

VAT GUIDES UPDATES

Revision of VAT Guidance Notes

The VAT Act and Regulations now being law, some of the Guides have been amended:

1. The word **Bill** has been removed and replaced with **Act**
2. Paragraph of VAT group registration has been reduced. A separate VAT guide has been developed

VAT Guidance for Land and Property

What if the charge includes an amount for utilities?

Amended to indicate that where the cost of utilities is included as part of the rent, the cost will take on the tax status of the main supply.

What if I charge my tenants for a portion of the insurance cost?

Amended to indicate that, where the cost of insurance is being recovered and is included as part of the rent, the cost will take on the tax status of the main supply.

What if the property has both a commercial and residential element?

If the property is rented under one rental contract with the charge for both the store and the apartment combined into one rental amount then the charge for the rent should be apportioned in accordance with the floor space occupied for each use or any other appropriate method that the Comptroller allows...

What if I offer a rent free period?

Amended to state that where rent is offered free of charge to entice a tenant then VAT is applicable to the market value.

When is the tax point?

The treatment of deposit has been removed. The tax point for such supplies is the date payment becomes due or is made, whichever is the earlier. Receipt of deposit in this case is not considered payment for the purposes of VAT. If the deposit is eventually applied or used as payment, then VAT will be due on the amount of the deposit utilized for that purpose.

VAT Guidance for the Construction Industry

The following persons who are engaged in construction industry may find this Guide useful:

- Contractor and subcontractor
- Developer;
- Professional service providers -Architect, quantity surveyors

- Suppliers of construction goods

Are construction services subject to VAT?

Construction services are subject to VAT. The sale of a building, structure with the exception of a dwelling is also subject to VAT. There is no VAT charged on the sale or rental of dwelling, as the Act exempts these transactions from VAT.

However, if you construct and sell the said property, this is treated as a supply of goods and not a supply of services.

What if I am both the contractor and the developer?

- *For the purposes of this Guide a developer is a person who constructs and sells developed properties. This includes property developed for rental/lease and is own by the developer.*

What if I am a subcontractor?

A subcontractor is a contractor who has been hired by the primary contractor to provide construction services on his behalf.

Any construction service you provide to the primary contractor is subject to VAT

Subcontractors are sometimes engaged to carry out the following construction services:

- the installation in any building or structure of systems of heating, lighting, ventilation, power supply, drainage, sanitation, water supply, fire protection, air conditioning, elevators or escalators;
- the internal cleaning of buildings and structures so far as carried out in the course of their construction, alteration, extension, repair or restoration;
- painting the internal or external surface of any building or structure
- operations which form an integral part of, or are preparatory to, or are for rendering complete, such construction operations, including site clearance, earth moving, excavation, tunnelling or boring laying of foundations, erections of scaffolding, site restoration, landscaping and the provision of roadways and other access works;

Please note all the above services are subject to VAT whether they are provided by a contractor or subcontractor

Architects, surveyors, consultants and supervisors

The supply of architectural, surveying, consultancy and supervisory services is a taxable supply subject to VAT at the standard rate.

Goods on hire

Sometimes contractors asked persons to supply certain goods on hire.

The provision of these hired goods is subject to VAT at the standard rate. Examples include the hire of:

- plant and machinery
- scaffolding, formwork
- security fencing,
- mobile offices;
- portable toilets and washrooms

VAT Guidance on Transitional Arrangements

Pricing

A registrant offering goods for retail sale must show the price on the goods inclusive 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.

Where a registrant retailer is unable to comply with the pricing requirements, the retailer will not be penalized during the first two months, if he does any of the following:

- a) displays visible signage that the VAT will be added as an additional amount to the quoted or affixed price of the specified goods;
- b) displays a sticker or sign of the VAT inclusive price immediately adjacent to the goods offered for sale; or
- c) provides leaflets or other printed materials which give a listing of VAT inclusive prices.

VAT Invoice/Sales Receipt

With respect to registrants who provides domestic financial services, and who are unable to meet the requirements relating to VAT invoice and VAT sales receipt, they will be given additional time to meet such requirement. However, in the meantime, they should make available to their customers, a list indicating their fees which should be tax inclusive.

Input tax credit for Insurance Companies

Registrants who will supply insurance services that will become taxable July 1, 2015, may be allowed to claim input tax credit paid, in respect of those services. The rules will be set out in a VAT Rule.

Deposit on returnable container

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 Comptroller may require. (to indicate such document)

VAT Guidance on Holiday accommodations

For supplies of holiday accommodation that commence before January 1 2015 and ends after January 1, 2015 VAT is only applied on the portion of the accommodation beginning January 1, 2015. For example, a guest who checks in on December 24 2014 and checks out on January 15, 2015, will be charged VAT on 14days only i.e. January 1 to 14, 2015.

In respect of the treatment of pre-booked groups and businesses, made before September 1 2014, where hotel packages have already been paid for or secured by deposit prior to January 1, 2015, the supply will be deemed to have already been made. These will be exempt from VAT. As such, these will remain liable to hotel room tax at the 10 percent rate in force at time of payment. Services not included in the pre-booked package, will be subject to VAT at the standard rate. On a reporting basis, hotels are required to identify these as exempt supplies. A listing of these exempt sales had to be reported to the VAT Comptroller prior to October 1, 2014 with monthly updates of cancellations or adjustments against the pre-bookings.

Any contract executed after August 31, 2014 will be presumed to have made provision for VAT for accommodations commencing on or after January 1, 2015.

Any reservations not secured by August 31, 2014, for services delivered on or after January 1, 2015 will be considered under the general transitional provisions for VAT.

As part of the transitional provisions providers of accommodations are now also allowed to begin charging VAT in place of the room tax on packages being booked for 2015.

Taxable value of your accommodations supply

The general rule is that tax should be applied to the total amount you have charged your guests for any taxable goods or services you have supplied or will supply. This includes an amount charged for compulsory service charge. However, VAT will not be charged on any gratuity collected from guests on behalf of your staff.

Tax is to be applied to all other incidental charges such as energy charge, levy, laundry, telephone. The provision of meals, snacks, drinks are also subject to VAT.

The supply of free meals to staff will not be treated as a taxable supply, therefore no tax is chargeable. Also, where a staff member is required to stay on property in connection with his/her duty and a room is provided, no tax is chargeable. Complimentary rooms are subject to tax at the going rate, but are not subject to VAT when these are contributions to recognized charities. The following example demonstrates how to calculate the value on which VAT is charged for hotel or holiday accommodation:-

| Charges | \$ |
|----------------------|---------------|
| Accommodation | 200.00 |
| Levy (10%) | 20.00 |
| Energy | 12.00 |
| Service charge (10%) | 20.00 |
| Sub-total | 252.00 |
| VAT @ 7.5% | 18.90 |
| Total charges | 270.90 |
| Gratuity (5%) | 10.00 |
| Total invoice | 280.90 |

For the purpose of the above, VAT is applied on all charges except the gratuity (which is a percentage of accommodation only) paid to the staff.

The period to claim a refund was shortened from 3 months in which the credits arise to carrying forward the VAT one period and if there are any excesses you should submit an application for a refund.

The section entitled “What if I buy goods or services from suppliers that are situated outside The Bahamas and “What is VAT grouping?” were deleted.

VAT Guidance on the Hawksbill Creek Agreement

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

With reference to the payment of VAT the clarification that for retailers who have an open bonded warehouse agreement with Customs the same agreement will be extend to VAT and so VAT will be due on the item and payable at the same time the duty on the item is paid. In addition, provided the goods other than consumable stores are to be used in your business activity under the terms of your license, you can import them exempt of VAT.

Items sold to a Port licensee once they have been removed from a bonded warehouse or imported must have the Port licensee’s Tax Identification number in addition to the other requirements listed in the guides on a purchase order as evidence that the sale of the goods is not subject to VAT. The same applies to the VAT treatment of goods manufactured or assembled.

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 that was paid at the time of importation.

The amended guide now indicates that Port Licenses who are VAT registrants can claim input credits as opposed to refunds, when either VAT was improperly charged to them by another licensee or if the recovery related to import VAT on goods purchased from elsewhere in the Bahamas.

The revisions also clarify that if a licensee provides goods or services to a Port Licensee, the recipient must be treated the same as any other customer. The recipient must be charged VAT unless they provide 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.

VAT Guidance on Motor Vehicles

The VAT Comptroller will take a less restrictive approach on which VAT charges on passenger vehicles will be allowed as input tax deductions. As long as the vehicle is used exclusively as an input to the operations of the business VAT credits will be permitted, subject to the normal apportionment rules. If the vehicles are put exclusively or in part to personal use deductions will not be allowed. For example if a car is used to deliver supplies to customers during the day hours, and is provided for the employer and owner personal use after hours, input VAT will not be allowed either in respect of the acquisition or maintenance of the vehicle.

A section is being added to address payments of compensation by insurers. If a vehicle is a write-off and the vehicle owner receives compensation from an insurer this is not a supply by owner to the insurer for VAT purposes even though the ownership of the written-off vehicle passes to the insurer. If vehicle repair services are provided in respect of an insurance claim the services will be subject to VAT. Although service provider (presumably the mechanic) may invoice and receive payment from the insurance provider the service would be considered supplied to the car owner.

Sale of vehicles acquired by an insurance company

The VAT treatment of the sale of a vehicle acquired by an insurance company (for example, a vehicle that has been written off) for scrap, parts or repair will only be subject to VAT if it is a commercial vehicle and the insured party has reclaimed the VAT incurred at the time of purchase.

For trade-ins against new car purchases it is clarified that a non-VAT registrant customer must pay the VAT on the total value of the new car and cannot charge the car company VAT on the old car that they are trading in.

Guidance on Group Registration

Where several entities have common ownership they can apply for group registration. If approval is granted by the Comptroller, only one entity will be required to file VAT returns. Transactions between these entities will not attract VAT.

Each business entity must be conducting or in the course of conducting a taxable activity and registered separately with 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.

VAT Guidance for Education

What about the provision of day-care and after-school care?

In accordance with Part I section 9 of the Second Schedule of the VAT Act the provision of day-care and after-school care is exempt from VAT when provided by any institution or business. The exemption covers the charge for the day-care or after-school care, if you make a separate charge (for example for meals) you are making a separate supply of goods or services and must charge VAT as it is a separate supply. For example, Day Care X begins after school care at a cost of \$20/day from 4:00 pm - 6:00 pm., snacks not included. If the parent wants Day Care X to provide snacks an additional \$5/day is required. This additional charge will be subject to VAT once the Day Care is registered.

Definition of Professional and Personal Development Courses

What are professional or personal development courses?

Professional development courses are courses conducted by institutions of higher education that are required to qualify in a particular profession. For example a chartered accountant may be required to complete several courses to be certified. Personal Development courses are done to enhance skills in a particular field. It may not be mandatory to complete such a course but an individual may pursue such a course as it allows them to better perform in a particular role--for example, a computer literacy course or a course in events management.

VAT Guidance on Finance and Insurance Services

How do you determine residency status?

As a rule, once financial services and products are being offered behind the Exchange Control firewall to persons considered or designated as non-resident, these are zero-rated. These however must still meet the test that the benefit or use of the service occurs outside the Bahamas. The VAT comptroller will recognize the benefit or use is external to the

Bahamas once access to these financial services related supplies are governed by the Exchange Control Regulations.

Non-residents are for the most part persons who are who are not citizens of The Bahamas and who reside outside The Bahamas. Similarly firms and vehicles fall into the non-resident categories when they are physically located or domicile outside The Bahamas. That said, non-residency also applies in respect of access in many cases to international or “offshore” financial products for entities and individuals that reside in The Bahamas. This group includes banks and trust companies, mutual funds administrators and non-nationals who are holders of residency permits. Beneficial ownership, board composition is also not sufficient to determine whether a company is considered resident or not. Residency is also based on Exchange Control designation.

One test of whether an entity or individual is being treated as a non-resident is if they need official approval to conduct business in Bahamian dollars. A test of whether an entity or individual is resident is whether they require authorization to access financial products in foreign currency. If a corporate entity is licensed or authorized to do business in The Bahamas i.e. earn Bahamian dollar revenue, this puts them in the category of resident.

In the case of IBCs these are all vehicles used to conduct business outside The Bahamas, even though the vehicles may be wholly owned by Bahamians. Where the IBC has a physical presence in The Bahamas (offices and employees), it would be expected to register for VAT once they meet the registration criteria. This will allow the firm to file for input tax credits on zero-rated supplies.

Treatment of claims paid by insurance companies

Where Insurance Company pays a claim to an insured, who is VAT registered, for supplies that would have been taxable at the standard rate, the amount paid is deemed to be VAT inclusive. For example if a business’ inventory was destroyed by fire and the business was compensated by the Insurance Company for the loss, the business is required to report output VAT on the amount received from the Insurance.

In cases where an insurance company pays a claim to regular individual for an amount that would have been previously paid to a supplier (eg. a registered doctor), the claim amount is deemed to include VAT and the amount is based on the contractual arrangement between the insurance company and the insured.

Apportionment of VAT

The Apportionment formula indicated in the legislation is not applicable to Banks and other Financial Institutions whose core business activity is the provision of financial services. Such institutions however, can only claim input tax that can be directly allocable to their taxable activity.

Businesses whose core operation is dealing in taxable goods and services but conduct financial services ancillary to their core activity, can apply the de minimis rule, in the event that in a particular tax period 90% or more of their taxable supply is derived from rendering financial services.

Please note that the de minimis rule is a rule applicable to businesses involved in mixed activity (both taxable and exempt) and are not be able to claim all input tax that it incurs.. It therefore allows the business to determine the ratio of taxable supplies to total supplies and claim input tax based of the ratio. Input tax that can be directly allocable to taxable supplies can be claimed in full and input tax that can be directly allocable to exempt supplies only cannot be claimed. It further allows the business to claim all input tax incurred if the ratio is 90% or above whereas no input tax can be claimed if the ratio is 10% or below.

Professional Services

Licences, subscription and membership fees paid by professionals

Most professional associations or bodies collect an annual licence and subscription/membership fee from their membership. Once the clubs are not of a recreational nature the levies may not be VATable, in particular when they are regulated by statute.

Guidance on Medical and Healthcare Services

What is the VAT treatment of medical products and drugs?

The supply of a good incidental to the supply of a service is a supply of service. It therefore follows that the provision of medical products and drugs provided as part of medical treatment in a public health care facility to a “public patient” such as incontinence products, medicines bandages and syringes are exempt from VAT as the entire supply is treated as a supply of service

Where a professional provides medical services eg. medical doctor, dentist, etc. pays a licence or statutory fee to a regulatory body like the Medical Association, such licence will be exempt from VAT.

Any drugs or medical products provided other than by a public health care facility to a public patient as part of medical treatment is subject to VAT at the standard rate.

Treatment of medical services with insurance

Where medical services are provided by a facility that is not a public facility, the service is subject to VAT irrespective of whom the supply was provided to. In some instances, the patient may pay for the services directly and make a claim on the insurance company with whom they are insured; in other circumstances, the doctor may bill the insurance company for payment of the services supplied to the patient. Irrespective of how the bill is settled, the supplier of the service, once registered must account for VAT on the full value of the service.

The obligation of the supplier to account for VAT on the amount billed is independent of what is paid by the insurance company as a result of the contractual arrangement between the insurance and the insured. Where because of the contractual arrangement between the insurance company and the insured, the Insurance pays a portion and the insured is required to pay the balance (co-payment), the amount paid by both the insured and the insurance company must be treated as VAT inclusive.

In some circumstances, the insurance companies do not pay the full amount of the balance remaining after co-payment has been received. In such cases whatever amount is received by the insurance company is considered VAT inclusive and the balance outstanding is the obligation of the patient to whom the supply was delivered.