

COMMONWEALTH OF THE BAHAMAS



VALUE ADDED TAX (VAT)

*A Summary and Explanation
of the
Draft Legislation*

**Ministry of Finance
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1. Introduction

Since the White Paper on the proposed reform of The Bahamas' tax system was released in February 2013, the Government has engaged in preliminary and exploratory discussions with various key segments of society and the economy to assist in its deliberations on sharpening the details of the VAT. That work has progressed to the point that Government is now in a position to release a draft of the VAT Bill and Regulations for an intensive and extensive public education and consultation exercise, the details of which are set out below.

This paper provides an overview of the key features of the proposed VAT, as well as a summary and explanation of the major provisions of the draft law, as a means of enhancing the public's understanding of the law and specifically what it would mean in practical terms. The focus is specifically on areas of the White Paper where further clarification and definition was required.

The contents of this paper are not exhaustive. For a full understanding of the VAT law, the reader is directed to the draft VAT Bill and Regulations. In the period leading up to VAT introduction, the Central Revenue Administration (CRA) would issue a series of information pamphlets on key matters relating to VAT administration and compliance on the part of consumers and the private sector.

The draft VAT Bill would be tabled in Parliament after the conclusion of the public consultation process. Based on the results of the public discussions and consultations, appropriate amendments to the draft Bill would be made.

2. Why Tax Reform and a Value Added Tax at this Time?

A Value Added Tax (VAT) is being introduced in The Bahamas next July, as part of a broader reform of our tax system. That reform is necessary primarily to return the public finances to a sustainable and prudent state. As was explained in this year's Budget Communication, for the sake of future growth and prosperity, the Government must begin to eliminate the large and persistent deficits and place the stock of public debt, relative to the size of the economy on a downward path. To achieve and sustain this outcome, the Medium-Term Fiscal Consolidation Plan outlines a framework to enhance the revenue yield by at least 4 percentage points of GDP, bringing it closer to the lower end of the intake ratio elsewhere in the Caribbean. Tax reform including VAT is a critical component of that plan.

Tax reform is also important for a number of other reasons, including the following:

- The heavy reliance on customs duties on imported goods is less advantageous than in the distant past when services were less important in overall economic activity.
- Taxing goods and not services is unfair to the less advantaged in society who spend a significantly greater share of their incomes on goods.
- The current tax structure does not generate an adequate revenue stream for Government that keeps pace with growth in the economy. Meanwhile, the demands for Government services and amenities continue to grow more in line with the expansion in the population and economic activity.

- The Government must have access to revenues that adequately fund both the current and future needs of its citizens.
- A response to the increased integration at the international economic level has also become more relevant for The Bahamas, in order to preserve and enhance access to exports markets especially for services. The Bahamas is therefore joining the World Trade Organization (WTO). WTO membership would require a more liberalized customs tariff regime, primarily through lower import duties.
- The reduction in customs duty revenues must be replaced by an alternative source. Based on the experience in scores of other countries and for the other reasons set out above, the VAT is the ideal alternative revenue source.

3. What is VAT and How Does it Work?

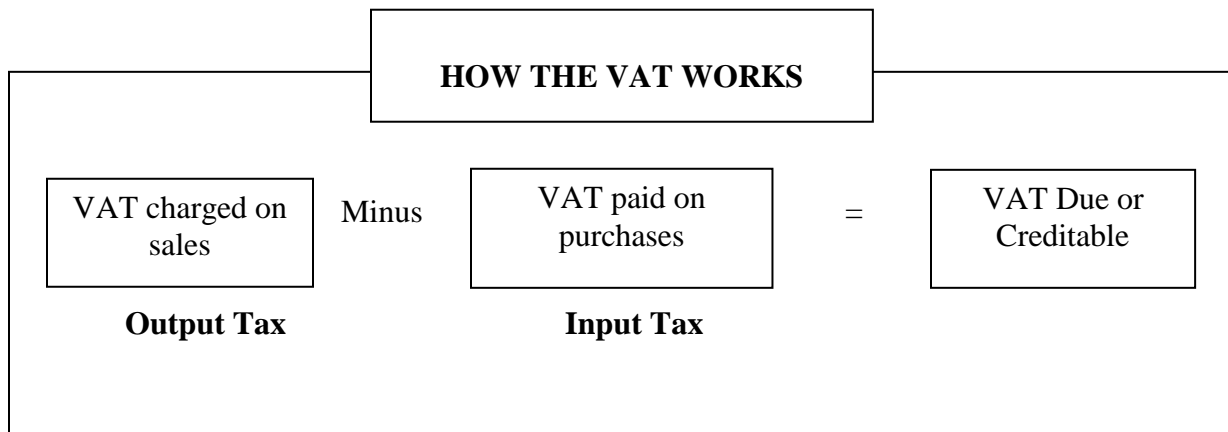
Like a Sales Tax, a Value Added Tax is a tax on the sale of goods and services, paid as a percentage of their value at the point of sale. Its unique name derives from the method of collection. A sales tax is collected when a final sale to a consumer occurs. A Value Added Tax is collected at every stage of the import, production and distribution chain leading up to the final consumer. It is collected by VAT-registered businesses when they supply their customers with goods or services that are designated in the VAT law as taxable (“taxable supplies”). Only registered persons can charge VAT on their supplies as output tax and claim credit on their purchases of supplies as input tax.

The draft legislation is clear on when the supply of a good or service occurs. This happens on the earliest of the date on which:

- (a) the goods are delivered or made available or the performance of services is completed;
- (b) an invoice for the supply is issued; or
- (c) any consideration for the supply is received.

A supply of goods under a credit agreement occurs on the date of commencement of the agreement. A supply of goods pursuant to a lay-away agreement occurs when the goods are delivered to the purchaser.

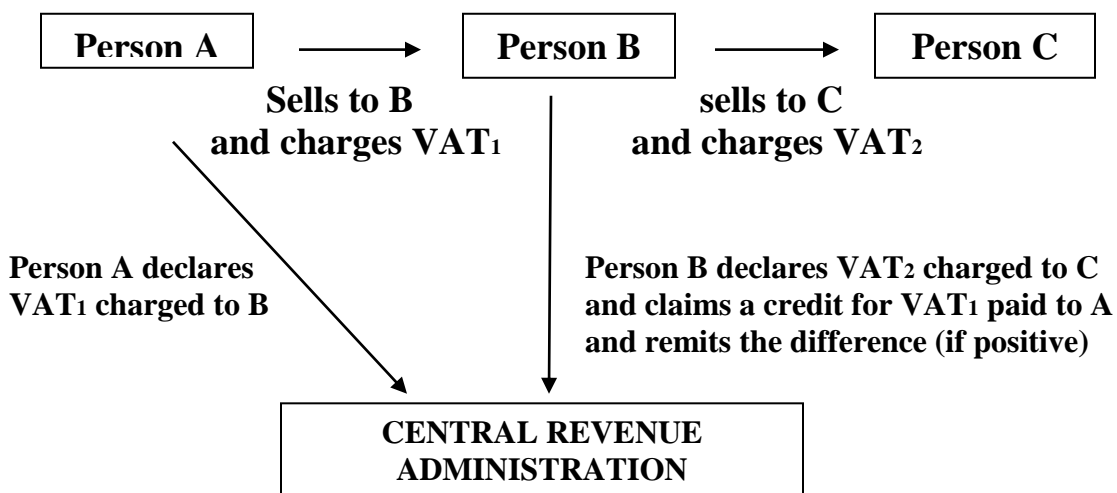
Goods supplied under a rental agreement or services supplied under an agreement that provides for periodic payments are treated as successively supplied for successive parts of the period of the agreement, and each of the successive supplies occur when a payment becomes due or is received, whichever is the earlier.



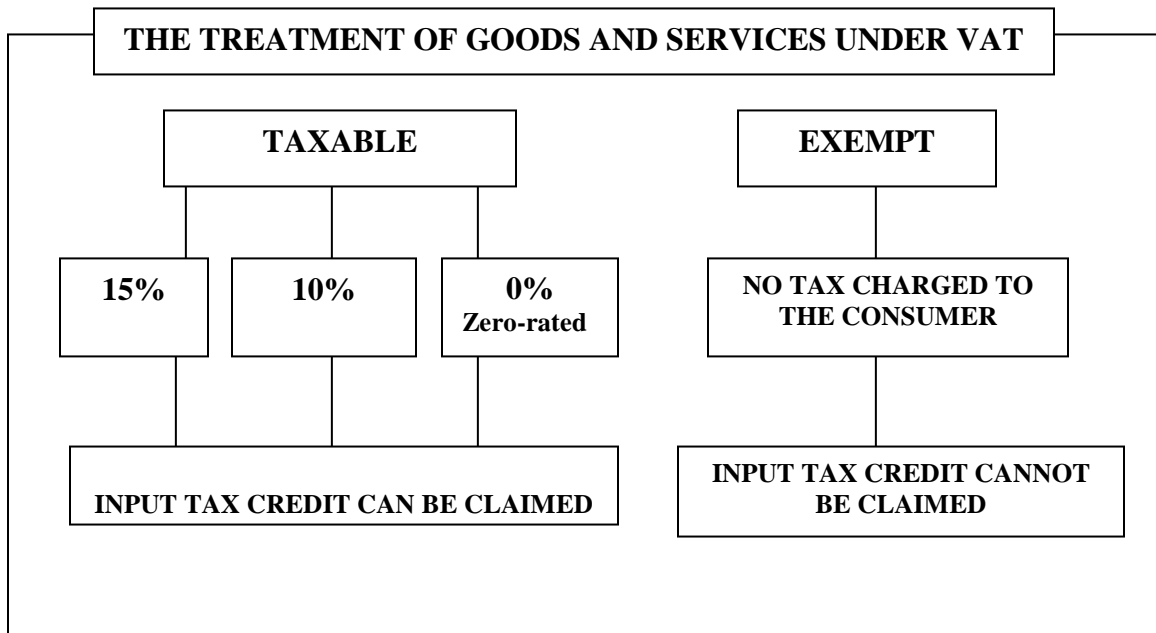
In the Bahamas the registered person or firm would charge VAT on the sale of their taxable goods and services and pay VAT on purchases. If the VAT charged on the sales exceeds the VAT paid on

purchases, the difference would be paid to the CRA. If it is less, the person would be entitled to carry forward the excess credit to the following tax period and treat it as input tax deductible in that period. If after three months, the excess for a given tax period is not used, then the registrant would be entitled to file a claim for a refund. However, before the amount is refunded, the CRA would have the authority to verify the accuracy of the amount to be refunded.

This system is designed to minimize tax avoidance and to increase compliance. Every time an item is sold from, say, person A to person B and then from person B to person C in the chain, VAT would be charged. However, as was explained above, person B does not remit the full amount of VAT collected from person C. Rather, he deducts from that amount any VAT that he paid on the materials and supplies bought from person A. He therefore sends VAT to the Government only on the value that he himself added to the product. That is why this tax is called a Value Added Tax. In this system, person A who sold supplies to person B above must accurately report the value of his sales to the CRA because it would have information on those sales that was submitted as a credit by person B.



By the time the product has finally been sold by the retail store to the consumer, the total VAT sent to the Government would be exactly the amount of VAT paid by the consumer. At the end of the day, it is the consumer who pays the full amount of VAT, just as he would pay under a Sales Tax.



When sales attract the VAT, these are referred to as taxable supplies. Under VAT, taxable supplies are taxed at either the standard rate of 15 percent, the lower rate of 10 percent or at 0 percent, i.e. zero-rated. Those supplies that are zero-rated are listed in the First Schedule of the VAT Bill. The Second Schedule lists the supplies that are subject VAT at 10 percent. Input tax paid can be claimed on all taxable supplies.

Registered persons making exempt supplies cannot charge consumers any VAT or reclaim any input tax relative to those supplies. The Third Schedule of the Bill sets out the list of exempt goods and services.

4. Why VAT and not a Sales Tax?

The VAT system has built-in mechanisms to encourage compliance. A VAT registrant expects the buyers of his product to claim credits for VAT paid to him, thereby discouraging him from attempting to hide VAT receipts. With a sales tax system, buyers may seek to avoid the payment of tax and sellers may be tempted to acquiesce in order to complete a sale. Such a transaction is easy to conceal to the detriment of Government coffers.

The evidence that has been collected suggests that fraud in a sales tax system becomes a significant problem when the rate of tax exceeds 10 percent. It may be noted that VAT around the world are generally imposed at rates in excess of that rate. Revenue requirements in the Bahamas, including the need to replace taxes being eliminated under tax reform, are such that a rate of 15 percent would be necessary. At such a rate, VAT is preferable to a simple sales tax.

Another advantage of VAT over a sales tax is that it avoids the problem of cascading, where tax at one stage is imposed on tax at a previous stage. With the crediting that is permitted under VAT, there is no such “tax on tax” effect; when every registered business adds its markup to its cost of production to determine its selling price, it would not include the VAT that it paid on the materials and supplies that it bought because it would get a credit for that VAT when it files its VAT return. VAT would therefore not be charged nor paid on VAT.

5. VAT is Part of Broader Tax Reform

It is important not to look at the VAT proposal for The Bahamas in isolation. As was highlighted in the White Paper, the proposed VAT is one component of a broader tax reform package whose overall objectives are to:

- provide adequate and stable revenues for modern governance;
- secure a fairer system of taxation; and
- enhance prospects for economic growth, job creation and living standards.

To achieve those goals, the proposed tax reform package, in addition to VAT, also measures in respect of Customs Duties, Excise Tax, Hotel Occupancy Tax and Business License Tax. On the basis of further analysis and public discussions, the Government's thinking in respect of these areas of taxation has evolved somewhat since the publication of the White Paper.

5.1 Customs Duties

The White Paper explained that the Government will be obliged to reduce the customs import duties that it currently charges on imports once it accedes to WTO membership. Negotiations to determine the precise terms of our accession to that organization have been ongoing for a few years and are expected to conclude by the end of 2014. The introduction of VAT should occur before this process is concluded and would entail an early adjustment in the tariff schedule. The Government plans to reduce tariff rates, as of July 1 2014, by an amount just sufficient to compensate for the introduction of VAT for nearly all most products that are now subject to a tariff rate above 15 percent. Tariff rates at or below 15 percent would be

eliminated. The structure of the existing protections for domestic manufacturing and agricultural products would continue to be enjoyed.

With the rebalancing of tariffs to absorb the VAT, the prices paid for some goods by consumers after the introduction of VAT could remain unchanged. The example below illustrates this.

Consider a retailer who imports an electric stove now at a price of \$350 and pays customs duty of 45 percent or \$157.50 for a total landed cost of \$507.50. Assuming his markup is 50 percent, he could sell the stove at retail for \$761.25. As of July 1, 2014 the customs duty could be reduced to as low as 26.1 percent, or \$91.35. In the first step, VAT would be charged on the new total landed cost (including the revised customs duty) of \$441.35. At 15 percent, a VAT of \$66.20 would be collected.

Continuing this example, the relevant inventory cost for the retailer is now \$441.35, which excludes the amount paid in VAT. This is important to note because when the retailer files his monthly return to the CRA, he would recoup the full amount of the VAT that he paid on the import. Now with the 50 percent markup above his new inventory cost he would quote a selling price for the stove of \$662.03. The price is lower than before because of the reduction in the Customs duty component. When the customer buys the appliance the retailer would charge VAT of 15 percent, or \$99.30, for a final cost to the consumer of \$761.33. This would essentially be the price paid by the consumer before the introduction of VAT.¹

¹ The outcome could a slightly higher price if the retailer desires to maintain a fixed dollar markup. However the VAT regime would also compress other customs duty costs that influence the operating costs which affect pricing margins.

The Price of an Imported Electric Stove Before and After VAT

	Before VAT	After VAT
Import price (CIF)	350.00	350.00
Customs duty (Pre-VAT) - 45%	157.50	
Customs duty (post VAT) - 26.1%		91.35
Sub-total	507.50	441.35
VAT at Customs (15%) Input VAT		66.2
Landed cost	507.50	507.55
Mark-up (assume 50%)	253.75	220.68
Selling price inclusive of Mark-up	761.25	662.03
Domestic VAT (15%) output VAT	0	99.30
Selling price to the consumer	761.25	761.33

5.2 *Hotel Occupancy Tax*

As of July 1, 2014, hotel accommodations would be subject to VAT and the Government would eliminate the current Hotel Occupancy tax. However, for competitiveness reasons, VAT on hotel occupancy would be charged at a rate of 10%, the same rate that is currently charged under the existing hotel room tax. As well, all incidental fees and charges that are built into the basic daily room rate would be subject to VAT at 10 percent. Any fees or charges charged separately for services, such as internet use, spa treatments, exercise gyms and recreational amenities, would be subject to the standard VAT rate of 15 percent.

Also for competitiveness reasons and, in light of the significant contribution of hotel sector activity to the national economy, it is proposed that food and beverage sales in hotels be subject to VAT at the rate of 10%. Food and beverages consumed within hotel premises are deemed to be a

market distinct from the local food and beverage establishments and, as such, the latter should not be placed at a disadvantage by the 5 percentage points lower VAT rate charged in hotels.

Under VAT, hotels would be able to claim input tax credits on their purchases of materials and supplies and this treatment would be consistent with the current Hotels Encouragement Act regime. Local food and beverage establishments would also benefit from a credit for any VAT that they pay on the purchase of materials and supplies that they use in their operations.

5.3 Excise Taxes

The Government plans to maintain the proposal in respect of excise taxes that was presented in the White Paper. Since current excise tax rates imposed on excisable products are relatively high, the rates would also be reduced by an amount just sufficient to counteract the imposition of a 15% VAT on those products.

5.4 Business Licence Tax

The current structure of business licence tax would be retained for the time being. Any future adjustment would be informed, as much as possible, by the influence of the public consultation process on subsequent revenue reforms initiatives.

6. How Much Revenue would Tax Reform and VAT Generate for the Government

One of the core objectives of the tax reform package set out in the White Paper is to secure adequate revenues for the future, in support of modern governance, and to bring the revenue yield of the tax system more in

line with that elsewhere in the Caribbean region. The present tax system generates annually collections that are equivalent to some 17.5% of GDP, as compared to yields in the mid-20% to 30% range in other countries in the region. With the VAT and other reforms underway, the Bahamas yield is expected rise just above 21% of GDP. The Government expects the VAT to produce a net increase in revenues on the order of \$200 million or 2% of GDP.

7. What would Happen to the Cost of Living Under VAT

The VAT would have some positive effect on the consumer price level, more likely for services than for goods. It is estimated that average prices could increase initially by just over 5 percent. This less than proportionate rise corresponds to rebalancing effects, as the bulk of the VAT revenues substitute for Customs Duties and Excise Taxes. Many goods and services would be exempt under VAT and their base prices should be less directly affected by the tax. The duty and excise reductions meanwhile would also feed into some reduction in input costs for supplies of services and hence cushion the final rise in such costs to consumers even when they are taxable.

To absorb the impact of any cost of living increase on the poor and vulnerable, the Government would boost targeted spending on social assistance to low-income households. As discussed later below, these households would also benefit from exemptions from VAT on most of their electricity and water consumption.

8. Who would Administer VAT

The CRA and its Commissioner would be responsible for the day-to-day administration of the system. The draft VAT Bill provides that the Commissioner of the CRA would have the responsibility for carrying out the provisions of the VAT law. Public officers would be empowered by the Commissioner to administer the provisions of the VAT legislation. As for imports, the Comptroller of Customs, also acting through his appointed officers would administer the tax. Where VAT is payable on an import of services the persons or companies liable would be required to furnish the Commissioner of the CRA with an import declaration and pay the taxes due within 21 days after being supplied with such foreign services.

9. Registration Threshold

The registration threshold for Businesses, based on annual sales is being revised upwards for VAT to \$100,000. The White Paper proposed that a VAT registration threshold of \$50,000 might be appropriate for the Bahamas. At the revised level, the tax would still capture approximately 98 percent of total economic activity in the country. This however exempts a larger number of smaller firms from the requirement to register and the stringent accounting and reporting requirements imposed. Any smaller firm falling below the threshold would be free to voluntarily register if it so wishes and can demonstrate that it can fully meet the registration requirements.

Some exceptions would remain however. For operators of hotels, villas, and similar accommodations and the supply of commercial property for lease, the threshold would be \$50,000.

10. What would be Taxed under VAT

The White Paper indicated the types of VAT treatment to which products and services would be subject and provided examples of the types of goods and services that would fall in each category. They would either be:

- taxable at the standard rate of 15 percent;
- taxable at a reduced rate of 10 percent;
- taxable at a rate of zero percent (“zero-rated”); or
- exempt from VAT.

The draft VAT Bill sets out the refined treatment that is proposed for various goods and services.

10.1 Taxable at 15 Percent

Most goods and services sold by VAT registered businesses and most imports of goods and services would be taxed at the standard VAT rate of 15 percent. The exclusions are for goods and services taxable at 10 percent, those zero-rated goods and those that are exempt.

10.2 Taxable at 10 Percent

As was mentioned above, hotel accommodations and food and beverages sold within hotels would be subject to the lower VAT rate of 10 per cent. The draft Bill makes it clear that this would only apply to:

- (i) the value of accommodations;
- (ii) services included in the room rate for accommodations; and
- (ii) food and beverage sales

that are supplied by a hotel and similar establishment registered and licensed by the Hotel Licensing Authority. The Regulations further clarify that this special rate would apply to a hotel, guest house, inn, or similar establishment. The latter includes a facility provided for sleeping accommodation for overnight or short-term stays of less than a month and an apartment or room not located in a private home leased for a month or more where the lessor provides utilities or furnishings for the term of the lease. For the application of the tax, the value of a supply of accommodations includes all of the charges imposed for the accommodation, including any non-discretionary amounts added to the accommodation rate, such as mandatory service charges, resort levy, and gratuities for hotel staff.

The standard 15 percent rate would apply to services rendered outside the qualifying room or suite or to discretionary services rendered in a qualifying room or suite, for which there is a separate charge imposed, such as charges for internet access.

10.3 Zero-Rated Supplies

The sale of goods and services taxable at a zero rate, or zero-rated, is generally restricted to exports. As those goods are not consumed in

the domestic market, it is desirable not to impose VAT on them. However, for the sake of maintaining the competitiveness of domestic exporters, it is desirable to allow them to claim a credit for the VAT that they pay on the materials and supplies that they purchase to produce the products that they export. To that end, exports would be zero-rated.

This treatment includes goods sold under a rental agreement, charter party, or agreement for chartering, where the goods are used exclusively in an export country. It also includes a supply of goods, and related services, in the course of repairing, renovating, modifying, or treating goods temporarily imported into The Bahamas under the special import regime and those for the repair, maintenance, cleaning, outfitting, refurbishing or improving a foreign-going aircraft or foreign-going vessel.

As well, zero-rating would apply as follows:

- International services, including financial services, provided to a person treated as a non-resident under the Exchange Control Regulations.
- A supply of services directly in connection with land, or an improvement to land, situated outside The Bahamas;
- A supply of services directly in respect of :
 - (a) personal property situated outside The Bahamas at the time the services are rendered;
 - (b) goods temporarily imported into The Bahamas under the Customs Management Act; or
 - (c) the repair, maintenance, cleaning, outfitting, refurbishment, or improvement of a foreign-going aircraft or foreign-going vessel.
- A supply of freight and insurance directly attributable to a supply of goods exported from the Bahamas.

- A supply of services to a foreign going vessel by a port authority.
- A supply of services by the manager of an airport to an unregistered non-resident who is the owner or operator of the ship or aircraft used by that person in international commercial service, for consumption or use in connection with that ship or aircraft;
- A supply of services (or the arranging of such a supply) to an unregistered non-resident where such supply is made directly and comprises the storage, repair, maintenance, cleaning, management or arranging the provision of a container temporarily imported into The Bahamas.
- A supply of services to a non-resident who is not a taxable person comprising the arranging for the person of a supply of goods exported from The Bahamas;
- A supply of professional services listed in the Bill to the extent that such services are used or consumed elsewhere than in The Bahamas;
- A supply of services comprising:
 - (a) the filing, prosecution, grant, maintenance, transfer, assignment, licensing, or enforcement of any intellectual property rights for use outside The Bahamas;
 - (b) incidental services necessary for the supply of services referred to in paragraph (a); and
 - (c) the acceptance by a person of an obligation to refrain from pursuing or exercising, in whole or in part, any intellectual property rights for use outside The Bahamas.
- A supply of international transport services.

- A supply of services to a telecommunication carrier not conducting business in The Bahamas comprising the transmission of calls and other telecommunication services through The Bahamas
 - (1) that have their origin and destination outside The Bahamas;
 - (2) that are not for the consumption or use of persons in The Bahamas; and
 - (3) where the registrant supplier does not charge an interconnection fee for providing the services.
- A supply, under certain conditions, by a registered person to another registered person of a taxable activity, or part of a taxable activity, as a going concern (such a sale does not represent consumption but merely the transfer of the means of production from one owner to another).

10.4 Exempt Supplies

The White Paper provided a broad list of supplies that should, for valid economic and social reasons, be exempt from VAT. Exemption of supplies means that such supplies are not taxable under VAT and, as such, the seller may not claim credit for any VAT paid on materials and supplies procured for the purpose of their production. Since February the Government has given further consideration to the specific types of products that should be exempt from VAT. The details of the exemptions are set out in Annex II of this paper and in the draft VAT Bill. These exemptions are highlighted below.

10.4.1 Social Development Products

The Tariff Act currently provides for the duty-free entry of a number of products on the basis that such products serve desirable social development objectives, for example agricultural and basic food items. Accordingly, such products, listed in the Third Schedule of the VAT Bill, that are currently imported duty-free would be exempted from VAT, whether imported or supplied domestically. Also exempt would be a number of price-controlled items.

The Government would also provide an exemption for electricity and water consumption, in accordance with the limits prescribed by regulations.

10.4.2 Financial Services

Financial services, however defined, are commonly treated as exempt as they often relate to the activities of savings and investment rather than consumption. It is also often the case that it is administratively difficult to calculate the value of intermediation services (the spread between interest received on loans and interest paid on deposits). As well, some services considered to be financial services, like life insurance, have a savings component that typically is not subject to VAT.

It is proposed in the VAT Bill to exempt domestic financial services which are rendered without an explicit fee or on which stamp taxes are payable. As defined in the draft Bill, financial services are diverse and include:

- granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor;
- transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring; or
- transactions relating to financial derivatives, forward contracts, options, and similar arrangements;
- transactions relating to shares, stocks, bonds, and other securities, other than custody services;
- management of investment funds;
- insurance products; or
- other financial services provided by banks within the scope of their banking business.

For clarification, medical, life and property and casualty insurance services would be exempt even if rendered for an explicit fee.

How finance charges are stated in the sales price of goods would determine if VAT is applicable. If a supplier makes a taxable supply of goods on credit and includes the finance charges in the total amount payable by the buyer in instalments, the total amount payable for the goods (including any finance charges) would be subject to tax. If a supplier of taxable goods on credit lists the finance charges separately from the consideration for the goods, the finance charges are, under certain conditions, exempt financial intermediation services.

Some services that may be viewed as financial services are not exempt, even if rendered without a fee or other similar charge, and whether

or not they are supplied by or to a financial service provider in connection with an exempt financial service, including:

- the provision of a short-term insurance contract;
- legal, accounting, record packaging services, and tax agency services (including advisory services);
- safe custody for money or documents;
- brokerage services;
- debt collection or factoring services; and
- trustee services.

Furthermore, a supply of the following financial services provided for an explicit fee would be taxable, including –

- the transmission of money or monetary value in any form,
- the issuance, sale or redemption of money orders or traveller’s cheques,
- cheque cashing,
- currency exchange issuance, sale or redemption of money orders or traveller’s cheques, and
- currency exchange and pay day advances.

Financial services that are taxable or exempt if supplied domestically are zero-rated if they are rendered directly in connection with the international transport of goods for export.

10.4.3 Medical Services

As was proposed in the White Paper, medical services would be exempt from VAT. To that end, “medical services” means a supply of a medical, dental, nursing, convalescent, rehabilitation, midwifery, paramedical or other service, where the service is performed by, or under the

supervision and control of, a person who is licensed by the Public Hospitals Authority, the Department of Public Health, the Bahamas Pharmacy Council, the Health Professionals Council, and The Bahamas Medical Council to provide those services. Medical services that are cosmetic in nature are not exempt. For the sake of clarification, also included in the exemption are services provided by registered optometrists. Veterinary services, however, are taxable.

10.4.4 Education Services and Daycare/After-School Care

Education services and services rendered by a day care business, including after-school care, would be exempt from VAT. As set out in the VAT Bill, “education services” means tuition or instruction for students provided by an institution registered or accredited with the Ministry of Education, the College of The Bahamas, the Department of Social Services, or the Public Hospital Authority. Such institutions include:

- a pre-primary, primary, or secondary school;
- a technical college, community college, or university;
- an educational institution established for the promotion of adult education, vocational training, technical education;
- an institution established for the education or training of physically or mentally handicapped persons; or
- an institution established for the training of sports persons.

10.4.5 Residential Dwellings and Land

The VAT would apply in the case of commercial rentals. It would also apply generally in the construction sector on materials and labour, and other inputs, on both new construction and renovations of both residential and commercial projects. The sale of property is also VATable in most systems. In the Bahamas, residential transfers already attract stamp taxes at a rate as high as 10 percent in most cases and would be exempted. **Services provided in connection with property transfers however, including legal fees and brokerage commissions would be subject to VAT.**

The rental of residential dwellings and all transfers of vacant land would be exempt.

10.4.6 Government Services

The draft Bill exempts a supply of any goods or services by the Government or a Statutory Body in connection with a taxable activity, where the charge for the goods or services is nominal in amount or not intended to recover the cost of such goods or services.

10.4.7 Domestic Transportation

The Government proposes to exempt the supply of domestic transportation of passengers by land and water, other than in connection with a tour. As such the supply of domestic air travel would be subject to VAT.

10.4.8 Personal Care Services

Also exempt from VAT would be a supply of services provided directly by a facility to the following persons who need care:

- aged persons;
- indigent persons;
- infirm persons;
- disabled persons;
- handicapped persons.

10.4.9 Religious Services

A supply of religious services by an institution of religious worship would be exempt from VAT. An institution of religious worship, for purposes of the VAT law, means an institution which is a church or other religious organization which is registered as a religious organisation to perform religious ceremonies.

10.4.10 Services of Charitable Organizations

The VAT Bill would exempt supplies by an approved charitable organization, to the extent that these relate directly to the charitable function of the organization. An approved charitable organization means an organization which, in addition to the conditions in the Regulations, satisfies all of the following requirements:

- it is organized exclusively to carry out, and in fact carries out, educational, relief of poverty, charitable, social welfare, civic improvement or other similar activities in the public interest;
- it is not involved in partisan political activities;
- no more than 50% of the funds it receives have come from one person or organisation, or from a group or organisation that does not deal with each other at arm's length;
- it disburses annually more than 50% of contributions received towards the attainment of its activity in accordance with paragraph (a);
- it does not make its distribution quota above by the exchange of gifts between other approved charities, persons, organization or other legal persons;
- it is in compliance with any other rules and regulations under the Bill that relate to an approved charitable organization; and
- it is resident in the Commonwealth of The Bahamas during the tax year.

10.4.11 Games of Chance/Gambling/Lotteries

A supply of games of chance, gambling games, or lotteries covered by the Lotteries and Gaming Act would be exempt from VAT. These activities are already subject to tax under the Casino Taxation Act.

10.4.12 Exempt Imports

The following imports of goods are exempt from VAT:

- An import of goods listed in the schedule of exempt supplies;

- An unconditional gift of goods to an approved charitable organization, other than for purposes of re-sale, if the Comptroller of Customs has written notification from the CRA Commissioner, before entry, that the goods are to be exempt from tax;
- An unconditional gift of goods (other than for re-sale) consigned to the Government if the Comptroller of Customs has written notification from the CRA Commissioner, before entry, that the goods are to be exempt from tax;
- Bona fide unsolicited gifts which do not exceed \$1000 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco);
- Goods which are shipped or conveyed to The Bahamas for transshipment or conveyance to any other country; and
- Certain goods imported by a national returning for permanent residence.

11. Commercial Rental Establishments

Commercial rental establishments would be subject to VAT. In this context, “commercial rental establishment” means:

- (a) accommodations in a hotel;
- (b) residential accommodation of any kind which constitutes an asset, including a leased asset, of a business undertaking or a separately identifiable part of a business undertaking carried on by any person who leases the accommodation as residential accommodation for continuous periods not exceeding forty-five calendar days;

- (c) residential accommodation in a condo, timeshare, or house, acquired by a non-resident under the International Persons Landholding Act where the permit specifies that such accommodation would be used for rental purposes;
- (d) residential accommodation in a condo, timeshare, or house which is not part of a hotel or resort complex and is acquired by a non-resident under the International Persons Landholding Act whose permit specifies that such accommodation would be used for rental purposes;
- (e) residential accommodation in a condo, house, flat, apartment, or room, other than accommodation referred to above which is leased as residential accommodation for continuous periods not exceeding forty-five calendar days and leased with furnishings and utilities provided by the lessor; or
- (f) any other accommodation which the Minister may, by order, designate as a commercial rental establishment.

A commercial rental establishment does not include accommodation in a:

- (a) boarding establishment or hostel operated by an employer not for the profit of any person but, solely or predominantly, for the benefit of the employees of such employer, a related person of such employer or the dependants of a person referred to above;
- (b) a boarding establishment or hostel operated by a local government council not for the profit of any person; or
- (c) a registered hospital, maternity home, nursing home, convalescent home, or clinic.

The operation of a commercial rental establishment would be a taxable activity comprising a taxable supply of services and, where the operation satisfies the registration threshold, the owner of such establishment becomes a taxable person required to register as such under the Act.

Care would have to be taken to ensure that the CRA is notified when the usage of property switches to a non-commercial purpose. The conversion by the owner of a commercial rental establishment to a dwelling is a taxable supply and may in the discretion of the CRA Commissioner be treated as an exempt supply where a taxable person owning such establishment submits to the Central Revenue Administration, prior to the conversion, a written declaration of the intent to convert such establishment to a dwelling. If such notification is not provided the property would continue to be treated as commercial for VAT purposes.

12. Condos Leased Collectively

The leasing of condos or other residential accommodations that are part of a pool or other collective rental agreement would be taxable. As such where the activity satisfies the registration threshold, the administrator of such accommodations must register as a taxable person. In this regard it is acceptable for the property administrator (as defined by the collective rental agreement) to remit the VAT to the CRA. Otherwise, the owner remains directly liable for the tax.

13. Refunds of VAT to Diplomatic Missions, International Organizations and Charitable Organizations

The draft VAT Bill provides the grant of a refund of VAT paid or borne on an import by or supply to a diplomatic mission or international organisation and their eligible staff members, in relation to qualifying goods or services comprising a taxable supply by a taxable person or a taxable importation. As well, application may be made for a refund of tax paid on the acquisition of qualifying goods or services, including unconditional gifts, by an eligible charitable organisation, or a non-governmental organisation, approved by the Minister in accordance with criteria prescribed in the regulations.

14. VAT and the Hawksbill Creek Agreement (HCA)

The VAT regime is proposed to be aligned with Hawksbill Creek Agreement. Under Clause 2 of the HCA, the Port Authority and its licensees are exempt from customs duties and taxes on imported goods that are used for developmental or manufacturing purposes within the Port Area, or which support the administrative purposes of the Port Authority. Goods of a consumable nature are excluded from this treatment.

In the VAT draft Bill, it is stated that the VAT law would apply in the Hawksbill Creek Port Area where:

- a taxable supply within the Hawksbill Creek Port Area is made by:
 - (i) a taxable person who is a Port licensee to a person who is not a Port licensee;
 - (ii) a taxable person to a person who is a Port licensee, where the

supply is not of a kind or usage within the meaning of section 2 of the HCA (which sets out the terms and conditions governing the duty and other tax exemptions enjoyed by the Port Authority and Port licensees);

- (iii) a taxable person to another person neither of whom is a Port licensee
- a taxable importation from outside The Bahamas is made into the Hawksbill Creek Port Area by a person who:
 - (i) is not a Port licensee;
 - (ii) is a Port licensee but the goods or services are not of a kind or usage within the meaning of section 2 of the HCA;
- a taxable importation of goods from outside The Bahamas is made into the Hawksbill Creek Port Area for the personal use of any person;
- a taxable supply of goods in the Hawksbill Creek Port Area is made by a taxable person for the personal use of any person;
- a taxable person within the Port Area, whether or not a Port licensee, makes a taxable supply within The Bahamas to a recipient outside the Hawksbill Creek Port Area;
- a taxable person in another part of The Bahamas makes a taxable supply to a recipient in the Hawksbill Creek Port Area who —
 - (i) is not a Port licensee;
 - (ii) is a Port licensee but the supply is not of a kind or usage within the meaning of section 2 of the HCA.

The VAT law would not apply in relation to the Hawksbill

Creek Port Area where:

- a taxable supply within the Hawksbill Creek Port Area is made by a taxable person who is a Port licensee to another Port licensee and the goods or services are of a kind and usage referred to in clause 2 of the HCA;
- a taxable importation from outside The Bahamas is made into the Hawksbill Creek Port Area by a Port licensee and the goods or services are of a kind and usage referred to in clause 2 of the HCA.

15. Key Milestones to VAT Introduction

The VAT Implementation Team within the Ministry of Finance has developed a detailed plan to guide the various and many activities that are required to ensure the successful launch of VAT on July 1, 2014. In addition to in-house resources, technical assistance is being provided by both the Caribbean Technical Assistance Centre (CARTAC) of the IMF, the IMF and the Inter-American Development Bank. A summary overview of the VAT implementation plan is presented in Annex I.

It should be noted that public education and assistance to VAT registered businesses form a significant and critical component of the plan. In addition to consumer education, the VAT Team will engage in one-on-one meetings with business registrants to ensure that they fully understand the requirements of the tax and to assist them in arranging their operations to effectively meet those requirements.

ANNEX I: KEY MILESTONES IN VAT IMPLEMENTATION**2013**

February	Release of White Paper on Value Added Tax
March-July	Preparation of draft VAT Law and Regulations
May	Appoint Advisory Committee and Implementation Team
June	Appoint Project Management Committee Secure Expert Consultant for VAT Implementation
July-November	Internal review of draft law and Regulations Cabinet approval of VAT policy framework
Fall	Release of VAT Bill and Regulations with Overview Paper
December/January	Tabling of VAT Bill in Parliament
September and beyond	Public education and stakeholder consultations
August-December	Develop organizational structure and staff positions Procurement of office space for CRA/VAT staff Operations development (procedures, manuals, forms, guides)
October-December	Procurement of Vendor for IT Systems and Procedures Begin implementation of new IT Systems
November-December	Begin engagement of key management staff for CRA/VAT

2014

January	Parliamentary approval of VAT Bill
January-March	Continuation of public relations/education campaign/ and stakeholder consultations Engagement of CRA/VAT staff
January-June	VAT registration; advisory visits to registrants; VAT staff training
January-June	Operations development (procedures, manuals, forms, guides) Implementation of new IT Systems
July	VAT goes into effect

**ANNEX II:
EXEMPT SUPPLIES AND IMPORTS OF GOODS AND SERVICES**

**Part I
Exempt Supplies of Goods**

Bovine animal meat
Chicken
Pork
Sheep/goat/horse meat and edible offal of these
Meat/Edible offal, salted, dried, in brine, smoked
Sausages and similar products
Prepared or preserved meat for infant use
Sandwich meat: turkey, ham, corned beef, roasted beef
Fish, Prepared and preserved fish in airtight containers
Fresh milk, milk products, cheese
Concentrated & evaporated milk/cream, or containing added sugar/sweetener
Butter, dairy spreads
Vegetables, fresh and frozen
Fresh fruits
Rice, fonio, quinoa, triticale
Flour
Cereals
Cereal groats, meal and pellets
Cereal grains otherwise worked (flaked, rolled, etc.)
Soybean oil, crude, whether or not degummed
Ground nut oil, olive oil, other oils and their fractions
Oils (Palm, sunflower/safflower, cottonseed, coconut/palm kernel, rape, mustard, other vegetable fats)
Castor oil and sesame oil and their fractions
Margarine, imitation lard, shortening
Cane sugar, beet sugar, whether or not containing flavouring/colouring
White sugar
Bread
Preparations for infant use (cereal, flour, starch, milk)
Noodles, couscous, bulgur wheat, bread
Packaged for infant use: vegetables, jams, jellies, fruit juices
Mustard flour and meal, prepared mustard
Mayonnaise
Soups and broths
Mineral waters packaged for infant use
Laundry detergent (liquid, powder), dishwashing liquid
Soaps
Electricity in accordance with the limits prescribed by regulations
Water in accordance with the limits prescribed by regulations

PART II

Exempt Supplies of Services

Exempt supplies of services are a supply of or a transaction comprising:

1. Domestic financial services which are rendered without an explicit fee or on which stamp tax is payable
2. Insurance
3. Medical services including the services of a registered optometrist.
4. Education services.
5. The sale, or rental, of a dwelling, including land attributable to such dwelling.
6. The transfer of vacant land.
7. A lease of land to the extent that such land is principally used, or intended for use, for accommodation as a dwelling which is erected or to be erected on such land.
8. 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 is nominal in amount or not intended to recover the cost of such goods or services.
9. Services rendered by a daycare business, including the provision of afterschool care.
10. Domestic transportation of passengers by land or water, other than in connection with a tour.
11. Services provided directly by a facility to persons in need of care, being persons who are aged; indigent; infirm; disabled; or handicapped.
12. Services directly, and not through an agent or other person, to a person resident outside The Bahamas who is not a taxable person:
 - comprising the handling, pilotage, salvage, or towage, of any foreign-going aircraft while situated within The Bahamas; or
 - provided in connection with the operation or management of any foreign-going aircraft or foreign-going vessel.
13. Religious services by an institution of religious worship.
14. Services by a recognized charity to the extent that such services relate directly to the charitable function of the charity.
15. Games of chance, gambling and lotteries

PART III
Exempt Imports of Goods

1. An import of goods listed in Part I of this Schedule.
2. An import of goods:
 - (i) intended as an unconditional gift to an approved charitable organisation, other than for purposes of re-sale by such organisation; and
 - (ii) where the Comptroller of Customs is in receipt of a written notification from the CRA Commissioner, prior to entry of such goods, that the goods are to be exempt from a charge of VAT.
3. An unconditional gift of goods, other than for purposes of re-sale, consigned to the Government, or a ministry, department, statutory body, agency, local government council, or other entity of Government, where the Comptroller of Customs has written notification from the CRA Commissioner, prior to entry of such goods, that the goods are to be exempt from a charge of VAT.
4. An import that is a *bona fide*, unsolicited gift which:
 - (i) does not exceed \$1000 dollars in value;
 - (ii) is not contained in a passenger's baggage; and
 - (iii) does not comprise wine, spirits or manufactured tobacco.
5. Goods which are shipped or conveyed to The Bahamas for transshipment or conveyance to another country.
6. Subject to the regulations, goods imported by a national who is returning home for permanent residence, limited to:
 - (1) new or used household and personal effects (other than building material), including:
 - (a) a television;
 - (b) a home entertainment system, DVD, VCR or equivalent device;
 - (c) a stereo system;
 - (d) a refrigerator;
 - (e) a cooker/stove range;
 - (f) a washing machine and dryer;
 - (g) a microwave oven;
 - (h) a freezer;
 - (i) a laptop or desktop computer and printer; and
 - (j) other items as published by the Central Revenue Administration;
 - (2) one new or used motor vehicle.

ANNEX III: OVERVIEW OF PROVISIONS IN VAT BILL

This section is intended as an overview of the key features and provisions of the draft VAT Law, as guidance for those interested in examining the draft Law in more detail. The treatment of specific situations and circumstances is to be found in the draft VAT law.

The draft Law is divided into 12 Parts and 3 Schedules as follows:

Part I	PRELIMINARY
Part II	IMPOSITION AND LIABILITY FOR PAYMENT OF VALUE ADDED TAX
Part III	ADMINISTRATION
Part IV	REGISTRATION
Part V	SUPPLIES OF GOODS AND SERVICES
Part VI	IMPORTS OF GOODS AND SERVICES
Part VII	CALCULATION OF TAX PAYABLE BY TAXABLE AND OTHER PERSONS
Part VIII	ASSESSMENTS
Part IX	INVESTIGATORY POWERS AND ENFORCEMENT
Part X	RECORD KEEPING AND ACCOUNTS
Part XI	OBJECTIONS AND APPEALS
Part XII	MISCELLANEOUS

SCHEDULES

FIRST SCHEDULE	Zero-rated Supplies and Importations
SECOND SCHEDULE	Special Rated Supplies
THIRD SCHEDULE	Exempt Supplies and Importations

PART I: PRELIMINARY

This is the introductory part of the draft law, containing 3 sections (sections 1-3), dealing with the basic terms that are utilized in the succeeding parts and sections of the law.

Section 1 lays out the title of the VAT law and its commencement date.

Section 2 presents the definition of various terms utilized in the Act.

Section 3 outlines the scope of application the law, specifically to every taxable supply made by a taxable person and every taxable importation by any person in The Bahamas. This section also spells out how the law applies in the Port Area that is defined in the Hawksbill Creek Agreement.

Part II IMPOSITION AND LIABILITY FOR PAYMENT OF VALUE ADDED TAX

This Part comprises 7 sections (sections 4-10) dealing with the imposition of VAT, the persons liable to pay and account for VAT, the rates of VAT, exempt supplies, importations and persons, the method of pricing to be used under VAT and the interest chargeable on unpaid VAT.

Section 4 sets out matters related to how and where VAT is imposed and it specifically clarifies that a person who is not a taxable person or who is an unregistered person cannot advertise, quote or collect VAT on a taxable supply to any person.

Section 5 spells out the persons liable to account for and pay VAT, namely:

- (a) in the case of a taxable supply, the taxable person making the supply;
- (b) in the case of a taxable import of goods, the importer;
- (c) in the case of a taxable import of services, the importer, if applicable, and the recipient jointly;
- (d) in the case of condos that are part of a pool or other collective rental arrangement, the hotel or other person administering the rental of the condos that are part of the pool or other collective rental arrangement.

Section 6 sets out the various rates at which VAT is to be levied and paid, namely: (1) 15% on the value of every taxable supply by a taxable person; (2) 15% on the value of every import of goods or services, other than exempt imports; (3) 10% of the value of accommodations, services included in the room rate and food and beverage sales that are supplied by a hotel and similar establishment registered and licensed by the Hotel Licensing Authority, as set out in the Second Schedule of the Act; and (4) zero per cent on exports and other limited supplies set out in the First Schedule of the Act.

Section 7 explains that VAT is not chargeable on the exempt supplies and importations set out in the Third Schedule.

Section 8 clarifies the treatment of exempt persons, such as diplomats, who must, in specified circumstances, pay VAT on supplies and imports and then claim a refund.

Section 9 indicates that registrants must state prices exclusive of VAT and state the tax separately on VAT invoices and sales receipts. They may, however, state the price inclusive of VAT in marketing campaigns if they state clearly that VAT is included.

Section 10 outlines that VAT payable that is not paid by the due date would bear interest at a rate specified in the Regulations.

PART III: ADMINISTRATION

This part of the law, containing 7 sections (sections 11-17), specifies where responsibility lies for administering the Act, as well the functions and powers of the CRA Commissioner and VAT officers, the allowance of input tax deductions for investments prior to registration, administrative fines and warning letters, and VAT guidelines and advance rulings.

Section 11 states that the Commissioner of the CRA is responsible for carrying out the provisions of the VAT law.

Section 12 clarifies that the Commissioner is responsible for the day-to-day operations of the CRA and it sets out his functions and powers.

Section 13 outlines the responsibilities of VAT officers to abide by the provisions of the Act and, specifically, not take unlawful payments and rewards nor do anything whereby VAT revenue is or may be defrauded.

Section 14 provides for the Commissioner to allow input tax deductions in respect of investments made within the twenty-four month period prior to VAT registration, if deemed appropriate in the circumstances.

Section 15 sets out the authority of the CRA to order the payment of an administrative fine where a person has contravened or failed to comply with a provision of the Act, Regulations or the Guidelines made by the CRA. The section also spells out that the CRA may issue warning letters to persons in respect of contraventions or non-compliance, and the remedy requested.

Section 16 explains that the Commissioner may publish Guidelines to clarify, explain or illustrate procedures or other matters related to the administration of the Act and Regulations.

Section 17 spells out that the Commissioner may, upon application, issue an advance ruling as to the liability of a person to pay tax in relation to a proposed supply or importation.

PARTIV: REGISTRATION

This part relates to registration issues and contains 10 sections (sections 18-27).

Section 18 sets out that an unregistered person who carries on a taxable activity is required to apply for registration, namely within 14 business days of:

- (a) the end of any period of 12 or fewer months where during that period the person made taxable supplies the total value of which exceeded the registration threshold; or
- (b) the beginning of any period of 365 days, where there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period would exceed the registration threshold.

Promoters of public entertainment must apply at least forty-eight hours before the commencement of the public entertainment, regardless of the turnover anticipated.

The Commissioner may compulsorily register a person who is judged to be a taxable person who has failed to apply for registration.

Section 19 provides for the voluntary registration of a person with a turnover below the threshold, if that person can satisfy the Commissioner that he is capable of meeting the requirements set out in this section, in particular the ability to maintain proper records and submit regular VAT returns.

Section 20 specifies that, for most registrants, the VAT registration threshold would be \$100,000. For taxable activities involving hotel accommodations or commercial property for lease, the threshold would be \$50,000. For promoters of public entertainment, the threshold is to be determined by the Commissioner in light of the circumstances of each particular case.

Section 21 provides that application for registration must be made in the prescribed form and the applicant must provide any additional information required by the Commissioner. It also states that a taxable person carrying out taxable activities in branches or divisions would be treated as a single person and no separate registration would be allowed.

Section 22 states that the Commissioner must register an applicant within 21 business days of receipt of the application if the applicant meets the registration requirements. If the Commissioner fails to notify the applicant of his decision within that timeframe, the application would be deemed to have been refused.

Section 23 spells out that an unregistered person, while not permitted to collect VAT, issue invoices and receipts or file VAT returns, remains liable to account for and pay VAT chargeable on all taxable supplies made by that person while unregistered.

Section 24 provides that a registrant must display at all times a valid registration certificate in a conspicuous place at each location where he carries on a taxable activity.

Section 25 outlines the requirement for a registrant to notify the Commissioner of any change in circumstances within 21 calendar days; of the cessation of business within 7 days; and of the sale or transfer of a taxable activity as a going concern within 7 days.

Section 26 deals with the cancellation and suspension of registration, specifically where requested to do so or if he deems a registrant fails to meet the registration requirements, or fails to file regular returns

Section 27 provides for the maintenance and annual publication by the Commissioner of an up-to-date register of all registrants, which shall be open to the public and available in electronic media. It also provides for the replacement of lost or mutilated certificates of registration.

PART V: SUPPLIES OF GOODS AND SERVICES

This part, containing 10 sections (sections 28-37), deals with rules relating to the time of supply, the place of supply and the value of supply.

Section 28 specifies what constitutes a supply of goods, namely: a sale of goods; the grant of the use of goods under, for example, a rental agreement or credit agreement; the provision of utility goods; the supply of goods for a consideration in goods or services; the transfer of goods on consignment; and the supply of services incidental to a supply of goods.

Also included is the disposition of a taxable activity, or part thereof, as a going concern, as well as the supply of goods by auction if not an exempt supply.

Section 29 specifies what constitutes a supply of services, namely: anything done which is not a supply of goods or money, or a supply of services for a consideration in goods or services, or a supply of goods incidental to a supply of services.

Section 30 specifies the treatment of supplies of goods and services in special cases, namely: the application to a different use of goods and services acquired by a taxable person; a repossession of goods under a credit agreement; the cancellation of a lay-away agreement, the right to receive goods for a value stated on a token; phone cards and prepayment on a cellular phone.

Provision is also made in this section for the treatment of separate parts of a taxable supply; the conversion of a condo or other residential property from commercial rental establishment to a dwelling; supplies by an agent for a principal or to an agent for a principal.

Where the registration of a person is cancelled and an input tax deduction has been claimed in respect of the goods and services on hand on the date of cancellation, that person is deemed to have made a taxable supply of all goods and service on hand, including capital goods and intellectual property.

Section 31 sets out rules relating to the time at which a supply occurs. Generally, a supply of goods or services occurs on the earliest of the date on which:

- (a) the goods are delivered or made available or the performance of services is completed;
- (b) an invoice for the supply is issued; or
- (c) any consideration for the supply is received.

The section also specifies the timing of supplies under a credit agreement, a layaway agreement, the repossession of goods, a rental agreement, the use of tokens, vouchers, gift certificates, phone cards, prepayments on a cellular phone or other advance payments, transfers on consignment, etc.

Section 32 relates to considerations in respect of the place of a supply. Specifically, a supply of goods takes place where the goods are delivered or made available by the supplier or, if the delivery or making available involves the goods being transported, the place where the goods are when the transportation commences.

A supply of utility goods takes place where the supply is received.

A supply of a service takes place at the location of the place of business of the supplier from which the services are supplied.

Section 33 specifies that, beyond these general provisions, the place of supply for certain specific types of goods and arrangements as well as services.

Section 34 states that the value of a supply of goods or services is the total of the consideration for the supply.

Section 35 clarifies the calculation of the consideration for a taxable supply as the total amount in money or money's worth paid or payable less any discounts or rebates accounted for at the time of supply. Included in the section is the treatment of items such as deposits on returnable containers, duties, levies and charges as well as the treatment of discounts.

Section 36 outlines rules relating to the value of a taxable supply. For example, where a supply is made by a taxable person for no consideration or for a consideration that is less than the fair market value of that supply, and the supplier and the recipient are related persons, the value of the supply is the fair market value of the supply as determined in accordance with the Regulations.

The determination of the value of a supply is set out in this section for particular arrangements such as credit agreements, etc.

Section 37 specifies that, where the taxable supply by a taxable person of a hotel accommodation or tour package is arranged by either a travel agent or tour operator resident outside The Bahamas and who is not a taxable person, the value of that taxable supply is the consideration charged by the taxable person including the commission or

fee paid to and in respect of the services of the travel agent or tour operator resident outside The Bahamas.

PART VI: IMPORTS OF GOODS AND SERVICES

This Part contains 7 sections (sections 38-44) dealing with issues related to the time of import, mixed imports, the value of a taxable import, the consideration for a taxable import, and the payment of tax for the importation of goods and services.

Section 38 specifies that an import of goods occurs when the goods are entered for purposes of the Customs Management Act and that an import of services occurs at the time a supply of such services occurs under Part V.

Section 39 relates to the treatment of mixed imports, i.e. the importation of goods incidental to the importation of services, and vice versa

Section 40 stipulates that the value of a taxable importation is the total consideration for the import.

Section 41 sets out the calculation of the consideration for a taxable importation, namely the sum of:

- (a) the value of the goods for the purposes of customs duty under the Customs Management Act;
- (b) the cost of insurance and freight where not included in the customs value under paragraph (a);
- (c) the amount of any customs duty, excise tax, environmental levy, or any other fiscal charge (other than VAT) payable on the importation of such goods; and
- (d) the amount of any customs service charge payable on the importation of such goods.

The value of an import of services is the amount in money or money's worth paid or payable for the import less any discount or rebate accounted for at the time of import.

Section 42 provides rules for the calculation of the value of a taxable importation of services where the supplier and the recipient are related and there is no consideration or it is below fair market value.

Section 43, relating to the import declaration and payment of tax for the importation of goods, states the requirement for the Comptroller of Customs:

- (a) to collect, at the time of import and on behalf of the Commissioner of the CRA, any tax due under the Act on an import of goods and, at that time, obtain the name and the taxpayer identification number, if any, of the importer, the import declaration, and the invoice values in respect of the import; and
- (b) make arrangements for such functions to be performed on his behalf in respect of imports through the postal services.

Where tax is payable on an import of goods, the importer is required, upon such entry, to furnish the Comptroller of Customs with an import declaration and pay the tax due on the import.

In general, the provisions of the Customs Management Act shall apply to a charge of VAT on a taxable importation of goods as if it were a customs duty under the CMA.

Section 44, relating to the import declaration and payment of tax for the importation of services, states that the person liable for the tax as specified in the Act is required to:

- (a) furnish the Commissioner with an import declaration; and
- (b) pay the tax due in respect of the import within the timelines set out in this section.

PART VII: CALCULATION OF TAX PAYABLE BY TAXABLE AND OTHER PERSONS

This part contains 12 sections (sections 45-56) dealing with the determination of tax payable by registrants, unregistered taxable persons and auctioneers; the VAT return; input tax deductions; post-sale adjustments and bad debts, carry-forwards of excess credits and refunds; interest on overpayment; tax invoices and sales receipts and tax credit and debit notes; and other persons eligible for refunds..

Section 45 indicates that the tax payable by a registrant for a tax period in respect of taxable supplies is the total amount of output tax payable by the person in respect of taxable supplies made by the person during the period, less the total input tax deduction allowed for the period. The tax period applicable is one calendar month.

Section 46 states that every taxable person is required to file a tax return for each tax period with the Commissioner within 21 days after the end of the tax period, whether or not tax is payable in respect of that period and pay the tax due. The section also clarifies the requirements of the VAT return, as well as the responsibilities of the Commissioner in respect of evaluating returns and, where necessary, make assessments of the taxable activity of a registrant. Registrants may apply for an extension of time for filing a return and the Commissioner may grant an extension if warranted, A registrant may also, within one year of filing, apply for permission to vary a return.

Section 47 clarifies that tax is payable by an unregistered person in respect of a relevant period prior to becoming registered in accordance with an assessment made by the Commissioner under part VIII.

Section 48 sets out the responsibilities of auctioneers in respect of charging and paying VAT on supplies.

Section 49 presents the rules to be applied in respect of a claim for input tax deductions. Among others, a claim is only allowable if the taxable supply or importation to which the claim relates was used in the course or furtherance of a taxable activity carried on by the claimant. The Commissioner may determine whether a claim would be allowed and a taxable person aggrieved by any decision may object or appeal under part XI,

Sections 50—51 provide the details of the treatment of various post-supply adjustments to output tax and adjustments due to bad debt. Post-sale adjustments include, for instance, situations where a supply is cancelled or where goods or services are returned to the supplier. For example, where the output tax actually accounted for by the registered person exceeds the output tax properly chargeable in relation to the supply, the registered person is allowed an input tax deduction for the amount of the excess in the tax period in which the event occurred.

Section 52 requires a registered supplier making a taxable supply to a registered recipient to provide the registered recipient with an original tax invoice for the taxable supply in the form and containing the information specified in Regulations.

However, a registered supplier making a taxable supply to a registered recipient may issue a sales receipt in lieu of a tax invoice in the form and containing the information specified in Regulations if the total consideration for the taxable supply is in cash and does not exceed \$50.

A registered supplier making a taxable supply to a person who is not registered, referred to as the unregistered recipient, is required to provide the unregistered recipient with a sales receipt for the taxable supply in the form and containing the information specified in Regulations.

Section 53 provides that where a tax invoice has been issued and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the registered person making the supply is required to provide the registered recipient of the supply with a tax credit note containing the particulars specified in Regulations.

Where a tax invoice has been issued and the tax properly chargeable in respect of the supply exceeds the amount shown as tax charged in that tax invoice, the registered person making the supply is required to provide the registered recipient of the supply with a tax debit note containing the particulars specified in Regulations.

Section 54 provides that, where the total amount of input tax deduction allowed to a taxable person for a tax period exceeds the total amount of output tax payable by the person for that period, the amount of the excess is to be carried forward to the next tax period. If any excess remains after being carried forward in three consecutive tax periods, the registrant may file a claim for refund with the Commissioner. The section also clarifies the procedures to be followed by the Commissioner in reviewing such claims and the right of claimants to object or appeal a decision by the Commissioner..

Section 55 provides for the payment of interest by the Commissioner, at a rate specified in the Regulations, on the overpayment of tax by a claimant or as the result of an objection or appeal.

Section 56 outlines the procedures for a claim for a refund of tax.

PART VIII: ASSESSMENTS

This Part contains 2 sections (sections 57-58) in respect of rules relating to assessments and the use of assessments as evidence.

Section 57 stipulates that, under certain circumstances (e.g. failure to file a return or furnish an import declaration, etc.), the Commissioner may at any time make an assessment of the amount of tax payable by the person or of the amount of tax represented by the person as payable. The Commissioner may, based on the information available, estimate the tax payable by a person for the purposes of making an assessment. The procedures to be followed in making assessments are laid out in this section.

Section 58 provides that an original, or a copy certified by the Commissioner, of a notice of assessment is receivable as conclusive evidence in any proceedings.

PART IX: INVESTIGATORY POWERS AND ENFORCEMENT

This part contains 15 sections (sections 59-73) relating to the investigatory powers of the Commissioner and VAT officers, including entry and the seizure of goods and vehicles.

Section 59 sets out the power of the Commissioner, by notice in writing, to require any person to furnish information, to attend at such time and place as the Commissioner specifies in the notice for the purpose of being examined on oath, to produce any record or computer in the control of the person that the Commissioner or the taxation officer may require him to produce, and to provide access to the premises where a taxable activity is carried on by the person or where records or books of account are kept in respect of that taxable activity.

As well, the Commissioner may by a notice in writing:

- (a) require a bank or other financial institution to furnish the Commissioner with the details of any banking account or other assets that may be held on behalf of any person, or to furnish a copy of bank statements or statement of assets of any such banking account or other asset;
- (b) require a bank to permit the Commissioner or any taxation officer authorized by him to inspect the records of the bank or other financial institution with respect to the banking account of any person; and
- (c) require the attendance of an officer of a bank or other financial institution before the Commissioner to give evidence respecting bank accounts or other assets that may be held by the bank or other financial institution on behalf of a person.

Section 60 provides that, where a VAT officer suspects an offence under the Act, he may apply to the Revenue Court for a warrant to enter premises, search for records, seize records, seize computers, etc.

Section 61 makes provision for the Commissioner to request a person to give security for the payment of tax.

Section 62 provides that the Commissioner may seize goods where they comprise a taxable supply and VAT has not been paid. The section also sets out provisions for the seizure of vehicles. As well, the section clarifies the conditions under which the Commissioner may sell goods and vehicles seized.

Section 63 provides that the Commissioner may recover unpaid tax by distress proceedings against the personal property of the person liable to pay the tax, referred to as the “person liable”, by specifying the person liable, the location of the property, and the tax liability to which the proceedings relate. Distress may not be levied upon tools of trade.

Where the person liable does not pay the tax due, together with the costs of the distress

- (a) in the case of perishable goods, within such period as the Commissioner considers reasonable having regard to the condition of the goods; or
- (b) in any other case, after the ten working days period ,

the property distrained upon may be sold by public auction or in such other manner as specified in Regulations.

Section 64 outlines the right of the Commissioner to enter any house or premises at any time for the purpose of executing a seizure or distress.

Section 65 stipulates that a registering authority appointed under any law may not effect registration upon a change of ownership or importation into The Bahamas of registerable goods (defined in this section) unless proof is provided that the requirements set out in the VAT Act have been satisfied (e.g. the payment of VAT if applicable).

Section 66 states that where, in respect of a taxable supply by a taxable person, the taxable person has, in consequence of a fraudulent action or misrepresentation by the recipient of the supply, incorrectly treated the supply as an exempt or zero-rated supply, the Commissioner may raise an assessment upon the recipient for the amount of unpaid tax in respect of the supply together with any interest, fine or penalty that has become payable.

Nothing precludes the Commissioner from recovering the tax, interest or fine from the taxable person making the supply.

Section 67 stipulates that where a person who is liable to pay tax under the Act fails to do so by the due date, the Commissioner may, by notice in writing, require any other person who -

- (a) owes or may owe money to the person liable;
- (b) holds or may subsequently hold money for or on account of the person liable;
- (c) has authority from some other person to pay money to the person liable; or
- (d) has possession of the property of the taxable person, despite any other law;

to be the agent of that taxable person and to pay the money or deliver the property to the Commissioner as provided in this section.

Section 68 provides that a receiver, as defined in this section, is required to notify the Commissioner in writing within 14 days after being appointed to the position or taking possession of an asset of the person liable to tax in The Bahamas, whichever first occurs. The section outlines the duties of receivers in respect of disposing of the assets of a person liable to tax and acquitting the tax liability of that person.

Section 69 speaks to the power of the Commissioner, if he considers it necessary to do so, to declare a person to be a representative of a taxable person. A representative of a taxable person is responsible for performing any duties, including the payment of tax, imposed by the Act on the taxable person. Every representative is also, under the conditions set out in the section, personally liable for the payment of any tax payable in his representative capacity.

Section 70 provides that, where the Commissioner determines that a scheme has been entered into or carried out for the obtention of a tax benefit, he may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Commissioner considers appropriate for the prevention or reduction of the tax benefit.

Section 71 pertains to directors or similar officers of companies and stipulates that, where a company fails to pay an amount of value added tax that is payable, the persons who were directors or similar officers of the company at the time the company was required to pay the amount shall be jointly and severally liable, together with the company, to pay that amount and any interest on it and penalties relating to it.

However, such persons shall not be liable for a failure as set out above where they exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Section 72 provides for the closure of business premises where a person repeatedly violates certain sections of the Act. In such circumstances, the Commissioner may, after obtaining an order of the Revenue Court, forcibly close one or more business premises of the person.

Section 73 provides that, where a person violates certain sections or rules in the Act or Regulations, the Commissioner may publish the name of the person in a newspaper circulating in The Bahamas or in such other manner as the Commissioner deems appropriate.

PART X: RECORD KEEPING AND ACCOUNTS

This Part contains 2 sections (sections 74-75) treating with the accounting records that are to be kept.

Section 74 states that every taxable person must maintain in The Bahamas up-to-date and reliable accounting records in the English language, for a period of 7 years after the end

of the tax period to which they relate or the occurrence of the taxable transaction to which the records relate.

Section 75 outlines the types of records to be maintained. As well, it is stipulated that taxable persons must maintain records by electronic means, including but not limited to electronic tills or point-of-sale systems and computerized accounting systems.

PART XI: OBJECTIONS AND APPEALS

This Part contains 4 sections (sections 76-79) dealing with objections to a decision of the Commissioner, appeals to and hearings by the Appeals Panel and appeals to the Revenue Court.

Section 76 provides a definition of what constitutes an appealable decision, including an assessment. Objections to the appealable decision of the Commissioner must be lodged within 30 days after the date of service of the notice of the decision. The objection must be in writing and shall specify the grounds on which it is made. Where it is an objection to an assessment of value added tax, it shall be accompanied by payment of the total amount assessed or provide security for that amount acceptable to the Commissioner by the date that the objection is lodged.

This section also sets out the form and content of the appeal and the procedure to be followed by the Commissioner following consideration of the objection. Specifically, he must serve notice in writing on the objector within 90 days after the lodging of the objection.

Section 77 states that any person who is dissatisfied with the Commissioner's decision under this Part on an objection may, within 30 days after being served with notice of the decision, appeal against the decision to the Appeals Panel. Such an appeal shall be by notice of appeal and shall specify the grounds for the appeal in detail.

Section 78 speaks to aspects of the procedures to be followed by the Appeals Panel and sets out the conditions under which the Appeals Commissioners would consider an appeal as well as the types of orders to be made by the Commissioners. The Appeals Panel must hear and decide an appeal within 90 days of its lodging and serve notice of decision in writing.

Section 79 provides for an appeal by an appellant to the Revenue Court in respect of a decision by the Appeals Panel, within 21 days after being served a notice of decision under section 78.

PART XII: MISCELLANEOUS

This Part, comprising 15 sections (sections 80-94), deals with a variety of miscellaneous matters relating to the administration and enforcement of the Act.

Section 80 provides that a registrant must include the taxpayer identification number issued by the Commissioner in any return, notice, or other document prescribed or used for the purposes of the Act.

Section 81 defines the meaning of “officer” of an unincorporated body and explains that, where a liability or obligation is imposed by or under the Act or the Regulations on an unincorporated body, the body and each of the persons who are officers of the body at the time the liability or obligation is imposed are jointly and severally liable and responsible to satisfy the liability or obligation.

Sections 82-84 explain the treatment of such events as the dissolution of a partnership or unincorporated association or body and the subsequent coming into existence of a new partnership or unincorporated association or body and the new entity carries on the taxable activity of the dissolved entity; the death of a taxable person and the carrying on of that person’s taxable activity by the executor or trustee; and mortgagees in possession of land or other property, previously mortgaged by a mortgagor who is a taxable person, that carry on any taxable activity in relation to the land or other property.

Section 85 provides for the variation of consideration in cases where there is a change in the rate of tax applicable to the supply.

Section 86 provides for the order of application of payments, in order of priority, to interest, penalty, fine and tax payable.

Section 87 specifies that a person must not knowingly make a false or misleading statement to the Commissioner or VAT officers, nor omit from a statement any matter without which the statement is misleading.

Section 88 provides for the remission of tax and extinguishment of liability as a debt to the Government.

Section 89 posits that a person must not contravene or fail to comply with any provision of the Act or Regulations for the purpose of evading the assessment, payment or collection of VAT or otherwise impeding tax administration.

Section 90 outlines the responsibilities of taxation officers to not disclose certain information or permit any person to have access to any records in the possession or custody of the Commissioner. Clarification is also brought on the circumstances under which the Commissioner may disclose documents or information.

Section 91 provides for the power of the Minister to make regulations for carrying out all or any of the purposes of the Act.

Section 92 asserts that any application, notice, declaration, return or other form required to be filed, made or provided pursuant to the Act or Regulations may be provided by electronic means.

Section 93 sets out various provisions, rules and arrangements to deal with the transition to the coming into force of the VAT Act.

Section 94 sets out the Acts or sections of Acts that are repealed with effect from the date the VAT Act comes into force.