



*Adequate Revenues for the Future*

# **GUIDE TO VALUE ADDED TAX BILL & REGS. 2013**



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# MAIN CONSIDERATIONS FOR THE NEW VAT TAX LAW

- ▶ Applying the VAT Tax Laws effectively and efficiently in order to ensure compliance but with fairness and integrity among all Registrants and/or Taxable Persons.



## Introduction: VAT

- ▶ Under the Bill as presently drafted there is the requirement that all Registrants/Taxable Persons meeting the proposed threshold requirements are expected to:-
  - 1) Register with the VAT Tax Division
  - 2) Collect taxes at a proposed rate of 15% on supply of goods and services
  - 3) File a VAT Return
  - 4) Remit the Net VAT to the VAT Tax Division
  - 5) Keep records



## REGISTRATION FOR VAT

- ▶ A Registrant/Taxable Person must apply for registration within 14 days. In cases where public entertainment is being promoted at least 48 hours before such event takes place.
- ▶ Remember that there are two important factors which determine whether one is considered a Registrant/Taxable Person for VAT.



# PRE-REQUISITE/QUALIFIER for REGISTRANT/TAXABLE PERSON

1. Meets the threshold requirement as set out in the Legislation AND
  - ▶ 2. Carries out a taxable activity which means :-
    - ▶ Any activity which is carried on *continuously or regularly* in The Commonwealth of The Bahamas, whether or not for (*pecuniary*) profit that involves or is intended to involve in whole or in part the supply of goods or services to another person for consideration.



# Who is the Registrant/Taxable Person

- ▶ The Registrant/Taxable Person includes :-
  - ▶ (a) The Government
  - ▶ (b) A natural person, corporation, company, partnership, or trust.
  - ▶ (c) An unincorporated association or body;

# What happens when the Registrant/Taxable Person 'Registers'

1. The Application to register is made to the VAT Commissioner
  2. Within 21 business days of receipt of the application and once the Commissioner is satisfied that all of the requirements have been met the person shall be registered
  3. Registration takes effect for the person who has applied within the requisite time one month after the Commissioner's approval
- ▶ We shall now consider the persons who do not fulfil the requirements and/or who do not meet or may meet other requirements within a certain time frame:-



## Other Persons

- 1) The Person/Company who/which exceeds the threshold that person/company is required to register within 12 months upon this happening. Such registration will then take effect within a calendar month after the Commissioner approves the same;
- 2) A Government, Ministry Department, Statutory Body, agency, local government council, or other entity of Government, the day the taxable activity is commenced;
- 3) An auctioneer on the date the auctioneer becomes an auctioneer;
  - ▶ In other cases regarding registration, it will be as determined by the Commissioner.
  - ▶ *We inserted a provision or power for the Commissioner to make registration retrospective where he/she compulsorily registers a person.*
  - ▶ *This is just mentioned as there may in fact be cases which may arise and which may, from an administrative standpoint require registration to be made retrospective.*





# SUPPLIES OF GOODS & SERVICES

- ▶ TIME OF SUPPLY
- ▶ ***Section 28 of the VAT Bill deals with Time of Supply***
- ▶ ***The time of supply is important in that primarily it identifies the tax period in which a particular transaction ought to be taxed.***
- ▶ The rule of law which determines that a supply takes place is on the earliest of the following:-
  - ▶ (a) the date the Invoice is issued;
  - ▶ (b) the date payment is made; and payment may be in whole or in part;
  - ▶ (c) the date when the goods are made available or in the case of services when the services are performed;



# VAT BILL 2013 PART V – SUPPLIES OF GOODS AND SERVICES

- ▶ **Section 28. Rules relating to a supply of goods.**
- ▶ (1) Subject to this Act and the regulations, a supply of goods includes a —
  - ▶ (a) sale of goods;
  - ▶ (b) grant of the use of , or right to use, goods under a rental agreement, credit agreement, freight contract, agreement for charter, or other agreement;
  - ▶ (c) transfer or provision of utility goods;
  - ▶ (d) supply of goods for a consideration in goods or services;
  - ▶ (e) a transfer of goods on consignment;
  - ▶ (f) a supply of services incidental to a supply of goods.



# SUPPLIES OF GOODS & SERVICES

- ▶ **29. Rules relating to a supply of services.**
- ▶ (1) Subject to this Act and the regulations, a supply of services is any thing done which is not a supply of goods or money including
  - ▶ (a) making available any facility or advantage;
  - ▶ (b) refraining from, or tolerating, an activity; or
  - ▶ (c) the grant, assignment, cessation, or surrender of a right.
- ▶ (2) A supply of services for a consideration in goods or services is a supply of services.
- ▶ (3) A supply of goods incidental to a supply of services is part of the supply of services.



# VAT INVOICES & SALES RECEIPTS

- ▶ **Section 52**
- ▶ It provides for the issuance of a VAT Invoice to a Registrant/Taxable Person to another Registrant/Taxable person.
- ▶ The VAT Invoice will be issued where the total consideration of the supply exceeds fifty (\$50) dollars
- ▶ In the case where the total consideration is in cash and does not exceed fifty (\$50) dollars then a VAT Sales Receipt may be issued instead.
- ▶ It is expected that only One (1) VAT Invoice will be issued and in the case where a Registrant may not have been given a VAT Invoice at the time of supply he may make a written request for one which must be complied with within fourteen (14) calendar days once the request is made.
- ▶ Where circumstances arise and the VAT Invoice is lost i.e. the Original VAT Invoice the Registrant may be issued a new one but it must be clearly indicated that it is a "copy" and hence marked thereon as "copy".



# CENTRAL REVENUE AGENCY CRA

- ▶ The VAT Bill states that all liability to pay VAT means that it is a liability to pay or account to the Central Revenue Agency Section **5(3)**
- ▶ Under the Bill as drafted, all responsibility for the administration and enforcement of the Act is given to the CRA . In turn there will be A VAT Division. The Bill also provides for the functions and powers of a VAT Commissioner and VAT Officers.
- ▶ **Sections 11-13**
- ▶ Functions and Powers **Section 12**
- ▶ VAT Officers **Section 13**
- ▶ **Section 15** Lays out Administrative Fines and orders which may be made by the CRA.
- ▶ All of the fines offences and penalties under the Act will be contained and specified in the Regulations.
- ▶ The Bill lends credence to eventual enforcement by the CRA through a Revenue Court all fines penalties and orders.



# Some examples of Criminal Offences

•Tax Evasion	•Impeding Tax Administration
•Failure to preserve secrecy	•Improper claim for refund
<ul style="list-style-type: none"> <li>•<u>Offences by Tax Officers</u></li> <li>• Taking of bribe, collusion, conceals information, abstain from doing an act which results in the revenue being compromised</li> </ul>	<ul style="list-style-type: none"> <li>•<u>Offences by Companies</u></li> <li>• Aiders and Abettors</li> </ul>
•Promoter of public entertainment – failure to get permission	•Failure to pay security
•Failure to file a return for two consecutive or non-consecutive periods	•Collection of tax by unregistered persons
•Failure to issue sales receipt and tax invoices	•Failure to comply with notice for the recovery of the tax (garnishment)



## Some Examples of Civil Penalties Section 15 VAT Bill & Part VIII Regulations & First Schedule (Reg.44)

Failures Re. Tax Invoices and Sales Receipt – false invoice/receipt, failure to provide; provides in contravention of the Act)	Failures Re. Debit and Credit Notes – failure to provide; provides in contravention of the Act)
Failure to comply with tax-exclusive pricing rules	Making false or misleading statements
Failure to register	Failure to file a Return
Failure to display registration certificate	Failure to Pay Tax
Failure to provide notification	Failure to maintain records
Failure to provide information or evidence	Failure to provide facilities
Use of false Taxpayer ID	



# CENTRAL REVENUE AGENCY CRA (contd.)

- ▶ One of the most important facets of this Bill is that for the first time in the history of The Commonwealth of The Bahamas it is expected that VAT and all Tax collection for that matter will now be a preferential claim on a taxpayers' assets.
- ▶ The CRA is also empowered in the person of its Commissioner to have such powers to seize goods and vehicles, execute distress on premises for unpaid tax.
- ▶ Likewise to seek recovery of tax from persons leaving the Bahamas through the Director of Immigration.
- ▶ VAT Officers will also be given direct powers of entry and seizure in addition to their broad investigatory powers.





# Additional Penalties

- ▶ Temporary Closure for repeated offences
  - Tax Invoices
  - Debit/Credit Notes
  - Failing to file returns
  - Failing to pay tax on time
  - Improperly claiming tax refunds
  - Impeding Tax Administration

# Additional Penalties Cont'd

- ▶ Publication of Names of Defaulters
  - Failure to file a return on 3 occasions
  - Failure to pay tax on 3 occasions
  - Any other rule made under this Act which is designated a serious delinquency by Regulations



# APPEALS PROCEDURE through the Appeals Panel

- ▶ No rule of law or legislation of this far reaching effect on the person can be without an appeals process.
  
- ▶ There is a rule of law which relate to the rules of natural justice which says two things:-
  - 1) the rule against bias (*nemo iudex in causa sua*) and
  - 2) the right to a fair hearing (*audi alteram partem*).
  
- ▶ Thus PART XI of the Bill provides for Objections and Appeals to any decision of the Commissioner under the Act.
  
- ▶ Section 77 provides for an Appeal Panel.



## The Objections and Appeal Process

- ▶ VAT law is fair and protects the rights of both the Tax Administration and the VAT Registrants
- ▶ The Law provides for a person who feels aggrieved to request a formal change to an official decision regarding tax assessment or other decisions made by the Commissioner.
- ▶ **BURDEN OF PROOF IS ON THE TAXPAYER!!!**



## What types of decisions can be appealed?

- ▶ Decision to register or not register a person who has applied
- ▶ Decision to cancel or not to cancel a person's registration
- ▶ Decision regarding a person's claim to input tax deduction
- ▶ Decision regarding the demand for security fee
- ▶ Decision regarding an application for refund



# Stages in the Objections & Appeals Process

Appeals Process must appear to be Independent, fair and unbiased

- ▶ Stage 1 – Appeals to the Commissioner
- ▶ Stage 2 – Appeals to the Appeals Commissioners
- ▶ Stage 3 – Appeals to Revenue Court



## Note on Appeals

- ▶ There is to be established A Revenue Court to which eventually all matters of enforcement of fines, payments of taxes
- ▶ The Revenue Court is expected to have the same standing as the Supreme Court of The Commonwealth of The Bahamas regarding its decision and enforcement.

# TRANSITIONAL PROVISIONS

- ▶ **Section 93**
- ▶ (1) The VAT Commissioner may, on and from the date this Act is enacted
  - (a) accept applications from persons, in such form as the Commissioner may determine, for provisional registration under this Act; and
  - (b) grant provisional registration to a person who satisfies the Commissioner that such person meets the requirements for registration under section 18 or section 19.
- ▶ (2) A provisional registration does not entitle a registrant to the issue of a certificate of registration or to enforce any provision of this Act.
- ▶ (3) The VAT Commissioner must, on the date this Act comes into force, in
- ▶ respect of each provisional registrant —
  - (a) issue a certificate of registration; and
  - (b) allocate a tax period, and an effective date of registration, commencing on the 1st day of July, 2014;





# TRANSITIONAL PROVISIONS

- ▶ (4) A supplier may —
  - (a) where a contract was concluded before the entry into force of this Act and no provision relating to tax was made in such contract; and
  - (b) where the supplier after the entry into force of this Act becomes a registrant and makes taxable supplies under the contract, recover from the recipient of a taxable supply made after the entry into force of this Act the tax due on the supply.



# TRANSITIONAL PROVISIONS

- ▶ (6) The contract price, in relation to a contract concluded after the date this Act comes into force which does not provide for tax, is deemed to include tax and a taxable person who makes a taxable supply under such contract must pay and account for output tax chargeable on the supply.
  
- ▶ (7) Subject to subsection (9), a payment in connection with a taxable supply is, for the purpose of determining the tax period in which the supply occurs or an input tax deduction is allowed, treated as made or an invoice as issued on the date this Act comes into force where —
  - (a) title to the goods passes, or delivery of the goods is made, or services are rendered, after the date this Act comes into force; and
  
  - (b) payment is received, or an invoice is issued, within a period of six months before the date this Act comes into force.

# Implementation of VAT BILL & REGS.

- ▶ The Value Added Tax Bill is expected to be tabled before Parliament passed and to become Law on or before JULY 1, 2014.
  
- ▶ The purpose of the introduction of this new VAT Legislation is expected to:-
  - 1) Making the tax structure one that is fair and equitable;
  
  - 2) Putting in place the machinery to effectively and efficiently ensure compliance with the VAT Law. Likewise, to ensure fairness and integrity among all Registrants and/or Taxable Persons within the tax framework.



## QUESTIONS??????

- ▶ Contact information for CRA/VAT unit

[VAT@bahamas.gov.bs](mailto:VAT@bahamas.gov.bs)

225-7280 (toll free)

**Thank You for your attention!!!!**