

COMMONWEALTH OF THE BAHAMAS



Ministry of Finance

Draft Value Added Tax and Regulations

November 2013

The drafts of the Value Added Tax (VAT) Bill and Regulations are being released to expand the public discussion and consultation process on the fiscal reform initiative. The drafts summarize the government policy framework for advancing the implementation of the tax. Following the consultation process and prior to the passage of the legislation the Government reserves the right to revise the policy framework, having regard to the initial phasing of customs tariff and excise tax reductions (and correspondingly the rate of the tax) and the scope of VAT exemptions. This process is to ensure that the revenue and fiscal consolidation targets are maintained. Revisions to the management structure for the CRA will also be reflected in the draft legislation to be sent to Parliament.

The public is invited to submit comments on the draft to the Ministry of Finance as follows:

The Financial Secretary
Ministry of Finance
Sir Cecil Wallace Whitfield Centre
West Bay Street
P.O. Box N3017
Nassau Bahamas
Email: taxreform@bahamas.gov.bs

VALUE ADDED TAX REGULATIONS, 2013

Arrangement of Sections

Section

PART I – PRELIMINARY	4
1. Citation.....	4
2. Interpretation.....	4
3. Determination of fair market value and cash value.....	8
4. Taxable activity.....	9
5. Criteria for approval as a charitable organisation.....	10
6. Criteria for determining a finance lease.....	11
7. Determination of related persons.....	11
8. Commercial rental establishment.....	12
9. Condos leased collectively.....	14
10. Returnable container.....	14
11. Exchange of information.....	15
12. VAT Forms.....	15
PART II – APPLICATION OF RATES OF TAX	15
13. Zero rated exports.....	15
14. Supply of taxable activity as a going concern.....	15
15. Special rated supplies by hotel and similar establishment.....	17
16. Exempt supply of electricity and water.....	18
17. Exempt financial services.....	19
PART III – REGISTRATION	21
18. Exempt imports by nationals returning home.	21
19. Time limit for entry of exempt imports of returning nationals.	23
20. Violation of conditions for exemption by returning nationals.	24
21. Certificates, notices and declarations.....	24
PART IV– TRANSACTIONS INVOLVING A SUPPLY OR IMPORT OF GOODS OR SERVICES	25
22. Application of a portion of goods or services to a different use.....	25
23. Supply of goods or services to employees.....	26
24. Determination of value of goods or services applied to a different use.....	26

25.	Determination of value of supply by advance payment of specified goods or services.....	27
26.	Value of a supply of capital goods on cancellation of registration.....	28
27.	Classification of transaction as a mixed supply or a mixed import.....	28
28.	Brokerage services.....	29
29.	Place of supply of services rendered by overseas portion of a business.....	29
30.	Discount coupons.....	29

PART V – INPUT TAX DEDUCTIONS AND VAT DOCUMENTS **30**

31.	Sale and input tax deduction by a registrant dealer of second-hand vehicles.....	30
32.	Apportionment where both taxable and exempt supplies are made.....	31
33.	Financial institutions.....	32
34.	VAT invoice, VAT sales receipt, tax credit note and tax debit note.....	33

PART VI – EXCESS CREDITS AND REFUNDS **34**

35.	Proof of excess credits and issuance of refunds.....	34
36.	Procedure for claim of refunds by exempt persons.....	35

PART VII – TAX-EXCLUSIVE PRICING **37**

37.	Tax-exclusive pricing.....	37
-----	----------------------------	----

PART VIII – OFFENCES, PENALTIES, ADMINISTRATIVE FINES AND WARNING LETTERS **38**

38.	General offences.....	38
39.	Offences by VAT officer.....	39
40.	Offences by VAT registrant.....	39
41.	Offences by taxable person.....	41
42.	Offences by importer.....	42
43.	Offences by companies, aiders and abettors.....	43
44.	Administrative fines.....	43
45.	Procedure for imposition of administrative fines.....	44
46.	Assessment and collection of fines.....	46
47.	Warning letters.....	46
48.	Limitation periods for prosecution of offences.....	46

PART IX – MISCELLANEOUS PROVISIONS **47**

49.	Objection to decision of the VAT Commissioner.....	47
50.	Transitional provisions.....	47

FIRST SCHEDULE (REGULATION 44) **47**

ADMINISTRATIVE FINES	47
----------------------	----

SECOND SCHEDULE (REGULATION 12)	55
VAT FORMS	55
THIRD SCHEDULE (REGULATION 27)	58
CALCULATION OF VALUE OF A DEEMED SUPPLY OF CAPITAL GOODS ON CANCELLATION OF REGISTRATION	58

Draft
For consultation

**VALUE ADDED TAX ACT
NO. --- OF 2013**

VALUE ADDED TAX REGULATIONS, 2013

The Minister, in exercise of the powers conferred by section 93 of the Value Added Tax Act, makes the following Regulations —

PART I – PRELIMINARY

1. Citation.

- (1) These Regulations may be cited as the Value Added Tax Regulations, 2013.
- (2) These Regulations shall come into force on the 1st day of July, 2014.

2. Interpretation.

- (1) In these Regulations, unless the context otherwise requires —
 - “**Act**” means the Value Added Tax Act (*No. --- of 2013*);
 - “**ancillary transport services**” means —
 - (a) stevedoring services;
 - (b) lashing and securing services;
 - (c) cargo inspection services;
 - (d) preparation of customs documentation;
 - (e) container handling services;
 - (f) storage of transported goods or goods to be transported;
 - “**capital goods**” means an asset, or a component of an asset which is —
 - (a) of a character subject to an allowance for depreciation, or comparable deduction, for purposes of financial accounting; and
 - (b) used in the course or furtherance of a taxable activity;
 - “**commercial rental establishment**” has the meaning set out in regulation 8;
 - “**domestic financial services**” means financial services supplied within The Bahamas to a person who is not treated as a non-resident for purposes of the Exchange Control Regulations¹.

¹*Sub. Leg.; Vol VI, Ch. 360*

“**dwelling**” means a building, premises, structure, or other place, or any part thereof, used or intended for use predominantly as a place of residence or abode of a natural person together with any appurtenances belonging thereto or enjoyed therewith, excluding a commercial rental establishment;

“**education services**” means tuition or instruction for students provided by an institution registered with the Ministry of Education, the Department of Social Services, or the Public Hospitals Authority 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, or technical education;
- (d) an institution established for the education or training of physically or mentally handicapped persons;
- (f) an institution established for the training of sports persons;

“**Excise Act**” means the Excise Act (*Ch. 293A*);

“**export country**” means any country or place outside The Bahamas, excluding a country or place designated by the Minister by order not to be an export country;

“**exported from The Bahamas**” means, in relation to a supply of movable goods by a registrant under a sale or credit agreement, goods —

- (a) consigned or delivered by the registrant supplier to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Vat Commissioner or delivered by the registrant to the owner or charterer of an exporting ship or aircraft for use or consumption in such ship or aircraft;
- (b) which immediately before being put on board the exporting ship or aircraft are produced to the Comptroller of Customs for examination;
- (c) in respect of which, on request by the Comptroller of Customs, such samples as the Comptroller may require for testing or any other purpose are made available;
- (d) in relation to which the master or commander of the exporting ship or aircraft, or such other person as the master or commander may authorize, certifies on the document on which such goods are entered that they have been received on board the exporting ship or aircraft;

- (e) in respect of which the particulars are included in the cargo manifest of the exporting ship or aircraft;
- (f) which have not been, nor will be, re-imported into The Bahamas by the registrant supplier;

“fair market value” has the meaning ascribed in regulation 3;

“financial services” includes —

- (a) granting, negotiating, and dealing with loans, credit, credit guarantees, or any security for money, including the management by the grantor of loans, credit and credit guarantees;
- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, excluding debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, and other securities, excluding custody services;
- (e) management of investment funds;
- (f) medical and life insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents in connection with medical and life insurance and reinsurance transactions;
- (g) other services provided by a financial service provider within the scope of its business;

“financial services provider” means a person who provides financial services in the course or as part of a taxable activity carried on by such person;

“hotel” means a hotel, motel, inn, boarding house, guest house, hostel, or similar establishment in which lodging is regularly or normally provided —

- (a) to five or more persons;
- (b) at a daily, weekly, monthly, or other periodic charge;

“intellectual property rights” means a patent, design, trademark, copyright, know-how, confidential information, trade secret, or similar right;

“international financial services” means financial services supplied within The Bahamas to a person treated as a non-resident for purposes of the Exchange Control Regulations²;

²Sub. Leg.; Vol VI, Ch. 360

“international transport services” means services, including ancillary transport services, comprising —

- (a) the transport of passengers by road, water, or air —
 - (i) from a place outside The Bahamas to another place outside The Bahamas where the transport, or part of the transport, is across the territory of The Bahamas;
 - (ii) from a place outside The Bahamas to a place within The Bahamas;
 - (iii) from a place within The Bahamas to a place outside The Bahamas;
- (b) the transport of goods by road, water, or air —
 - (i) from a place outside The Bahamas to another place outside The Bahamas where the transport, or part of the transport, is across the territory of The Bahamas;
 - (ii) as part of a single voyage, directly from a place within The Bahamas to a place outside The Bahamas;

“medical services” means a service —

- (a) which is a medical, dental, nursing, convalescent, rehabilitation, midwifery, paramedical, or other similar service;
- (b) performed by, or under the supervision and control of, a person who is licensed in accordance with the Medical Act (*Ch. 224*), or the Dental Act (*Ch. 226*) and in possession of a valid business licence to provide such services in accordance with the Business Licence Act (*No. 30 of 2011*);
- (c) which is not cosmetic in nature;

“registrant dealer” means a registrant who carries on a taxable activity consisting, in whole or in part, of the supply or import of second-hand vehicles;

“residential accommodation” includes accommodation in a condo, house, flat, apartment, timeshare, room, caravan, houseboat, tent, or caravan or camping site;

“special rated” means chargeable to tax at a ten percent rate of the value of the supply or import;

“standard rated” means chargeable to tax at a fifteen percent rate of the value of the supply or import;

“Tariff Act” means the Tariff Act (*Ch. 295*);

“zero rated” means chargeable to tax at a zero percent rate of the value of the supply or import;

- (2) Words and phrases not defined in paragraph (1) and used in these Regulations, unless the context otherwise requires, have the same meaning ascribed to them in the Act.

3. Determination of fair market value and cash value.

- (1) A supply made for consideration includes a supply —
- (a) where the supplier directly or indirectly receives a payment for the supply from the recipient or any other person, including a payment wholly or partly in money or kind;
 - (b) made between related persons for no consideration;
 - (c) of goods for use only as trade samples;
 - (d) made through the application to a different use of goods or services acquired for use in a taxable activity; and
 - (e) made on the disposition of a taxable activity as a going concern to the extent the recipient acquires the goods or services for a purpose unrelated to the making of taxable supplies and such purpose relates to more than ten percent of the total taxable activity acquired by the recipient.
- (2) For the purposes of the Act and these Regulations, the fair market value of a supply or import of goods or services at a given date is —
- (a) the consideration in money which the supply or import, being a supply or import freely offered and made between persons who are not related persons, would generally fetch if supplied or imported in similar circumstances at such date in The Bahamas;
 - (b) where the fair market value cannot be determined under subparagraph (a), the consideration in money which a similar supply or similar import, being a supply or import freely offered and made between persons who are not related persons, would generally fetch if supplied or imported in similar circumstances at such date in The Bahamas;
 - (c) where the fair market value cannot be determined under subparagraphs (a) or (b), determined in accordance with a method approved by the VAT Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for such supply or import had the supply or import been freely offered and made between persons who are not related persons; and
 - (d) determined in accordance with the Act at the time of the supply or import.
- (3) For purposes of paragraph (2) —

- (a) a similar import, in relation to an import of goods or services, means goods or services produced in the same country which, although not alike in all respects, have the characteristics and like component materials which enables them to perform the same functions and to be commercially interchangeable; and
 - (b) a similar supply, in relation to a supply of goods or services, means any other supply of goods or services which, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that first-mentioned supply of goods or services.
- (4) For the purposes of the Act and these Regulations, the cash value in relation to a supply of goods under a credit agreement is —
- (a) where the seller or lessor is a bank or other financial institution, an amount equal to the sum of —
 - (i) the consideration paid by the bank or institution for the goods or the fair market value of the supply of the goods to the bank or institution, whichever is the greater;
 - (ii) any consideration borne by the bank or institution for the erection, construction, assembly, or installation of the goods;
 - (b) where the seller or lessor is a dealer, an amount equal to the sum of —
 - (i) the consideration at which the goods are normally sold by the dealer for cash; and
 - (ii) any consideration borne by the dealer for the erection, construction, assembly, or installation of the goods.

4. Taxable activity.

- (1) A ministry, department, statutory body, agency, local government council, or other entity of Government carries on a taxable activity when it —
 - (a) conducts auctions;
 - (b) hires equipment;
 - (c) rents space; or
 - (d) engages in any activity commonly conducted for profit.
- (2) The issuance of licences by an entity of Government referred to in paragraph (1) is not a taxable activity.
- (3) Any thing done in connection with the commencement or termination of a taxable activity is treated as carried out in the course or furtherance of that taxable activity.

- (4) Subject to these Regulations, an isolated supply of property used as a dwelling made by a person independent of any other taxable activity is not treated as a taxable activity.
- (5) A supply of a condo that is part of a hotel complex, including a condo that is part of a rental pool, is made in the course or furtherance of a taxable activity regardless of the value of the taxable supplies associated with such condo within any period of ninety days.

5. Criteria for approval as a charitable organisation.

- (1) The Minister may, in the Minister's discretion, pursuant to section 55(2)(a) of the Act approve as a charitable organisation a society, association, or other organisation that —
 - (a) is carried on for purposes other than profit or gain to a proprietor, member or shareholder of such organisation;
 - (b) under its memorandum, articles of association, written rules, or other document constituting or governing its activities is —
 - (i) required to utilise any assets or income solely in furtherance of its aims and objects;
 - (ii) prohibited from transferring any part of its assets or income directly or indirectly so as to profit a person other than by way of the —
 - (A) provision of charitable assistance;
 - (B) payment in good faith of reasonable remuneration to an officer or employee for services rendered to such organisation; and
 - (iii) on its winding-up or liquidation, required to give or transfer to another society, association, or other organisation, having similar objects its assets remaining after the satisfaction of its liabilities.
- (2) An organisation approved by the Minister pursuant to subsection (1) must —
 - (a) be organised exclusively to carry out, and in fact carry out, relief of poverty or educational, charitable, social welfare, civic improvement, or other similar activities, in the public interest;
 - (b) not involve itself in partisan political activities;
 - (c) not receive more than fifty percent of its funds from one person or organisation, or from a group or organisation that does not deal with each other at arm's length;
 - (d) disburse annually more than fifty percent of contributions received towards the attainment of activities referred to in paragraph (a);

- (e) not make its annual disbursement quota referred to in paragraph (d) by the exchange of gifts between other approved charities, persons, organisations or other legal persons;
- (f) be in compliance with any laws in The Bahamas governing charities; and
- (g) be resident in The Bahamas during the tax year.

6. Criteria for determining a finance lease.

For the purposes of the Act and these regulations, a finance lease in relation to goods is a lease —

- (a) having a term which exceeds seventy-five percent of the expected life of the goods;
- (b) which provides for transfer of ownership at the expiration of the lease term or grants the lessee an option to purchase the goods for a fixed or determinable price at the expiration of the lease term;
- (c) where the estimated residual value of the goods to the lessor at the expiration of the lease term, including the period of any option to renew, is less than twenty percent of the fair market value of the goods at the commencement of the lease term; or
- (d) where the goods are custom-made for the lessee and, at the expiration of the lease term, will not be usable by anyone other than the lessee.

7. Determination of related persons.

- (1) For the purposes of the Act and these Regulations, a person A is related to a person B, and vice versa, where —
 - (a) A is a natural person and B is a relative of A;
 - (b) A is a trust and B is a person who is or may be a beneficiary in respect of A or whose relative is or may be a beneficiary;
 - (c) A is a partnership or company limited by shares and B is a member of such partnership or company and B, together with other persons who are related persons under this section, owns by way of shares or other membership interests twenty-five percent or more of the rights to income or capital of such partnership or company;
 - (d) A is a shareholder and B is a company limited by shares and A, together with other persons who are related to A under this section —
 - (i) controls by way of shares twenty-five percent or more of the voting power in B;

- (ii) owns twenty-five percent or more of the rights to dividends or of the rights to capital;
 - (e) A is a company and B is a company and a third person C, either alone or together with persons who are under this section related to C —
 - (i) controls twenty-five percent or more of the voting power in A and B;
 - (ii) owns twenty-five percent or more of the rights to dividends or of the rights to capital in A and B;
 - (f) A is a non-resident branch or home office of a company operating in The Bahamas and B is a resident branch or home office of the same company in the Bahamas.
- (2) For the purposes of sub-paragraphs (c), (d) and (e) of paragraph (1), a person owns, on a pro rata basis, shares or other membership interests where such shares or interests are owned and controlled by such person indirectly through one or more interposed persons.
- (3) For the purposes of this regulation —
- (a) a relative B in relation to a natural person A is —
 - (i) the spouse or child of A;
 - (ii) an ancestor of A or lineal descendant of A's grandparent, stepfather, stepmother, or stepchild;
 - (iii) the spouse of a person referred to in sub-sub-paragraph (ii); and
 - (b) an adopted child is treated as a natural child of the adopter.

8. Commercial rental establishment.

- (1) For the purposes of the Act and these Regulations, a commercial rental establishment includes —
- (a) accommodation in a hotel;
 - (b) residential accommodation of any kind which constitutes an asset, including a leased asset, of a business undertaking or a separately identifiable part of a business undertaking carried on by any person who —
 - (i) leases or holds for lease in the course of such business undertaking the accommodation as residential accommodation; and
 - (ii) in respect of each occupant, regularly or normally leases or holds for lease the accommodation as residential accommodation for continuous periods not exceeding forty-five calendar days;

- (c) residential accommodation in a condo, timeshare, or house, acquired by a non-resident under the International Persons Landholding Act (*Ch. 140*) where the permit specifies that such accommodation will be used for rental purposes;
 - (d) residential accommodation in a condo, timeshare, or house which —
 - (i) is not part of a hotel or resort complex;
 - (ii) is acquired by a non-resident under the International Persons Landholding Act (*Ch. 140*) whose permit specifies that such accommodation will be used for rental purposes;
 - (e) residential accommodation in a condo, house, flat, apartment, or room, other than accommodation referred to in sub-paragraphs (a), (b), (c) or (d), which is —
 - (i) in respect of each occupant of such condo, house, flat apartment, or room, regularly or systematically leased or held for lease as residential accommodation for continuous periods not exceeding forty-five calendar days;
 - (ii) leased with furnishings and utilities provided by the lessor; or
 - (f) any other accommodation which the Minister may, by order, designate as a commercial rental establishment.
- (2) A commercial rental establishment pursuant to paragraph (1), unless designated by the Minister pursuant to sub-paragraph (f), does not include accommodation in a —
- (a) boarding establishment or hostel operated by —
 - (i) an employer not for the profit of any person but, solely or predominantly, for the benefit of —
 - (A) the employees of such employer;
 - (B) a related person of such employer;
 - (C) the dependants of a person referred to in (A) or (B);
 - (ii) a local government council not for the profit of any person; or
 - (b) registered hospital, maternity home, nursing home, convalescent home, or clinic.
- (3) Subject to regulation 13, the operation of a commercial rental establishment is a taxable activity comprising a taxable supply of services and, where the operation satisfies the registration threshold, the owner of such establishment becomes a taxable person required to register as such under the Act.

- (4) The conversion by the owner of a commercial rental establishment to a dwelling —
 - (a) is a taxable supply; and
 - (b) may in the discretion of the VAT Commissioner be treated as an exempt supply where a taxable person owning such establishment submits to the Central Revenue Agency, prior to the conversion, a written declaration in Form No. 1 of the intent to convert such establishment to a dwelling.
- (5) A commercial rental establishment in respect of which the owner fails to submit to the Central Revenue Agency, prior to a conversion, a written declaration of the intent to convert such establishment to a dwelling, continues to be a commercial rental establishment for VAT purposes.

9. Condos leased collectively.

- (1) Pursuant to section 5 of the Act, the leasing of condos or other residential accommodations that are part of a pool or other collective rental agreement is a taxable activity comprising a taxable supply of services and, where such activity satisfies the registration threshold, the administrator of such accommodations must register as a taxable person under section 18 of the Act.
- (2) The payment of VAT by an administrator pursuant to paragraph (1) on the supply of an accommodation in the pool relieves the owner of the accommodation of the liability for VAT on the taxable supplies associated with such accommodation.
- (3) The owner of an accommodation under this regulation —
 - (a) is liable, where the administrator fails to pay VAT on the supply of such accommodation, for VAT on taxable supplies associated with the accommodation; and
 - (b) must pay any VAT payable by the due date for payment.
- (4) For the purposes of this regulation, the administrator is the hotel or other person responsible, in accordance with a collective rental agreement, for the collective administration of condos or other residential accommodations forming part of a pool.

10. Returnable container.

- (1) For the purposes of the Act, a returnable container is a container that is supplied on payment of a deposit under an arrangement whereby the container, where in a suitable condition, is returnable for a refund or credit of the deposit.
- (2) A returnable container pursuant to paragraph (1) includes —

- (a) heavy-duty containers for industrial application;
- (b) oil drums;
- (c) gas or oxygen cylinders;
- (d) pallet containers;
- (e) shipping and protective storage bins;
- (f) such other containers as may be approved by the Commissioner.

11. Exchange of information.

- (1) The Central Revenue Agency may, in order to facilitate the efficient management of taxes and taxpayer compliance, enter into a Memorandum of Understanding in Form No. 2 with other Government entities to govern in accordance with section 92 of the Act the type of information which may be exchanged and the circumstances in which such information may be exchanged.
- (2) Notwithstanding paragraph (1), the Central Revenue Agency may without entering into a Memorandum of Understanding exchange information with the Customs Department on a registrant's unique VAT identification number.

12. VAT Forms.

A reference made in these Regulations to a specific numbered form is a reference to that form as prescribed by and set out in the *Second Schedule* to these Regulations.

PART II – APPLICATION OF RATES OF TAX

13. Zero rated exports.

- (1) An exporter must, in order to obtain zero rating for the export of goods and related services, identify the goods at the port of exit and present such documentary proof as may be required by the Comptroller of Customs.
- (2) The professional services specified in section 9 of Part II of the *Second Schedule* to the Act are zero-rated only where the supplier provides documentary proof, acceptable to the VAT Commissioner, that the services are used or the benefit or advantage is obtained outside The Bahamas.

14. Supply of taxable activity as a going concern.

For the purposes of a transfer of a business as a going concern pursuant to sections 25(2), 28(2) and (3), 30(8), 36(12) of the Act —

- (a) a going concern is not a dormant or prospective business but an income-producing activity capable of separate operation that is in fact operational and capable of being carried on without interruption after the transfer;
- (b) a transfer qualifies as a transfer of a going concern where it constitutes the entire taxable activity of the supplier that is a going concern; or a portion of such taxable activity where capable of being carried on as a going concern;
- (c) a supply can constitute a transfer of a going concern even where the transferred business is not profitable, or is being transferred to a liquidator, receiver, trustee in bankruptcy, or other person appointed upon the insolvency of a registrant;
- (d) the supply is zero-rated only where the transfer takes place on or after the date the Act comes into force;
- (e) a supply of a going concern is zero rated within Part I of the *First Schedule* to the Act even where the supply is to a person with no previous interest in the business;
- (f) zero-rating applies to a supply of an existing business that involves only a change of legal status or form of doing business, such as from a partnership to an incorporated company;
- (g) it is not necessary for the transferee to operate the particular income-producing activity acquired, so long as the activity is capable of separate operation;
- (h) the supply of a vacant factory building held as an investment does not qualify for zero-rating as the supply of a going concern;
- (i) the transfer of machinery and a factory building that have been used to manufacture shipping boxes qualifies as a supply of a going concern;
- (j) the supply is not zero rated unless a notice in writing in Form No. 3 signed by both the transferor and transferee is filed with the VAT Commissioner within twenty-one calendar days after the supply takes place and contains the details of the supply;
- (k) the twenty-one calendar day period referred to in sub-paragraph (j) within which the notice must be filed is determined in accordance with the provisions of section 31 of the Act;
- (l) the VAT Commissioner may require additional information from the transferor or transferee, or both; or may waive the requirement to value individual assets of nominal value;
- (m) where the transferor cancels its registration as a result of a zero-rated transfer of a going concern —
 - (i) the transferor must comply with section 26 of the Act;

- (ii) in accordance with section 30(6) of the Act, the goods which are not transferred as part of the going concern constitute a supply of the goods by the transferor at the value prescribed in regulation – and regulation –; and
- (n) sub-paragraph (m) does not apply to goods and intellectual property in respect of which the transferor has not been allowed an input tax deduction under the Act and these Regulations.

15. Special rated supplies by hotel and similar establishment.

- (1) A supply by a hotel or similar establishment is chargeable to VAT at the special rate of ten percent of its value where the hotel or similar establishment is registered and licensed by the Hotel Licensing Authority and the supply is of—
 - (a) accommodations;
 - (b) services included in the room rate for accommodations; or
 - (c) food and beverages rendered within the hotel or similar establishment.
- (2) A similar establishment pursuant to paragraph (1) includes a facility—
 - (a) provided by a supplier for sleeping accommodation for individuals for overnight or short-term stays of less than a month; and
 - (b) comprising an apartment or room not located in a private home leased for a month or more where the lessor provides utilities or furnishings for the term of the lease.
- (3) For the purposes of paragraph (2) —
 - (a) a stay by a guest for more than a month in a rare or unusual circumstance does not by itself forfeit the special rated status of an accommodation referred to in sub-paragraph (a); and
 - (b) a private home referred to in sub-paragraph (b) is the residence of the lessor where the home is a single family dwelling.
- (4) In this regulation —
 - (a) the value of a supply of accommodation includes all —
 - (i) charges imposed for the accommodation;
 - (ii) non-discretionary amounts added to the accommodation rate, including mandatory service charges, resort levy, and gratuities for hotel staff;
 - (b) the special rate does not apply to a supply of services —
 - (i) rendered outside the room or suite comprising the accommodation being supplied other than a supply of food and beverages;

- (ii) rendered in the room or suite comprising the accommodation for which a separate charge is imposed, such as a charge for internet access.
- (5) A hotel or similar establishment which bundles services to which the special rate applies with other services to which the special rate does not apply —
 - (a) must apportion the services in relation to the fair market value of each; and
 - (b) is not required to apportion the services where the value of the services to which the special rate does not apply does not exceed ten percent of the value of the bundled accommodation services.
- (6) This regulation applies to accommodations provided for guests or occupants to sleep or rest and, notwithstanding that guests or occupants sleep within them, does not apply to accommodations provided predominantly for commercial use including —
 - (a) business meetings;
 - (b) merchandise displays or trade exhibitions;
 - (c) banquets or similar events.

16. Exempt supply of electricity and water.

- (1) A supply of electricity is exempt where —
 - (a) such supply is made to a residential dwelling;
 - (b) in relation to an established customer, the total electricity supplied to the residential dwelling on a monthly basis does not exceed ----- kilowatts of electricity, commencing with the billing period that begins on or after the date the Act comes into force; or the average monthly consumption within the preceding calendar year did not exceed -----kilowatts of electricity; and
 - (c) in relation to a new customer, the supplier estimates that the average annual consumption will not exceed ----- kilowatts of electricity; or that the monthly consumption is likely to fall within (b).
- (2) A supply of water is exempt where —
 - (a) such supply is made to a residential dwelling;
 - (b) in relation to an established customer, the total water supplied to the residential dwelling on a quarterly basis does not exceed ten thousand gallons of water, commencing with the billing period that begins on or after the date the Act comes into force; or the average quarterly consumption within the preceding calendar year did not exceed ten thousand gallons of water; and

- (c) in relation to a new customer, the supplier estimates that the average annual consumption will not exceed ten thousand gallons of water per quarter.

17. Exempt financial services.

- (1) Pursuant to Part II of the *Third Schedule* to the Act and subject to this regulation, exempt financial services are —
 - (a) the insurances services described in paragraph (1);
 - (b) domestic supplies of financial services —
 - (i) which are rendered without an explicit fee, commission, or similar charge, other than discounting cost; or
 - (ii) on which stamp taxes are payable.
- (2) An exemption from a charge of VAT applies to domestic financial intermediation services where such services are rendered for an implicit fee provided —
 - (a) a supplier who makes a taxable supply of goods on credit does not include the finance charges in the total amount payable by the buyer in instalments;
 - (b) the supplier under sub-paragraph (a) lists the finance charges separately from the consideration for the goods; and
 - (c) the services are otherwise in accordance with the requirements of this regulation.
- (3) A taxable person, such as a credit department of a retail shop, may render exempt financial intermediation services referred to in paragraph (2) even where it is not a registered or licensed bank or financial services provider.
- (4) A domestic financial service is not exempt from a charge of VAT, even when rendered without an explicit or implicit fee or other similar charge, and whether or not supplied by or to a financial service provider in connection with an exempt financial service, where such service consists of —
 - (a) legal, accounting, record packaging services, and tax agency services, including advisory services;
 - (b) safe custody for money or documents;
 - (c) brokerage services;
 - (d) debt collection or factoring services; and
 - (e) trustee services;
- (5) For purposes of paragraph (4) —

- (a) the accounting and record packaging services referred to in sub-paragraph (a) are services which may be provided to a financial institution rendering exempt financial services and include —
 - (i) services related to a financial clearing system that may be part of the settlement process;
 - (ii) the posting of financial transactions to or the maintenance of the accounts of the financial institution's customers;
 - (iii) the rendering of services ancillary to the services under sub-paragraphs (i) and (ii);
- (b) in relation to the factoring services referred to in sub-paragraph (d) —
 - (i) the mere acquisition of a debt is not a taxable transaction, including debt acquired by a factor; and
 - (ii) the services related to debt recovery, litigation, and the management of the recovery of the amount due from debtors are taxable, including sales accounting services under a factoring arrangement and other services related to factoring.
- (6) For the avoidance of doubt, domestic financial services which are not exempt from a charge of VAT where a bank or financial services provider charges an explicit fee include —
 - (a) the transmission of money or monetary value in any form;
 - (b) the issuance, sale or redemption of money orders or traveller's cheques;
 - (c) cheque cashing;
 - (d) currency exchange issuance, sale or redemption of money orders or traveller's cheques; and
 - (e) currency exchange and pay day advances.
- (7) A supply of domestic financial services that is exempt from a charge of VAT is, when supplied directly in connection with the international transport of goods, treated as a zero rated export of financial services.
- (8) In this regulation —
 - “cheque” includes a postal order, money order, cheque, or any other order or authorization, whether in writing, by electronic means, or otherwise, to a financial institution to credit or debit an account;
 - “currency” means a banknote or other currency of any country, other than when used as a collector's piece, investment article, item of numismatic interest, or otherwise than as a medium of exchange;
 - “discounting cost” means the amount a person is charged in the nature of interest when obtaining financing using as security its invoices or

receivables but excludes any service fee the lender or discounter charges to administer the finance facility.

PART III – REGISTRATION

18. Exempt imports by nationals returning home.

- (1) A national who is returning home for permanent residence may apply for an exemption from a charge of VAT under Part III of the *Third Schedule* to the Act where such national —
 - (a) has a valid passport establishing his nationality as a citizen or permanent resident of The Bahamas;
 - (b) has documents acceptable to the VAT Commissioner and the Comptroller of Customs which evidence such person's —
 - (i) residential status outside The Bahamas for at least the previous ten years;
 - (ii) intention to re-establish permanent residence in The Bahamas; and
 - (c) satisfies the requirements of paragraph (6).
- (2) Documents acceptable to the VAT Commissioner and the Comptroller of Customs pursuant to sub-sub-paragraph (i) of sub-paragraph (b) include —
 - (a) entries in a foreign passport;
 - (b) an alien resident card; or
 - (c) a work permit accompanied by a letter from an employer abroad.
- (3) Documents acceptable to the VAT Commissioner and the Comptroller of Customs pursuant to sub-sub-paragraph (ii) of sub-paragraph (b) include proof of —
 - (a) retirement;
 - (b) ownership of a dwelling home or land in The Bahamas; or
 - (c) a planned investment in The Bahamas.
- (4) An exemption under paragraph (1) applies and is limited to the —
 - (a) returning national and his family members who are also returning nationals; and
 - (b) family members who are the husband, wife, or children under eighteen years of age, of the returning national.

- (5) A returning national must, in order to qualify for an exemption under paragraph (1) —
- (a) be at least eighteen years of age;
 - (b) have been a resident outside The Bahamas continuously for at least ten years immediately prior to his return;
 - (c) be returning permanently to The Bahamas;
 - (d) retain ownership and use of the goods exempted from VAT for his personal use;
 - (e) not sell, lend, hire out or otherwise dispose of any goods granted exemption under this regulation within a period of five years after re-establishing residence status in The Bahamas; and
 - (f) not previously have received an exemption from VAT under section 6 of Part III of the *Third Schedule* to the Act.
- (6) A motor vehicle referred to in paragraph (2) of section 6 of Part III of the *Third Schedule* to the Act is exempt from VAT provided —
- (a) where the vehicle was purchased abroad, it was purchased by the national before returning to The Bahamas and imported from the country where he resided immediately before returning to The Bahamas;
 - (b) where the vehicle was purchased in The Bahamas, it was purchased by the national from a motor vehicle dealer licensed in The Bahamas who sold it to the returning national directly from a Customs bonded warehouse;
 - (c) the vehicle was acquired other than by inheritance and the importer provides documentary proof acceptable to the VAT Commissioner and the Comptroller of Customs that the vehicle was used by the returning national outside of The Bahamas such proof being one or more of the following items —
 - (i) a bill of sale;
 - (ii) certificate of title;
 - (iii) foreign registration document;
 - (iv) police certificate of registration;
 - (v) an insurance policy covering the vehicle;
 - (vi) a document confirming the prior export of the vehicle from The Bahamas;
 - (d) the vehicle was acquired by inheritance and the importer provides documentary proof acceptable to the VAT Commissioner and the Comptroller of Customs that the vehicle was owned by the deceased abroad, such proof being —

- (i) one or more documents listed in sub-sub-paragraphs (i) to (vi) of sub-paragraph (c) together with a death certificate of the deceased;
 - (ii) an authenticated document from the executor of the deceased; and
- (e) the returning national enters into an agreement in Form No. 4 with the VAT Commissioner and the Comptroller of Customs that —
 - (i) the vehicle will not be sold, given away as a gift, exchanged, or otherwise disposed of, within five years of entry without payment of the applicable VAT; and
 - (ii) the returning national will notify the VAT Commissioner in writing where, within five years of the date that the vehicle entered The Bahamas, the returning national —
 - (A) disposes of the vehicle;
 - (B) departs from The Bahamas for a period of more than six months;
 - (C) transfers the use of the vehicle where he leaves The Bahamas temporarily for a period of up to six months.
- (7) An exemption from VAT under this regulation in respect of a vehicle does not extend to the liability of the returning national for any duty or other tax, other than VAT, that may apply to the imported vehicle.
- (8) A returning national who applies for an exemption pursuant to paragraph (1) must file the application in duplicate with the VAT Commissioner and the Comptroller of Customs in Form No. 20.
- (9) A returning national must not make, by act or omission, any false or misleading or fraudulent statements in support of an application for exemption.

19. Time limit for entry of exempt imports of returning nationals.

- (1) An exemption under regulation 18 is limited to such goods of a returning national that enter The Bahamas for Customs purposes within three months before or after the returning national arrives in The Bahamas.
- (2) For the purposes of paragraph (1), the VAT Commissioner may grant an extension beyond the three-month period where —
 - (a) application for an extension in Form No. 5 is filed with the VAT Commissioner by the returning national within the three-month period after his arrival in The Bahamas; and
 - (b) the returning national shows good cause in the application why an extension ought to be granted.

20. Violation of conditions for exemption by returning nationals.

- (1) A returning national —
 - (a) who through fraud or misrepresentation obtains an exemption under regulation 18; or
 - (b) who subsequent to obtaining an exemption violates a condition to which the exemption was subject or which was contained in an agreement referred to in paragraph (6)(e) of regulation 18,
is liable —
 - (i) in respect of goods other than a motor vehicle, for VAT equal to the amount of VAT that would have been chargeable at the time of the entry of the goods into The Bahamas had the exemption not applied together with any applicable interest and fines;
 - (ii) in respect of a vehicle —
 - (A) for VAT equal to the amount of VAT that would have been chargeable at the time of the entry of the imported vehicle into The Bahamas had the exemption not applied together with any applicable interest and fines;
 - (B) seizure of the vehicle by the VAT Commissioner; and
 - (C) sale at public auction of the vehicle by the VAT Commissioner where the amount due is not paid within two months after the date of seizure and application of the net proceeds to payment of the outstanding VAT, interest and fines.
- (2) For the purposes of regulation 18(5)(b)(c), a person is deemed to reside outside The Bahamas where the person leaves The Bahamas for an uninterrupted period of six months.
- (3) Notwithstanding paragraphs (1) and (2), the Financial Secretary may by notice in writing in Form No. 6 to the Central Revenue Agency, specifying the special circumstances that apply, request the Agency to treat for purposes of regulation 18 a returning national who leaves The Bahamas for an uninterrupted period of more than six months as continuing to reside in The Bahamas.

21. Certificates, notices and declarations.

- (1) A certificate of registration by the VAT Commissioner pursuant to section 22(3) of the Act must be issued in Form No. 18.
- (2) A notice of change of circumstances by a registrant pursuant to section 25(1) of the Act must be filed in Form No. 19.

- (3) A notice of assessment by the VAT Commissioner under the Act must be issued in Form No. 22.
- (4) Pursuant to section 59(1) and (5) of the Act, a notice by the VAT Commissioner requiring —
 - (a) a person to furnish information to, or attend, the Commissioner or a VAT officer must be issued in Form No. 23;
 - (b) a person to produce a record or computer must be issued in Form No. 24;
 - (c) a person to provide access to premises must be issued in Form No. 25;
 - (d) a bank or financial institution to —
 - (i) furnish details of a banking account or other assets, must be issued in Form No. 26;
 - (ii) furnish a copy of bank statements or statement of assets, must be issued in Form No. 27;
 - (ii) permit the VAT Commissioner or a VAT officer to inspect records, must be issued in Form No. 28;
 - (iv) to attend by an officer and give evidence before the Commissioner, must be issued in Form No. 29.
- (5) Pursuant to section 69(1) of the Act, a notice requiring a person to be the agent of a person liable to pay tax must be issued in Form No. 30.
- (6) A declaration by the VAT Commissioner declaring a person to be the representative of a taxable person pursuant to section 71(1) of the Act must be issued in Form No. 31.

PART IV– TRANSACTIONS INVOLVING A SUPPLY OR IMPORT OF GOODS OR SERVICES

22. Application of a portion of goods or services to a different use.

For purposes of Part V of the Act —

- (a) subject to paragraph (c), the application by a taxable person of a portion, amounting to more than ten percent, of goods or services acquired to a different use is chargeable as a taxable supply;
- (b) the VAT Commissioner must determine, where a taxable person applies a portion of goods or services to a different use, the portion of goods or services so converted to a different use by —

- (i) aggregating within a twelve month period the applications to a different use of such goods or services; and
- (ii) calculating in accordance with regulation 25 the value of the portion of the goods or services applied to a different use;
- (c) the application to a different use by a taxable person of a portion of goods or services acquired is not chargeable as a taxable supply where —
 - (i) the taxable person was not entitled to claim an input tax deduction for VAT imposed and paid on the acquisition of such goods or services;
 - (ii) the goods were on hand on the date of cancellation of the registration of such person but no claim was made for input tax deduction in respect of VAT imposed and paid at the time the goods were acquired; or
 - (iii) the goods or services are exempt goods or exempt services.

23. Supply of goods or services to employees.

- (1) Pursuant to regulation 22, the provision by an employer of goods or services acquired for use in a taxable activity carried on by such employer to an employee for personal use is a taxable supply except where —
 - (a) the employer was not entitled to claim an input tax deduction for VAT imposed and paid on the acquisition of such goods or services;
 - (b) the goods were provided to the employee on the date of cancellation of the registration of the employer and the employer had made no claim for input tax deduction in respect of VAT imposed and paid at the time the goods were acquired; or
 - (c) the employer supplies an exempt good or exempt service to the employee.
- (2) A supply of goods or services by an employer to an employee is, except where paragraphs (a), (b) or (c) applies, a taxable supply for consideration even where the employee does not pay, or pays less than market value, for the goods or services.

24. Determination of value of goods or services applied to a different use.

- (1) The value of a supply comprising the portion of goods or services which are applied by a taxable person to a different use is the lesser of —
 - (a) the percentage that the cost of the goods or services which are applied to the different use bears to the original cost of the entire goods or services acquired by the taxable person; or

- (b) the current fair market value of such goods or services as evidenced by documentary proof.
- (2) An application to a different use is treated as nil where ten percent or less of the value of goods or services acquired by a taxable person is applied to the different use.
- (3) Paragraph (2) does not apply to a supply of immovable property.

25. Determination of value of supply by advance payment of specified goods or services.

- (1) Pursuant to section 36(12) of the Act and subject to paragraph (2) of this regulation, the value of a supply of a phone card, prepayment on a cellular phone, or other specified good or service under a similar scheme of advance payment, is the stated value on such prepaid card as may be used to obtain the good or service.
- (2) Paragraph (1) applies only where —
 - (a) a registrant who is a service provider or reseller supplies the specified good or service to an unregistered taxable person who is also a reseller;
 - (b) the sale is at a discount from the stated value on the card which stated value excludes VAT; and
 - (c) VAT on the supply is accounted for separately from the stated value.
- (3) The value of a supply pursuant to section 34(2) of the Act is, where the supplier of a prepaid card does not account for VAT separately from the stated value on such card, the price of such prepaid card reduced by an amount equal to the VAT fraction and multiplied by that price so that, by way of example —
 - (a) in a case where the tax rate on the supply is ten percent;
 - (b) where the prepaid card's stated value is one hundred and ten dollars; and
 - (c) where the card is sold by a registrant service provider or reseller to a reseller who is an unregistered taxable person for ninety two dollars,

the value of the supply by the registrant service provider or reseller is one hundred dollars, being one hundred ten dollars reduced by the VAT fraction or $(10/110 \times 110)$.

26. Value of a supply of capital goods on cancellation of registration.

The value of capital goods deemed to be a taxable supply on a cancellation of registration pursuant to section 36(13)(b) of the Act is determined in accordance with the *Fourth Schedule*.

27. Classification of transaction as a mixed supply or a mixed import.

- (1) A mixed supply or a mixed import occurs where a single transaction consists of —
 - (a) the supply of two or more things, whether goods or services or both, where the VAT treatment of each thing would be different if they were not combined in the single transaction; or
 - (b) the importation of two or more things, whether goods or services or both, where the VAT treatment of each thing would be different if they were not combined in the single transaction.
- (2) The VAT Commissioner may classify a transaction involving the supply or importation of two or more things, whether goods or services or both, where each thing on its own would be subject to a different VAT treatment, as —
 - (a) a mixed supply or a mixed import constituting a single transaction; or
 - (b) two or more separate supplies or imports, where each thing supplied or imported is subject to its own VAT treatment.
- (3) For the purposes of Part V and Part VI of the Act, the VAT Commissioner must, in determining whether a transaction is a mixed supply or mixed import constituting a single transaction, consider whether—
 - (a) one thing being supplied or imported is merely a subsidiary part that is ancillary or incidental to another thing being supplied or imported, which latter thing is the dominant part of the transaction; and
 - (b) the subsidiary part is merely a means of better enjoying the dominant part or is a thing necessarily supplied as an integral part of the dominant part.
- (4) The VAT Commissioner must, where the Commissioner determines that a transaction satisfies the criteria referred to in paragraphs (a) and (b) of subsection (3) —
 - (a) classify the transaction as a single transaction, being a mixed supply or a mixed import; and
 - (b) treat each subsidiary part of the transaction as part of the dominant part and subject it to the same tax treatment as the dominant part.

- (5) The VAT Commissioner must, where the Commissioner classifies a transaction as two or more separate supplies or imports, determine the value of each separate supply or import by —
 - (a) apportioning the consideration for the transaction between each separate supply or import so as to provide a true reflection of the value to the recipient of each such supply or import; and
 - (b) give such weight as the Commissioner deems appropriate in the circumstances to the manner in which the supplier and the recipient agreed to apportion the consideration.

28. Brokerage services.

Brokerage services rendered by a domestic supplier that are incidental to the import of goods are, in accordance with section 39(1) of the Act, part of the import of goods.

29. Place of supply of services rendered by overseas portion of a business.

- (1) Notwithstanding section 32(3) of the Act, services rendered by an overseas portion of a business to the portion of the business carried on in The Bahamas —
 - (a) is treated as services imported into The Bahamas by the portion of the business carried on in The Bahamas; and
 - (b) is chargeable to VAT in accordance with section 44 of the Act.
- (2) Subject to these Regulations, paragraph (1) applies to all services rendered and, for the avoidance of doubt, includes the storage by an overseas portion of a business of computer data of the business carried on in The Bahamas.

30. Discount coupons.

- (1) In this regulation a discount coupon is a coupon that entitles the holder to a discount on the price of specific goods or services, whether such entitlement is expressed as a —
 - (a) face value amount on or associated with the coupon;
 - (b) percentage of the price; or
 - (c) “two-for-one” or similar offer, or in any other way.
- (2) The issuance of a discount coupon, whether in an advertisement or otherwise, is not a supply.
- (3) The consideration for a supply of goods or services, where a discount coupon is used in relation to the supply, does not include the —

- (a) monetary value, if any, stated on the coupon; or
- (b) amount of the discount granted because of the acceptance of the coupon.

PART V – INPUT TAX DEDUCTIONS AND VAT DOCUMENTS

31. Sale and input tax deduction by a registrant dealer of second-hand vehicles.

- (1) The tax period in which an input tax deduction may be claimed, pursuant to section 49(2)(f) of the Act, by a registrant dealer in respect of the sale of a second-hand vehicle by such dealer is the tax period in which the dealer sells the second-hand vehicle.
- (2) A registrant dealer who claims, or intends to claim, an input tax deduction in respect of the sale of a second-hand vehicle must —
 - (a) give to the person from whom the vehicle is acquired a purchase receipt in Form No. 8 acknowledging the purchase of the vehicle; and
 - (b) maintain in Form No. 9 a register or stock book for each vehicle purchased.
- (3) A purchase receipt issued by a registrant dealer under paragraph (2) must contain —
 - (a) an identifying number for the purchase;
 - (b) a description of the vehicle;
 - (c) the date of the acquisition by the dealer;
 - (d) the name and address of the person selling the vehicle to the dealer;
 - (e) the price paid by the dealer for the vehicle; and
 - (f) the number of the invoice, if any, given by the seller to the dealer.
- (4) A registrant dealer must enter into the register or stock book of the dealer, as soon as practicable after a purchase is made, all of the information required to be listed on the purchase receipt and, in addition —
 - (a) give each vehicle to be sold a separate identification number;
 - (b) where a vehicle was purchased together with a second vehicle or other items for a single price and such items will be sold separately —
 - (i) allocate the purchase price across the items in accordance with their market value when purchased; and

- (ii) ensure that the full amount paid to the seller has been listed against the items purchased.
- (5) A registrant dealer must, where the dealer sells a second-hand vehicle, enter in the register or stock book, and cross-reference to the entry for the purchase of the vehicle sold the —
 - (a) date of sale;
 - (b) identifying number or numbers given to the vehicle under this regulation;
 - (c) number of the VAT invoice given for the sale; and
 - (d) price of the sale.
- (6) Subject to paragraph (7), an input tax deduction is not allowed under this Part to a registrant dealer who contravenes or fails to comply with a provision of this regulation.
- (7) For purposes of section 49 of the Act, the VAT Commissioner may, notwithstanding a registrant dealer is in contravention of or non-compliance with a provision of this regulation, allow the dealer to claim input tax deduction where the Commissioner is satisfied that the dealer's records are sufficient to support an entitlement to a claim.
- (8) A registrant dealer, where the dealer sells a second-hand vehicle that was acquired as a trade-in on the purchase of a new vehicle, must ensure that there is equality in the values of the —
 - (a) price the dealer used to calculate the input tax deduction allowed under section 49(2)(f) of the Act and this regulation for the acquisition of the trade-in car; and
 - (b) amount the dealer treated as non-monetary consideration in working out the price of the new vehicle for the purposes of determining the VAT payable on the supply of that vehicle.
- (9) For the purposes of working out the amounts referred to in sub-paragraphs (a) and (b) of paragraph (8), the registrant dealer must use the true market value of the trade-in vehicle or the trade-in value stated in the transaction documents.

32. Apportionment where both taxable and exempt supplies are made.

- (1) Subject to paragraphs (3) and (4), input tax deduction is, where a taxable person acquires or makes a supply or importation that is used for the making of both taxable and exempt supplies, calculated according to the formula ' $A \times B/C$ ' where —

- (a) **A** is the total amount of input tax payable in respect of supplies and imports received during the period less the sum of the input tax attributable to supplies or imports —
 - (i) acquired or made which are directly allocable to the making of taxable or exempt supplies;
 - (ii) in respect of which deduction is disallowed under the Act or these Regulations;
 - (b) **B** is the total amount of taxable supplies made by the taxable person during the period; and
 - (c) **C** is the total amount of all supplies made by the taxable person during the period.
- (2) A taxable person may, where the fraction '**B/C**' referred to in subsection (1) is more than 0.90, deduct the total amount of input tax on the supplies or imports acquired or made during the tax period.
 - (3) Paragraphs (1) and (2) do not apply to a financial institution making both taxable and exempt supplies for a tax period.
 - (4) The VAT Commissioner may determine the amount of input tax allowed for a tax period on such basis other than referred to in paragraphs (1) and (2) as the Commissioner considers reasonable in a particular case.

33. Financial institutions.

- (1) A registrant which is a licensed financial service provider, and makes both taxable and exempt supplies, may claim input tax deduction only for input tax on purchases and imports used in making taxable supplies.
- (2) A bank or other financial institution can claim an input tax deduction on domestic purchases and imports only to the extent that such purchases or imports are directly attributable to and used wholly for the making of taxable supplies.
- (3) A registrant rendering financial services which derives more than ninety per cent of its total supplies in a tax period from taxable supplies may apply the *de minimis* rule and deduct the entire input tax allowable on taxable purchases and taxable imports for the period.
- (4) The VAT Commissioner may apply the *de minimis* rule referred to in paragraph (3) to a business that renders financial services only ancillary to its business of selling taxable goods or services.
- (5) A supplier of financial services must, when calculating the value of taxable and total supplies —
 - (a) use gross figures for supplies other than financial intermediation services; and

- (b) use net interest amounts (interest income less interest expense) for financial intermediation services.
- (6) The VAT Commissioner may limit input tax deductions allowed under this regulation where it is, in the opinion of the Commissioner, necessary to properly reflect transactions involving related parties.

34. VAT invoice, VAT sales receipt, tax credit note and tax debit note.

- (1) A person must, where a VAT document is required for the purposes of the Act or these Regulations, ensure that such document is in the form and contains the information specified in —
 - (a) Form No. 10, for a VAT invoice;
 - (b) Form No. 11, for a VAT sales receipt;
 - (c) Form No. 12, for a tax credit note; and
 - (d) Form No. 13, for a tax debit note.
- (2) A VAT invoice is invalid where any of the specified information required to be stated on the VAT invoice is missing and the registrant recipient of the supply is not entitled to claim an input tax deduction in relation to the supply unless and until the supplier issues a VAT invoice containing the specified information.
- (3) Notwithstanding paragraph (2), where the registrant recipient of a supply is entitled to claim an input tax deduction on VAT paid on the acquisition of the thing supplied but the amount of VAT stated on the VAT invoice issued by the supplier is less than the VAT actually chargeable on the supply —
 - (a) the VAT invoice is not invalid merely because it understates the amount of VAT chargeable on the supply; and
 - (b) for the purposes of calculating the amount of any input tax deduction that the recipient is entitled to claim under 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 VAT invoice containing the amount of VAT actually chargeable on the supply.
- (4) A registrant recipient of a supply may, in the tax period in which the acquisition was made, claim the correct or an additional amount of input tax deduction in any case where —
 - (a) the supplier purported 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 chargeable on the supply;

- (b) the recipient requested the supplier, within sixty days after the date of the supply, to issue a correct VAT invoice; and
 - (c) the supplier provided a correct VAT invoice, whether before or after the expiration of the sixty day period.
- (5) The input tax in relation to the acquisition of a supply, where the VAT invoice issued by the supplier overstates the VAT chargeable on the supply, is —
- (a) not the amount stated on the invoice; and
 - (b) determined by reference to section 6 of the Act.
- (6) For purposes of section 49 of the Act, this regulation applies where information required to be stated on a tax credit note or tax debit note is missing, or the amount of a VAT adjustment is understated, as if the references to —
- (a) a VAT invoice were references to a tax debit note or tax credit note; and
 - (b) a claim for input tax deduction by the recipient of a supply were references to a claim for input tax deduction by the supplier or recipient, as the case may be, because of a VAT adjustment event.
- (7) Section 52(7) of the Act does not prevent a registrant from issuing a corrected VAT invoice, clearly marked “Corrected Invoice” as such in bold typeface, where —
- (a) a document purporting to be a VAT invoice was previously issued by the registrant; and
 - (b) the document referred to in sub-paragraph (a) is not a valid VAT invoice or, had paragraph (3) not applied, would not have been a valid VAT invoice.

PART VI – EXCESS CREDITS AND REFUNDS

35. Proof of excess credits and issuance of refunds.

- (1) A person claiming under section 54 of the Act a refund of tax paid in excess of the amount properly charged must maintain and make available for inspection by the VAT Commissioner on request documentary proof in support of the claim in the form of—
- (a) VAT invoices, VAT sales receipts, tax credit notes, and tax debit notes issued in the transactions giving rise to the claim; and
 - (b) records that explain the essential features of the transactions and how they relate to the excess amount claimed.

- (2) Any refund payable under Part VII of the Act is, where a registrant has made no taxable supplies in a tax period, nor in any previous tax period, subject to such conditions as the VAT Commissioner thinks fit to impose, including a delay in the issuance of the refund until the registrant starts making taxable supplies in the ordinary course of the taxable activity carried on by such registrant.

36. Procedure for claim of refunds by exempt persons.

- (1) This regulation applies to exempt persons pursuant to sections 2, 8 and 56 of the Act and, in this regulation —
- “eligible staff members of a mission” means a diplomatic agent or consular officer within the meaning of the Vienna Convention;
- “international organisation” means an organisation within the meaning of section 3(1) of the International Organisations (Immunities and Privileges) Act (*Ch. 14*) and includes the person serving as head in The Bahamas and other eligible representatives of such organisation;
- “mission” means a diplomatic mission or consulate within the meaning of the Vienna Convention;
- “Vienna Convention” means —
- (a) the Vienna Convention on Consular Relations scheduled to the Consular Relations and Commonwealth Officers Act (*Ch. 18*);
 - (b) the Vienna Convention on Diplomatic Privileges and Immunities scheduled to the Diplomatic Privileges and Immunities Act (*Ch. 19*);
- (2) A diplomatic agent or consular officer or the head in The Bahamas of an international organisation may apply, on behalf of the mission or organisation, to the VAT Commissioner in Form No. 14 for a refund of VAT paid on the acquisition of qualifying goods or services.
- (3) Goods or services which qualify for a refund pursuant to subsection (2) include —
- (a) goods and services imported or acquired for official receptions, dinners, or luncheons, hosted at hotels and restaurants;
 - (b) household furniture and equipment imported or acquired for official use only by the —
 - (i) mission and eligible staff members of the mission;
 - (ii) head and eligible representatives of an international organisation; and

- (c) such other goods or services as the Minister may by order approve.
- (4) A mission or international organisation may apply for a refund of tax under paragraph (2) only where the mission or organisation —
 - (a) is registered under Part IV of the Act; and
 - (b) provides the VAT Commissioner with —
 - (i) a specimen of the signature of the head of the mission or head of the international organisation;
 - (ii) a specimen of the signature of a diplomatic agent or consular officer, or an official of the organisation, who is —
 - (A) delegated authority to sign VAT returns and the application for refund and schedule of purchases in the absence of the head; and
 - (B) approved by the Commissioner.
- (5) The VAT Commissioner may register a mission or an international organisation under section 18 of the Act, whether or not the mission or organisation is a taxable person or carries on a taxable activity.
- (6) An application for refund in Form No. 14 must be filed by the mission or organisation with the VAT Commissioner on a monthly basis as if it were a VAT return unless the Commissioner has granted the head of the mission or organisation written permission to file the application on a different basis.
- (7) An application for refund in Form No. 14 filed on behalf of a registered mission or international organisation must be accompanied by —
 - (a) supporting documentation establishing the amount of VAT paid in relation to the acquisition or import made by the person entitled to the refund and the reason that the goods or services qualify under paragraph (3);
 - (b) an original valid VAT invoice or other evidence which, to the satisfaction of the Commissioner, evidences —
 - (i) that a supply to the mission or organisation was a taxable supply;
 - (ii) the amount of tax included in the price of the supply;
 - (iii) that the person claiming to be entitled to the refund made the acquisition and paid the consideration for the supply;
 - (c) customs entry documentation or other evidence in relation to a taxable importation showing the amount of tax paid to the Comptroller of Customs and the identity of the person by whom it was paid; and
 - (d) a schedule of purchases in Form No. 15 .

- (8) A mission or international organisation must, where filing an application for refund —
 - (a) subject to paragraph (6), categorize at the end of each tax period all VAT invoices or other supporting documentation according to claims made on behalf of —
 - (i) the mission or an individual eligible staff member; and
 - (ii) the organisation or an individual eligible representative;
 - (b) include on the VAT invoice or supporting documentation the unique VAT identification number of the mission or organisation and, in the case of an individual claimant, the person's diplomatic identification card number;
 - (c) complete the schedule of purchases in Form No. 15 using the information on the VAT invoice or other supporting documentation;
 - (d) total and attach the schedule of purchases to the VAT return together with the supporting documentation attached in the same order as it appears on the schedule of purchases; and
 - (e) sign in accordance with paragraph (4)(b) the application for refund and the schedule of purchases.
- (9) The VAT Commissioner must, where the Commissioner is satisfied that an application for refund and schedule of purchases are correct, within three calendar months of receipt of the application and schedule issue a refund to the mission or international organisation by way of cheque.
- (10) A mission or organisation receiving a cheque pursuant to paragraph (9) is responsible for distributing the refunds to the claimants.
- (11) The VAT Commissioner must, where the Commissioner is not satisfied that an application for refund and schedule of purchases are correct —
 - (a) notify the head of the mission or international organisation in writing specifying the reasons why the Commissioner is not satisfied; and
 - (b) within three calendar months of receipt of the application and schedule issue a refund for such part of the claim, if any, that the Commissioner is satisfied is correct.

PART VII – TAX-EXCLUSIVE PRICING

37. Tax-exclusive pricing.

- (1) This regulation applies where a registrant offers goods for retail sale.

- (2) A registrant offering goods for retail sale must show the price on the goods exclusive of VAT and, where VAT is charged on such goods, show the amount of VAT charged in a VAT sales receipt or VAT invoice issued to the purchaser.
- (3) The VAT Commissioner may approve methods of identification by a registrant of taxable goods —
 - (a) using colour coding price tickets for taxable, zero-rated, special-rated, exempt and other supplies; or
 - (b) by asterisking taxable supplies,provided a clear explanation of the method used is displayed prominently at such places as are necessary to enable customers to identify, before they enter into a transaction, whether VAT has been included in the price of the goods.

PART VIII – OFFENCES, PENALTIES, ADMINISTRATIVE FINES AND WARNING LETTERS

38. General offences.

- (1) A person commits an offence who —
 - (a) not being a taxable person, in contravention of subsection (4) of section 4 of the Act, collects, advertises, or quotes value added tax in respect of a taxable supply by such person to another person;
 - (b) wilfully evades, or attempts to evade, the assessment, payment, or collection of VAT pursuant to the Act and these Regulations;
 - (c) wilfully impedes, or attempts to impede, the VAT Commissioner or a VAT officer in the administration of this Act by —
 - (i) failing to comply with a lawful request by the Commissioner or officer made under Part IX;
 - (ii) interfering with, or obstructing, the exercise by the Commissioner or officer of a lawful power under Part IX;
 - (iii) in any manner whatsoever contravening or failing to comply with a provision of the Act and these Regulations; or
 - (d) contravenes or fails to comply with a requirement of confidentiality under section 92 of the Act,and is liable on conviction in the Revenue Court to a fine not exceeding fifty thousand dollars (\$50,000.00) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (2) A person who contravenes section 89 of the Act commits an offence and is liable on conviction in the Revenue Court, where the tax properly payable

by such person exceeds the tax payable on an assessment based on the false or misleading statement, to a fine equal to the sum of one thousand dollars (\$1000.00) and, in addition —

- (a) the amount by which the tax payable by such person would be reduced when assessed on the basis of the information provided in the statement; and
 - (b) the amount by which any refund applied for by such person would be increased when determined on the basis of the information provided in the statement.
- (3) A person who is declared an agent by the VAT Commissioner and who contravenes section 69(2) of the Act by failing within the prescribed time to pay money or deliver property specified in a notice issued by the VAT Commissioner commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
 - (4) A person who, in contravention of section 92 of the Act, fails to maintain confidentiality commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
 - (5) A person who contravenes or fails to comply with any provision of the Act or these Regulations for which no penalty is prescribed under this Part commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

39. Offences by VAT officer.

- (1) A VAT officer who contravenes or fails to comply with section 13(5) of the Act commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding one hundred thousand dollars (\$100,000.00) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (2) A VAT officer who contravenes or fails to comply with sections 13(4) or 13(6) of the Act commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding ten thousand dollars (\$10,000.00).

40. Offences by VAT registrant.

- (1) A registrant who, in contravention of section 9 of the Act and regulation 39 —

- (a) fails to state the price of a good exclusive of VAT;
- (b) fails to issue, or to state separately the amount of VAT charged on a good in, a VAT invoice or a VAT sales receipt; or
- (c) fails to display the prices of goods or services supplied by such registrant in accordance with the regulations or VAT Rules,

commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding one hundred thousand dollars (\$100,000.00) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

- (2) A registrant who, in contravention of section 24 of the Act —
 - (a) fails to display a valid certificate of registration at a location where he carries on a taxable activity; or
 - (b) fails to display a valid certificate of registration in a conspicuous place at the location where he carries on a taxable activity,

commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding fifty thousand dollars (\$50,000.00) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

- (3) A registrant who fails to comply with any provision of subsections (1) or (3) of section 25 of the Act commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding fifty thousand dollars (\$50,000.00) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.
- (4) A registrant who in contravention of subsection (3) of section 46 fails to file a VAT return in the prescribed form or within the prescribed time, or to pay VAT due and payable, for two or more consecutive or non-consecutive tax periods, commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (5) A promoter of public entertainment who contravenes or fails to comply with section 61(3) of the Act commits an offence and is liable on conviction in the Revenue Court to —
 - (a) a fine not exceeding fifty thousand dollars (\$50,000.00) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; and
 - (b) pay an additional penalty equal to fifteen percent of the value of the tickets printed for the entertainment.
- (6) A registrant who fails to give a security pursuant to a notice in writing issued by the VAT Commissioner under section 61(1) of the Act commits

an offence and is liable on conviction in the Revenue Court to a fine not exceeding fifty thousand dollars (\$50,000.00) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

- (7) A registrant who contravenes or fails to comply with section 52 of the Act by —
- (a) failing to issue an original VAT invoice within sixty calendar days contrary to subsection (1);
 - (b) issuing more than one VAT invoice in respect of a taxable supply contrary to paragraph (a) of subsection (3);
 - (c) failing to comply with a request within the fourteen day period contrary to paragraph (b) of subsection (3);
 - (d) failing to issue a VAT sales receipt in accordance with subsection (5); or
 - (e) issuing a VAT invoice or a VAT sales receipt contrary to subsection (7),

commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

- (8) A registrant who contravenes or fails to comply with section 54 of the Act by improperly filing a claim for refund under subsection (2)(b), subsection (5), or subsection (9), of that section commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding ten thousand dollars (\$10,000.00) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

41. Offences by taxable person.

- (1) A taxable person who, in contravention of section 18 of the Act, fails to apply for registration —
- (a) in accordance with subsection (1);
 - (b) within the time prescribed by paragraphs (a) or (b) or subsection (2); or
 - (c) being an auctioneer, in accordance with paragraph (b) of subsection (8),

commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding one hundred thousand dollars (\$100,000) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

- (2) A taxable person who fails to comply with any provision of subsections (2) or (3) of section 25 of the Act commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding one hundred thousand dollars (100,000) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.
- (3) A hotel or other person responsible for the administration of condos that are part of a pool or other collective rental arrangement who, in contravention of section 5(3) and section 18(2) of the Act, fails to register commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding one hundred thousand dollars (\$100,000) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.
- (4) An unregistered taxable person who, in contravention of section 23(2)(a) and (c) of the Act —
- (a) collects tax or issues to any person a VAT invoice, VAT sales receipt, tax credit note or tax debit note; or
 - (b) fails to pay and account to the Central Revenue Agency for value added tax chargeable on all taxable supplies and taxable importations made by him while unregistered,
- commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding two hundred fifty thousand dollars (\$250,000) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

42. Offences by importer.

- (1) An importer of a taxable importation of goods who, in contravention of section 43 of the Act —
- (a) fails to submit an import declaration to the Comptroller of Customs;
 - (b) fails to pay the VAT due on the import; or
 - (c) submits an import declaration that fails to comply with subsection (3),
- commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding two hundred fifty thousand dollars (\$250,000) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.
- (2) An importer of a taxable importation of services who, in contravention of section 44 of the Act —
- (a) fails to submit an import declaration to the VAT Commissioner;
 - (b) fails to pay the VAT due on the import within the time prescribed; or

- (c) submits an import declaration that fails to comply with subsection (3),

commits an offence and is liable on conviction in the Revenue Court to a fine not exceeding two hundred fifty thousand dollars (\$250,000) or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

43. Offences by companies, aiders and abettors.

- (1) Every person who, at the time an offence under this Part was committed by a company —

- (a) was a director or other similar officer of the company; or
(b) acted or purported to act in the capacity of a director or other similar officer,

also commits the offence and is liable on conviction in the Revenue Court to such penalty as may be applicable for the offence.

- (2) It is a defence for a person referred to in subsection (1) to prove that —

- (a) the offence was committed without such person's knowledge or consent; and
(b) such person exercised such care, diligence, and skill to prevent the commission of the offence by the company as ought to have been exercised having regard to the nature of such person's functions in all the relevant circumstances.

- (3) A person who aids or abets the commission by another of an offence under this Part also commits such offence and is liable on conviction in the Revenue Court to the same penalties as the person whom he aided or abetted in committing such offence.

44. Administrative fines.

- (1) The Central Revenue Agency may not impose under section 15 of the Act an administrative fine on a person where in respect of the same act or omission constituting the contravention or non-compliance to which such fine relates such person has already been convicted of an offence under this Part.

- (2) The Central Revenue Agency must —

- (a) withdraw a prosecution for an offence which, after payment in full of an administrative fine has been made within the prescribed time, is instituted in respect of the same act or omission constituting the contravention or non-compliance to which the fine related;

- (b) refund the amount of an administrative fine that has been paid where, after the lapse of the time prescribed for payment, payment of the fine has been made in part only and a criminal prosecution is instituted in respect of the same act or omission constituting the contravention or non-compliance to which the fine relates.
- (3) An administrative fine imposed under section 15 of the Act does not become payable and the time period for payment specified in the order is suspended until the prosecution is withdrawn in a case where, after imposition of the fine and before payment in full has been made —
 - (a) a prosecution for an offence is instituted in respect of the same act or omission constituting the contravention or non-compliance to which the fine relates; and
 - (b) the prosecution is instituted when the time period for payment specified in the order has not yet elapsed.
- (4) Pursuant to section 15 of the Act, a contravention or non-compliance described in the second and third columns of the *First Schedule* is classified as very serious, serious, or minor as specified in the fourth column of the *First Schedule*.
- (5) The Central Revenue Agency may, where the Agency imposes a fine on a person, publish in such manner as it deems appropriate a statement of the contravention or non-compliance in respect of which the fine is imposed.

45. Procedure for imposition of administrative fines.

- (1) The Central Revenue Agency must, in determining the amount of a variable fine to be imposed on a person who has committed a contravention or non-compliance, take into account the —
 - (a) degree of intention or negligence on the part of such person;
 - (b) harm done by the contravention or non-compliance;
 - (c) history of such person having regard to the imposition of any prior fine, or conviction for an offence under this Part, within the five-year period immediately before the contravention or non-compliance;
 - (d) whether such person brought the contravention or non-compliance to the attention of the Agency;
 - (e) classification of the contravention or non-compliance;
 - (f) whether or not the contravention or non-compliance was inadvertent;
 - (g) efforts, if any, made to rectify the contravention or non-compliance and to prevent a recurrence;

- (h) potential financial consequences to such person, and to third parties including customers and creditors of such person, of imposing a fine; and
 - (i) the amount of the fines imposed by the Agency in other same or similar cases.
- (2) The Central Revenue Agency may, where the Agency proposes to impose an administrative fine on a person believed to have committed a very serious or serious contravention or non-compliance, give to such person prior to imposing the fine a written notice containing the —
- (a) name of such person;
 - (b) classification of the contravention or non-compliance;
 - (c) amount of the fine applicable where fixed or that the Agency proposes to impose where variable;
 - (d) right of such person within fourteen days after the notice is served, or within such longer period as the Agency may specify in the notice, to pay the fine in full or to make representations to the Agency with respect to the contravention or non-compliance;
 - (e) manner in which the person may make representations pursuant to paragraph (d); and
 - (f) warning that such person is, where payment in full or representations are not made in accordance with the notice, be deemed to have committed the contravention or non-compliance and the Agency may issue an order imposing the fine in respect of it.
- (3) A person who pays in full a fine in accordance with a written notice given pursuant to subsection (2) is deemed to have committed the contravention or non-compliance and all proceedings in respect of such contravention or non-compliance terminates upon such payment.
- (4) The Central Revenue Agency must, where a person makes representations in accordance with a written notice given pursuant to subsection (2), decide on a balance of probabilities whether such person committed the contravention or non-compliance and where the Agency decides the contravention or non-compliance —
- (a) has been committed, by order impose the applicable fixed fine or the proposed or a lesser fine where variable; or
 - (b) has not been committed, impose no fine.
- (5) A person who does not pay a fine or make representations in accordance with a written notice given pursuant to subsection (2) is deemed to have committed the contravention or non-compliance and the Agency may by order impose the applicable fixed fine or the fine proposed in the notice.

46. Assessment and collection of fines.

Subject to the Act, an administrative fine —

- (a) may be assessed and collected as if such fine were VAT due under the Act and these Regulations and, where such fine relates to an amount of VAT payable, may be assessed together with the VAT to which it relates; and
- (b) which is calculable by reference to the VAT payable for a tax period must be assessed within the same time limit which applies to the assessment of the VAT to which the fine relates.

47. Warning letters.

- (1) A warning letter pursuant to section 15(11) of the Act must be issued by the Central Revenue Agency in Form No. 16.
- (2) A warning letter pursuant to section 15(13) of the Act must be issued by the Central Revenue Agency in Form No. 17.

48. Limitation periods for prosecution of offences.

- (1) The Central Revenue Agency may not commence criminal proceedings for an offence under this Part —
 - (a) where the contravention or non-compliance constituting such offence is classified as minor, later than six months after the subject-matter of the proceedings became known to the Agency; or
 - (b) where the contravention or non-compliance constituting such offence is classified as serious or very serious, later than six years after the subject-matter of the proceedings became known to the Agency.
- (2) A document appearing to have been issued by the Central Revenue Agency certifying the day on which the subject-matter of any proceedings became known to the Agency is —
 - (a) admissible in evidence without proof of the signature or official character of the person appearing to have signed such document; and
 - (b) in the absence of evidence to the contrary, proof of the matter asserted in such document.

PART IX – MISCELLANEOUS PROVISIONS

49. Objection to decision of the VAT Commissioner.

A person objecting to an appealable decision of the VAT Commissioner pursuant to section 78 of the Act must lodge the objection in Form No. 21.

50. Transitional provisions.

- (1) A registrant who, during the first month after the Act comes into force, fails to comply with a provision of regulation 32, other than paragraph (5) —
 - (a) in relation to the non-compliance, is not liable during such one-month period to a fine pursuant to regulation 47(4)(b), or to prosecution in the Revenue Court pursuant to regulation 40(5); and
 - (b) is liable to a fine or prosecution as specified in sub-paragraph (a) where the non-compliance continues beyond the one-month period.
- (2) Value added tax is payable on a taxable supply or taxable import to the extent that such supply or import is made on or after the date the Act comes into force and, for this purpose, except as otherwise provided in these Regulations, the rules relating to time of supply under the Act apply.
- (3) A deposit made on a returnable container and paid to the person returning the container after the coming into force of the Act is eligible for an input tax deduction where such payment is supported by such documentation as the Commissioner may require.

FIRST SCHEDULE (Regulation 44)

ADMINISTRATIVE FINES

VALUE ADDED TAX ACT, 2014

VALUE ADDED TAX REGULATIONS, 2014

No	Description of Contravention or Non-Compliance	Provision of Act	Classification

DRAFT

VALUE ADDED TAX REGULATIONS, 2013

1	<p>Not being a taxable person, or being an unregistered taxable person, collecting, advertising or quoting VAT in respect of a taxable supply made to another person.</p> <p>Being an administrator of a hotel pool or other pooled accommodation, failing to register.</p>	<p>Sections 4(4)</p> <p>Section 5(3)</p>	<p>Very Serious</p> <p>Very Serious</p>
2	<p>Being a registrant, failing in respect of a taxable supply to state the price exclusive of value added tax.</p>	<p>Section 9</p>	<p>Serious</p>
3	<p>Being a registrant, failing when charging VAT on a taxable supply to state the tax separately on a VAT invoice or a VAT sales receipt.</p>	<p>Section 9</p>	<p>Serious</p>
4	<p>Failure to apply for registration.</p>	<p>Section 18(1)(a) (b) or (c); Section 18(2)(a) and (b); Section 23(1)</p>	<p>Very Serious</p>
5	<p>Being an unregistered taxable person, issuing to a person a VAT invoice, VAT sales receipt, tax credit note or tax debit note.</p>	<p>Sections 23(2)(a)</p>	<p>Very Serious</p>
6	<p>Being a registrant, failing to display a valid certificate of registration in a conspicuous place at a location where he carries on a taxable activity.</p>	<p>Section 24</p>	<p>Minor</p>
7	<p>Being a registrant, (a) failure to notify the VAT Commissioner of a change in circumstances; or (b) failing to notify a change in circumstances in the manner prescribed.</p>	<p>Section 25(1);</p> <p>Section 25(3)</p>	<p>Very Serious</p> <p>Minor</p>

8	Failure by a taxable person to notify the VAT Commissioner of the sale or transfer of a taxable activity as a going concern	Section 25(2)	Serious
9	Failure to return to the VAT Commissioner the certificate of registration upon cancellation.	Section 26(11)	Minor
10	Failure to (a) submit an import declaration to the Comptroller of Customs; or (b) pay the VAT due on the import.	Section 43(2)	Very Serious
11	Failure to submit an import declaration (a) in the prescribed form; (b) including the information necessary to calculate the VAT payable in respect of the import; or (c) in the manner prescribed or as approved by the Comptroller of Customs.	Section 43(3)(a) (b) or (c); and Section 44(3)	Serious Serious
12	Failure to (a) submit an import declaration to the VAT Commissioner; and (b) to pay the VAT due on the import within the prescribed time.	Section 44(2)(a) (b)	Very Serious
13	Failure to (a) file a VAT return in the prescribed time and form or (b) pay VAT due and payable pursuant to a VAT return or notice of assessment.	Section 46(1)(a); Section 46(1)(b)	Very Serious Very Serious
14	Being an auctioneer (a) failing to add the output tax chargeable on a taxable supply to the amount of a successful bid or to the purchase price in the case of a	Section 48(1);	Serious

DRAFT

VALUE ADDED TAX REGULATIONS, 2013

	sale out-of-hand; or (b) failing to include the output tax in the total cost or price charged to the bidder or purchaser.	Section 48(2)	Serious
15	Submitting a claim for input tax deduction to the VAT Commissioner that is not allowable.	Section 49(3)	Minor
16	Failure by a registrant to make a post-supply adjustment as required.	Section 50(3)(4) (5) and (7)	Serious
17	Failure by a registrant to issue a VAT invoice within the time, and in the form, specifying the particulars prescribed.	Section 52(1)	Very Serious
18	Issuing more than one VAT invoice in respect of a taxable supply or failure to issue a VAT invoice requested in writing within the time prescribed.	Section 52(3)	Very Serious
19	Failure by a registrant to issue a VAT sales receipt within the form and specifying the particulars prescribed.	Section 52(5)	Very Serious
20	Not being a registrant, issuing a VAT invoice or a VAT sales receipt; Being a registrant, issuing a VAT invoice or a VAT sales receipt in a manner not prescribed.	Section 52(6);	Very Serious
		Section 52(7)	Serious
21	Being a registrant supplier issuing a VAT invoice (a) as principal when an invoice has already been issued by the agent of such supplier; or (b) to a registrant recipient when the supplier has already	Section 52(8)	Serious
		Section 52(9)	Serious

	issued an invoice to the agent of such recipient.		
22	Being a registrant supplier failure to issue (a) a tax credit note in the form and specifying the particulars prescribed; or (b) a tax debit note in the form and specifying the particulars prescribed.	Section 53(1); Section 53(2)	Serious Serious
23	Not being a registrant supplier, issuing a tax credit note or a tax debt note.	Section 53(3)	Very Serious
24	Being a registrant, issuing more than one tax credit note or tax debit note in respect of a taxable supply.	Section 53(5)	Very Serious
25	Being a registrant, failing to comply with paragraphs (a) and (b) when filing a claim for refund.	Section 54(5)	Very Serious
26	Failure by a person assessed to pay the amount of tax assessed by the date specified in the notice of assessment.	Section 57(9)(b)	Very Serious
27	Failure to comply with a request by the VAT Commissioner made by notice in writing.	Section 59(1)(a) (b)(c) or (d)	Very Serious
28	Failure to give the VAT Commissioner or a VAT officer reasonable assistance or to answer questions.	Section 59(2)	Very Serious
29	Being a bank or other financial institution, failure to comply with a request by the VAT Commissioner made by notice in writing.	Section 59(5)	Very Serious
30	Failure to provide reasonable	Section 60(3)	Very Serious

	facilities or assistance to a VAT officer in the exercise of his powers.		
31	Failing to provide security in the form, amount and time specified in the notice of request.	Section 62(2)	Very Serious
32	Being a promoter, allowing a public entertainment to take place without having (a) paid the amount of security requested or (b) received the approval in writing of the VAT Commissioner.	Section 62(3)	Very Serious
33	Preventing, interfering with or impeding the VAT Commissioner in the exercise of his powers.	Section 64(12)	Serious
34	Being a fraudulent recipient of a taxable supply, failing to pay the amount assessed in a notice of assessment.	Section 68(3)	Very Serious
35	Being a deemed agent, failing within the time prescribed to pay money or deliver property specified in the notice to the VAT Commissioner.	Section 69(2)	Serious
36	Being a receiver, failing to notify the VAT Commissioner in writing within fourteen calendar days after appointment or after taking possession of an asset of a person liable to VAT within The Bahamas, whichever event occurs first.	Section 70(2)	Very Serious
37	Being a receiver, failing to set aside out of the proceeds of sale of an asset the amount notified by, or agreed with,	Section 70(4)	Very Serious

	the VAT Commissioner.		
38	Being a declared representative of a taxable person, failing to perform a duty of the taxable person under the Act or the regulations.	Section 71(2)	Serious
39	Being a declared representative of a taxable person, (a) alienating, charging, or disposing of any money received or accrued in respect of which VAT is payable; or (b) disposing of or parting with any fund or money belonging to the taxable person whose representative he is, and from or out of which such tax could legally have been paid, which is in his possession or comes to him after the tax becomes payable.	Section 71(3)(a) (b)	Very Serious
40	Being a director or similar officer, failing to pay within the specified time the amount payable in a notice of assessment.	Section 73(4)	Very Serious
41	Failing to (a) keep reliable accounting records in the English Language in relation to taxable transactions or (b) failing to keep such records for a period of seven years.	Section 76(1) and (2); and Section 77	Very Serious
42	Being a registrant, failing to include in a VAT return, notice or other document prescribed or used for the purposes of this Act the unique value added tax	Section 82(1)	Minor

	identification number issued to him upon registration.		
43	Not being a taxable person, failing to include in an application, notice, declaration or other document prescribed or used for the purposes of this Act the VAT ID number issued to him.	Section 82(2)	Minor
44	Including a false taxpayer identification number on a document prescribed or used for the purposes of the Act.	Section 82(3)	Very Serious
44	Being a registrant, failing to pay the increased VAT chargeable in relation to a taxable supply on a variation in the VAT rate.	Section 87(1)	Serious
46	Being an unregistered taxable person, collecting from the recipient of a supply the increased VAT chargeable in relation to the supply on a variation in the VAT rate.	Section 87(4)	Serious
47	Making by an act or omission a false or misleading statement to the VAT Commissioner or a VAT officer.	Section 89(1)	Serious
48	Impeding tax administration by failing to comply with any other provision of the Act.	Section 91	Minor
N o	Description of Contravention or Non- Compliance	Provision of Regulations	Classification
1	Being an administrator of a pool, failing to register under section 18 of the Act.	Reg. 9(1)	Very Serious
2	Being the owner of an accommodation in a pool,	Reg. 9(3)	Very serious

	failing to pay VAT on the accomodation.		
3	Failing to register	Reg. 18(2)(a)	Very Serious
4	Being a registrant, failing to file notice of change of circumstances in the prescribed form	Reg. 19(2)	Minor
5	Aiding and abetting an offence	Reg 42(3)	Serious
8			
9			
10			
11			
12			
13			
14			

SECOND SCHEDULE (Regulation 12)

VAT FORMS

Index

Form No. 1 Declaration of Intent to Convert Commercial Rental

	Establishment to a Dwelling
Form No. 2	Memorandum of Understanding Between the Central Revenue Agency and <i>Government Entity</i> for Exchange of Information
Form No. 3	Notice in Writing of Transfer of Business as a Going Concern
Form No. 4	Returning National Agreement
Form No. 5	Returning National Application for Extension of Time for Entry of Goods
Form No. 6	Notice in Writing of Special Circumstances of Returning National
Form No. 7	
Form No. 8	Registrant Dealer Purchase Receipt
Form No. 9	Registrant Dealer Second-Hand Vehicle Register/Stock Book
Form No. 10	VAT Invoice
Form No. 11	VAT Sales Receipt
Form No. 12	Tax Credit Note
Form No. 13	Tax Debit Note
Form No. 14	Application for Refund by Exempt Persons
Form No. 15	Schedule of Purchases
Form No. 16	Central Revenue Agency Warning Letter
Form No. 17	Central Revenue Agency Warning Letter (Closure of Business Premises)
Form No. 18	Certificate of Registration
Form No. 19	Notice of Change of Circumstances
Form No. 20	Returning National Application for Exemption
Form No. 21	Objection to Decision of VAT Commissioner
Form No. 22	Notice of Assessment
Form No. 23	Notice to Furnish Information or Attend the VAT Commissioner

Form No. 24	Notice to Produce Record or Computer
Form No. 25	Notice to Provide Access to Premises
Form No. 26	Notice to Furnish Details of Bank Account
Form No. 27	Notice to Furnish Copy of Bank Statements or Statement of Assets
Form No. 28	Notice to Inspect Banking Records
Form No. 29	Notice to Attend and Give Evidence
Form No. 30	Notice of Agency
Form No. 31	Declaration of Person to be Representative

NB: MOF MUST PREPARE FORMS FOR INCLUSION IN DRAFT REGULATIONS

Draft
For consultation

THIRD SCHEDULE (Regulation 27)**CALCULATION OF VALUE OF A DEEMED SUPPLY OF CAPITAL GOODS
ON CANCELLATION OF REGISTRATION****PART I – CLASSIFICATION OF ASSETS****1. Classification of real property.**

- (1) For the purpose of determining the useful lives under Part II with respect to real property used by a taxable person in his business, real property is classified as follows —
 - (a) commercial real property means hotels, commercial rental establishments and restaurants; and
 - (b) industrial real property includes buildings in which goods are manufactured or processed and buildings used for the purpose of trade consisting of the storage of goods or materials which—
 - (i) are to be used in the manufacture of other goods or materials;
 - (ii) will be subjected in the course of trade to any process; and
 - (iv) have been manufactured, produced or subjected in the course of trade to any process but have not been delivered to a purchaser.
- (2) Real property utilized for more than one purpose in a business is classified as commercial or industrial depending on the dominant purpose for which the property is used.

2. Classification of plant and machinery.

- (1) For the purpose of determining the useful lives under Part II with respect to plant and machinery used by a taxable person in a business, the plant and machinery is classified as follows —
 - (a) five year plant and machinery includes —
 - (i) aircraft and aircraft accessory equipment;
 - (ii) bicycles;
 - (iii) motor cars, lorries, omnibuses, vans, jeeps, tractors, land rovers, traction and hauling equipment;
 - (iv) motor cycles;
 - (v) office appliances – accounting, adding and calculating machines, cash registers, duplicating and copying machines, typewriters, computers and computer accessories;

- (vi) trailers.
- (b) seven year plant and machinery includes —
 - (i) aerated beverage plant (electrical);
 - (ii) bakery machinery and plant;
 - (iii) block and brick manufacturing machinery and plant;
 - (iv) cigarette manufacturing machinery;
 - (v) cinematography equipment – projectors, fans, public address systems and other electrical appliances and furniture used for seating;
 - (vi) clothing trade – general machinery used in the clothing trade including sewing machines;
 - (vii) copra crushing and refining plant;
 - (viii) cranes;
 - (ix) diesel engines and motors;
 - (x) electrical lifts;
 - (xi) electrical undertakings including generating plants;
 - (xii) engineering workshops – electrical equipment, lathes and milling machines, welding plant, tools and instruments;
 - (xiii) furniture workshops – electrical and other equipment;
 - (xiv) furniture;
 - (xv) ice manufacture and cold storage – electrical plant and insulation, refrigeration machinery, compressors, condensers, tanks, etc.;
 - (xvi) neon signs;
 - (xvii) photographic equipment;
 - (xviii) plant and machinery not specified as either five or nine year machinery or equipment;
 - (xix) printing type;
 - (xx) pumps – electric pumps;
 - (xxi) radio equipment – amplifiers and receivers;
 - (xxii) refrigeration and deep freeze cabinets;
 - (xxiii) shipping – canoes, launches, lighters and sail boats;
 - (xxiv) stores; and
 - (xxv) timber merchants – saw milling machinery and electrical motors; and
- (c) nine year plant and machinery includes —
 - (i) aerated beverage plant (steam);

- (ii) clothing trade – steam boilers, engines and similar machinery and plant;
- (iii) electrical undertakings – mains and other equipment, water turbines and transformers;
- (iv) engineering workshops – heavy plant;
- (v) garages – gasoline and kerosene tanks and pumps;
- (vi) gas – gas holders and containers and other plant;
- (vii) ice manufacture and cold storage – steam and gas engines;
- (viii) oil tanks and pumps;
- (ix) printing – plant and machinery;
- (x) pumps – other than electric pumps;
- (xi) radio equipment – lines and speakers;
- (xii) scales;
- (xiii) timber merchants – steam engines and boilers; and
- (xiv) waterworks – appliances and apparatus used for storage, purification, conveyance, measurement or regulation of water.

PART II – AMOUNT OF THE CAPITAL ALLOWANCES

Calculation of value of capital goods.

- (1) The value of capital goods deemed supplied on the cancellation of registration under the Act and these Regulations is calculated by deducting from the cost of constructing, acquiring or improving the capital goods listed in Part I the amount determined in accordance with the provisions of this Part.
- (2) The deduction allowable under paragraph (1) —
 - (a) begins in the year in which the asset was first brought into use in making taxable supplies; and
 - (b) is the amount equal to the percentage of the assessed cost, as specified in this Part, of the asset.
- (3) The deduction allowable for industrial real property is four per cent for the year the asset was first brought into use and in the next twenty-four succeeding years of assessment.
- (4) The deduction allowable for five year plant and machinery is twenty per cent for the year the asset was first brought into use and in the next four succeeding years of assessment.
- (5) The deduction allowable for commercial real property is determined in accordance with Table I —

TABLE 1
COMMERCIAL REAL PROPERTY

Assessment Year Percentage of Cost

Assessment Year	Percentage of Cost
1	4
2 – 33	3

- (6) The deduction allowable for seven year plant and machinery is determined in accordance with Table 2 —

TABLE 2
SEVEN YEAR PLANT AND MACHINERY

Assessment Year Percentage of Cost

Assessment Year	Percentage of cost
1	15
2	15
3	14
4	14
5	14
6	14
7	14

- (7) The deduction allowable for nine year plant and machinery is determined in accordance with Table 3 —

TABLE 3
NINE YEAR PLANT AND MACHINERY

Assessment Year Percentage of Cost

Assessment Year	Perenatge of Cost
1	12

2	11
3	11
4	11
5	11
6	11
7	11
8	11
9	11

- (7) The deduction under paragraph 1 is, where capital goods have been used for purposes other than in making taxable supplies, computed as if deductions had been allowed with respect to that asset for all of the years that the asset has been used in the business.
- (8) The VAT Commissioner may, where capital goods are deemed supplied at a time other than at the end of a year of use, apportion the deduction allowable in such manner as appears to the Commissioner to be reasonable.
- (9) By way of example of a calculation under this Part —
- (i) where machinery was acquired for \$100,000;
 - (ii) where the machinery has a useful life of 7 years;
 - (iii) where the machinery has been used in a taxable activity for 3 years;

the value of the machinery calculated in accordance with Table 2 —

Cost	\$100,000
Capital allowance (14% of cost after 3 yrs)	(14,000)
Value of capital goods deemed supplied	\$ 86,000

is \$86,000 after the capital allowance or deduction of \$14,000.00.