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VALUE ADDED TAX (AMENDMENT) ACT, 2022

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No. 27 of 2022

VALUE ADDED TAX (AMENDMENT) ACT, 2022

AN ACT TO AMEND THE VALUE ADDED TAX ACT

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, 2022.
- (2) This Act shall come into force on the 1st day of July, 2022.

2. Amendment of section 2 of the principal Act.

Subsection (1) of section 2 is amended—

- (a) by the deletion of the definitions of “disposition of a business” and “transactions comprising the disposition of a business”;
- (b) in the definition of “approved project” by the deletion immediately after “(Ch. 289)” of the comma and the substitution of the word “or” and by the deletion of the words “or Hawksbill”; and
- (c) by the insertion of the following new definition —
“**withholding agent**” means any person registered under section 23A;”.

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 (d).

4. Amendment of section 4 of the principal Act.

Subsection (1) of section 4 of the principal Act is amended by the deletion of paragraph (d).

5. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended—

- (a) in subsection (1) by the deletion of paragraph (e); and
- (b) in subsection (2B) by the deletion of the word “non-Bahamian”.

6. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended by the deletion of subsections (3) and (4).

7. Amendment of section 18 of the principal Act.

Section 18 of the principal Act is amended by the insertion immediately after subsection (1) of the following new subsection —

“(1A) An advance VAT ruling shall not be provided —

- (a) where the applicant has not provided all the information determined by the Comptroller to be necessary;
- (b) where the Comptroller is of the opinion that there are no genuine points of uncertainty;
- (c) where the applicant is asking the Comptroller to give tax planning advice;
- (d) where the request relates to transactions which, in the Comptroller’s view, are for the purposes of avoiding tax;
- (e) in any other circumstances outlined by the Comptroller in VAT Rules.”.

8. Insertion of new section 23A into the principal Act.

The principal Act is amended by the insertion immediately after section 23 of the following new section —

“**23A. Withholding agents.**

- (1) The Comptroller may appoint a person to be a withholding agent for VAT, who is a —
 - (a) recipient of a taxable supply of goods and services; or
 - (b) person responsible for the payment of a taxable supply of goods or services.
- (2) The Comptroller shall register the person appointed under subsection (1) as a withholding agent for VAT.
- (3) A person appointed and registered under subsections (1) and (2) shall, on purchasing or making payment for a taxable supply of goods or services, withhold the VAT payable thereon or the proportion of such VAT as prescribed in VAT

Rules and remit it to the Comptroller as specified under this Act and in VAT Rules.

- (4) A person withholding VAT under subsection (3) shall issue a Withholding VAT Certificate, in a form as prescribed by the Comptroller in VAT Rules, to the supplier at the time of making the payment for the supplies.
- (5) For the avoidance of doubt, the withholding of VAT under subsection (3) shall not relieve the supplier of taxable goods or services of the obligation to account for VAT in accordance with this Act, regulations and VAT Rules.
- (6) For purposes of this section, sections 19 and 20 of this Act shall not apply.
- (7) A withholding agent shall account for VAT each calendar month in a return.
- (8) Where a withholding agent under this Act fails to withhold VAT, he shall himself be personally liable to pay to the Comptroller the amount of the VAT that ought to have been withheld.
- (9) A person shall not unlawfully withhold VAT on payment to a supplier of taxable goods or services.
- (10) The Comptroller may make VAT Rules providing for the appointment, registration and administration of withholding agents.”.

9. Amendment of section 29 of the principal Act.

Section 29 of the principal Act is amended by the deletion of subsection (2) and substitution of the following —

- “(2) The disposition of a taxable activity as a going concern, or such part of the activity that is capable of separate operation, is a taxable supply of goods.
- (3) For the purposes of subsection (2), a taxable activity or its relevant part is disposed of as a going concern where —
 - (a) all the goods and services necessary for the continued operation of the activity, or its relevant part, are supplied to the transferee; and
 - (b) the transferor carries on the activity, or its relevant part, up to the time of its transfer to the transferee.”.

10. Amendment of section 38A of the principal Act.

Section 38A of the principal Act is amended by the deletion of subsections (3) and (4) and the substitution as follows —

- “(3) Where more than one instrument are executed as a part of the collateral to secure the same loan —
- (a) VAT shall be chargeable at the applicable rate in the Third Schedule on only one of the security instruments; and
 - (b) no value added tax shall be assessed by the Comptroller on any other agreements, documents or instruments executed and delivered simultaneously with the security instrument chargeable to VAT under paragraph (a), which along with such instrument, form a part of the collateral which secures the said loan.
- (3A) Subsection (3) only applies where —
- (a) the entire amount of the loan is secured by the instrument to be chargeable with VAT; and
 - (b) all the instruments that form a part of the collateral to secure the loan are submitted simultaneously for stamping.
- (4) Every instrument for a supply of real property shall —
- (a) with effect from the 1st October, 2022, state the assessment number assigned by the Chief Valuation Officer under the Real Property Tax Act (*Ch. 375*) in respect of all property to which it relates;
 - (b) be presented to the VAT Department within the time prescribed in VAT Rules for the assessment and payment of VAT due on the supply; and
 - (c) not be stamped unless all outstanding real property tax due on the real property to which it relates has been paid.”.

11. Amendment of section 38C of the principal Act.

Section 38C of the principal Act is amended by the deletion of the words “or instrument containing or evidencing a transaction comprising the disposition of a business”.

12. Amendment of section 38D of the principal Act.

Section 38D of the principal Act is amended by the deletion of the words “or a transaction comprising the disposition of a business” wherever it appears.

13. Repeal of section 38E of the principal Act.

Section 38E of the principal Act is repealed.

14. Amendment of section 38F of the principal Act.

Section 38F of the principal Act is amended —

- (a) in paragraph (a) of subsection (1), by the deletion of the words “or transaction for the disposition of a business”; and
- (b) in subsection (2), by the deletion of the words “and 38E respectively”.

15. Insertion of new sections 38G to 38J into the principal Act.

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

“38G. Unstamped instruments not to be given in evidence.

No instrument required by this Act to be stamped shall be pleaded or given in evidence in any court unless the said instrument shall be duly stamped, except as provided in section 38H.

38H. Production in evidence of unstamped instrument.

- (1) Upon the production in evidence in any court of any instrument required by this Act to be stamped which is not duly stamped, the judge or presiding magistrate may request the Comptroller’s advice as to the VAT due for the stamping of the instrument.
- (2) On payment of the VAT into the court by the party producing such instrument, the said instrument shall be admissible in evidence.
- (3) The Registrar, clerk of the court or the presiding magistrate shall, upon payment to him of the VAT due on the instrument give a receipt for the amount of the VAT.
- (4) The Comptroller shall, upon the production to him of a receipt under subsection (4), cause the instrument to be stamped in the amount of the VAT paid.
- (5) The Registrar, clerk of the court or presiding magistrate, shall, as soon as practicable, pay the said VAT to the Comptroller.
- (6) The decision of the Comptroller as to the necessity for stamping of any instrument or as to the amount payable as VAT due thereon shall be final.
- (7) No instrument shall in any criminal proceeding be inadmissible in evidence for want of a stamp.

38I. Approval under the International Persons Landholding Act.

- (1) Where any exemption, permission or approval is granted under the Exchange Control Regulations Act or the International Persons Landholding Act in respect of the acquisition of any real property, it shall be a condition of

such exemption, permission or approval, whether expressed therein or not, that in the event that the applicable VAT on the instrument or transaction to which such exemption, permission, or approval relates remains unpaid for a period of eighteen months from the time when such VAT became due, such exemption, permission, or approval shall be conclusively deemed to be rescinded as from the expiration of the said period.

- (2) Subsection (1) shall not operate to prejudice any bona fide purchaser for value who may have acquired the real property without actual or constructive notice that any relevant exemption, permission, or approval has been rescinded by reason of the non-payment of the applicable VAT.
- (3) Any exemption, permission or approval rescinded under this section, shall automatically be re-instated with effect from the date of rescission, upon payment of the unpaid VAT and any applicable fines.
- (4) A person on whose behalf an instrument is presented for stamping shall to produce a sworn declaration setting out the consideration and all facts and circumstances relevant to the charging of VAT on the instrument or the transaction to which it relates, when requested by the Accountant-General.

38J. Making of false statements in relation to instruments.

A person shall not, with intent to defraud the Comptroller of tax due

- (a) execute or present any instrument in which all the facts and circumstances required by this Act to be set forth in such instrument are not fully and truly set forth;
- (b) being employed or concerned in or about the preparation of any instrument, neglect or omit fully and truly to set forth therein all such facts and circumstances;
- (c) being employed or concerned in or about the preparation of any instrument, date the instrument such that it purports to be executed prior to the date it was executed;
- (d) execute an instrument knowing that the same purports to be executed prior to the date it was actually executed;
- (e) executes any instrument purporting to create a mortgage over any property in connection with the sale of any business or property knowing the same to be a sham.”.

16. Amendment of section 47 of the principal Act.

Subsection (1) of section 47 of the principal Act is amended by the deletion of paragraph (b) and the substitution as follows —

- “(b) pay the tax due in respect of the tax period by the end of the twenty-one day period within which the registrant is required to file the return.”.

17. Amendment of section 47A of the principal Act.

Section 47A of the principal Act is amended —

- (a) in subsections (1) and (2) by the insertion immediately after the word “registrant” of the words “or withholding agent” wherever it appears;
- (b) in subsection (4) by the insertion immediately after the words “due and payable” of the words “, other than tax payable on a supply of real property,”;
- (c) by the insertion immediately after subsection (6) of the following new subsection —
 - “(7) In this section, the reference to a VAT return includes a withholding VAT return required to be filed by a withholding agent under section 23A.”.

18. Amendment of section 48 of the principal Act.

Subsection (2) of section 48 of the principal Act is amended —

- (a) by the insertion immediately after the words “for the purpose of” of the words “compulsorily registering a taxable person pursuant to subsection (5) of section 19 or”;
- (b) in paragraph (a) by the deletion of the words “date of registration” and the replacement of the words “actual date that the taxable person is registered, regardless of the effective date of such registration”.

19. Amendment of section 50 of the principal Act.

Subsection (1) of section 50 is amended —

- (a) in paragraph (k), by the deletion of the semi-colon and the substitution of a full stop; and
- (b) by the deletion of paragraph (l).

20. Amendment of section 56 of the principal Act.

Section 56 of the principal Act is amended by the insertion immediately after subsection (16) of the following new subsection —

“(17) Where an amount is paid to, or applied to, a liability of a person as a refund under this section and the person is not entitled to the refund or the amount paid or applied exceeds the refund to which the person is entitled, the person shall pay to the Comptroller an amount equal to the refund or excess, on the day the refund or excess, is paid to, or applied to a liability of the person.”.

21. Amendment of section 58 of the principal Act.

Subsection (1)(b) of section 58 of the principal Act is amended—

- (a) in subparagraph (i), by the deletion of the word “or” ;
- (b) in subparagraph (ii), by the deletion of the full stop and the substitution of the words “; or”;
- (c) by the insertion immediately after subparagraph (ii) of the following new subparagraph —
 - “(iii) a Bahamian citizen on the construction or renovation of his first home, in accordance with criteria prescribed in regulations and VAT Rules.”.

22. Amendment of section 60 of the principal Act.

Section 60 of the principal Act is amended —

- (a) in subsection (2) —
 - (i) in paragraph (a), by the deletion the word “or”;
 - (ii) in paragraph (b) —
 - (aa) by the insertion immediately after the word “misrepresentation” of the words “or refuses to pay an amount of tax due on a taxable supply”; and
 - (bb) by the deletion of the full stop and the substitution of a semicolon;
 - (iii) by the insertion immediately after paragraph (b) of the following new paragraphs —
 - “(c) such person was a director, or other similar officer of a company, or acted, or purported to act, in such a capacity, the company failed to pay an amount of VAT for which it was liable within the prescribed time, and the Comptroller is satisfied that such person did not exercise due care, diligence, and skill to prevent the company from failing to pay the said VAT within the prescribed time;
 - (d) a person fails to comply with a notice under section 72, or makes any disposition of money, property or

- arrangement that contradicts the purpose of such notice;
- (e) an amount is paid to, or applied to a liability of, a person as a refund under section 56 and the person is not entitled to the refund or the amount paid or applied exceeds the refund to which the person is entitled.
- (f) a receiver fails to comply with section 73;
- (g) a representative commits an act under subsection (3) of section 74;
- (h) a withholding agent fails to withhold VAT in accordance with section 23A.”;
- (b) in subsection (5), by the deletion of paragraph (b);
- (c) by the deletion of subsection (6) and the substitution as follows —
 - “(6) A person assessed by the Comptroller to pay tax may apply in writing to the Comptroller for time to make payment of the tax assessed and the Comptroller may where good cause is shown —
 - (a) grant the applicant time to pay the assessed tax; or
 - (b) make such other arrangements with the applicant acceptable to the Comptroller to ensure payment of the tax due.”;
- (d) in subsection (9), by the deletion of paragraph (b).

23. Repeal and replacement of section 61B of the principal Act.

Section 61B of the principal Act is repealed and replaced as follows —

“61B. Assessment of real property.

VAT due on the supply of real property may be assessed by the Comptroller at any time.”.

24. Amendment of section 72 of the principal Act.

Section 72 of the principal Act is amended —

- (a) in subsection (2) —
 - (i) by the deletion in paragraph (a) of the words “within fifteen calendar days of the date of service of the notice” and the substitution of “within the time stated in the notice”;
 - (ii) by the deletion in paragraph (b) of the word “fifteen” and the substitution of the word “two”;
- (b) by the deletion of subsection (2B) and the substitution as follows —
 - “(2B) The time stated in the notice under subsection (2) shall not exceed fifteen calendar days, however, the Comptroller may,

in his discretion, permit an agent to pay the money specified in the notice in instalments.”.

25. Insertion of new section 72A into the principal Act.

The principal Act is amended by the insertion immediately after section 72 of the following new section —

“72A. Person leaving The Bahamas.

- (1) If the Comptroller reasonably suspects that a person has left or is about to leave The Bahamas, the Comptroller may, before the day otherwise fixed for payment, by notice to the person served personally, by electronic means in accordance with section 97 or sent by registered mail addressed to the person’s latest known address, demand payment of any amount for which the person is liable under this Act or would be liable if the time for payment of the amount had arrived, and that amount shall be paid without delay despite any other provision of this Act.
- (2) If a person fails to pay an amount as required under subsection (1), the Comptroller may direct that money, goods and chattels of the person be seized or garnished, and sections 67 and 72 apply.”.

26. Insertion of new section 81B into the principal Act.

The principal Act is amended by the insertion immediately after section 81A of the following new section —

“81B. Limitation on objections.

Notwithstanding the provisions of sections 81 and 81A of this Act and section 5 of the Tax Appeal Commission Act, 2020 (*No. 3 of 2020*), a person shall not, in respect of an issue for which the right of objection or appeal has been waived in writing by the person —

- (a) object to the Comptroller; or
- (b) appeal to the Tax Appeal Commission.”.

27. Amendment of section 97 of the principal Act.

Section 97 of the principal Act is repealed and replaced as follows —

“97. Electronic communications.

- (1) The Comptroller may establish an information processing system (in this section referred to as “the system”), including provision for any or all of the following operations —

- (a) filing of electronic communications with the Comptroller;
 - (b) service or issue of electronic communications with the Comptroller;
 - (c) payment or collection of tax by electronic means.
- (2) The filing, service or issuance of documents by the Comptroller via an information processing system established by the Comptroller shall be valid and effective for all purposes under this Act and an electronic communication that is made by means of the system is deemed immediately upon sending to have been received by the person to whom it has been sent unless the contrary is shown.
- (3) The filing, service or issuance of documents by electronic means other than via an information processing system established by the Comptroller, shall be valid and effective for all purposes under this Act where provided in accordance with the Electronic Communications and Transactions Act (*Ch. 337A*).
- (4) In this section, “electronic”, “electronic communication”, “electronic means” and “information processing system” have the meanings assigned to them respectively under section 2 of the Electronic Communications and Transactions Act (*Ch. 337A*).

28. Insertion of new section 97A into the principal Act.

The principal Act is amended by the insertion immediately after section 97 of the following new section —

“97A. Service of documents.

- (1) Where this Act requires a document to be served on or lodged with the Comptroller, such document may be —
- (a) served by electronic means in accordance with section 97;
 - (b) personally served on the Comptroller or on any person duly authorised by the Comptroller to accept service;
 - (c) left at the Comptroller’s office; or
 - (d) forwarded to the Comptroller’s office by post.
- (2) Where this Act requires a document to be served on any person other than the Comptroller, such document may be served —
- (a) by electronic means in accordance with section 97;

- (b) by delivering it to the person on whom it is to be served;
- (c) by leaving it at the usual or last known place of abode of that person;
- (d) by sending it by post addressed to the person on whom it is to be served —
 - (i) to the usual or last known place of abode, office or place or business of such person;
 - (ii) to any post office box rented in the name of such person or employer of such person or known to the Comptroller to be used as an address for correspondence by such person; or
 - (iii) in care of the Post Office (for general delivery) —
 - (aa) in the case where such person is known to the Comptroller to have a place of abode in New Providence; or
 - (bb) in the case where such person is known to the Comptroller to have a place of abode in an Family Island at a district post or subpost office in that Out Island;
- (e) in the case of a body corporate —
 - (i) by delivering it to an officer, employee, agent or other representative of the body corporate at its registered office or other place of business;
 - (ii) by sending it by post addressed to the secretary of that body corporate at any post office box rented in the name of that body corporate or known to the Comptroller to be used as an address for correspondence by that body corporate, or at any post office box rented in the name of that body corporate' registered office.”.

29. Amendment to First Schedule to the principal Act.

The First Schedule of the principal Act is amended —

- (a) In Part I —
 - (i) by the insertion immediately after item 4 of the following new item —
 - “5. A supply by a registrant to another registrant of a taxable activity, or part of such activity, as a going

concern where the provisions of this Act and the regulations are satisfied.”;

- (ii) in item 9 —
 - (aa) in paragraph (d) by the deletion of the words “\$500,000” and the substitution of the words “\$300,000”;
 - (bb) in paragraph (n) by the deletion of the full stop and the substitution of the semi colon;
 - (cc) by the insertion immediately after paragraph (n) of the following new paragraphs —
 - “(o) instruments relating to the vesting of real property to a beneficiary under a trust in accordance with the provisions of the trust;
 - (p) instruments relating to a transfer of real property between two or more companies where at least 95% of the shares of both companies are beneficially owned by the same person, provided that VAT is payable to the extent of the difference in beneficial ownership;
 - (q) 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, including the conveyance from the legal personal representative to the beneficiaries in severalty of property devised to the beneficiaries as joint tenants or tenants in common.”; and
 - (iii) by the insertion immediately after item 13 of the following new item —
 - “14. A supply of utility goods that comprises —
 - (a) electricity that is equivalent to \$300.00 or below per billing cycle;
 - (b) water, including sewerage services, that is equivalent to \$50.00 or below per billing cycle.”; and
- (b) In Part II, by the deletion of items (15) and (16).”.

30. Repeal and replacement of the Third Schedule to the principal Act.

The Third Schedule to the principal Act is repealed and replaced as follows —

“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, assignment or transfer of real property to a company or other entity	10%
(2) Subject to item (3), every deed of conveyance, assignment or transfer of real property to an individual	(a) 2.5% where the value does not exceed \$100,000; (b) 4% where the value exceeds \$100,000 but does not exceed \$300,000; (c) 6% where the value exceeds \$300,000 but does not exceed \$500,000; (d) 8% where the value exceeds \$500,000 but does not exceed \$700,000; (e) 9% where the value exceeds \$700,000 but does not exceed \$1,000,000; (f) 10% where the value exceeds \$1,000,000
(3) Acquisition of a first home by a Bahamian citizen	4% where the value exceeds \$300,000 but does not exceed \$500,000;
(4) Every long-term lease or transfer of an interest in a long-term lease	(a) 2.5% where the value does not exceed \$100,000; (b) 10% where the value exceeds \$100,000
(5) 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	10%

<p>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 that real property were divided; or</p> <p>(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</p>	
<p>(6) A deed of exchange of real property</p>	<p>(a) where the transferee is a company or other entity, the rates under item (1);</p> <p>(b) where the transferee is an individual, the rates under item (2) or item (3) where applicable</p>
<p>(7) A transfer of a Crown lease</p>	<p>(a) 2 ½ where the value does not exceed \$100,000;</p> <p>(b) 10% where the value exceeds \$100,000</p>
<p>(8) A mortgage or transfer of mortgage of real property</p>	<p>1% of mortgage or transfer of mortgage amount</p>
<p>(9) A re-conveyance of real property from a mortgagee to a borrower or mortgagor only</p>	<p>0.10% of mortgage amount</p>
<p>(10) 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</p>	<p>0.10% of mortgage amount</p>

mortgage (including a satisfaction or discharge of a debenture)	
(11) Any other supply of real property	(a) where the transferee is a company or other entity, the rates under item (1); (b) where the transferee is an individual, the rates under item (2) or item (3) where applicable”.