act forms part of the VAT Act

For the purposes of giving effect to this Act, this Act should be treated as if it were part of the VAT Act, and in particular, any powers or duties of the Comptroller of Inland Revenue or the Comptroller of Customs under the VAT Act, apply also for the purposes of this Act.

16. Regulations

The Minister may make regulations for transitional measures relating to the abolition of the repealed taxes, the part of VAT, the transition from the repealed taxes to VAT, and any other related matters.

CHAPTER 333B
VALUE ADDED TAX (TRANSITIONAL PROVISIONS) ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation