



*EXTRAORDINARY*  
**OFFICIAL GAZETTE**  
**THE BAHAMAS**  
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NASSAU

13<sup>th</sup> November, 2019

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**Ministry Of Finance**  
**VAT Department**

**VAT RULE 2019-001**  
**Supply of Real Property**  
**(General)**

## **VAT RULE # 2019-001**

### **Supply of Real Property (General)**

#### **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, unless otherwise stated.

#### **C. Application of the Rule**

The purpose of this rule is to clarify the application of value added tax in relation to a supply of real property and matters connected thereto.

#### **D. Comptroller's Rule**

##### **1. Interpretation.**

(1) For the purpose of a supply of real property –

“party to a supply of real property” means the supplier or recipient of a supply of real property; and “parties” shall be construed accordingly;

“recipient” or “transferee” means a person who receives a supply of real property;

“supplier” or “transferor” means a person who makes a supply of real property;

“transfer of real property” includes —

- (a) any conveyance, assignment or other disposition of any real property, whether effected or evidenced by deed or not and whether for valuable consideration or by way of gift;
- (b) any exchange of real property for other real property;
- (c) the issuance or transfer to any person or his nominee of any interest in any real property holding entity; or

- (d) any other transaction whether by way of merger or otherwise, that has the effect of vesting the beneficial interest in any real property or any interest in a real property holding entity in any person alone or with any other person;
- (2) The term “**land**” in the definition of real property under section 2 of the Act includes vacant real property, dwellings, commercial buildings, condominiums, tenements or any other structures attached to the land and time-shares.
- (3) For the avoidance of doubt, references in the Act to goods of a kind and for a use within the customs duties exemptions in clause 2 of the Hawksbill Creek Agreement scheduled to the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act (*Ch. 261*) do not include real property.

## **2. Time of Supply.**

- (1) A supply of real property takes place upon the first to occur of the following –
  - (a) the execution of the document that contains or evidences the supply of the real property;
  - (b) the completion date of the transaction for the supply of the real property;
  - (c) the date that the transaction for the supply of real property is substantially performed.
- (2) A transaction is substantially performed where –
  - (a) a substantial amount of the consideration is paid;
  - (b) the transferee is entitled to possession of the property;
  - (c) the first amount of rent is paid; or
  - (d) an option or right of preemption is acquired.

## **3. Liability to Account for and Pay VAT on a Supply of Real Property.**

- (1) VAT is chargeable on every supply of real property –
  - (a) by any person;
  - (b) whether or not the parties to the supply execute a document evidencing the supply.
- (2) VAT on a supply of real property is due and payable on the date of the supply and, subject to the provisions of section 32 (16) of the Act, is required to be paid in full directly to the Comptroller of VAT within ninety days of the date of the supply.



- (3) Notwithstanding paragraph (2) of this sub-rule, where a registrant makes a supply of real property in the course or furtherance of their taxable activity, the registrant must account for the VAT chargeable thereon as part of the taxable supplies recorded on the return filed for the tax period in which the real property was supplied.
- (4) Where vacant real property is supplied in a separate legal transaction from and which occurs before the construction of a building or other structure on the said real property –
- (a) VAT on the supply of the vacant real property must be paid in full within ninety days of the date of the supply of the vacant real property; and
  - (b) VAT on the contract for the construction of the building or other structure on the vacant real property is chargeable at the standard rate of twelve per cent in accordance with the time of supply rules in section 32 of the Act.
- (5) A supply of construction goods and/or services in relation to real property under an agreement providing for installments or periodic payments which is connected to the subsequent conveyance of the real property on which the structure is constructed shall be treated as follows –
- (a) the construction goods and/or services are treated as successively supplied for each period to which a payment for the goods or services relates;
  - (b) VAT at the standard rate of twelve per cent in relation to each successive supply is due in the tax period when a payment becomes due, is received, or an invoice relating only to such payment is issued, whichever is the earliest to occur; and
  - (c) where a Comptroller's receipt is presented, VAT paid in relation to the supply of the construction goods and services will be taken into consideration in determining the amount of VAT payable on the conveyance of the real property.
- (6) The parties to a supply of real property are required to submit the conveyance, mortgage deed, memorandum of transaction or other document that contains or evidences the supply of real property to the Comptroller of VAT for VAT to be assessed on the supply.
- (7) Where –
- (a) any supply of real property is not contained in or evidenced by any deed of conveyance or other document; or
  - (b) the parties to a supply of real property have determined in good faith that the document evidencing the supply is not in a form suitable for the impressing of a VAT stamp thereon,

it shall be the joint and several obligation of the parties to the supply to execute a memorandum of transaction setting out the consideration and all other facts and circumstances affecting the VAT chargeable in respect of the supply.

- (8) All the parties to a supply of real property are jointly and severally liable for the payment of the VAT due on the supply.

#### **4. Assessment of VAT due on a supply of real property.**

- (1) VAT due on a supply of real property may be assessed by the Comptroller at any time.
- (2) Where the Comptroller makes an assessment of VAT due on a supply of real property, the Comptroller must serve a notice of the assessment on the supplier or recipient of the supply or their representatives.
- (3) A notice of assessment for the supply of real property shall be by letter addressed to the supplier and/or recipient of the supply.
- (4) Notwithstanding the provisions of this sub-rule, where a supply of real property is made by a registrant or an unregistered taxable person, any VAT unpaid in relation to the supply may be assessed by the Comptroller together with an assessment of the overall taxable activity of the taxable person.

#### **5. Comptroller's receipt.**

- (1) A Comptroller's receipt shall be issued for all payments made in relation to VAT due on a supply of real property, including payments made under the provisions of section 32 (16) of the Act.
- (2) All Comptroller receipts must be retained and presented with the deed of conveyance or memorandum of transaction or other document evidencing a supply of real property at the time of presentation for stamping as evidence of all previous VAT payments made with regard to that supply.
- (3) The Comptroller's receipt shall contain the following information –
  - (a) the word "Comptroller's Value Added Tax Receipt" in a prominent place;
  - (b) the supplier's name, address and tax identification number/ national insurance number;
  - (c) the recipient's tax identification number/ national insurance number;
  - (d) the receipt's identification (serial) number;
  - (e) the date of the receipt;
  - (f) the date of the assessment;

- (g) the rate of VAT;
- (h) the amount of tax paid, where applicable.

#### **6. Zero Rated Supplies.**

(1) The following supplies of real property are zero rated –

- (a) conveyances by way of assent and deeds 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;
- (b) transfers of real property made pursuant to 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.
- (c) deeds of rectification or confirmatory conveyances of real property in respect of which stamp duty or VAT has already been paid on the initial conveyance and where there is no change in the parties thereto, but a clerical or other error such as the description of the real property;
- (d) instruments relating to the vesting of any real property in any person by virtue of any statutory or common law entitlement, except a merger;
- (e) the renunciation or release of dower;
- (f) subject to the provisions of the relevant rules, applications approved by the Comptroller of VAT under the provisions of VAT Rules 2019-02 Transfer of Home Mortgages; 2019-04 Inter Vivos Gifts of Real Property; and 2019-05 Acquisition of a First Dwelling;
- (g) the gift or voluntary disposition of real property by one company to another company where –
  - (i) all of the shares of every class of the transferor and transferee company are beneficially owned by the same person; and
  - (ii) no other person owns or has agreed to acquire any right, power, title, option or other interest in, over or concerning any of the shares or property of either the transferor or transferee company.

(2) The Comptroller shall publish from time to time the documents that will be accepted to confirm the occurrence of the zero rated supplies in this sub-rule.

#### **7. Value of a Supply of Real Property.**

- (1) The value of the supply of any real property, other than a mortgage, for the purpose of charging VAT shall be the –
- (a) total of the consideration for the supply, except in the circumstances outlined in sub-paragraph (b) of this sub-rule;



- (b) fair market value of the supply, where the supply is made for no consideration or for consideration below fair market value.
- (2) Subject to subsection (2) of section 36 of the Act, the consideration for a supply of real property is the total amount in money or money's worth paid or payable for the supply less the amount of any price discounts or rebates allowed and accounted for at the time of the supply.
- (3) In determining the fair market value of a supply of real property, the Comptroller of VAT may consider –
  - (a) the value of the property as assessed by the Chief Valuation Officer under the Real Property Tax Act (*Ch. 375*);
  - (b) the valuation provided by a reputable third party in the business of valuing real property;
  - (c) the area in which the property is located;
  - (d) the increase in value, if any, that occurred between the time when the conveyance was executed and the time it is presented for VAT stamping;
  - (e) any other pertinent matters that in the opinion of the Comptroller of VAT would contribute to formulating a reasonable estimate of the fair market value of the property.
- (4) A person who is aggrieved by the assessment of VAT for a supply of real property may object to the assessment in accordance with the provisions of section 81 of the Act upon the service of the notice of assessment.
- (5) An objection must be accompanied by payment of the total amount of VAT assessed or security for the total amount assessed in a form acceptable to the Comptroller, at the time the objection is lodged.

#### **8. Treatment of Input Tax Credits.**

VAT on a supply of real property is not allowable as an input tax deduction as per the provisions of section 50 of the Act.

#### **9. VAT on the Transfer of an Interest in a Real Property Holding Entity.**

- (1) An interest in a real property holding entity includes –
  - (a) a share; or
  - (b) any other legal or beneficial interest,in a real property holding entity.

- (2) The following transactions are chargeable to VAT in like manner as a direct transfer of real property where entered into for the purpose of effecting a direct or indirect change in the beneficial ownership of any real property –
- (a) the allotment or issuance to any person or his nominee of any shares of any class in any company such that the person to whom such shares are issued or his nominee thereby becomes entitled to voting rights, dividends, or the surplus assets of the company in place of any person who previously enjoyed those rights;
  - (b) the variation of the rights of shareholders of a company such that the person in whose favour such rights are varied becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other shareholders;
  - (c) the admission to membership of any person in a company limited by guarantee whether having a share capital or not such that he becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other members;
  - (d) any declaration of trust under which the present owner of real property declares himself a trustee of that real property for another person;
  - (e) any purchase by a company of its own shares, any redemption or cancellation of shares, any retention of shares as treasury shares, any conversion or exchange of shares into, or for, shares or other property of any class or description, or any other action of whatsoever nature that effects or facilitates any direct or indirect increase in the overall proportions of any person's shareholdings or effective equity in a company;
  - (f) any other transaction under or in relation to any trust, company, partnership, association or other unincorporated entity resulting in any person indirectly acquiring or succeeding to the beneficial ownership of any real property or any part thereof;
  - (g) the addition of any person to the beneficial class of a trust and the contemporaneous or subsequent removal or exclusion of the other beneficiaries of the trust such that the only person who remains beneficially interested under the trust is the person so added.
- (3) A real property holding entity includes any company that is the parent of any subsidiary that owns real property.
- (4) Where an interest in a real property holding entity is transferred, any real property legally or beneficially owned by the real property holding entity is deemed to be transferred in the same proportion of value as the interest acquired in the real property holding entity.

(5) The supply of an interest in a public company that is a member of a registered securities exchange is chargeable to VAT where –

- (a) the transfer of such interest creates a controlling interest or changes the controlling interest in a real property holding entity; or
- (b) the transaction is entered into for the purpose of effecting a direct or indirect change in the beneficial ownership of any real property.

(6) For the purposes of this sub-rule –

**“controlling interest”** means a change, acquisition or transfer that results in –

- (a) a shareholding of greater than 50% of the authorized and issued share capital of any class of a real property holding entity;
- (b) an entitlement greater than 50% to a right to profits or dividends by any person or group of related persons;
- (c) an interest that is greater than 50% of the legal or beneficial ownership of a real property holding entity; or
- (d) a percentage legal or beneficial ownership interest in a real property holding entity that is 50% or less, where the owner of that interest actually directs the business or affairs of the entity without the requirement of consent of any other person.

**“parent”** means any company that –

- (a) owns the majority of the issued shares of any class of shares in another company; or
- (b) that ultimately controls another company either directly or through its control of an intervening subsidiary or subsidiaries however many in number;

**“subsidiary”** means any company the majority of whose issued shares of any class are owned or controlled by another company.

#### **10. Sale and transfer of time-shares.**

For the purposes of the Act the sale or transfer of a time-share interest shall constitute a sale or transfer of real property and accordingly shall be chargeable to VAT at the applicable rate for a transfer of real property as set forth in the Third Schedule, based on the value of the time-share interest.

#### **11. Dividends-in-specie.**

- (1) For the purposes of the Act, a dividend-in-specie, or other transfer or vesting of the beneficial interest in real property by a company to or in any of its members, shall constitute a change in beneficial ownership and accordingly shall be subject to VAT in the same manner as if such change in beneficial ownership had occurred in favour of a person who was not a member of the company.
- (2) This sub-rule shall apply whether the dividend-in-specie or other transfer or vesting of the beneficial interest in real property occurs in the course of the winding-up of a company or otherwise.

#### **12. Transfers between members of a group of companies.**

- (1) A supply of real property between –
  - (a) members of a VAT group; or
  - (b) two or more companies that are constituent members of the same group of companies,is only zero rated where the conditions in paragraph (2) of this sub-rule are satisfied.
- (2) The conditions referred to in paragraph (1) of this sub-rule are that –
  - (a) the supplier and recipient are beneficially owned by the same person;
  - (b) no part of the consideration for the supply is payable to any person that is not a member of the VAT group or a constituent member of the same group of companies;
  - (c) the beneficial ownership of the real property remains unchanged; and
  - (d) no person, other than the recipient and a pre-existing member of the same group, acquires any interest in the real property.
- (3) Where the conditions in this sub-rule are not satisfied, the supply is subject to VAT at the applicable special rate indicated in the Third Schedule of the Act.
- (4) Where the parties are registrants they are required to account for the supply in the VAT return for the tax period in which the supply occurred.

#### **13. Transitional provision.**

- (1) Section 27(3) of the Value Added Tax (Amendment) Act, 2019 does not apply to a gift of real property as defined in Rule 2019-004.



- (2) For the avoidance of doubt, interest and fines for the late filing of an instrument for a supply of real property that was executed before the 1<sup>st</sup> January, 2019 are chargeable regardless of whether the VAT due on the supply is paid by 30<sup>th</sup> September, 2019.

**14. Late Payment.**

Where the VAT due on a supply of real property is not paid in full within the time prescribed under this Rule, the instrument for the supply of the real property shall not be stamped by the Comptroller unless the following are paid –

- (a) the outstanding VAT;
- (b) interest per annum on the outstanding amount as prescribed under section 47A of the Act; and
- (c) late fines as prescribed under section 38D of the Act.

**E. The period for which this Rule applies**

This Rule will apply from the 1<sup>st</sup> July, 2019 and remains in effect until withdrawn or modified by the Comptroller.

**F. Revocation of Previous Rules**

Value Added Tax Rules 2015-025 Real Estate and 2018-005 The Exempt Treatment of the Transfer of Real Property are hereby revoked.

Signed  
**GAYNELL ROLLE**

Approved by the Comptroller of VAT

**1<sup>st</sup> July, 2019**

Date



**Ministry Of Finance  
VAT Department**

**VAT RULE 2019-002  
Supply of Real Property  
(Transfer of a Home Mortgage)**

## VAT RULE # 2019-002

### Supply of Real Property (Transfer of a Home Mortgage)

#### 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, unless stated otherwise.

#### C. Application of the Rule

The purpose of this rule is to clarify the application of value added tax in relation to a transfer of a home mortgage and matters connected thereto.

#### D. Comptroller's Rule

##### 1. Interpretation.

(1) In relation to a supply of real property in the Act –

“home mortgage” means –

- (a) a mortgage in respect of a dwelling occupied by the mortgagor exclusively as a family residence;
- (b) the amount under either a mortgage of multiple properties or a mortgage of a multi-purpose property that represents the sum secured by a dwelling occupied by the mortgagor exclusively as a family residence.

“domestic loans” means non-business loans relating to the home or household, or pertaining to the family affairs, of the borrower;

“licensed lending institution” means –

- (a) a bank licensed under the Central Bank of The Bahamas Act (*Ch. 351*);
- (b) an insurance company licensed under the Insurance Act (*Ch. 347*), or under the External Insurance Act, 2009 (*Ch. 348*);
- (c) a credit union that has member representatives in the Apex Body called the National League established under section 115 of the Cooperatives Societies Act (*Ch. 314*).

(2) A transfer of a home mortgage refers to a transaction whereby a home mortgage –

- (a) held by one licensed lending institution is satisfied and a new home mortgage in relation to the same dwelling is created with a new licensed lending institution for an amount that is equivalent to the sum that was used to satisfy the previous home mortgage; or
- (b) in relation to a particular dwelling is transferred from one licensed lending institution to another licensed lending institution,

but does not include any

- (i) further sums advanced by the new licensed lending institution over and above the sum used to satisfy the previous home mortgage;
- (ii) sums advanced by the new licensed lending institution to satisfy a mortgage that is not a home mortgage;
- (iii) sums advanced by the new licensed lending institution to satisfy any amounts outstanding in respect of any real property or part thereof that is not occupied exclusively by the mortgagor as a dwelling.

(3) A transfer of a home mortgage combined with other domestic loans refers to a transaction whereby –

- (a) a home mortgage together with other domestic loans held by one licensed lending institution are satisfied; and
- (b) a new home mortgage is created with a new licensed lending institution in relation to the same dwelling and is equivalent to the sum that was used to satisfy the previous home mortgage and other domestic loans,

but does not include any

- (i) further sums advanced by the new licensed lending institution over and above the sum used to satisfy the previous home mortgage and other domestic loans;
- (ii) sums advanced by the new licensed lending institution to satisfy a mortgage that is not a home mortgage;
- (iii) sums advanced by the new licensed lending institution to satisfy any amounts outstanding in respect of any loan against real property or part thereof that is not occupied exclusively by the mortgagor as a dwelling.

## **2. VAT payable.**

(1) Where a transfer of a home mortgage or a transfer of a home mortgage combined with domestic loans takes place, the instrument evidencing –

- (a) the satisfaction of the previous home mortgage and the creation of the new home mortgage; or
- (b) the transfer of the home mortgage,

shall be chargeable to VAT at the zero rate upon application by the mortgagor or mortgagee and submission of the required supporting documents.

(2) VAT at the zero rate shall be limited to the sum used to satisfy the –

- (a) previous home mortgage held with the previous licensed lending institution; or
- (b) previous home mortgage and domestic loans held with the previous lending institution.

(3) Where the new licensed lending institution advances –

- (a) further sums over and above the sum used to satisfy either the previous home mortgage or the previous home mortgage together with domestic loans; or
- (b) sums that are partially used to satisfy a mortgage that is not a home mortgage;
- (c) sums that are partially used to satisfy any amounts outstanding in respect of any real property or part thereof that is not occupied exclusively by the mortgagor as a dwelling,

the instrument evidencing the creation of the new mortgage or the transfer of the mortgage will be subject to VAT at the applicable rates as set out in the Third Schedule of the Act in respect of the amount borrowed that represents the sums that were not used to satisfy the previous home mortgage or previous home mortgage together with domestic loans.

(4) Where a mortgage is in relation to multiple properties or a multi-purpose property that includes a dwelling occupied by the mortgagor exclusively as a residence, the transaction shall be treated as follows –

- (a) Where the terms of the loan allow for the determination of the loan balance associated with the dwelling, a letter or statement from the previous licensed lending institution shall be provided to indicate the portion of the overall mortgage satisfaction sum that is directly associated with the dwelling;
- (b) Where the terms of the loan do not allow for the determination of the loan balance associated with the dwelling, the amount that is used to satisfy the previous home mortgage will be ascertained by apportioning the overall mortgage satisfaction sum to each property or part thereof based on the fair market value of each property or part thereof taken as a percentage of the whole;
- (c) Where the mortgagee and mortgagor are unable to provide the amount that relates to the satisfaction of the home mortgage or the information that would be required to determine this amount under this sub-rule, the entire transaction will be assessed to VAT based on the rates outlined under the Third Schedule of the Act.

### **3. Applications for zero rating.**

- (1) An application for zero rating of a transfer of a home mortgage or a transfer of a home mortgage combined with other domestic loans must be made to the VAT Comptroller



on the prescribed VAT Form 68 and must be accompanied by the following documents

—

- (a) A real property tax certificate from the Chief Valuation Officer evidencing that the property is located in New Providence and is classified as owner-occupied under the Real Property Tax Act (*Ch. 375*); or
- (b) Where the property is located in a Family Island, an affidavit that the dwelling is owner-occupied.

**4. The period for which this Rule applies.**

This Rule will apply from the 1<sup>st</sup> July, 2019 and remains in effect until withdrawn or amended by the Comptroller.

**Signed**  
**GAYNELL ROLLE**

Approved by the Comptroller of VAT

**1<sup>st</sup> July, 2019**

Date



**Ministry Of Finance  
VAT Department**

**VAT RULE 2019-003  
Supply of Real Property  
(Long-Term Leases)**



**VAT RULE # 2019-003**  
**Supply of Real Property (Long-Term Leases)**

**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, unless stated otherwise.

**C. Application of the Rule**

The purpose of this rule is to clarify the application of value added tax in relation to a long-term lease of real property and matters connected thereto.

**D. Comptroller's Rule**

**1. Interpretation.**

In relation to a supply of real property –

**“capital sum”** means –

- (a) a lump sum payment or premium payable by a lessee to a lessor at the commencement of or in order to secure a long-term lease;
- (b) the annual rent reserved where the lease agreement does not indicate that a lump sum or premium is payable.

**“lease”** means –

- (a) an interest in or right over real property for either a fixed or periodic term; or
- (b) a tenancy at will, or other interest in or right over real property terminable by notice at any time;

**“special rate”** in relation to VAT on a long-term lease means –

- (a) two and one half per cent of the value of the supply where the value is one hundred thousand dollars or less;
- (b) ten per cent of the value of the supply where the value is greater than one hundred thousand dollars.

**2. Value of the supply of a long-term lease.**

- (1) The value of a supply of a long-term lease is the greater of –
  - (a) the total of the consideration payable under the lease; and
  - (b) the fair market value for a long-term lease of the real property.
- (2) The total of the consideration payable under a long-term lease is the total amount in money or money's worth paid or payable under the lease.
- (3) The total amount payable under a long-term lease shall be determined in accordance with section 36(2) of the Act.
- (4) Where the Comptroller is unable to ascertain the amount of the consideration based on the terms of the lease agreement the value of the supply is the fair market value.

### **3. Payment of VAT.**

- (1) VAT on a long-term lease is charged at the –
  - (a) special rate on the capital sum after deduction of any stamp duty paid or payable in connection therewith;
  - (b) standard rate of twelve percent on all subsequent payments paid or payable periodically under the lease.
- (2) The VAT due on the capital sum under a long-term lease shall –
  - (a) where the lessor and lessee execute a lease agreement at the commencement of the lease, be paid within ninety days of execution of the lease agreement;
  - (b) in any other case be paid within ninety days of the date that the capital sum is paid or payable, whichever is earlier.
- (3) The VAT due on a periodic payment paid or payable under a long-term lease shall be paid by the end of the twenty-one day period that the lessor is required to file the VAT return for the tax period within which the periodic payment is due.
- (4) Payment of the VAT on the capital sum under a long-term lease shall be evidenced by the issue of a Comptroller's receipt.
- (5) The applicable special rate of VAT for any payment in relation to a long-term lease shall be determined by the value of the supply for the entire term of the lease.

### **4. Input Tax Deductions.**

- (1) Claims for input tax deduction in relation to any VAT assessed on the capital sum under a long-term lease are not allowable under the provisions of section 50 of the Act.
- (2) Input VAT incurred on the periodic payments under a lease of real property will be allowed as an input tax deduction where the term of the lease does not exceed twenty years.
- (3) Claims for input tax deduction in relation to VAT payable under short-term leases are allowable as an input VAT deduction to registrant lessees in accordance with the provisions of section 50 of the Act.

**5. Short-term leases.**

A short-term lease, tenancy agreement or other agreement for the rental of real property providing for periodic payments that is not a –

- (a) long-term lease, or
- (b) lease to own contract

is not a supply of real property and is, therefore, subject to VAT at the standard rate of twelve per cent.

**6. Lease to own contracts.**

- (1) Lease to own contracts for the eventual sale and conveyance of real property by way of a 'lease to own agreement' is a supply of real property and, subject to paragraph (3) of this sub-rule, shall attract VAT at the special rate on all sums paid or payable by the lessee.
- (2) The time of supply shall be the time at which an installment payment becomes payable or is paid or when the property is made available to the recipient whichever is the earliest to occur in accordance with section 32 of the Act.
- (3) Non-refundable deposits or fees are –
  - (a) subject to VAT at the standard rate of twelve percent;
  - (b) construed to be for a right to a supply of real property where the supplier obtains the right to retain an amount paid by the recipient under the agreement.
- (4) VAT paid on a non-refundable deposit will not be taken into consideration in ascertaining the total amount payable on the eventual conveyance of the real property.

(5) The applicable special rate of VAT for any periodic payment in relation to a lease to own contract shall be determined by the value of the supply for the entire term of the lease.

(6) VAT assessed on a 'lease to own agreement' is not available as an input tax credit under the provisions of section 50 of the Act.

**E. The period for which this Rule applies**

This Rule will apply from the 1<sup>st</sup> July, 2019 and remains in effect until withdrawn or modified by the Comptroller.

**Signed**

**GAYNELL ROLLE**

Approved by the Comptroller of VAT

**1<sup>st</sup> July, 2019**

Date



**Ministry Of Finance**  
**VAT Department**

**VAT RULE 2019-004**  
**Supply of Real Property**  
*(Inter Vivos Gifts)*

**VAT RULE # 2019-004**

**Supply of Real Property (*Inter Vivos* Gifts)**

**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, unless stated otherwise.

**C. Application of the Rule**

The purpose of this rule is to clarify the application of value added tax and the conditional zero rating in relation to an *inter vivos* gift of real property and matters connected thereto.

**D. Comptroller's Rule**

**1. Interpretation.**

In relation to a supply of real property in the Act –

“child” means an individual who is –

- (a) the biological offspring of a natural person; or
- (b) adopted by a parent under the Adoption of Children Act (*Ch. 131*);

“parent” means

- (a) the biological mother or father of a child;
- (b) any person liable by law to maintain a child or entitled to his custody;
- (c) the adoptive parent under the provisions of the Adoption of Children Act (*Ch. 131*);

“qualifying transfer” means a transfer of real property –

- (a) from a transferor to qualifying transferee as outlined in paragraph (2) of sub-rule 3; and
- (b) where the instrument for the supply of the real property was executed within the time prescribed in paragraph (3) of sub-rule 3;



“**remoter issue**” means a grandchild who is the biological child of the biological or adopted offspring of a parent;

“**spouse**” means the spouse in a marriage that is subsisting at the date of the transaction and where the marriage has not been voided on any of the following grounds –

- (a) that it is not a valid marriage in accordance with the provisions of the Marriage Act (*Ch. 120*);
- (b) that at the time of the marriage, either party was already lawfully married;
- (c) that the parties are not respectively male and female; or
- (d) that in the case of a polygamous marriage entered into outside The Bahamas, either party was domiciled in The Bahamas;

## 2. Definition of a gift of real property.

A gift of real property is defined as the voluntary disposition of real property by one person to another for nominal or no consideration.

## 3. Zero-rated gifts of real property.

(1) An *inter vivos* gift of real property shall only be zero rated upon application by either the transferor or the transferee in the manner and subject to the terms and conditions prescribed in this Rule.

(2) The categories of *inter vivos* gifts of real property that are eligible to be zero rated are as follows –

	THE TRANSFEROR	QUALIFYING TRANSFeree
1	An individual	<u>A company</u> , all of whose shares of every class are beneficially owned by the transferor, the transferor's spouse, the transferor's adult children or adult remoter issue, and in relation to which no other person owns or has agreed to acquire any right, power, title, option or other interest in, over or concerning the shares, any of the property of the company, or any of the property of the transferor, the transferor's spouse, the transferor's adult children or adult remoter issue;”
2	An individual	<u>A Trustee</u> where the express and unalterable terms of the trust instrument permanently excludes every person, except for the transferor, the transferor's spouse, parents, children or remoter issue, from taking or receiving any title to the trust property or income, or any power, right or benefit related to the trust;
3	An individual	Another individual who is :- <b>A. The transferor's spouse;</b> <b>B. One or both of the transferor's parents;</b> <b>C. One or more of the transferor's adult children;</b> <b>D. The transferor's adult Grandchild as remoter issue;</b>
4	An individual	A foundation where the only beneficiaries are (i) the transferor, and/or (ii) the transferor's spouse and/or (iii) the transferor's children or remoter issue
5	A company	A trust or foundation where the only beneficiaries are



		(i) the beneficial owner of all of the equity in such company, and/or (ii) spouse of the beneficial owner of such company and/or (iii) the children or remoter issue of the beneficial owner of such company.
6	A trustee	Another trustee where i. The terms of the trust or trust deed, the beneficiaries and the trust assets remain the same. ii. The change in trustee is purely for administrative purposes and there is no variation in the rights and obligations of the trustees or beneficiaries.

(3) An *inter vivos* gift of real property shall only be zero rated where the instrument for the supply of the real property has been executed –

- (a) on or after the 1<sup>st</sup> July, 2010, in the case of a transfer in the categories outlined in items 1 and 2 of paragraph (2) of this sub-rule;
- (b) on or after the 1<sup>st</sup> July, 2019, in the case of a transfer in the categories outlined in items 3 to 6 of paragraph (2) of this sub-rule.

(4) An *inter vivos* gift of real property shall only remain zero rated where the transferee –

- (a) retains the gift for a minimum period of 7 years from the date of the transfer;
- (b) is the legal and beneficial owner of the real property;
- (c) does not transfer, sell, pledge, mortgage or in any way dispose of the real property or any right thereto except –
  - (i) as a transfer to the transferee's spouse, parent, child or remoter issue, as provided for in the Act;
  - (ii) for security in which a pledge or mortgage is made or granted to a financial institution regulated under the Banks and Trust Companies Regulation Act (*Ch. 316*);

(5) Where a transferee contravenes any of the conditions outlined in paragraph (4) of this sub-rule, VAT shall be assessed on –

- (a) the contravening transfer of the real property in accordance with the provisions of VAT Rule 2019-001 Supply of Real Property (General) at the applicable special rate in the Third Schedule of the Act;
- (b) the original *inter vivos* gift of the real property as follows –
  - (i) using the fair market value of the real property at the date of the original *inter vivos* transfer;
  - (ii) using the applicable VAT rate in the Third Schedule on the date of the original *inter vivos* transfer of the subject property;
  - (iii) as an amount of VAT which was not paid at the date the VAT on the original *inter vivos* transfer became due and payable;

- (iv) the application of interest on the assessed VAT from the date the VAT would have become due if the transfer had not been assessed as an *inter vivos* gift to the date of contravention;
- (v) the application of a late fine as provided for under section 38D of the Act.

#### **4. Qualifying transfers below fair market value.**

Where a qualifying transfer is made at a value considered to be below the fair market value –

- (a) VAT will be chargeable on the consideration for the supply at the applicable special rate outlined in the Third Schedule; and
- (b) the transfer may still be treated as an *inter vivos* gift and subject to the same conditions in respect of the amount that represents the difference between the consideration and the fair market value.

#### **5. Applications for zero rating of *inter vivos* gifts.**

- (1) An application for the conditional zero rating of VAT on an *inter vivos* gift of real property must be made on VAT Form 66 and submitted to the Comptroller of VAT for review along with the requisite supporting documents.
- (2) The requisite supporting documents referred to in paragraph (1) of this sub-rule must be capable of establishing the following –
  - (a) the legal description of the real property;
  - (b) the name or names of the legal and beneficial owner;
  - (c) the name or names of the transferor;
  - (d) the name or names of the transferee;
  - (e) the details and proof of the relationship between the transferor and the transferee;
  - (f) proof that there are no outstanding real property taxes or other taxes related to the subject real property.
- (3) The Comptroller may in seeking proof of the relationship between the transferor and transferee ask for the production of records by either or both parties, including but not limited to –
  - (a) an original or certified copy of a birth certificate;
  - (b) an original or certified copy of a marriage certificate;
  - (c) scientific certification of lineage such as a DNA profile;
  - (d) an adoption order or certified copy of an entry in the Adopted Children Register under the Adoption of Children Act (*Ch. 131*);
  - (e) a passport or other Government issued photo identification.

#### **6. The compliance period in the case of successive qualifying transfers.**

Where *inter vivos* gifts of real property are made successively to qualifying transferees the period of compliance shall run from the date of the initial transfer.

**7. Valuation of Real Property.**

The fair market value of real property at the date of the transfer shall be determined by reference to the date of the deed of gift or conveyance and shall be determined by the Comptroller of VAT as set out in the Regulations and the Rules.

**E. The period for which this Rule applies**

This Rule will apply from the 1<sup>st</sup> July, 2019 and remains in effect until withdrawn or amended by the Comptroller.

**Signed**  
**GAYNELL ROLLE**

Approved by the Comptroller of VAT

**1<sup>st</sup> July, 2019**

Date



**Ministry Of Finance**  
**VAT Department**

**VAT RULE 2019-005**  
**Supply of Real Property**  
**(Acquisition of a First**  
**Dwelling)**

## **VAT RULE #2019-005 Supply of Real Property (Acquisition of a First Dwelling)**

### **A. Authority**

This Rule is made under Section 17 of the Value Added Tax Act, 2014.

### **B. Legislation**

Legislative references are pursuant to the Value Added Tax Act, 2014 and/or the Value Added Tax Regulations, 2014, unless stated otherwise.

### **C. Application of the Rule**

The purpose of this rule is to set out the requirements for and treatment of zero-rated supplies for the acquisition by a Bahamian citizen of their first dwelling.

### **D. Comptroller's Rule**

#### **1. Interpretation.**

For the purpose of this Rule -

**"Bahamian citizen"** means a natural person, that is, an individual who is a citizen of The Commonwealth of The Bahamas;

**"financing"** means the grant of a mortgage to finance the acquisition of a first dwelling and "financed" shall be construed accordingly;

**"package deal"** means a transaction consisting of the purchase of vacant real property connected to the construction thereon by -

- (a) the vendor of that real property, or
- (b) a person who is a member of the same VAT group as the vendor,

of a dwelling for the benefit of the purchaser of that real property.

#### **2. Acquisition of first dwelling by Bahamian citizen is zero-rated.**

A transaction or instrument for the acquisition by a Bahamian citizen of the legal and beneficial interest in a dwelling for the first time is, subject to the provisions of this Rule, chargeable to VAT at the zero rate where the value of the real property does not exceed five hundred thousand dollars.



### **3. Dwelling.**

- (1) A dwelling for the purpose of this rule shall be limited to a single family residence, condominium unit or duplex, provided that such real property is intended for use as a dwelling by its Bahamian owner.
- (2) Zero rating granted on the supply of a duplex is treated in the same manner applied to a single family dwelling with regard to the part of the duplex that is intended to be used by the Bahamian owner as a first dwelling.
- (3) The part of a duplex that is not intended by the Bahamian owner as a first dwelling shall be subject to VAT at the applicable rate in the Third Schedule.

### **4. Determination of whether a supply is an acquisition of a first dwelling.**

- (1) Instruments for the following supplies of real property will be treated as the acquisition by a Bahamian citizen of a first dwelling –
  - (a) the acquisition by a Bahamian citizen of his first dwelling;
  - (b) the acquisition and financing by a Bahamian citizen of his first dwelling;
  - (c) the financing by a Bahamian citizen of his first dwelling;
  - (d) the acquisition and/or financing of a dwelling by a Bahamian citizen where such citizen no longer owns his first dwelling due to steps taken against him by a mortgagee as a result of the inability of the said citizen to meet his fiscal obligations under a mortgage;
  - (e) a package deal for the purchase by a Bahamian citizen of vacant real property and the construction thereon of his first dwelling.
- (2) Subject to the provisions of paragraph (3) of this sub-rule, where a Bahamian citizen acquires vacant real property in circumstances other than a package deal, the transaction shall not be treated as the acquisition of a first dwelling regardless of the purchaser's intended use of such real property.
- (3) Where a Bahamian citizen who acquired vacant real property subsequently enters into a contract for the construction of his first dwelling on the said vacant real property, and the value of the vacant real property and construction contract does not exceed five hundred thousand dollars, any VAT –
  - (a) chargeable on the construction contract; and
  - (b) paid on the conveyance of the vacant real property to the citizen,

may, in accordance with the provisions of this Rule, be adjusted to reflect the treatment that would have been applied under this Rule if such citizen had acquired a first dwelling with the same value as that of the vacant real property and the dwelling constructed thereon.

- (4) For the avoidance of doubt, where a Bahamian citizen grants a mortgage to finance the construction of his first dwelling on vacant real property, the mortgage shall be treated as an acquisition of a first dwelling.

**5. Determination of the value of the supply.**

- (1) Value for the purpose of determining whether the acquisition of a dwelling falls within the threshold of five hundred thousand dollars is –

(a) the total consideration for the supply, in the case of the purchase of a dwelling, unless there is no consideration or the consideration is below fair market value;

(b) the total consideration for a package deal, which amount shall include the consideration for the purchase of the vacant real property and the structure constructed thereon;

(c) the fair market value of the real property, in the case of –

(i) the acquisition of a dwelling for no consideration or where the consideration is below fair market value;

(ii) a mortgage.

- (2) For the purpose of this sub-rule, fair market value means –

where the instrument is presented for stamping within one hundred and eighty days of the grant of approval for zero rating, the fair market value on the date that the application was submitted for approval.

**6. Documents required to be submitted.**

- (1) An instrument for the acquisition of a first dwelling shall only be zero-rated where an application in Form 67, affidavit and other supporting documents evidencing the following are submitted with the instrument for the assessment of the VAT due and payable –

(a) proof of citizenship in the Commonwealth of The Bahamas of the recipient of the supply;

(b) that the Bahamian citizen is acquiring the legal and beneficial interest in the property;



- (c) that the value of the supply does not exceed five hundred thousand dollars;
  - (d) in relation to sub-rule 4 (1)(a) to (c), that the property acquired or financed is the recipient's first and only dwelling and there is not and has never been any other dwelling held by him or on his behalf situated either in or outside of The Bahamas;
  - (e) in relation to sub-rule 4 (1)(d), that the acquisition by the recipient of the dwelling is to replace the first dwelling which he no longer owns due to steps taken against him by a mortgagee as a result of the inability of the recipient to meet his fiscal obligations under a mortgage; and
  - (f) subject to sub-rule 4 (1)(d), that the recipient of the supply has never received exemption with respect to any acquisition of vacant land or first dwelling house under the provisions of the Stamp Act (*Ch. 370*) or zero rated acquisition of a dwelling under this Act.
  - (g) evidence that no real property taxes or other taxes with regard to the subject property are owing.
- (2) The VAT chargeable on a construction contract and any VAT paid on the conveyance of vacant real property to a Bahamian citizen in the circumstances outlined in paragraph (3) of sub-rule 4, may only be adjusted where –
- (a) the fully executed construction contract and the documents referred to in paragraph (1) of this sub-rule are submitted to the Comptroller of VAT; and
  - (b) the Comptroller of VAT provides prior approval in writing for the adjustment.

**7. VAT payable on acquisition of first time dwelling by Bahamian citizen.**

- (1) The VAT payable on the acquisition of a first dwelling by a Bahamian citizen shall be at the rate of zero per cent, except that –
- (a) where the value of the supply exceeds two hundred thousand dollars, but is less than two hundred and fifty thousand dollars, VAT shall be chargeable at the zero rate in respect of the first two hundred thousand dollars of the value, and at the rate of ten percent in respect of one-half of the value that exceeds two hundred thousand dollars;
  - (b) where the value of the supply exceeds two hundred and fifty thousand dollars but does not exceed five hundred thousand dollars, VAT is chargeable at the rate of ten percent in respect of one-half of the total value of the supply;
  - (c) where the value of the supply exceeds five hundred thousand dollars, VAT is chargeable on the full value of that supply at the rate of ten percent.
- (2) The VAT payable on the financing of a first dwelling by a Bahamian citizen shall be at the –

- (a) rate of zero per cent where the amount being borrowed in respect of the financing of the first dwelling and the value of the real property does not exceed five hundred thousand dollars;
- (b) applicable rate in the Third Schedule of the Act where the amount being borrowed or the value of the real property exceeds five hundred thousand dollars.

#### **8. Joint ownership.**

- (1) Where a dwelling is being acquired by more than one owner –
  - (a) only the interest acquired in the dwelling by a qualified Bahamian owner shall be treated as the acquisition of a first dwelling;
  - (b) the part of the value of the supply that represents the interest of any person who is not a qualified Bahamian owner shall be chargeable to VAT at the applicable rate in the Third Schedule, unless it is otherwise zero rated.
- (2) The value for the purpose of determining the applicable rate in the Third Schedule under paragraph (1)(b) of this sub-rule shall be the total value of the supply.
- (3) For the avoidance of doubt, the limit of five hundred thousand dollars is imposed on the total value of the supply.
- (4) For the purpose of this sub-rule, a qualified Bahamian owner means a Bahamian citizen who is acquiring a first dwelling.

#### **9. Refunds.**

- (1) Refunds of VAT paid on a supply of real property shall only be made –
  - (a) in order to give effect to any final decision of the VAT Appeal Commission or the Court; or
  - (b) before a document has been duly recorded where it can be demonstrated that the refund is as a result of an error in calculation of the applicable tax.
- (2) Refunds shall not be occasioned by any other occurrence whatsoever.

#### **10. Timelines.**

- (1) The acquisition of a dwelling for the first time by a Bahamian citizen shall only be zero rated where the instrument for the supply of the property has been executed after the 1<sup>st</sup> January 2003.

- (2) An approval granted for zero rating of the supply of real property for the acquisition of a first dwelling by a Bahamian citizen must be utilized within 180 days of the issue of the approval.
- (3) Submission for approvals shall only be entertained prior to the payment of VAT on the documents to which the submission relates.
- (4) For the avoidance of doubt, where the instrument for the acquisition of a first dwelling by a Bahamian citizen is not presented for VAT stamping within 180 days of the issue of the approval for zero rating, the acquisition of the dwelling shall not be zero rated regardless of the reason for the failure to submit within the 180 days prescribed in this sub-rule.
- (5) An instrument for the supply of real property that –
  - (a) had been granted approval for exemption from stamp duty under section 3B of the Stamp Act (*Ch. 370*); and
  - (b) has not been stamped under the provisions of the Stamp Act (*Ch. 370*),

shall be assessed for VAT based on the approval granted under the provisions of the Stamp Act (*Ch. 370*) provided that the instrument is submitted within 180 days of the granting of the approval and any VAT due thereon is paid by 31<sup>st</sup> December, 2019.

**E. The period for which this Rule applies**

This Rule will apply from the 1<sup>st</sup> July, 2019 and remains in effect until withdrawn or amended by the Comptroller.

Signed  
**GAYNELL ROLLE**

Approved by the Comptroller of VAT

**1<sup>st</sup> July, 2019**

Date