



MINISTRY OF FINANCE
THE DEPARTMENT OF INLAND REVENUE

VAT GUIDANCE FOR LAND AND PROPERTY



DEPARTMENT OF
INLAND REVENUE
Central Revenue Administration

Introduction


This guide is intended to provide businesses supplying land and property within The Bahamas with information about Value Added Tax (“VAT”). The supply of land and property include the sale, lease, rental, assignment or transfer of property. It should be read in conjunction with the Value Added Tax Act 2014 (“VAT Act” or “the Act”), as amended, the Value Added Tax Regulations 2014 (“VAT Regulations”) The Value Added Tax Rule on Real Estate (VAT Rule 2015-025) and The Bahamas VAT Guide (“VAT Guide”), the Stamp Act Chapter 370 and the Real Property Act chapter 375 all of which can be found on the website of the Government of The Bahamas (“Government”). **If there is a discrepancy within the Guidance Note, the law will prevail in accordance with the VAT Act, Regulations and/or Rules.**

Is the sale or rental of land and property subject to VAT?

The sale, lease, rental or hire of land or property or any conveyance of property located in The Bahamas is subject to VAT at the standard rate. The following supplies are exempt from VAT:

1. The rental of a dwelling
2. The transfer of vacant land or residential property (as defined in the Real Property Tax Act) valued at less than one hundred thousand dollars
3. A transfer of a property that is an owner occupied dwelling of a first time Bahamian homeowner that does not exceed five hundred thousand dollars
4. In accordance with Part I of the First Schedule, section 5 of the VAT Act, transactions costs on land and property transferred by one VAT registrant to another VAT registrant as part of a transfer of a taxable activity as a going concern is subject to VAT at the zero rate provided all provisions of the VAT Act and VAT Regulations are complied with. The real estate assets conveyed, may also be subject to zero-rating, provided they comprise facilities (such as factories, warehouses, and offices) used in the making of taxable

Disclaimer: VAT Guidance Notes do not supersede the VAT Act, VAT Regulations, or VAT Rules



supplies. However, with regard to the conveyance of vacant land or inventories of developed properties being held for sale, the Comptroller may determine that these are subject to VAT at the standard rate.

What does conveyance mean?


A conveyance includes assignment, appointment, lease, settlement and other assurance, and covenant of surrender, made by deed, on a sale mortgage, demise or settlement of any property, or on any other dealing with or for any property; and “convey” has a meaning corresponding with that of conveyance as per Section 2 of the Conveyance and Law of Property Act. Also, a conveyance is a lease agreement that is 10 years or more and is required to be presented to the treasury for stamping according to the Stamp Act.

In accordance with the VAT Rule on Real Estate and Section 38A (amended) of the Value Added Tax Act, if a person sells property using a deed of conveyance, transfers property by assignment or disposes of or transfers any property it is a conveyance for the purposes of the Value Added Tax Act. If the value of the property is over \$100,000 the transaction is subject to VAT at the standard rate of 7.5%.

What is a dwelling?

In the VAT Regulations, a dwelling is defined as a building, premises, structure, or another 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 accessories belonging thereto or enjoyed therewith excluding a commercial rental establishment. In accordance with the VAT Act the rental of a “dwelling” is exempt from VAT; therefore, it is important to determine what is considered a dwelling.

A condo, house, flat, apartment, room, caravan, houseboat, tent or camping site can all be considered a dwelling. Garages, sheds, outbuildings, and gardens, provided they are supplied with and considered part of the property that is considered a dwelling, will be considered part of that dwelling.



If you own a condo, house, flat or apartment and lease it, furnished or unfurnished, for periods normally exceeding 45 days, to a person who will occupy it as their usual place of abode, your supply will be exempt from VAT. The VAT exemption will apply even if you carry on a property rental business and lease several properties on this basis.

What is a commercial rental establishment?

The supply of a commercial rental establishment is not considered a supply of a dwelling. The lease, rental or hire or any supply, other than the transfer or sale of a commercial rental establishment located in The Bahamas is, therefore, subject to VAT at the standard rate (7.5%).

A commercial rental establishment includes a condo, apartment, flat or similar accommodation where the accommodation is leased normally or regularly for continuous periods of 45 days or less. It also includes such accommodation where the accommodation is owned or 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 and that accommodation is normally rented or leased for continuous periods of 45 days or less.

As a condo apartment or similar accommodation can be considered a dwelling or a commercial rental establishment, you must determine the VAT treatment by considering its normal use and the purpose for which it is to be used. For example, a one-off short-term rental (less than 45 days) of a condo that is usually rented on a long-term basis will be considered a supply of a commercial rental establishment. Similarly, if you usually provide a condo for rental on a short-term basis and you rent it out for a longer period of 2 months this will still be considered a taxable activity.

A supply of a commercial rental establishment does not include:

- Accommodation in a boarding establishment provided by an employer, not for the profit of any person but solely for the benefit of their employees, related person of the employer or dependents of the employer;

- Accommodation in a boarding establishment provided by a local government council and not for the profit of any person; or
- Accommodations in connection with exempt supplies of medical services.

What if I operate a rental pool?

The supply of accommodation for periods of normally 45 days or less by the operator of a collective rental agreement ('pool administrator') is subject to VAT. The pool administrator may be a hotel or other person responsible for the administration of the accommodations. The supply of the accommodation to the tourist/tenant is considered to be made by the pool administrator.


A pool administrator, when considering whether there is a requirement to register for VAT must take into account all the income from all the accommodation they administer.

If the pool administrator does not pay any VAT due on the rental of a property then the Comptroller has the right to collect the VAT payable from the owner of the accommodation.

What if I own accommodation such as a condo and make it available through a rental pool?

If you make your accommodation available to a pool for them to rent to tenants this is not a supply for VAT purposes. This means that you do not have to register for VAT or submit VAT returns. The administrator is liable for registration and to account for VAT. If the administrator responsible for the rental pool fails to pay VAT on the supply of the accommodation, you as the owner can be held liable for the VAT relating to the accommodation you own.

What if I rent accommodation such as a condo directly to visitors?



If you normally supply the accommodation on a long-term basis for periods of over 45 days where the accommodation is likely to be considered the tenant's permanent residence, your supplies are exempt from VAT.

If your supply of the accommodation is normally provided on a short-term basis of 45 days or less then you are making taxable supplies. You will need to consider whether you are required to register for VAT (see section "When do I need to be registered for VAT?").

Is a property management fee subject to VAT?

The management of a property is a taxable activity and subject to VAT. This includes maintenance fees for use of communal areas, maintenance and repairs and administration charges. For the avoidance of doubt, condo management fees are subject to VAT and the condo administrator should register and charge VAT on such fees once the necessary requirements for VAT registration are met.

What is the VAT treatment of condominium and homeowners' association fees?

Condo and homeowners association fees are subject to VAT at the standard rate of 7.5%. When billed the VAT should not be included on the portion of the fee assessment that relates to property taxes or other purchases by the associations that are exempt.

Associations will be allowed to use the cash basis of accounting for VAT.

Is the sale of a commercial rental establishment subject to VAT?

The sale of a commercial rental establishment is a taxable supply, subject to VAT including all legal and other transactions costs. If you are registered for VAT and sell a commercial rental establishment your transactions costs will be subject to VAT unless the sale of the property forms part of a transfer of a business (see section "Transfer of a business" **page 9**).

What is the VAT treatment of timeshare?



The supply of timeshare is a taxable activity as timeshare is not a supply of a dwelling.

What is the VAT treatment of commercial property?

The rental or lease of a commercial property is subject to VAT at the standard rate. Commercial property includes, but is not limited to:


- warehouses
- factories
- retail outlets
- restaurants
- hotels and commercial rental establishments
- offices
- storage facilities
- industrial units

If you sell a commercial property to another VAT registrant, that buyer can recover the VAT on the transaction. For conditions of a transfer of a business see the section “Transfer of a business.”(page 9)

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

Some properties may have both a commercial and residential element, for example, a store with an apartment for rental on a long-term basis (a dwelling). Where there are separate rental contracts the treatment is quite clear; the commercial element will be subject to VAT and the residential element will be exempt from VAT.

If the property is rented under one rental contract with the charge for both the store and the apartment combined with 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 rent the property to someone who resides outside The Bahamas?

It doesn't matter where the person to whom you rent resides. The supply of land and property is considered to take place where the property is located and is, therefore, subject to VAT at the standard rate unless it is a dwelling, in which case, the rental will be exempt.

What if I only supply land?

The lease, rental or hire of land located in The Bahamas is subject to VAT except where the land is valued at one hundred thousand dollars or less.

What if I rent or sell property that is not located in The Bahamas?

The sale or rental of property located outside The Bahamas is not subject to VAT in The Bahamas.

What if the charge includes an amount for utilities?

If a supply of a facility is made and the total amount charged includes an amount for utilities, if the supply of the facility is a taxable supply, VAT is applied to the total charge inclusive of the utilities. It should be noted that the landlord is not the supplier of the utilities.

If the supply of the facility is an exempt supply, the total amount charged for the facility inclusive of the utilities is treated as an exempt supply.

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

If the supply of the facility is taxable and includes the cost of insurance for the facility, the VAT must be applied to the total cost of the supply of the facility including the insurance cost.

Additionally, if the supply of the facility is an exempt supply, the total amount charged for the facility inclusive of the insurance is treated as an exempt supply.

What if I supply reception, switchboard facilities, office services or equipment?

Any supply of these services, if charged for a separate fee, will be subject to VAT at the standard rate. If included in the rental amount, then they will already be captured for VAT purposes.

What if I offer a rent free period?

With respect to a commercial property, if you offer a rent free period to entice a tenant to commit to a rental contract this will be considered as a taxable supply for no consideration, and subject to VAT at the standard rate. VAT is, therefore, applicable on the market value of the supply and the supplier is still entitled to claim input VAT credit. If the parties to the transaction are related, the Comptroller may refuse to recognize the discount.

Transfer of a business

The sale of a business that makes taxable supplies is ordinarily subject to VAT; however, where certain conditions are met, the sale of the business can be treated as the transfer of a going concern which is subject to VAT at the zero rate.

For a commercial rental business to be treated as the transfer of a going concern:

- The buyer must be registered for VAT;
- The property should be occupied by a tenant, or a lease has been signed, or the property is being actively marketed as available to rent; and
- The necessary documentation has to be completed, signed and filed with the Comptroller 14 days prior to the transfer. Documentation includes:
 - VAT Form No. 3 Notice In Writing To Transfer A Business As A Going Concern Under Section 26 Of The Value Added Tax Act And Regulation 16 Of The Value Added Tax Regulations)

- Sales Agreement
- Financial Statements

The advantage of treating a sale of a property as a transfer of a going concern is that neither the seller nor the buyer has to account for or pay VAT on the transactions. It must be noted that for the transaction to be treated as a going concern, it is the business being sold and not just the asset.

Further details of the conditions that need to be met for the transfer of a going concern can be found in Part II section 16 of the VAT Regulations.

When do I pay and report value added tax on the supply of a sale or other conveyance?

Only the Comptroller of VAT is authorized to collect the VAT on conveyances. Before a conveyance is presented to be stamped (within the time determined by the Stamp Act) and it is lodged at the Registrar General's office, the person doing the transfer must present the documents to the Comptroller of Value Added Tax who would determine if it qualifies for the exemptions in the first paragraph. Once it is assessed as being exempt, no VAT is payable. Otherwise, VAT is payable based on the value accepted or appraised by the Comptroller.

The Comptroller of VAT would provide a tax invoice to the purchaser indicating the value of the supply and the tax paid, or the value of any exemption. If the person making the supply (vendor) is registered for value added tax they would report either the corresponding input or output tax on the return of the period in which the sale or transfer takes place.

For the registrant seller, there would only be an accounting entry on the VAT return recording the sale. The taxable supply reported on line 4 of the VAT return will be the value accepted by the VAT Comptroller inclusive of the VAT on the transaction. This value (exclusive of the VAT) must also be placed on line 25 "Adjustment for the period" of the VAT Return. For non-

exempt sales, credit adjustments should be made in the appropriate place on the VAT return form to avoid a double payment of the tax.

If the buyer is registered for value added tax, then he may claim the input taxes on the supply in accordance with the Rule on Real Estate. The purchase invoice must be in the name of the purchaser for this claim to be made.

How are Developers affected by affected by VAT on Conveyances?

Persons who develop vacant land for sale as developers and are registered for VAT purposes must report the tax when the land is conveyed as described above. If the sale is exempt, the input tax relating to that sale cannot be claimed. If the developer has a mixture of exempt and taxable sales, they must apportion the input tax in accordance with the formula described in regulation 31 of the Value Added Tax Act.

Frequently Asked Questions

1. Are Conveyances of property subject to VAT and how is a value determined?

If a property is valued at \$100,000 or more it is subject to VAT. If the value comes into question, the appraised value is subject to the Comptroller's decision.

2. What is the treatment when a property is conveyed from one entity to another or when a trust is involved if they both share the same beneficial interest?

When a property is conveyed from one entity to another or a trust is involved having a beneficial interest, it is subject to VAT but exempt from stamp tax.

3. If stamp tax of 2.5% is imposed on all real estate conveyances, are there any exemptions for transactions under \$100,000, or for a first-time owner-occupier?

Where the transaction of a conveyance is under \$100,000 it would not be subject to VAT however it is subject to stamp tax. First time home owner-occupier with a

value of \$500,000 and below would be subject to VAT but may receive a partial or full exemption. *(It is dependent on different values that determines the exemption and how much)*

4. **Where a developer is selling land and house packages, sometimes the land is first conveyed and then the home is constructed within 6 months thereafter, which results in two distinct contracts but related. If the purchasers are first-time home owner's would the land which has been conveyed attract VAT if the land is valued less than \$500,000?**

The transaction would attract VAT if conveyed separately from the fully constructed developed home and if the land is valued above \$100,000.

5. **If the purchaser is a first-time home owner occupier would the construction contract attract VAT if valued at less than \$500,000?**

The construction would attract VAT if separate and apart from the transfer of property.

6. **When land transfer is being registered, must the details of the construction contract, if being done by the same company, be presented to the Comptroller of VAT at the time the land is presented?**

The construction contract does not have to be presented to the Comptroller of VAT at the time the land is presented.

7. **Is the developer entitled to a rebate on VAT paid on construction materials, in particular for the construction of homes to purchasers who qualify for VAT exemption?**

The Developer would not be entitled to a rebate for the construction materials.

8. **What is the VAT liability for the transfer of shares in a foreign company NOT registered in The Bahamas which owns land (in its name) in The Bahamas?**

There is no VAT liability on the transfer of shares in any transaction.

9. In the circumstances where land is conveyed but there is no transfer of the beneficial ownership (the transferee is a subsidiary of the transferor and the transferor is the beneficial owner of all the issued shares in the transferee) of the title of vacant land which is exempt from stamp duty, is this transfer also exempt from VAT?

The transfer will be subject to VAT but exempt from stamp duty.

The Law

You may find the following references to the legislation useful.

VAT Act

Definitions

Part IV section 19 - registration

Part V section 29 - transfer of a going concern

Part V section 31(9) - the conversion of a condo or commercial rental establishment to a dwelling

Part V section 31(6) - self-supply at the time of de-registration

Part V section 33 - place of supply Part V section 38A

Part XII section 98 - transitional provisions

First Schedule Part II (1) – zero-rate for supplies outside The Bahamas


First Schedule Part I section 5 - supply by a registrant to another registrant as a going concern

Second Schedule Part I - exempt supplies items 5, 6, and

VAT Regulations

Definitions

Part I Regulation 4 (4) - supply of a dwelling



Part I Regulation 4 (5) - supply of a condo or similar

Part I Regulation 10 - commercial rental establishment

Part I Regulation 11 - condos leased collectively

Third Schedule (Regulation 27) Part I - classification of real property

Third Schedule (Regulation 27) Part II - capital goods

The VAT Rule on Real Estate 2015-025



Contact Us

Further information can be obtained from the Taxpayers Services help desk:

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

Or you can write to:

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