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VALUE ADDED TAX (AMENDMENT) ACT, 2019

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No. 31 of 2019

VALUE ADDED TAX (AMENDMENT) ACT, 2019

AN ACT TO AMEND THE VALUE ADDED TAX ACT

[Date of Assent - 2nd August, 2019]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Value Added Tax Act, 2014 (*No. 32 of 2014*), may be cited as the Value Added Tax (Amendment) Act, 2019.
- (2) This Act shall come into force on the 1st day of July, 2019.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended —

- (a) in the definition of “**dwelling**”, by the deletion of the word “owner-occupied and”;
- (b) in the definition of “**goods**”, by the insertion immediately after the word “real” of the word “property”;
- (c) in the definition of “**fine**”, by the insertion immediately after the words “pursuant to” of the words “section 38B and”;
- (d) by the deletion of the words “**international commercial service**” and its definition and the substitution of the following —
““**international commercial service**” means a trade or trade related service performed by a commercially scheduled aircraft or vessel involved in the commercial transport of passengers or goods;”;
- (e) by the insertion in the appropriate alphabetical order of the following new definitions —
““**beneficial owner**” means any person who is beneficially interested in any property, including a beneficiary under a trust, and “**beneficially owned**” shall be construed accordingly;

“homeowner” includes —

- (a) the legal or equitable owner of a residence;
- (b) the holder of a lease for the residence;
- (c) a person occupying a residence on the authorisation of the legal owner;

“long-term lease” means a lease of five or more years;

“marketplace” means a person or entity other than a homeowner that —

- (a) provides a means or a platform, whether over the Internet or otherwise, through which accommodation in a vacation home rental is offered; and
- (b) facilitates or collects payment in respect of a vacation home rental;

“real property” includes —

- (a) all lands, tenements and hereditaments in The Bahamas together with all structures and other improvements, including machinery and equipment, built into or attached to the soil;
- (b) any interest in a real property holding entity;

“real property holding entity” means —

- (a) a company incorporated or registered under the Companies Act (*Ch. 308*);
- (b) a company incorporated or continued under the International Business Companies Act (*Ch. 309*);
- (c) a partnership;
- (d) an association;
- (e) a trust; or
- (f) any other incorporated or unincorporated entity,

that legally or beneficially owns real property in The Bahamas;

“supply of real property” includes the sale, long-term lease, assignment, mortgage or other conveyance, or dealing with, or the transfer of a beneficial or legal interest in real property from one person to another, whether or not for money or money's worth;

“vacation home rental” means a residence that is offered as a short-term rental for a continuous period not exceeding forty-five days.”.

3. Amendment of section 3 of the principal Act.

Subsection (1) of section 3 of the principal Act is amended by the deletion of paragraph (c) and the substitution as follows —

“(c) supply of real property.”.

4. Amendment of section 4 of the principal Act.

Subsection (1) of section 4 of the principal Act is amended —

- (a) in paragraph (a), by the deletion of the word “and”;
- (b) in paragraph (b), by the deletion of the full stop and the substitution of the words “; and”; and
- (c) by the insertion immediately after paragraph (b) of the following new paragraph —
“(c) supply of real property made to any person.”.

5. Amendment of section 5 of the principal Act.

Subsection (1) of section 5 of the principal Act is amended —

- (a) in paragraph (b), by the deletion of the word “and”;
- (b) in paragraph (c), by the deletion of the full stop and the substitution of the words “; and”; and
- (c) by the insertion immediately after paragraph (c) of the following new paragraph —
“(d) in the case of a supply of real property, falls jointly and severally on the supplier and the recipient of the supply.”.

6. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended —

- (a) by renumbering the section as subsection (1);
- (b) by the insertion immediately after subsection (1) of the following new subsection —
“(2) Value added tax imposed under section 4 on a supply of real property that is not zero rated is, subject to such conditions as may be prescribed in regulations and VAT Rules, chargeable on the value of the supply at the rates specified in the *Third Schedule*.”.

7. Amendment of section 19 of the principal Act.

Section 19 of the principal Act is amended —

- (a) in subsection (1) —

- (i) in paragraph (c), by the deletion of the word “or” where it last occurs;
- (ii) in paragraph (d), by the deletion of the full stop and the substitution of the words “; or”; and
- (iii) by the insertion immediately after paragraph (d) of the following new paragraph —
 - “(e) is domiciled within or outside The Bahamas to the extent such person provides, through an agent, telecommunication services or electronic commerce to persons for use, enjoyment, benefit or advantage within The Bahamas, regardless of the registration threshold.”;
- (b) by the deletion of subsection (2) and the substitution as follows —
 - “(2) A person must, regardless of the registration threshold, apply for registration in accordance with this Part where that person is —
 - (a) a hotel or other person responsible for the administration of condos, or other residential accommodations, forming part of a pool or other collective rental arrangement; or
 - (b) a marketplace for a vacation home rental.”;
 - (c) in subsection (3) —
 - (i) in paragraph (a), by the deletion of the word “or”;
 - (ii) in paragraph (b), by the deletion of the full stop and the substitution of a semi-colon; and
 - (iii) by the insertion immediately after paragraph (b) of the following new paragraphs —
 - “(c) in the case of paragraph (e) of subsection (1), within fourteen days of the commencement of an activity referred to in paragraph (e) of subsection (1); or
 - (d) in the case of subsection (2), within fourteen days of the commencement of an activity referred to in subsection (2).”;
 - (d) by the deletion of subsection (8).

8. Amendment of section 20 of the principal Act.

Subsection (1) of section 20 of the principal Act is amended —

- (a) in paragraph (a) by the deletion of the word “and” where it appears after the words “taxable supplies” and the substitution of the word “or”;
- (b) in paragraph (b), by the deletion of the word “and” where it appears after “taxable supplies” and the substitution of the word “or”.

9. Amendment of section 22 of the principal Act.

Section 22 of the principal Act is amended by the insertion immediately after subsection (4) of the following new subsection —

- “(5) The Comptroller may make rules to establish the conditions for group registration.”.

10. Insertion of new section 22A into the principal Act.

The principal Act is amended by the insertion immediately after section 22 of the following new section —

“22A. Requirement of business licence for registration.

No VAT registration certificate shall be issued under this Act unless the Comptroller is satisfied that the applicant has complied with the requirements of the Business Licence Act, 2010 (No. 25 of 2010).”.

11. Amendment of section 27 of the principal Act.

Section 27 of the principal Act is amended —

- (a) in subsection (3), —
 - (i) by the deletion of the word “of” and the substitution of the word “or”; and
 - (ii) by the deletion of the words “section 21” and the substitution of the words “section 20”; and
- (b) in subsection (7), by the deletion of the words “by regulations”.

12. Amendment of section 29 of the principal Act.

Subsection (1) of section 29 of the principal Act is amended —

- (a) in paragraph (f), by the deletion of the full stop and the substitution of a semi-colon; and
- (b) by the insertion immediately after paragraph (f) of the following new paragraph —
 - “(g) supply of real property.”.

13. Amendment of section 32 of the principal Act.

Section 32 of the principal Act is amended by the insertion immediately after subsection (20) of the following new subsection —

“(21) Notwithstanding any provision of this section, the time of supply of a supply of real property shall be in accordance with VAT Rules.”.

14. Amendment of section 37 of the principal Act.

Subsection (2) of section 37 of the principal Act is amended in paragraph (a) by the deletion of the word “and” and the substitution of the word “or”.

15. Insertion of new sections 38A, 38B, 38C and 38D into the principal Act.

The principal Act is amended by the insertion, immediately after section 38, of the following new sections —

“ 38A. Collection of value added tax on supply of real property.

- (1) Where a supply of real property occurs, it shall be the responsibility of the Comptroller to assess and collect value added tax due and payable on the supply.
- (2) The value for the supply of real property shall always apply on an aggregate basis when the transferor makes separate supplies of contiguous tracts of real property to the same person or related person within any twelve month period.
- (3) Where a supply of real property is a mortgage, the value for the supply shall be the amount being borrowed by the mortgagor.
- (4) Every instrument for a supply of real property shall be presented to the VAT Department within the time prescribed in VAT Rules for the assessment and payment of VAT due on the supply.
- (5) A person aggrieved with an assessment of the Comptroller under subsection (1) may object to the decision under Part XI.
- (6) For the avoidance doubt, “**related person**” is determined in accordance with the Value Added Tax Regulations, 2014 (*S.I. 87/2014*).

38B. Liability to pay VAT on inter vivos gift.

A person who within seven years of receiving an *inter vivos* gift of real property makes a further supply of the real property —

- (a) to any person other than a spouse, parent, child or remoter issue; or
- (b) other than as security under a mortgage made or granted by a financial institution regulated under the Banks and Trust Companies Act (*Ch. 316*),

is liable to pay the VAT on such gift at the applicable VAT rate in the *Third Schedule*.

38C. Documents may not be recorded until duly stamped by Comptroller.

The Registrar General shall not receive for record, nor enter in any books of record in his office, any instrument for the supply of real property which he is required by any Act to enter for record, unless the said instrument has been duly stamped by the Comptroller to indicate that the VAT has been paid or is not payable in respect of the instrument.

38D. Fine for late filing of instrument for supply of real property, etc.

- (1) A recipient of a supply of real property is liable to pay a fine of ten per cent of the amount of tax owed where the supplier and recipient —
 - (a) fail to submit, within the time prescribed in the VAT Rules, an instrument for a supply of real property; or
 - (b) fail to pay, or makes a late payment in respect of the tax due and payable on a supply of real property.
- (2) Where a recipient of a supply of real property is liable to pay a fine under subsection (1) such fine shall be —
 - (a) automatically applied by the Comptroller; and
 - (b) immediately due and payable by the recipient of the supply of real property.”.

16. Amendment of section 50 of the principal Act.

Subsection (1) of section 50 of the principal Act is amended —

- (a) in paragraph (j), by the deletion of the full stop and the substitution of a semi-colon;
- (b) by the insertion, immediately after paragraph (j), of the following new paragraph —
 - “(k) the taxable supply to which the claim relates is a supply of real property.”.

17. Amendment of section 60 of the principal Act.

Section 60 of the principal Act is amended by the insertion immediately after subsection (9) of the following new subsection —

“(10) A person served with a notice of assessment pursuant to this section may object to the decision under Part XI.”.

18. Insertion of new section 61A into the principal Act.

The principal Act is amended by the insertion immediately after section 61 of the following new section —

“61A. Assessment and collection of fixed penalties.

- (1) A fixed penalty may be assessed together with the amount of VAT to which the fixed penalty relates.
- (2) Where a fixed penalty is calculated by reference to the VAT payable for a tax period, the fixed penalty must be assessed within the same time limit that applies to the assessment of the VAT to which the fixed penalty so relates.”.

19. Amendment of section 62 of the principal Act.

Subsection (1) of section 62 of the principal Act is amended —

- (a) by the deletion of the words “pursuant to section 47(3) and section 60”;
- (b) in paragraph (a), by the insertion immediately after the words “such information” of the words “, documents and other records”; and
- (c) in paragraph (c), by the insertion immediately after the words “in his” of the words “custody or”.

20. Amendment of section 71 of the principal Act.

Subsection (1) of section 71 of the principal Act is deleted and substituted as follows —

- “(1) The Comptroller may make an assessment on the recipient of a taxable supply for the amount of unpaid tax in respect of the supply, and any interest, fine or other penalty payable under this Act where —
- (a) a taxable person, due to fraud or misrepresentation by the recipient of the taxable supply, has incorrectly treated the supply as an exempt or zero rated supply;
 - (b) the recipient of the taxable supply falsely represents to the taxable person who made the supply that the supply is not subject to tax; or

- (c) the recipient of a taxable supply refuses to pay an amount of tax due on a taxable supply.”.

21. Amendment of section 72 of the principal Act.

Section 72 of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsections —

- “(2A) Any person on whom a notice has been served under this section that fails to comply with such notice, or who makes any disposition of money, property or arrangement that contradicts the purpose of the notice, is personally liable for the amount that he should have paid or property that he should have delivered in compliance with the notice, and such amount or property may be recovered by the Comptroller as if it were VAT due under this Act.
- (2B) Notwithstanding subsection (2), the Comptroller may, in his discretion, permit an agent to pay the money specified in a notice in instalments.”.

22. Amendment of section 77 of the principal Act.

Subsection (3) of section 77 of the principal Act is amended by the deletion of the words “subsection (13)” and the substitution of the words “subsection (5)”.

23. Amendment of section 81 of the principal Act.

Subsection (2) of section 81 of the principal Act is amended —

- (a) in paragraph (j), by the deletion of the word “and”;
- (b) in paragraph (k), by the deletion of the full stop and the substitution of a semi-colon; and
- (c) by the insertion immediately after paragraph (k) of the following new paragraphs —
 - “(l) subsection (5) of section 38A; and
 - (m) subsection (10) of section 60.”.

24. Amendment of First Schedule to the principal Act.

The First Schedule to the principal Act is amended —

- (a) in Part I, by the insertion immediately after item 8 of the following new item —
 - “9. Subject to the VAT Rules, the following supplies of real property —
 - (a) an *inter vivos* gift of real property that is held by the transferee for at least seven years from the date of the transfer where —

- (i) there is no change in beneficial ownership; or
- (ii) the only transferees are —
 - (aa) the transferor or the transferors spouse, parents, children or remoter issue;
 - (bb) a company, all of whose shares of every class are beneficially owned by the transferor, the transferor's spouse, the transferor's children or 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 children or remoter issue;
 - (cc) a trustee 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;
 - (dd) a foundation where the only beneficiaries and remaining beneficiaries are the founder, or the founder's spouse, parents, children or remoter issue;
- (b) a gift of real property from one exclusively charitable, religious or non-profit institution or body to another such institution or body;
- (c) any real property transfer made pursuant to an adjustment order under the Matrimonial Clauses Act (*Ch. 125*);
- (d) an acquisition of a dwelling for the first time by a Bahamian citizen where the value does not exceed \$500,000;
- (e) a transfer between licensed lending institutions of a home mortgage, or of a home mortgage combined with other domestic loans;

- (f) the transmission of real property upon the death or bankruptcy of the owner of such property to his personal representatives or trustee in bankruptcy;
 - (g) a deed of rectification or a confirmatory conveyance 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;
 - (h) instruments relating to the vesting of any real property in any person by virtue of any statutory or common law entitlement, except a merger;
 - (i) a renunciation or release of dower.”;
- (b) in Part II —
- (i) in item 4(2), by the deletion of the words “service.” and the substitution of the words “service, where such supply is made directly, and not through an agent or other person.”;
 - (ii) in item 7, by the deletion of the words “aircraft.” and the substitution of the words “aircraft, where such supply is made directly and not through an agent or other person.”;
 - (iii) by the deletion of item 11;
 - (iv) by the insertion, immediately after item 13, of the following new items —
 - “14. Any services by a ministry, department, statutory body, agency, local government council, or other entity of Government, in connection with a taxable activity where the consideration for such services are —
 - (a) nominal in amount; or
 - (b) not intended to recover the cost of such goods or services.
 - 15. A supply of electricity service by any utility service provider that is equivalent to \$300.00 or below per billing cycle.
 - 16. A supply of water service by any utility service provider that is equivalent to \$50.00 or below per billing cycle.
 - 17. Services relating to the use of terminal or berthing facilities by commercial vessels in respect of goods that have not been entered for home consumption under the Customs Management Act, 2011 (*No. 30 of 2011*) where the port of origin and the port of

destination are not within the territory of The Bahamas, in accordance with the procedures prescribed in the VAT Rules.

18. Services in respect of the storage of goods and any processes to optimise or maintain the integrity of those goods during storage where those goods that have not been entered for home consumption under the Customs Management Act and where the port of origin and the port of destination are not within the territory of The Bahamas, in accordance with the procedures prescribed in the VAT Rules.”.

25. Amendment of Second Schedule to the principal Act.

Part I of the Second Schedule to the principal Act is amended —

- (a) by the deletion of paragraph (1) and the substitution as follows —
 - “(1) The following insurance services in the course of carrying on an insurance business in or from The Bahamas performed by persons permitted to perform such services under or pursuant to the Insurance Act (*Ch. 347*) —
 - (a) life insurance, annuities and savings products; and
 - (b) insurance contracts on dwellings that are owner-occupied.”;
- (b) by the deletion of paragraphs (6)(a) and (6)(b);
- (c) by the deletion of paragraph (8);
- (d) by the deletion of paragraph (16) and the substitution as follows —
 - “(16) Lightering or the direct transfer between vessels of goods that have not been entered for home consumption under the Customs Management Act, 2011 (*No. 30 of 2011*), where the port of origin and the port of destination are not within the territory of The Bahamas in accordance with the procedures prescribed in the VAT Rules.”;
- (e) by the deletion of paragraphs (17) and (18).

26. Insertion of new Third Schedule into the principal Act.

The principal Act is amended by the insertion immediately after the Second Schedule of the following —

“THIRD SCHEDULE

(section 6)

**VALUE ADDED TAX RATES FOR SUPPLIES OF REAL PROPERTY
THAT ARE NOT ZERO RATED**

Supply of real property	Applicable VAT Rate
1. Every deed of conveyance, long-term lease, assignment or transfer of real property.	(a) 2 ½ % where the value is \$100,000 & under; or (b) 10% where the value exceeds \$100,000
2. An assignment, transfer, lease, sublease or licence of a marina slip.	(a) 2 ½ % where the value is \$100,000 and under; or (b) 10% where the value exceeds \$100,000
3. A transaction or instrument which by virtue of the provisions of this Act is a supply of real property and which — (a) has the effect of transferring any interest in a real property holding entity and which would have a similar effect on the legal or beneficial interest in any real property in The Bahamas that is legally or beneficially owned by the entity, had the legal or beneficial ownership of such entity represented the proportionate parts into which that legal or beneficial interest in the real property were divided; or (b) forms part of a series of transactions, and has the cumulative effect on real property as referred to in paragraph (a) above, unless the Comptroller is satisfied that the transaction is not of a series having regard to a statement to that effect endorsed in the instrument.	(a) 2 ½ % where the value is \$100,000 & under; or (b) 10% where the value exceeds \$100,000
4. A deed of exchange of real	(a) 2 ½ % where the value is

property.	\$100,000 & under; or (b) 10% where the value exceeds \$100,000
5. A transfer of a crown lease.	(a) 2 ½ % where the value is \$100,000 & under; or (b) 10% where the value exceeds \$100,000
6. A mortgage or transfer of mortgage of real property.	1.00%
7. A re-conveyance of real property or both to a borrower or mortgagor only.	0.10%
8. An endorsement or mortgage under section 32 of the Conveyancing and Law of Property Act (<i>Ch. 138</i>), or other satisfaction or discharge of a mortgage (including a satisfaction or discharge of a debenture).	0.10%
9. Any other supply of real property	(a) 2 ½ % where the value is \$100,000 & under; or (b) 10% where the value exceeds \$100,000

27. Transitional.

- (1) Upon the commencement of this Act any marketplace that is not a registrant under this Act, shall apply for registration by 1st October, 2019.
- (2) Any instrument executed before the commencement of this Act which, by virtue of the provisions of this Act, is an instrument for the supply of real property shall be subject to the provisions of this Act where the instrument has not been stamped under the provisions of the Stamp Act (*Ch. 370*).
- (3) Notwithstanding the provisions of sections 6 and 37 of this Act, an instrument for the supply of real property shall be assessed for VAT on the consideration for the supply if such instrument was executed within ten

years before the commencement of this Act and the VAT due on the supply is paid by 30th September, 2019.

- (4) Where any person makes a payment of VAT due on an instrument for a supply of real property that was executed between 1st January, 2019 and 1st July, 2019, such payment, once made by 30th September, 2019 is not considered a late payment.