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VALUE ADDED TAX (AMENDMENT) ACT, 2023

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No. 20 of 2023

VALUE ADDED TAX (AMENDMENT) ACT, 2023

AN ACT TO AMEND THE VALUE ADDED TAX ACT

[Date of Assent - 30th June, 2023]

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, 2023.
- (2) This Act shall come into force on the 1st day of July, 2023.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended —

- (a) in subsection (1) —
 - (i) in the definition of “token” by the deletion of the words “, in relation to section 37(8)(9),”;
 - (ii) by the insertion of the following new definitions in the appropriate alphabetical order —

“**Bahamian**” means —

 - (a) a citizen of The Bahamas or a permanent resident with right to work in The Bahamas;
 - (b) a company —
 - (i) in which one hundred per centum of the shares are beneficially owned by Bahamians; and
 - (ii) which is not in any manner directly or indirectly controlled by any foreign person;

- (c) a partnership or other unincorporated association or body of persons in which one hundred per centum of the partners and members are citizens of The Bahamas or permanent residents with the right to work;
- (d) a trust in which each trustee and every person having a beneficial interest in the trust is a Bahamian;

“beneficially owned by a Bahamian” means, in relation to a company, that its shares are one hundred percent legally and beneficially owned by a Bahamian and no person is in any way under any obligation to or otherwise may exercise any right attaching to the share at the instance of or for the benefit of any person who is not a Bahamian;

“foreign person” means —

- (a) an individual who is not —
 - (i) a citizen of The Bahamas; or
 - (ii) a permanent resident with a right to work in The Bahamas;
- (b) a company incorporated in The Bahamas where any of its shares or other capital is legally or beneficially owned by a person who is not a Bahamian or where it is in any manner, whether directly or indirectly, controlled by a person who is not a Bahamian;
- (c) a company incorporated at any place outside The Bahamas;
- (d) an unincorporated association or body firm in which any of the partners or members is not a Bahamian or where it is in any manner, whether directly or indirectly, controlled by any person who is not a Bahamian; or
- (e) a trust in which any of the trustees or any person having a beneficial interest in the trust is not a Bahamian;

“large taxpayer” means a taxable person with—

- (a) turnover of five million dollars or more; or
- (b) such other turnover amount or other classification as prescribed by the Comptroller in Rules;”;

- (b) in subsection (3)(d) —
 - (i) by the deletion of the word “and” where it last appears in paragraph (iv);
 - (ii) by the deletion of the full stop in paragraph (v) and the substitution of a semi-colon;
 - (iii) by the insertion immediately after paragraph (v) of the following new paragraphs —
 - “(vi) provision of digitised products including electronic books, software, software upgrades and digital applications;
 - (vii) services provided via website or (including search engines, text, information and automated distance learning services);
 - (viii) services generated and supplied by a computer via the internet or a network;
 - (ix) downloads of music, films and games via the internet;
 - (x) mobile applications.”.

3. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended —

- (a) by the deletion of subsection (2B) and the substitution of the following —

“(2B) Subject to rules as prescribed by the Comptroller, a homeowner that supplies a vacation home rental and any services offered as part of that rental shall be liable to pay and account for VAT on the total value of all rentals and services.”;
- (b) by the deletion of subsection (4) and the substitution of the following —

“(4) Every person liable to pay and account for VAT, upon collection of an amount of money for VAT or on account of VAT is deemed, for all purposes and despite any security interest in the amount, to hold the amount of money in trust for His Majesty in right of His Government of The Bahamas, separate and apart from any property he owns or that is in his possession and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the VAT Department or withdrawn under subsection (5).

(5) A person who holds VAT or amounts of money in trust by reason of subsection (4) may withdraw from the aggregate of

the moneys so held in trust any input tax that may be deducted by the person in determining the tax payable under section 46, as and when the return for the tax period in which the input tax deduction is claimed is filed with the VAT Department.

- (6) Notwithstanding any other provision of this Act (except subsection (4)), or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for His Majesty is not remitted to the VAT Department or withdrawn in the manner and at the time provided under subsection (5), property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed —

- (a) to be held, from the time the amount was collected by the person, in trust for His Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest; and
- (b) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest,

and is property beneficially owned by His Majesty in right of His Government of The Bahamas despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the VAT Department in priority to all security interests.

4. Amendment of section 17 of the principal Act.

Section 17 of the principal Act is amended in subsection (2)(a) by the deletion of the word “later” and substitution of the word “other”.

5. Amendment of section 19 of the principal Act.

Section 19 of the principal Act is amended —

- (a) in paragraph (d) of subsection (1) by the deletion of the words “under section 5 of the Business Licence Act (No. 25 of 2010)” and the substitution of the words “issued under the Business Licence Act, 2023”;
- (b) in subsection (2), by the deletion of paragraph (c) and the substitution of the following —

- “(c) a homeowner who –
- (i) supplies a vacation home rental; and
 - (ii) is a foreign person;”.

6. Amendment of section 23 of the principal Act.

Section 23 of the principal Act is amended in paragraph (d) of subsection (7) by the insertion of the words “a member of” immediately before the words “the group” where it second appears.

7. Amendment of section 23A of the principal Act.

Section 23A of the principal Act is amended by inserting after subsection 8, the following as subsection (8A)—

- “(8A) A withholding agent who is held personally liable under subsection (8) to pay to the Comptroller the amount of VAT which ought to have been withheld by him under subsection (3), may appeal the decision of the Comptroller to the Tax Appeal Commission pursuant to section 5 of the Tax Appeal Commission Act, 2020 (No. 3 of 2020).”.

8. Amendment of section 31 of the principal Act.

Section 31 of the principal Act is amended —

- (a) by the deletion of subsections (4) and (5) and the substitution as follows —
 - “(4) Subject to subsection (5) —
 - (a) the issuance or sale of a token for consideration shall be deemed not to be a supply, except to the extent that the consideration paid for the token exceeds the monetary value stated on the token;
 - (b) when a token is given as consideration for a supply of goods or a service, the token shall be deemed to be money.
 - (5) Subsection (4) does not apply to a —
 - (a) postage stamp under the Post Office Act (*Ch. 300*);
 - (b) phone card;
 - (c) prepayment on a cellular phone; or
 - (d) similar scheme of advance payment for the supply of goods or the rendering of services in accordance with VAT Rules.”;
- (b) by the deletion of subsection (9A) and the substitution as follows —

“(9A) A supply of a vacation home rental is a taxable supply.”.

9. Amendment of section 32 of the principal Act.

Section 32 of the principal Act is amended by the deletion of subsection (9) and the substitution as follows —

- “(9) Where the issuance of a token constitutes a supply, such supply occurs when such token is issued.”.

10. Amendment of section 46 of the principal Act.

Section 46 of the principal Act is amended in subsection (1) —

- (a) in paragraph (b), by the insertion of the words “or payable” after the word “paid”;
- (b) in paragraph (c), by the deletion of the words “or payable” after the word “paid”.

11. Amendment of section 47 of the principal Act.

Section 47 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the word “A” where it first appears and the substitution of the words “Subject to subsection (1A), a”;
- (b) by the insertion immediately after subsection (1) of the following new subsection —
- “(1A) A registrant that is a large taxpayer must —
- (a) file with the Comptroller a VAT return in the prescribed form within fourteen days after the end of each tax period, whether or not tax is payable by the registrant in respect of the period;
- (b) pay the tax due in respect of the tax period by the end of the fourteen day period within which the registrant is required to file the return.”.
- (c) by the deletion of subsection (7) and the substitution as follows —
- “(7) A registrant, other than a large taxpayer, who, in an exceptional case and with good cause, is unable to file a VAT return within the time prescribed under this section may apply in writing as prescribed to the Comptroller for an extension of the period within which to file the return.”.

12. Amendment of section 50 of the principal Act.

Section 50 of the principal Act is amended in subsection (1) —

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

- (b) by the insertion immediately after paragraph (k) of the following new paragraph —
 - “(1) the claimant is a ministry, department, statutory body, agency, local government council, or other Government entity and the claim relates to goods purchased using a government subvention or subsidy.”.

13. Amendment of section 60 of the principal Act.

Section 60 of the principal Act is amended —

- (a) in subsection (3) by the insertion, immediately before the word “fraud”, of the words “neglect, carelessness,”; and
- (b) by the insertion, immediately after subsection (3) of the following —
 - “(3A) An admission by a registrant of a misstatement in a VAT return filed by such registrant shall be deemed to establish that the default was due to neglect, carelessness, fraud, wilful default, or wilful misstatement.”.

14. Amendment of section 66 of the principal Act.

Section 66 of the principal Act is amended —

- (a) in subsection (1) by the insertion of the words “the Value Added Tax Department,” immediately before the words “the Customs Department”; and
- (b) in subsection (2) by the deletion of the words “subject to the lien”.

15. Amendment of section 68 of the principal Act.

Section 68 of the principal Act is amended by the insertion immediately after subsection (6) of the following new subsection —

- “(7) In this section **“tools of trade”** means equipment required for the production or repair of goods in the course or furtherance of a taxable activity, and does not include the inventory of the business, or any vehicle or vessel owned by or used in the business, or any other business asset not required for the production or repair of goods.”.

16. Insertion of new section 72B into the principal Act.

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

- “72B. Liability of transferee after non-arm's length transfer.**

- (1) If a taxable person transfers money or other property, either directly or indirectly, by any means including by means of a trust, to or for the benefit of another person —
 - (a) with whom the transferor, at the time of the transfer, is not dealing at arm's length; or
 - (b) who is under the age of eighteen years,
the transferee is liable, upon assessment under section 60, for the transferor's tax debt to the extent provided for in subsection (2), unless the transferor establishes that he —
 - (i) was not a tax debtor at the time of the transfer; or
 - (ii) did not make the transfer in anticipation of becoming liable for another person's existing tax debt.
- (2) The limit of the transferee's liability under subsection (1) is the total of —
 - (a) the lesser of —
 - (i) the transferor's tax debt at the time of the transfer and any tax debt of the transferor assessed after the time of the transfer in respect of a tax liability that arose before the time of the transfer; and
 - (ii) the amount, if any, by which the fair market value of the transferred property, including any transferred money, at the time of the transfer exceeds the fair market value at that time of the consideration given by the transferee for the transfer; and
 - (b) interest payable on that amount, calculated at the same rate that applies to the transferor's tax debt —
 - (i) from the date of the transfer to the date of payment; or
 - (ii) if the transferor's debt arose only upon an assessment under section 60 that was made after the date of the transfer, from the date of the assessment to the date of payment.
- (3) A payment in accordance with this section —
 - (a) by the transferee in respect of the transferor's tax debt reduces the transferor's and the transferee's liability for the transferor's tax debt;
 - (b) by the transferor reduces the transferee's liability only to the extent that it reduces the transferor's tax debt below the amount for which the transferee is liable.

- (4) Except to the extent that the transferor's tax debt is reduced by a payment by the transferee, nothing in this section affects the transferor's liability for the tax debt.
- (5) For the purposes of this section —
 - (a) persons are deemed not to be dealing at arm's length with each other when they are related persons;
 - (b) a taxable person and a personal trust are deemed not to deal with each other at arm's length if the taxable person, or any person not dealing at arm's length with the taxable person, is beneficially interested in the trust;
 - (c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length."

17. Amendment of section 80 of the principal Act.

Section 80 of the principal Act is amended in subsection (2) by the insertion immediately after the word "person" of the words "with a turnover in excess of two hundred and fifty thousand dollars".

18. Amendment of section 81 of the principal Act.

Section 81 of the principal Act is amended by the insertion immediately after subsection (6) of the following new subsections —

- “(6A) The onus of proving that the assessment complained of is erroneous shall be on the person making the objection.
- (6B) On the receipt of an objection under this section, the Comptroller may —
 - (a) require the objector to deliver (if he has not already done so) within thirty days or such longer period as the Comptroller may permit, a return for the tax periods which in the opinion of the Comptroller are affected by the notice of objection;
 - (b) issue a notice under section 62 to the objector requesting any —
 - (i) particulars, books, documents and other records as the Comptroller may deem necessary with respect to the taxable activity of the person; or
 - (ii) person who he thinks is able to give evidence respecting the assessment to attend before him to be examined on oath or otherwise.
- (6C) Where the objector refuses or neglects to comply with subsection (6B), within the period prescribed by or pursuant to that subsection,

the objection lodged by such person shall cease to have effect and the assessment as made shall be final and conclusive for all purposes of this Act.”.

19. Amendment of First Schedule to the principal Act.

The *First Schedule* of the principal Act is amended in Part I in item (9) —

- (a) in paragraph (c), by the deletion of the word “Clauses” and the substitution of the word “Causes”;
- (b) by deletion of paragraph (d) and the substitution of the following—
“(d) an acquisition of a dwelling for the first time by a citizen of The Bahamas where the value does not exceed \$300,000 and the financing by a citizen of The Bahamas of his first dwelling where the value does not exceed \$500,000;”;
- (c) by the deletion of paragraph (k) and the substitution of the following —
“(k) leases, deeds and other instruments issued to the Crown, the Treasurer or the Ministers that are corporation soles;
- (d) in paragraph (n) by the insertion immediately after the words “the Minister,” of the words “without regard to when the transaction occurred.”; and
- (e) by the insertion, immediately after paragraph (q) of the following—
“(r) conveyances to University of The Bahamas;
(s) conveyances to the Bahamas National Trust;
(t) purchase of real property by a real property investment trust listed on BISX.”.

20. Amendment of Second Schedule to the principal Act.

The *Second Schedule* of the principal Act is amended in Part II by the insertion immediately after item (8) of the following new item —

- “(9) The importation of pleasure vessels where such vessels are registered in The Bahamas.”

21. Amendment of Third Schedule to the principal Act.

The *Third Schedule* of the principal Act is amended —

- (a) by the deletion of item (1) and the substitution of the following—
“

(1) Every deed of conveyance, assignment or	(a) 2.5% where the value does not exceed \$100,000;
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transfer of real property to a Bahamian company or other Bahamian entity	(b) 10% where the value exceeds \$100,000”;
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- (b) in the first column of item (2) by the deletion of the words "an individual" and the substitution of the words "a Bahamian individual or a Bahamian company that is used solely by the owner for holding real property and does not conduct business";
- (bb) in the first column of item (3) by the deletion of the words “Bahamian citizen” and the substitution of the words “citizen of The Bahamas”;
- (c) by the insertion immediately after item (3) of the following new item —

(3A) Every deed of conveyance, assignment or transfer of real property to a foreign person	10.00%
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- (d) by the deletion of items (5) and (6) and the substitution of the following—

<p>(5) A transaction or instrument which by virtue of the provisions of this Act is a supply of real property and which –</p> <p>(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 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</p>	<p>(a) Where the transferee is a Bahamian -</p> <ul style="list-style-type: none"> (i) 2.50% where the value does not exceed \$100,000; (ii) 10.00% where the value exceeds \$100,000; <p>(b) Where the transferee is a foreign person, the rate of 10.00%</p>
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<p>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 Bahamian company or other Bahamian entity, the rates under item (1);</p> <p>(b) where the transferee is a Bahamian individual, the rates under item (2) or item (3) where applicable;</p> <p>(c) where the transferee is a Bahamian company that is used solely by the owner for holding real property and does not conduct business, the rates under item (2);</p> <p>(d) where the transferee is a foreign person, the rates under item (3A)</p>

(e) by the deletion of item (11) and the substitution as follows—

<p>(11) Any other supply of real property</p>	<p>(a) where the recipient is a Bahamian company or other Bahamian entity, the rates under item (1);</p> <p>(b) where the recipient is a Bahamian individual or Bahamian company that is used solely by the owner for holding real property and does not conduct business, the rates under item (2);</p> <p>(c) where the recipient is a foreign person, the rates under item (3A).</p>
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