

Version for Publication and Comptroller's
Approval



Ministry Of Finance
VAT Department

VAT RULE
2015-025
REAL ESTATE



Version 2: November 2015

VAT RULE # 2015-026

Real Estate

A. Authority

This Rule is made under section 17 of the Value Added Act, 2014

B. Legislation

Legislative references are pursuant to the Value Added Tax Act, 2014 and/or the Value Added Tax Regulations 2014, the Stamp Act Chapter 370 and the Real Property Act Chapter 375 as amended.

C. Application of the Rule

The purpose of this rule is to clarify the application of value added tax in relation to transactions on real property under the Stamp Act Chapter 370 and matters connected thereto

D. Comptroller's Rule

General Application

This rule applies as follows:

1. Value added tax is chargeable on all conveyances of real property valued by the Comptroller of Value Added Tax at more than one hundred thousand dollars at the time of stamping and is payable at the time the conveyance is required to be registered and stamped at the Department of Inland Revenue in accordance with the Stamp Act.
2. Conveyances to first time owners-occupiers of dwellings who are exempt from stamp duty are not chargeable to value added tax except in the circumstances described in sub-rule 8 and sub-rule 9.
3. Conveyances include the sale, lease, assignment or other transfer of real property from one owner or owners (beneficial or legal) to another, whether or not for money or money's worth.
4. The term real property includes, but is not limited to vacant land, dwellings for first time owner-occupiers whether or not valued over one hundred thousand dollars, commercial buildings, condominiums, tenements or any other structures attached to

- the land, time-shares and any buildings constructed for sale by contractors who are also the owners, but does not include the transfer of shares for the ownership of property.
5. Persons include limited liability companies and natural persons.
 6. The Comptroller of Value Added Tax shall be responsible for collection of the value added tax which shall be paid by the person to whom the conveyance is made and held to the account of the persons who have conveyed the property.
 7. Notwithstanding any other written rule, when conveyances are required to be registered, they shall first be presented to the Comptroller of Value Added Tax who shall determine whether conveyances are to be treated as exempt or taxable supplies.

Application of the Rule in Special Cases

8. Conveyances made to first-time owner-occupiers of dwellings are chargeable to value added tax on the value of the conveyance as determined by the Comptroller of Value Added Tax that exceeds five hundred thousand dollars at the time the conveyance is required to be registered.
9. Value added tax is not chargeable on the value of the stamp duty payable by a first-time owner-occupier for a conveyance of a dwelling in the circumstances referred to in sub-rule 8.
10. Conveyances made under a deed of assent transferring real property in an estate, from a legal personal representative under a will or letters of administration and vesting such property in the beneficiaries of the will or letters of administration shall not be subject to value added tax and the procedures relating to the application of this rule may not apply to conveyances made in those circumstances.
11. Conveyances of a matrimonial home from one party to another proceeding from a consent order under a non-contentious divorce settlement or in obedience to the order of a court of competent jurisdiction arising from contentious divorce proceedings shall not be subject to value added tax. The procedures relating to the application of this rule may not apply to conveyances in those circumstances.
12. The treatment of conveyances made pursuant to sub-rule 11 is limited to the principal home deemed as the matrimonial home by the court of competent jurisdiction and does not extend to other properties conveyed under a divorce settlement. The Comptroller of Value Added Tax shall determine the property on which value added tax would not be applied if the court under which the order was made did not make such a determination.

13. The Comptroller shall publish from time to time the documents that would be accepted to confirm the occurrence of events in sub-rules 10 and 11.
14. Conveyances made in the furtherance of business by persons who own land on which dwellings are built by them for sale or profit are chargeable to value added tax at the time the conveyance is required to be stamped and registered.
15. Property conveyed by persons who are in the business of developing land and has developed vacant land for resale, but has not yet constructed dwelling houses or commercial property thereon, shall be chargeable to value added tax at the time the conveyance is required to be stamp and registered.
16. Where land is conveyed by persons on which dwellings and other commercial properties are or will be constructed and such land is conveyed prior to the construction of the dwelling or commercial property as a separate legal transaction, value added tax is chargeable at the time the conveyance for the land is required to be registered. Value added tax is chargeable on the contract for construction in accordance with the time of supply rules of section 32 of the Value Added Tax Act 2014.

Valuation of Real Property

17. The value of the property for the purpose of charging value added tax shall be assessed and certified by the Comptroller of Value Added Tax prior to any other valuation required by law.
18. In assessing the value of the property, the Comptroller of Value Added Tax shall consider the following:
 - a. The value of the consideration as negotiated between the parties to the conveyance at the time of execution of the conveyance;
 - b. If the consideration payable by persons standing in such a relationship as affects or could affect the amount of the consideration, then the value shall be the open market value.
19. In determining the open market value of the real property, the Comptroller of Value Added Tax may consider:
 - a. The valuation provided by a reputable third party in the business of valuing real property.

- b. The area in which the property is located.
 - c. The increase in value if any that occurred between the time when the conveyance was executed and the time it is required to be registered and stamped.
20. Should there be a divergence in the value assessed for value added tax and the value assessed for stamp duty, the Financial Secretary shall determine the value.
21. Any objection to the value of the property on which the value added tax is chargeable and the value added tax payable thereon, by the person for whom value added tax shall be held to the account, shall be deemed as an objection to an assessment raised by the Comptroller of Value Added Tax and the provisions of the Value Added Tax 2014 in that regard shall apply.
22. Any value added tax due and payable on the disputed assessment shall be paid to the Comptroller of Value Added Tax or security provided thereon before the objection shall be heard.

Exempt Supplies

23. Dwellings conveyed to persons who are first time owner-occupiers, in circumstances that apply in sub-rule 8 and 9 by persons who are registered for VAT or who are required to be registered, or that are valued at or below one hundred thousand dollars are considered to be exempt supplies.
24. For the avoidance of any doubt, whether or not a conveyance is to be classified as an exempt supply is for the determination of the Comptroller of Value Added Tax.

Treatment of Input Tax Credits

This sub-rule relates to persons who are registered or required to be registered

25. Persons who are registered or required to be registered for value added tax may be allowed input tax credit for input tax incurred and paid in relation to conveyances of real property as described in sub-rule 1.
26. Only persons to whom a conveyance is made may be allowed an input tax credit.
27. Persons who are registered are not allowed input tax credit in relation to conveyances that are considered to be exempt supplies except in accordance with this rule.
28. Persons who are not registered or required to be registered for value added tax are not allowed to claim input tax for conveyances.

Input tax claims prior to July 1, 2015

29. Input tax incurred and paid between January 1, 2015 and June 30, 2015 in relation to conveyances by persons who are registered or required to be registered for value added tax may be allowed against a return of output tax on taxable supplies.
30. Any claim in accordance with sub-rule 25 must be supported by a VAT invoice issued by a value added tax registrant and shall be claimed after two months for persons required to file monthly and after three months for persons required to file quarterly but not later than one calendar year from July 1, 2015.
31. The Comptroller of the Value Added Tax Department may allow the claim of input tax only on valid value added tax invoices and only in the name of the registered person to whom a conveyance was made.
32. Input tax is not allowable in circumstances in which the input tax relates to a conveyance of land that is exempt from value added tax under sub-rule 19.

Taxable Supplies during the transition period

The transition period refers to the period from January 1, 2015 – June 30, 2015

33. Where construction on a dwelling house was completed prior to January 1, 2015 by persons in furtherance of the business of constructing dwellings for resale and the conveyance is to be registered after July 1, 2015, such persons can elect to treat the conveyance as an exempt supply and would not be entitled to input tax claims during the transition period. Such persons may alternatively elect to treat the conveyance as chargeable to value added tax and claim the input tax during the transition period in accordance with sub-rule 25.

Invoices/Record of Transactions

34. The Comptroller of Value Added Tax (VAT) may issue a value added tax invoice on behalf of a person conveying property in accordance with this rule.
35. This value added tax invoice will be issued to the purchaser and a certified copy will be made available to the vendor.
36. The content of the value added tax invoice for this purpose will contain the following information:
 - a. The word “Value Added Tax Invoice” in a prominent place;
 - b. The vendor’s name, address and tax identification number (if applicable otherwise the vendor’s national insurance number will be used);

- c. The purchasers' tax identification number (if applicable otherwise the purchasers' national insurance number will be used);
 - d. The invoice identification (serial) number;
 - e. The date of the invoice;
 - f. The date of the valuation;
 - g. Whether the transfer is a taxable or exempt from value added tax.
37. If the vendor is a registered for value added tax, they must account for the value added tax chargeable on the conveyance and the taxable supplies as part of the taxable supplies recorded on the return filed for the period in which the value added tax was chargeable.

E. The period for which this Rule applies

This Rule will apply from November 1, 2015 and remains in effect until withdrawn or modified by the Comptroller.