

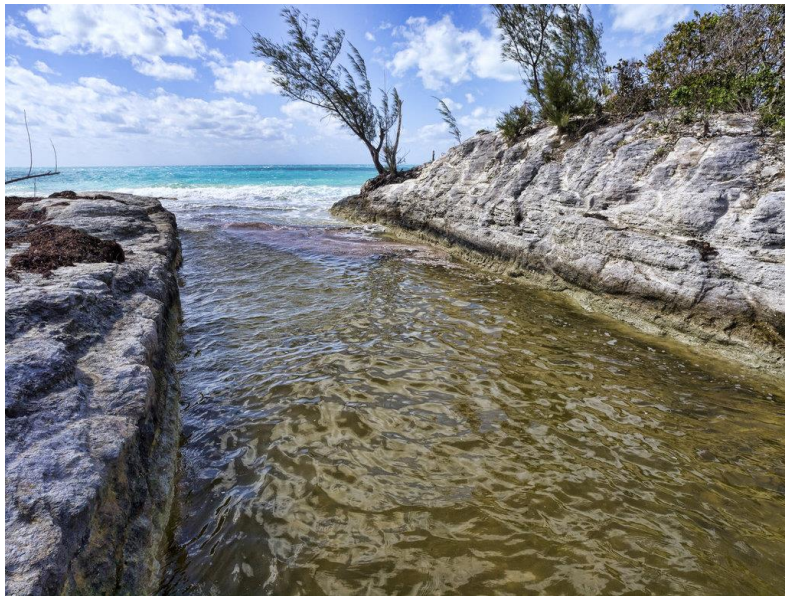


Ministry of Finance

VAT Department

VAT and the Hawksbill Creek Agreement

Version 3: December 22, 2014



Introduction

This guide is intended to assist businesses operating within the Freeport area with understanding how Value Added Tax (“VAT”) applies to them. It should be read in conjunction with the Value Added Tax Act 2014 (“VAT Act”), the Value Added Tax Regulations 2014 (“VAT Regulations”) the VAT Rules, The Bahamas General VAT Guide (“VAT Guide”) and The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act (Ch. 261) (“Hawksbill”).

The Law

The VAT Act has the following relevant definitions as it relates to Freeport, Grand Bahama and states as follows:

Part I section 2:

“Port Area” means the area as defined in Hawksbill;

“Port licensee” means Grand Bahama Port Authority or a licensee of the Port Authority entitled to the tax benefits conferred under Hawksbill;

“taxable supply” means –

- (a) A supply of goods and services in The Bahamas made by a person in the course or furtherance of a taxable activity carried on by such person, other than an exempt supply;
- (b) In relation to the Port Area, a supply of goods and services in the Port Area made by a person in the course or furtherance of a taxable activity carried on by such person other than an exempt supply or a supply referred to in subsection (3) of section 3 of the VAT Act;

Part I section 3 (2):

This Act applies in the Port Area where –

- (a) A taxable supply within the Port Area is made by –
 - (i) a taxable person who is a Port licensee to a person who is not a Port licensee;
 - (ii) a taxable person to a person who is a Port licensee, where the supply is not of goods of a kind and for a use within the customs duty exemptions in clause 2 of Hawksbill;
 - (iii) a taxable person to another person neither of whom is a Port licensee;
- (b) A taxable importation from outside The Bahamas is made into the Port Area by a person who –
 - (i) is not a Port licensee;
 - (ii) is a Port licensee but the importation is not of goods of a kind and for a use within the customs duty exemptions in clause 2 of Hawksbill;
- (c) A taxable importation from outside The Bahamas is made into the Port Area for the personal use of any person;
- (d) A taxable supply in the Port Area is made by a taxable person for the personal use of any person;
- (e) A taxable person within the Port Area whether or not a Port licensee, makes a taxable supply within The Bahamas to a recipient outside the Port Area;
- (f) A taxable person in another part of The Bahamas makes a taxable supply to a recipient in the Port Area who –
 - (i) is not a Port licensee; or

(ii) is a Port licensee but the supply is not of goods of a kind and for the use within the meaning of the customs duties exemptions in clause 2 of Hawksbill;

Part I section 3 (3):

This Act does not apply to transactions taking place within the Port Area where –

(a) A supply of goods within the Port Area is made by a taxable person who is a Port licensee to another Port licensee and the goods are of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill; and

(b) An importation of goods from outside The Bahamas is made into the Port Area by a Port licensee and the goods are of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill.

Part I section 3 (4):

References in the VAT Act to goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill do not include goods that are “consumable stores” as defined in clause 2(5) of Hawksbill.

Part II section 9:

References in the VAT Act to goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill do not include goods that are “consumable stores” as defined in clause 2(5) of Hawksbill.

Refunds to Port licensees in certain circumstances

(1) Where a Port licensee has been charged VAT on a transaction falling within paragraph (a) of subsection (3) of section 3, that Port licensee is, subject to the provisions of section 59, entitled to a refund of the VAT which was charged on that transaction.

(2) Where –

a) A Port licensee has purchased new and unused goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill from a person within The Bahamas; and


b) The goods purchased by the Port licensee are goods upon which VAT was charged upon their importation into The Bahamas,

then save where the Port licensee is entitled to a refund under subsection (1) in respect of the sale to it of the goods, and subject to the provisions of section 59, the Port licensee is entitled to a refund of the VAT which was charged on the original importation.

(3) Any claim to a refund under this section must be made in accordance with section 59.

Hawksbill Creek Agreement and Act

Clause 2 of Hawksbill states that all materials, supplies and things of every kind and description other than consumable stores which is of the opinion of the Port Authority necessary for the



dredging, construction and erection, air-conditioning, equipping, fitting out, furnishing, landscaping, extension, completion, repair, maintenance, replacement and operation of “the Port Area Development” may be imported or removed from bond by the Port Authority or a Port licensee free of all Customs Duties and taxes. This includes manufacturing supplies and administrative supplies as described within the Agreement. This does not include “consumable stores”.

Under Hawksbill the term “consumable stores” is defined as:

- a) Any article or thing imported for the personal use of any person made available after its importation for the personal use either by sale or gift or otherwise of any person, whether such person be employed or resident within the Port Area or not, provided always that sales of any articles or things for export outside of The Bahamas which are in fact exported from the Port Area to any place outside The Bahamas and in respect of which a landing certificate from the port of destination is produced shall not be deemed to be consumable stores within the meaning of this agreement;
- b) Any article or thing imported into the Port Area and subsequently exported from the Port Area to any other part of The Bahamas, and any article or things assembled, processed, or manufactured within the Port Area and subsequently exported from the Port Area to any other part of The Bahamas, except pine lumber or products consisting of or made out of pine lumber or pine timber processed or manufactured within the Port Area out of pine timber grown on the said Island of Grand Bahama; and
- c) Any article or thing sold to the passengers, officers or crew of any ship, vessel or yacht landing at the Port Area, provided always that ships’ stores and supplies including fuel and bunker supplies and all things whatsoever connected with the servicing of ships sold by the Port Authority or any Port licensee within the Port Area to any vessel of 1,500 net tons or more shall not be deemed to be consumable stores within the meaning of this agreement.

Transactions by a Port licensee

Who is a Port licensee?

A Port licensee is a company, firm, or individual that holds a valid and subsisting license from the Grand Bahama Port Authority to engage within the Port Area in a specified form of manufacturing, industrial or other business undertaking, enterprise or profession. In the case of limited liability companies, shareholders, directors and employees are not Port licensees. Also a subsidiary of a Port licensee is not a Port licensee unless it holds a licence separately in its own name.

If I am a Port licensee are the goods I import free of VAT on importation?

Not all goods you import will necessarily be free of VAT. It depends on the use to which the imported goods are put.

Imported goods can be split into 3 categories: Supplies, Manufacturing Supplies, and Consumable Stores.

Supplies

VAT on importation will apply to all supplies unless they are imported by a Port licensee and in the opinion of the Port Authority they are necessary for the dredging, construction and erection (including excavations and demolitions in connection therewith) air-conditioning, equipping, fitting out or furnishing, landscaping extension, completion, repair, maintenance, replacement, and operation of:

- a) The Port Project (i.e. the deep water Harbour, turning basin and wharf);
- b) The Port Area Development (or Port Development Area) comprising:
 - i. All factories, warehouses, industrial, commercial, business, and other undertakings, office buildings, housing, and all other buildings and accommodations of every kind within the Port Area;
 - ii. All roads, bridges, parks, places of beautification, amusement, entertainment, sports and recreation laid out within the Port Area;
 - iii. All utility undertakings within the Port Area; and
 - iv. Any other undertaking or thing within the Port Area constructed, erected, or operated by the Port Authority or by any person or company, licensed in writing by this Port Authority under their Common Seal to carry on any manufacturing, industrial or other business, under-taking, or enterprise within the Port Area.

“Supplies” means all materials, supplies and things of every kind and description other than consumable stores including equipment, building materials, factory plant and apparatus, parts, machine and hand tools, contractor’s plant, vehicles, vessels, petroleum products and nuclear fission products.

Manufacturing supplies

VAT on importation does not apply to manufacturing supplies that are imported by a Port licensee and used in a manufacturing, industrial or other production undertaking within the Port Area. This includes goods used in manufacturing, processing, assembly, exhibition, warehousing, storage, transshipment, unloading, loading, trucking, and stevedoring. The term manufacturing supplies therefore encompasses all goods required for a Port licensee to carry on their day-to-day business.

Consumable stores

VAT on importation is applicable to consumable stores unless the items are exempt from VAT or imported by a licensee with permission to operate an open bonded warehouse.

Consumable stores means any article or thing imported for the personal use of any person or made available after its importation for the personal use either by sale or gift or otherwise of any person, whether such person be employed or resident within the Port Area or not.

Consumable stores therefore include:

- items imported for retail sale within the Port Area;
- items of sale or hire in the course of a service or hire business;
- all items of food, drink, and tobacco;
- all items of personal clothing, footwear and headgear;
- any other item that is particularly adapted for personal use for example toys, jewellery or cosmetics;
- items imported for the benefit of a non-Port licensee;
- items imported, to be supplied to a person, or business in The Bahamas but outside the Port Area whether the items are supplied as imported or used in the manufacture, assembly or process of items to be supplied except products made in the Port Area from pine lumber or timber grown on the Island of Grand Bahama; and
- items sold to passengers, officers or crew of any ship, vessel or yacht in the port area except items considered ship's stores and supplies including fuel and bunkering and all things connected with the servicing of a commercial ship by the Port Authority or any Port licensee within the Port Area.

Some items that would normally be considered consumable stores can be treated as manufacturing supplies and imported free of VAT where the Customs Authorities are satisfied that:


- the articles are required for the operation of a Port licensee's business or the health and welfare of the Port licensee's employees;
- the items are only to be used on the business premises where the general public does not normally have access; and
- the items are used exclusively by the Port licensee's employees.

Such items include but are not limited to hand towels, paper napkins, toilet rolls, soap, disinfectants, cleaning materials, crockery, cutlery, protective clothing, safety equipment, uniforms and medical supplies.

Items imported into the Port Area by a Port licensee that are to be subsequently exported (often referred to as temporary imports) are not subject to import VAT. This would include containerized items that are simply transhipped for example through the Freeport Container Port or the BORCO oil bunkering facility, or items that are imported for the manufacture and subsequent export of the manufactured items.

If I import consumable stores, when do I pay the VAT?

If you import consumable stores you should pay the VAT to the Customs Authorities at the time of importation or when the goods are released from a bonded warehouse.



Some retailers will not know at the time of import whether the goods they sell will be sold to a Port licensee for use in their licensed activity or sold for a private use and as such will not be able to determine whether import VAT is due or not. For retailers that have a specific agreement with the Customs Authorities that permit the duty to be declared when the item is sold rather than when it is imported, ('open bonded warehouse') this same agreement will be extended to VAT. If the item sold is subject to VAT the retailer will need to declare on the VAT return the output tax (the VAT they charge the customer) and the input tax (the import VAT due on the item and payable at the same time the duty on the item is paid). On the same return they can recover the input tax.

For example an item is purchased for \$50 and is sold for \$100 + \$7.5 (VAT at 7.5%). The entries on the VAT return would be as follows:

Sale of goods (output tax)	- \$7.5
Import VAT (paid when duty is paid)	-\$3.75
Reclaim of import VAT (input tax)	-\$3.75
Balance payable to the VAT Commissioner	\$ 3.75

What if I import goods other than consumable stores - will they be subject to import VAT?

The Customs treatment of imports by licensees will determine if the non-consumables are assessed import VAT. If the goods will be entered into a bonded facility and the licensees have arrangements to declare import duties and excise taxes upon sales to non-bonded persons, Customs will not apply import VAT to the goods.

What if I import goods free of VAT but put them to a different use - do I have to then pay VAT?

If you put goods to a different use and that use would not provide you with the right to import the goods free of VAT you must declare the change of use to the Customs Authorities and recognize import VAT on the current value of the goods. The current value of the goods can be determined based on an inspection from the relevant officer appointed by the Comptroller of VAT upon the Port licensee's request. If you are a VAT registrant, you will account for output VAT on the disposition of the goods, and include this transaction in your return to the VAT Comptroller.

Where do I file and pay VAT that was collected on bonded imports applied to a different use or sold to non-licensees?

For VAT registrants all output VAT must be reported and paid to the VAT Comptroller, after allowance for all input credits. Non-Registrants are only liable to pay the import VAT which must also be paid in full to the VAT Comptroller, but without any allowable input credits.

What if I sell goods to another Port licensee once they have been removed from a bonded warehouse or imported - will they be subject to VAT?

It depends on the use to which the goods will be put. Provided the goods are to be used by another Port licensee in their business activity under the terms of their license, your supply of the goods will not be subject to VAT.

A purchase order with the Port licensee's license number and tax identification number (TIN) on it and a declaration that the goods will be used in the Port licensee's business will suffice as evidence that the sale of the goods is not subject to VAT. These documents should be kept for 5 years.

What is the VAT treatment of goods I have manufactured or assembled?

It depends on the use to which the goods will be put. If the goods are used by you in your business activity under the terms of your license, they will not be subject to VAT.

If you sell the goods you have manufactured or assembled to another Port licensee to be used in their business activity under the terms of their license, your supply of the goods will not be subject to VAT.

A purchase order with the Port licensee's license number and TIN on it and a declaration that the goods will be used in the Port licensee's business will suffice as evidence that the sale of the goods is not subject to VAT. These documents should be kept for 5 years.

If you sell the goods to a Port licensee for a private or non-business use or to a non-licensee your supply will be subject to VAT at the standard rate.

If you are manufacturing the goods and export the goods to a destination outside of The Bahamas, they will be subject to VAT at the zero rate

What if I provide services to another Port licensee, will they be subject to VAT?

Services provided by a Port licensee are subject to the general VAT rules and therefore services provided by one Port licensee to another Port licensee will be subject to VAT unless the services are exempt from VAT in accordance with second schedule of the VAT Act (for example, certain financial and insurance services).

Additional information is provided in the VAT Guide and sector guides available including the guide on professional services.

What if I import services, will I need to pay import VAT?

Services imported by a Port licensee are subject to import VAT unless the services are exempt from VAT in accordance with Second Schedule of the VAT Act (for example certain financial and insurance services).



Services imported for a private use or by a non-Port licensee will be subject to VAT unless the services are specifically exempt from VAT.

Further information on which services are exempt from VAT and how to declare the import VAT on imported services can be found in the VAT Guide.

What about the importation of vehicles?

A vehicle can only be imported VAT free if it is to be used solely for the purposes of a business of a Port licensee and will not be taken out of the Port Area.

What about the provision of housing by a Port licensee?

There are no special rules regarding the construction, rental and sale of a house or any other dwelling by a Port licensee. In accordance with the VAT Act, the construction of a dwelling is a service subject to VAT at the standard rate of 7.5%. The sale or rental of a house or other dwelling is exempt from VAT.

Construction materials used in the construction of a dwelling can be imported or purchased from another Port licensee VAT free when they are imported by a Port licensee and are considered goods of a kind and for a use within the customs duties exemptions in clause 2 of Hawksbill.

What about the importation of goods to construct other buildings?

Construction materials can only be imported VAT free when they are imported by a Port licensee and are considered goods of a kind and for a use within the customs duties exemptions in Clause 2 of Hawksbill.

What about goods imported in personal baggage?

The VAT exemptions relating to a Port licensee do not apply to goods brought into the Port Area by the Port licensee or employees in their baggage. The goods must arrive as manifested cargo of a ship or aircraft or, if the goods enter by parcel post, the exemption can be claimed by completing customs Form 100.

How do I claim the VAT exemption when I am importing goods?

A Port licensee must complete customs Form 100 “Conditionally Free Entry Form” to claim exemption from VAT.

What if I am charged VAT by a Port licensee?

If a Port licensee incurs VAT on goods that fall within the customs duty exemptions in clause 2 of Hawksbill and the goods were supplied by another Port licensee then the Port licensee can claim a refund of the VAT paid. The relevant requirements can be found in S59 of the Act. If you are a VAT Registrant, you can take an input tax credit on your VAT Return.

What if I am charged VAT by a non-Port licensee?

If the goods were supplied by a person within The Bahamas, are new and unused and were originally imported then the Port licensee can claim a refund of the VAT paid at the time of importation. If you are a VAT registrant, you claim input tax deductions for these on your VAT Return.

How do I apply for a refund of VAT?

To claim a refund of VAT under section 9 of the VAT Act a Port licensee must be registered for VAT under section 59 of the VAT Act. Port licensees registered for VAT under section 59 will be registered only for the purposes of making a claim for a refund of VAT. A Port licensee can be registered under section 59 even if they are required to be registered for VAT due to making taxable supplies exceeding the VAT registration threshold.

When will a Port licensee be required to register for VAT?

A Port licensee will be required to register for VAT if the value of the supplies they make that are subject to VAT (taxable supplies) exceeds the VAT registration threshold of \$100,000.

You can voluntarily register for VAT if you make taxable supplies and the value of those supplies is below the VAT threshold or you are entitled to recover VAT that you have incurred on purchases.

If you are not registered for VAT you do not have to charge VAT on any goods or services that would ordinarily be subject to VAT, however, once you are registered for VAT, either on a voluntary or compulsory basis, you must charge VAT on any taxable supplies you make.

If I am a Port licensee retailer or wholesaler in the Port Area what price do I display?

If you are registered for VAT, you should display the VAT inclusive price. Where you sell goods to another Port licensee and they are not subject to VAT the reduction in the price should be provided at the time of sale. Any invoice you raise must clearly show whether VAT has been charged or not.

What is VAT grouping?

Transactions between separate entities, even where there is common ownership, can be subject to VAT. This can create a VAT cost and restrict the way in which companies under common ownership are structured. This is particularly relevant for group structures where companies within the group make exempt supplies.

For example, a group may have two companies one making taxable supplies and the other making exempt supplies. However, the staff costs could all be incurred in the company making taxable supplies that then recharges a portion of these costs to the company making exempt supplies. Any recharge for the staff costs will be subject to VAT which can cause a cash flow issue and as the receiving company cannot recover any VAT incurred on costs it will result in a VAT cost for the group.

VAT grouping permits a group of entities all of whom are registrants (companies, partnerships or individuals) to apply to be treated as a single taxable person for VAT purposes. Any entity within the VAT group can be elected to be the “representative member” who is responsible for completing and rendering the single return on behalf of the group. Whilst the representative member is responsible for paying the VAT or receiving any repayment due, all the entities are jointly and severally liable for any VAT debts. Supplies between group members are normally disregarded for VAT.

Each business entity must be conducting or in the course of conducting a taxable activity and registered separately with an individual TIN. The group must decide which business will be the representative member. The business that is the representative will be the member responsible for completing and rendering the single return on behalf of the group and this business’ TIN will be used for this purpose. However, each business will continue to use their individual TIN for external business transactions.

If any member of the VAT group makes supplies that are exempt for VAT then the input tax for the whole VAT group would need to be apportioned. This can have advantages or disadvantages depending on the amount of VAT exempt supplies made by the group. The conditions for joining or forming a VAT group are as follows:

- All members of the VAT group must be related persons in accordance with Part I section 7 of the VAT Regulations.
- Registration as a group is not allowed where:
 1. a resident and a non-resident form part of the same grouping; or
 2. a Port licensee and a person who is not a Port licensee form part of the same grouping.

VAT grouping is optional and at the discretion of the Comptroller. If you would like to apply for VAT grouping you should contact The Comptroller providing details of the companies that you would like to VAT group including the taxable or exempt income of each company.

Transactions by businesses that are not Port licensees

If I sell goods or provide services will they be subject to VAT?

The normal VAT rules will apply. Further guidance on what goods and services will be subject to VAT can be found in the VAT Guide.

If I provide goods or services to a Port licensee, will they be subject to VAT?

You must treat a Port licensee the same as any other customer. If you supply goods to another Port licensee they must be charged VAT unless they provide evidence (customs bonded letter) of their exemption from customs duties and excise taxes on importation of the goods, under Clause 2 of the HCA and declare that the goods will be used in the Port licensee's business. All services you supply are subject to VAT. You should read the VAT Guide, the VAT Act and the VAT Regulations. The Port licensee will be able to recover the VAT you have charged if they are registered for VAT and use the goods or services you supply in the course of their business activity in accordance with their license or to make taxable supplies.

When will I be required to register for VAT?

The normal rules regarding VAT registration will apply. Further details on requirements of VAT registration can be found in the VAT Guide. There are also a number of industry specific guides available on the Bahamas VAT website that you may find useful.

The Law

You may find the following references to the legislation useful.

VAT Act

Section 2 – Interpretation

Section 3 – Application

Section 9 – Refund to Port Licensee under certain circumstances

Section 19 – Mandatory Registration

Section 22 – Application for Registration

Section 59 – Port Licensee eligible for tax refund in certain circumstances

VAT Regulations

Regulation 36 – Procedure for claim of refund by Port Licensees eligible for tax refund in certain circumstances



Contact Us

Further information can be obtained from the Taxpayers Services help desk: 1 (242) 225 7280

Or you can contact us by email: vatcustomerservice@bahamas.gov.bs

Or you can write to:

Value Added Tax Department

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